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FILED

JUN 06 2016

BUREAU OF REAL ESTATE

By B. Nicholas

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 NORCAL VENTURE REAL ESTATE &) NO. H- 6402 SAC
13 INVESTMENTS, INC., RAFAEL SIERRA) ACCUSATION
14 and FRANCISCO MACIAS,)
15 Respondents.)

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17 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
18 of the State of California for cause of Accusation against NORCAL VENTURE REAL ESTATE
19 & INVESTMENTS, INC. (NVREI), RAFAEL SIERRA (SIERRA) and FRANCISCO MACIAS
20 (MACIAS), collectively referred to as RESPONDENTS, is informed and alleges as follows:

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22 The Complainant makes this Accusation in her official capacity.

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

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All times herein mentioned, SIERRA was and is presently licensed and/or has license rights as a real estate salesperson.

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At all times herein mentioned, MACIAS was and is presently licensed and/or has license rights as a real estate broker.

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At no time herein mentioned was Joly Quintong Gagni (Joly Gagni) licensed as a real estate salesperson or broker.

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At all times herein mentioned, MACIAS was licensed by the Bureau as the designated officer of NVREI. As the designated officer, MACIAS was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of NVREI for which a real estate license is required.

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Whenever reference is made in an allegation in this Accusation to an act or omission or NVREI, such allegation shall be deemed to also mean that MACIAS committed such act or omission while engaged in furtherance of the business or operation of NVREI, and while acting within the course and scope of his employment.

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At all times mentioned, RESPONDENTS engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(a) of the Code, including the operation and conduct of a residential resale brokerage wherein RESPONDENTS bought, sold, or offered to buy or sell, solicited or obtained listings of, and negotiated the purchase, sale or exchange of real property or business opportunities, all for or in expectation of compensation.

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At all times mentioned, herein, RESPONDENTS employed Joly Gagni to engage in real estate activities.

FIRST CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 9 above, and incorporates them herein, by reference.

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In or around June, 2012, SIERRA, acting on behalf of NVREI, became the listing agent for sellers, Mark and Joanne M., in an attempted short sale of Mark and Joanne M.'s property commonly known as 3633 Buhler Way, North Highlands, California (Buhler Property). The proposed buyer in the attempted short sale was Klarisse Gagni, a daughter of Joly Gagni. That sale did not close.

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In or around October, 2012, Mark and Joanne M. and SIERRA signed an "arms length agreement" with Bank of America, agreeing not to sell the property within 90 days and continuously they did not expect to buy or rent back the property after closing.

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On or about December 20, 2012, SIERRA and Mark and Joanne M. executed a listing agreement for the short sale of the Buhler Property.

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On or about January 14, 2013, a purchase agreement between Mark and Joanne M. and Kenneth Gagni, a son of Joly Gagni, was executed for the sale of the Buhler Property. That transaction closed on May 17, 2013.

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On or about January 15, 2013, SIERRA and Mark and Joanne M. executed a "Short Sale Real Estate License Certification" disclosing any known relationships to buyer, and licensee representing to sellers there were no business relationships with buyer or seller.

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After the sale of the Buhler Property, Mark and Joanne M. remained in the property. On or about June 9, 2013, SIERRA submitted an offer on behalf of Mark and Joanne M. to buy back the Buhler Property from Kenneth Gagni. Mark and Joanne M. gave SIERRA a \$5,000.00 earnest money deposit. SIERRA failed to deposit the check into NVREI's trust account or place the check into escrow, and instead deposited it into an account belonging to SIERRA and Joly Gagni.

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That transaction did not close, but Mark and Joanne M. remained in the property and executed a lease agreement with Kenneth Gagni for the Buhler Property.

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As to SIERRA, the facts alleged above violate Sections 10145 (trust fund handling), 10176(a) (material misrepresentation) 10176(b) (false promises to influence, persuade, or induce), and 10176(i) (other conduct/fraud or dishonest dealing) of the Code and are grounds for the suspension or revocation of the licenses and license rights of SIERRA under Sections 10176(a), 10176(b), and 10176(i) of the Code.

