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FILED

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BUREAU OF REAL ESTATE

By S. Black

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-6247 SAC
13 MICHAEL KEITH BOLEN, II,)
14) ACCUSATION
15 Respondent.)

16 The Complainant, HEATHER NISHIMURA, a Deputy Real Estate Commissioner
17 of the State of California for cause of Accusation against MICHAEL KEITH BOLEN, II
(Respondent), is informed and alleges as follows:

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19 The Complainant makes this Accusation in her official capacity.

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21 At all times herein mentioned, Respondent was and is presently licensed and/or
22 has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and
23 Professions Code (the Code) by the Bureau of Real Estate (the Bureau) as a real estate broker.

24 3

25 At all times mentioned, Respondent engaged in the business of, acted in the
26 capacity of, advertised or assumed to act as a real estate broker in the State of California, within
27 the meaning of Section 10131(a) of the Code, including the operation and conduct of a

1 residential resale brokerage wherein Respondent bought, sold, or offered to buy or sell, solicited
2 or obtained listings of, and negotiated the purchase, sale or exchange of real property or business
3 opportunities, all for or in expectation of compensation.

4 FIRST CAUSE OF ACTION

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6 Complainant refers to Paragraphs 1 through 3 above, and incorporates them
7 herein, by reference.

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9 On or about February 8, 2012, Respondent entered a listing agreement with
10 Kimberly and Jeremy R. (Sellers) for their property commonly known as 18240 Clayton Avenue,
11 Sonoma, California (Clayton Property). It was listed at \$180,000.00, a price suggested by Bank
12 of America. Commission was set at six percent (6%) of the purchase price.

13 6

14 On or about March 11, 2012, Anderson, the first offer, through his salesperson,
15 Abraham Cyphers (Cyphers), submitted an all cash offer to purchase the Clayton Property at the
16 \$180,000.00 listing price. Sellers accepted this offer on or about March 12, 2012.

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18 The Short Sale Addendum, submitted with the above described offer, stated that
19 the transaction was contingent on the written consent from all secured lenders and lienholders by
20 March 31, 2012.

21 8

22 On or about March 14, 2012, Leff, the second offeror, sent Respondent an all cash
23 offer, by email, to purchase the Clayton Property at the \$180,000.00 listing price. On or about
24 March 16, 2012, Respondent communicated this offer to Sellers.

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2 On March 19, 2012, the preliminary title report showed the second loan on the
3 Clayton Property (CitiBank Loan).

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5 On or about March 22, 2012, Respondent corresponded with Leff and represented
6 that the Bank of America made a counter offer of \$183,000.00. Respondent did not make this
7 representation to Anderson.

8 11

9 On or about March 28, 2012, Anderson, through Cyphers, submitted a second
10 Short Sale Addendum to Respondent, to extend the contingency date from March 31, 2012 to
11 April 15, 2012. Respondent did not provide this document to Sellers.

12 12

13 On or about April 10, 2012, Cyphers emailed Anderson and advised him that
14 Cyphers noticed that the Citibank Loan was not addressed during the transaction. Cyphers also
15 communicated this information to Respondent's assistant Katherine Klam (Klam) who indicated
16 that she would look into the matter.

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18 On or about April 20, 2012, Bank of America was notified of the Citibank Loan.

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20 On or about April 21, 2012, Respondent represented to Leff that Sellers had not
21 disclosed the Citibank Loan.

22 15

23 On or about April 25, 2012, Respondent represented to Bank of America that
24 Sellers wanted to cancel the transaction with Anderson because the Sellers were preparing for a
25 loan modification or foreclosure. Respondent further represented that the Leff offer was much
26 stronger than the Anderson offer.

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On or about April 26, 2012, at approximately 12:58 PM, Respondent, through Klam, advised Citibank that he was forwarding a short sale package for Sellers.

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On or about April 26, 2012, at approximately 3:48 PM, Respondent received a confirmation that the Cancellation of Contract with Anderson had been signed by Sellers.

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On or about April 28, 2012, Respondent forwarded the Cancellation of Contract for Anderson's signature and represented to Anderson that Sellers were going to pursue a loan modification.

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On or about May 1, 2012, Cyphers delivered the Cancellation of Contract with Anderson's signature to Respondent.

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On May 4, 2012, Respondent notified Bank of America that the contract with Anderson was cancelled and that the Leff offer was accepted.

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On or about May 4, 2012, Respondent, through Klam, emailed Sellers and represented that Citibank wanted more information.

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On or about May 8, 2012, Escrow was opened on the Leff offer.

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On or about May 30, 2012, Anderson submitted a second all cash offer to purchase the Clayton Property for \$225,000.00. Respondent notified Bank of America of this offer on or before June 6, 2012.

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On or about August 24, 2012, the Clayton Property was sold to Leff for \$183,000.00. Respondent received commissions for representing both Sellers and Leff, in the total amount of \$10,980.00.

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The representations that Respondent made, as set forth above, were untrue and Respondent knew them to be untrue at the time he made them and were made for the purpose of gaining a commission from buyer as well as sellers.

26

The facts alleged above violate Sections 10176(a) (material misrepresentation) 10176(b) (false promises to influence, persuade, or induce), 10176(c) (continued flagrant course of misrepresentation), 10176(i) (other conduct/fraud or dishonest dealing) and 10177(j) (other conduct that constitutes fraud or dishonest dealing) of the Code and are grounds for the suspension or revocation of the licenses and license rights of Respondent under Sections 10176(a), 10176(b), 10176(c), 10176(i) and 10177(j) of the Code.

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

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary

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1 action against all licenses and license rights of Respondent under the Code, and for such other
2 and further relief as may be proper under other provisions of law.

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HEATHER NISHIMURA
Deputy Real Estate Commissioner

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8 Dated at Oakland, California,
9 this 15th day of April, 2015.