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FILED

MAY 18 2016

BUREAU OF REAL ESTATE

By B. Nicholas

9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of

13 FRANCISCO CALAMAYAN NERI,

14 Respondent.

No. H- 6397 SAC

ACCUSATION

15 The Complainant, TRICIA PARKHURST, a Supervising Special Investigator of
16 the State of California, for cause of Accusation against FRANCISCO CALAMAYAN NERI
17 (Respondent), is informed and alleges as follows:

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19 The Complainant, TRICIA PARKHURST, a Supervising Special Investigator of
20 the State of California, makes this Accusation in her official capacity.

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22 Respondent is presently licensed and/or has license rights under the Real Estate
23 Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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25 At all times mentioned, Respondent was and is licensed by the Bureau as a real
26 estate broker.

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At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate licensee, in the State of California, within the meaning of:

Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein Respondent solicited lenders and borrowers for loans secured directly or collaterally by liens on real property or a business opportunity, and wherein such loans were arranged, negotiated, processed, and consummated by Respondent on behalf of others for compensation or in expectation of a compensation; and

Section 10131.2 of the Code, including the claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.

On or about October 1, 2015, and continuing intermittently through February 22, 2016, the Bureau conducted an audit of the records of Respondent. The auditor examined the records for the period of October 1, 2013, through December 31, 2015.

While acting in the course and scope of a real estate licensee as described in Paragraph 7, and within three years prior to the filing of this Accusation, Respondent accepted or received funds in trust (trust funds), within the meaning of Sections 10145 and 10146 of the Code, from or on behalf of borrowers, lenders, and/or others in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, for or in expectation of compensation, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds, and engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees, which constitute trust funds, within the meaning

of Sections 10026, 10131.2, and 10146 of the Code.

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The trust funds accepted or received by Respondent as described in Paragraph 6 were deposited or caused to be deposited by Respondent into a trust account which was maintained by Respondent for the handling of trust funds, and thereafter from time-to-time Respondent made disbursements of said trust funds, identified as follows:

ACCOUNT # 1	
Bank Name and Location:	Chase Bank 901 Tennessee Street Vallejo, CA 94590
Account No.:	XXXXXX1885
Entitled:	Francisco Neri or Priscilla Neri
ACCOUNT # 2	
Bank Name and Location:	Bank of America P.O. Box 15284 Wilmington, DE 19850
Account No.:	XXXX XXXX 6983
Entitled:	Francisco C. Neri Priscilla Neri Elinore Neri

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While acting in the course and scope of a real estate licensee as described in Paragraphs 6 and 7, and within three years prior to the filing of this Accusation, Respondent claimed, demanded, charged, collected, and/or received advance fees in connection with loan modification services after October 10, 2009, in violation of Section 10085.6 (unlawful collection of advance fees related to loan modifications) of the Code and Section 2945.4 (unlawful collection of advance fees related to loan modifications) of the California Civil Code (Civil Code), for transactions, including but not limited to the following:

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Property Owner	Property	Advance Fee
Cipriano M.	564 Phoenix Circle, Vallejo, CA	\$5,050
Jamal Z.	1402 Ignacio Blvd., Novato, CA	\$1,000
Nader & Monica G.	60 Miwok Drive, Novato, CA	\$2,060
Maria and Raymond P.	2233 Garnet Drive, Vallejo, CA	\$4,500

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In connection with the operation and conduct of the activities and transactions described in Paragraph 8, and within three years prior to the filing of this Accusation,

Respondent:

(a) caused, suffered, or permitted the balance of funds in Account #1 to be reduced to an amount which, as of May 23, 2014, was approximately \$5,399.95 less than the aggregate liability of Account #1 to all owners of such funds in violation of Section 10145 (trust fund handling) of the Code and Section 2832.1 (trust fund handling for multiple beneficiaries) of Title 10 of the California Code of Regulations (Regulations);

(b) claimed, demanded, charged, received, collected, and/or contracted for advance fees in connection with real estate services and failed to submit the advance fee agreements and all materials used in obtaining the advance fee agreements to the Bureau prior to use, without first obtaining a "No Objection Letter" as required by Sections 10085 (failure to submit materials used in collection of advance fees to Bureau) of the Code, and Section 2970 (materials used in collection of advance fees must be approved by Bureau prior to use) of the Regulations;

(c) collected advance fees, trust funds, from principals for real estate services, and deposited those funds into Respondent's general business bank account instead of immediately depositing said funds into a designated trust account or neutral escrow depository, in

1 violation of Sections 10145 and 10146 (handling of advance fees as trust funds) of the Code, and
2 Section 2832 (trust account designation) of the Regulations;

