

MARY F. CLARKE, Counsel (SBN 186744)  
Bureau of Real Estate  
1651 Exposition Boulevard  
P.O. Box 137007  
Sacramento, CA 95813-7007

**FILED**

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Telephone: (916) 263-8670  
(916) 263-7303 (Direct)  
(916) 263-3767 (Fax)

BUREAU OF REAL ESTATE

By K. Contreras

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	
	)	NO. H-6099 SAC
A C O N, INC., a Corporation, and	)	
DAVID ALBERT NOVELO,	)	ACCUSATION
	)	
Respondents.	)	

The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity against A C O N, INC. (herein "ACON"), dba Capital Property Management (herein "CPM") and "Realty One", and DAVID ALBERT NOVELO (herein "NOVELO") (collectively "Respondents"), is informed and alleges as follows:

1

At all times herein mentioned, Respondents were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

2

At all times herein mentioned, ACON was and now is licensed by the State of California Bureau of Real Estate (herein "the Bureau") as a corporate real estate broker by and

1 through NOVELO as designated officer-broker of ACON to qualify said corporation and to act  
2 for said corporation as a real estate broker. ACON's corporate broker license failed to include a  
3 Mortgage Loan Originator license endorsement.

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5 At all times herein mentioned, NOVELO was and now is licensed by the Bureau  
6 as the designated officer-broker of ACON. As said designated officer-broker, NOVELO was  
7 at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the  
8 supervision of the activities of the officers, agents, real estate licensees, and employees of  
9 ACON for which a license is required. NOVELO's individual broker license expired on about  
10 March 6, 2012.

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12 Whenever reference is made in an allegation in this Accusation to an act or  
13 omission of ACON, such allegation shall be deemed to mean that the officers, directors,  
14 employees, agents and/or real estate licensees employed by or associated with ACON  
15 committed such act or omission while engaged in the furtherance of the business or operations  
16 of such corporate respondent and while acting within the course and scope of their authority  
17 and employment.

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19 At all times herein mentioned Respondents engaged in the business of, acted in  
20 the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others,  
21 for compensation or in expectation of compensation within the State of California within the  
22 meaning of Sections:

- 23 (a) 10131(a) of the Code, including the operation and conduct of a real estate  
24 brokerage with the public wherein Respondents sold or offered to sell,  
25 bought or offered to buy, solicited prospective sellers or purchasers of,  
26 solicited or obtained listings of, or negotiated the purchase, sale or exchange  
27 of real property or a business opportunity;

1 (b) 10131(b) of the Code, including the operation and conduct of a property  
2 management business with the public wherein, Respondents leased or  
3 rented or offered to lease or rent, or placed for rent, or solicited listings  
4 or places for rent, or solicited for prospective tenants, or negotiated the  
5 sale, purchase or exchanges of leases on real property or on a business  
6 opportunity, or collected rents from real property, or improvements  
7 thereon, or from business opportunities; and

8 (c) 10131(d) of the Code, including the operation and conduct of a mortgage  
9 loan brokerage with the public wherein Respondents solicited lenders or  
10 borrowers for or negotiated loans or loan modifications or collected  
11 payments or performed services for borrowers or lenders or note owners in  
12 connection with loans secured directly or collaterally by liens on real  
13 property or on a business opportunity.

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15 In so acting as real estate brokers as described in Paragraph 5, above,  
16 Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of  
17 tenants, owners, and others in connection with real estate leasing, renting, and collection of rents  
18 on real property or improvements thereon, and thereafter from time to time made disbursements  
19 of said funds.

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21 The aforesaid trust funds accepted or received by Respondents were deposited or  
22 caused to be deposited by Respondents into one or more bank accounts (herein "trust fund  
23 accounts") maintained by Respondents for the handling of trust funds at the Fair Oaks, California  
24 branch of Wells Fargo Bank, "A C O N Inc. dba Capital MNGT Operating Trust Account,"  
25 account #xxxxxx8298 (herein "Trust #1").