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As to NVREI and MACIAS, the facts alleged above violate Section 10137 (hiring unlicensed person) of the Code and are grounds for the suspension or revocation of the licenses and license rights of NVREI and MACIAS under Section 10137 of the Code.

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1 SECOND CAUSE OF ACTION

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3 Complainant refers to Paragraphs 1 through 19, above, and incorporates them
4 herein, by reference.

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6 In or about November 12, 2013, SIERRA, acting on behalf NVREI, made an offer
7 on behalf of Mark and Joanne M. to purchase that certain real property commonly known as 161
8 S. Lincoln, Roseville, California (Lincoln Property). SIERRA filled out the name of Rebecca G.
9 as buyer.

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11 Rebecca G. did not wish to purchase the Lincoln Property, nor did she realize that
12 SIERRA filled in her name as buyer in the offer.

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14 Rebecca G. had retained SIERRA to purchase another residence and had given
15 Joly Gagni a \$3,000.00 check as a deposit toward that residence. Rebecca G., pursuant to her
16 efforts to make an offer to purchase a residence, had provided personal financial information to
17 SIERRA.

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19 SIERRA failed to deposit the \$3,000.00 check into NVREI's trust account or into
20 escrow on the pending purchase of the Lincoln Property. Instead he deposited the check into the
21 account that he co-owned with Joly Gagni.

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23 SIERRA submitted a purported preapproval letter for the purchase of the Lincoln
24 Property, from Rodney Wong of Midtown Realty Mortgage. Wong has denied ever drafting the
25 letter or arranging financing for the Lincoln Property.

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As to SIERRA, the facts alleged above violate Sections 10145 (trust fund handling), 10176(a) (material misrepresentation) 10176(b) (false promises to influence, persuade, or induce), and 10176(i) (other conduct/fraud or dishonest dealing) of the Code and are grounds for the suspension or revocation of the licenses and license rights of SIERRA under Sections 10176(a), 10176(b), and 10176(i) of the Code.

27

As to NVREI and MACIAS, the facts alleged above violate Section 10137 (hiring unlicensed person) of the Code and are grounds for the suspension or revocation of the licenses and license rights of NVREI and MACIAS under Section 10137 of the Code.

THIRD CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 27, above, and incorporates the same herein by reference.

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On or about November 13, 2013, the corporate powers, rights and privileges of NVREI were suspended by the Secretary of State for the State of California, and continue until the present time without reinstatement, pursuant to the California Revenue and Taxation Code.

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The above acts/or omissions of MACIAS violate Sections 2742(c) (corporation in good standing), and 2725 (broker supervision) of the Regulations and Section 10159.2 (responsibility designated officer) of the Code and are grounds for the suspension or revocation of the license and license rights of NVREI and MACIAS under Sections 10177(d) (willful disregard/violation of Real Estate Law), 10177(g) (negligence/incompetence real estate licensee) and 10177(h) (broker supervision) of the Code.

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1 FOURTH CAUSE OF ACTION

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3 Complainant refers to Paragraphs 1 through 30, above, and incorporates the same
4 herein, by reference.

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6 At all times herein above mentioned, MACIAS, was responsible as the
7 supervising broker for NVREI, for the supervision and control of the activities conducted on
8 behalf of NVREI's business by its employees. MACIAS failed to exercise reasonable
9 supervision and control over the property management activities of NVREI. In particular,
10 NVREI permitted, ratified and/or caused the conduct described above, to occur, and failed to take
11 reasonable steps, including but not limited to handling of trust funds, supervision of employees,
12 and the implementation of policies, rules, and systems to ensure the compliance of the business
13 with the Real Estate Law and the Regulations.

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15 The above acts and/or omissions of MACIAS violate Section 10159.2
16 of the Code and Section 2725 of the Regulations and constituted grounds for disciplinary action
17 under the provisions of Sections 10177(d), 10177(g) and 10177(h) of the Code.

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

23 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
24 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
25 action against all licenses and license rights of Respondent under the Code, for the reasonable

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1 costs of investigation and prosecution of this case, including agency attorney's fees, and for such
2 other and further relief as may be proper under other provisions of law.

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5 TRICIA D. PARKHURST
6 Supervising Special Investigator

7 Dated at Sacramento, California,
8 this 24th day of May, 2016.

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