3 (d) collected advance fees from principals for providing real estate services,
4 and did not maintain and provide an accounting to those principals showing the services
5 rendered, identification of the trust account into which the funds were deposited and details of
6 how those funds were disbursed, in violation of Section 10146 of the Code and 2972 (verified
7 accounting of advance fee handling to principals) of the Regulations;

8 (e) failed to maintain separate beneficiary or transaction records for Account
9 #1 containing all information required by Section 2831.1 (separate beneficiary records) of the
10 Regulations;

11 (f) failed to maintain a written control record of all trust funds received and
12 disbursed in Account #1, containing all information required by Section 2831 (control record) of
13 the Regulations;

14 (g) failed to reconcile the balance of separate beneficiary or transaction
15 records with the control record of trust funds received and disbursed at least once a month,
16 and/or failed to maintain a record of such reconciliations for each account as required by Section
17 2831.2 (trust account reconciliation) of the Regulations;

18 (h) commingled with its own money or property, the money or property of
19 others which was received or held by Respondent in trust in violation of Section 10176(e)
20 (comingling) of the Code; and

21 (i) Respondent operated his loan modification and forbearance activities
22 under the fictitious business name of "Advocates for Neighbors", without Respondent obtaining
23 a license bearing said fictitious business name as required by Section 2731 (use of false or
24 fictitious name) of the Regulations.

26 The acts and/or omissions of Respondent as alleged above constitute grounds for
27 the suspension or revocation of all licenses and license rights of Respondent, pursuant to the

1 following provisions of the Code and Regulations:

2 As to Paragraph 8, under Section 10177(d) (willful disregard or violation of Real
3 Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of the
4 Code, and Section 10177(q) (violation of Civil Code) of the Code, in conjunction with Section
5 10085.6 of the Code and Section 2945.4 of the Civil Code;

6 As to Paragraph 9(a), under Sections 10177(d) and/or 10177(g) of the Code, in
7 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

8 As to Paragraph 9(b), under Sections 10177(d) and/or 10177(g) of the Code, in
9 conjunction with Section 10085 of the Code and Section 2970 of the Regulations;

10 As to Paragraph 9(c), under Sections 10177(d) and/or 10177(g) of the Code, in
11 conjunction with Sections 10145 and 10146 of the Code and 2832 of the Regulations;

12 As to Paragraph 9(d), under Sections 10177(d) and/or 10177(g) of the Code in
13 conjunction with Section 10146 of the Code and Section 2972 of the Regulations;

14 As to Paragraph 9(e), under Sections 10177(d) and/or 10177(g) of the Code in
15 conjunction with Section 2831.1 of the Regulations;

16 As to Paragraph 9(f), under Sections 10177(d) and/or 10177(g) of the Code in
17 conjunction with Section 2831 of the Regulations;

18 As to Paragraph 9(g), under Sections 10177(d) and/or 10177(g) of the Code in
19 conjunction with Section 2831.2 of the Regulations;

20 As to Paragraph 9(h), under Section 10176(e) of the Code; and

21 As to Paragraph 9(i), under Sections 10177(d) and/or 10177(g) of the Code in
22 conjunction with Section 2731 of the Regulations and Section 10159.5 (fictitious name) of the
23 Code.

24 COST RECOVERY

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26 The acts and/or omissions of Respondent as alleged above, entitle the Bureau to
27 reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund

1 handling violation) of the Code.

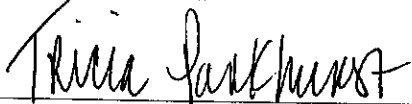
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5 Section 10106 of the Code provides, in pertinent part, that in any order issued in
6 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the
7 Administrative Law Judge to direct a licensee found to have committed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

9 WHEREFORE, Complainant prays that a hearing be conducted on the
10 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
11 discipline on all licenses and license rights of Respondent under the Real Estate Law (Part 1 of
12 Division 4 of the Business and Professions Code), for the cost of the investigation and
13 enforcement of this case as permitted by law, for the cost of the Bureau's audit as permitted by
14 law, and for such other and further relief as may be proper under the provisions of law.

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16 TRICIA PARKHURST
17 Supervising Special Investigator

18 Dated at Sacramento, California,
19 this 16th day of May, 2016

20 DISCOVERY DEMAND

21 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Bureau of Real
22 Estate hereby makes demand for discovery pursuant to the guidelines set forth in the
23 *Administrative Procedure Act*. Failure to provide Discovery to the Bureau of Real Estate may
24 result in the exclusion of witnesses and documents at the hearing or other sanctions that the
25 Office of Administrative Hearings deems appropriate.
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