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Between about March 1, 2010 and May 31, 2013, in connection with the property management business and trust fund handling activities described in Paragraphs 5, 6 and 7, above, Respondents:

- (a) caused, suffered or permitted the balance of funds in ACON Trust #1 to be reduced to an amount, which as of May 31, 2013, was approximately \$99,504.01 less than the aggregate liability of ACON to all owners of such funds, without the prior written consent of the owners of such funds, in violation of Section 2832.1 of Chapter 6, Title 10, California Code of Regulations (herein "the Regulations");
- (b) failed to keep a columnar record in chronological sequence of all trust funds received and disbursed from Trust #1 containing all the information required by Section 2831 of the Regulations;
- (c) failed to keep a separate record for each beneficiary or transaction for Trust #1 containing all the information required by Section 10145 of the Code and Section 2831.1 of the Regulations;
- (d) failed to reconcile at least once a month, the balance of all separate beneficiary or transaction records with Trust #1, as required by Section 2831.2 of the Regulations; and
- (e) failed to make available after requisite notice, books, accounts and records for examination, inspection and copying by the Commissioner or his/her designated representative, in violation of Section 10148 of the Code.

On about May 20, 2013, Respondent ACON failed to display its license I.D. number on a Realty One business card used by its employee, Tami Saucedo, in violation of Section 10140.6 of the Code and Section 2773 of the Regulations.

Between about October 1, 2013 and November 15, 2013, Respondents willfully caused, suffered and permitted ACON to perform licensed activities during the time ACON was not in good standing with the office of the Secretary of State, in violation of Section 2742(c) of the Regulations.

On about March 5, 2014, Respondent ACON failed to display its license I.D. number on the CPM and Realty One websites, in violation of Section 10140.6 of the Code and Section 2773 of the Regulations.

Respondents represented themselves as Mortgage Brokers on the Realty One website, as follows:

*"Residential Mortgage: We have mortgage programs to fit anyone's needs. It doesn't matter if you have good credit or bad credit. We can find you the best loan! As Mortgage Brokers, we look to match your needs with the right mortgage program and get you the best rate possible!"*

In fact, Respondents failed to obtain a Mortgage Loan Originator license endorsement for ACON's corporate broker license, in violation of Sections 10176(a) and (i) and/or 10177(g) and/or 10177(j) of the Code.

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code and Regulations:

- (a) as to Paragraph 8(a) under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph 8(b) under Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;

- 1 (c) as to Paragraph 8(c) under Section 10145 of the Code and Section  
2 2831.1 of the Regulations in conjunction with Section 10177(d) of the  
3 Code;  
4 (d) as to Paragraph 8(d) under Section 2831.2 of the Regulations in  
5 conjunction with Section 10177(d) of the Code;  
6 (e) as to Paragraph 8(e) under Section 10148 of the Code in conjunction  
7 with Section 10177(d) of the Code;  
8 (f) as to Paragraph 9 under Section 10140.6 of the Code and Section 2773  
9 of the Regulations in conjunction with Section 10177(d) of the Code;  
10 (g) as to Paragraph 10 under Section 2742(c) of the Regulations in  
11 conjunction with Section 10177(d) of the Code;  
12 (h) as to Paragraph 11 under Section 10140.6 of the Code and Section 2773  
13 of the Regulations in conjunction with Section 10177(d) of the Code;  
14 and  
15 (i) as to Paragraph 12 under Sections 10176(a) and (i) and/or 10177(g)  
16 and/or 10177(j) of the Code.

17 COST RECOVERY

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19 Audit Costs

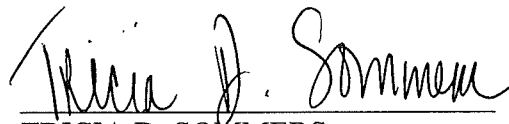
20 The acts and/or omissions of Respondents as alleged above entitle the Bureau to  
21 reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

22 15

23 Investigation and Enforcement Costs

24 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
25 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the  
26 Administrative Law Judge to direct a licensee found to have committed a violation of this part to  
27 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1           WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
3 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1  
4 of Division 4 of the Business and Professions Code), for the cost of the investigation and  
5 enforcement as permitted by law, and for such other and further relief as may be proper under  
6 other applicable provisions of law.

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10           TRICIA D. SOMMERS  
11           Deputy Real Estate Commissioner

12  
13          Dated at Sacramento, California  
14          this 24th day of March, 2014.