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FILED

MAR 19 2019

DEPARTMENT OF REAL ESTATE

By L. Krapp

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:

12 AMAC REALTY & LENDING, INC.,
13 MIN LE and
14 DANIEL DUC VU

Respondents.

No. H- 6795 SAC

ACCUSATION

15
16 The Complainant, CHIKA SUNQUIST, in her official capacity as a Supervising
17 Special Investigator of the State of California, Department of Real Estate ("Department") for
18 cause of Accusation against AMAC REALTY & LENDING, INC. ("AMAC"), MIN LE ("LE"),
19 and DANIEL DUC VU ("VU"), (collectively "Respondents"), is informed and alleges as
20 follows:

21 GENERAL ALLEGATIONS

22 1

23 AMAC is presently licensed by the Department and/or has license rights under
24 the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
25 ("Code"), as a corporate real estate broker, License No. 01523249. AMAC is presently licensed
26 by the Department as a mortgage loan originator, MLO/NMLS Id. No. 329197.

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LE is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker, License No. 01363015.

3

LE was and is presently licensed by the Department as a mortgage loan originator, MLO/NMLS Id. No. 329059.

4

VU is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate salesperson, License No. 01518393.

5

VU was and is presently licensed by the Department as a mortgage loan originator, MLO/NMLS Id. No. 344799.

6

At all relevant times herein, LE was and is the Designated Officer broker of AMAC.

7

John A. Bui ("J. Bui") was licensed with the Department as a real estate broker, License No. 01012012, from January 11, 1997, through June 13, 2011.

8

On March 5, 2010, J. Bui was convicted in the United States District Court, Northern District of California, Case No. CR-09-00770-001-SI, of the following felonies and crimes: 18 U.S.C. Section 1349 (wire fraud conspiracy); 18 U.S.C. Section 1519 (destruction of records in a federal investigation); and 18 U.S.C. Section 1512(b) (witness tampering).

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On June 13, 2011, J. Bui's real estate broker license was revoked pursuant to Sections 490 (conviction of a crime) and 10177(b) (conviction of a substantially related crime) of the Code.

Whenever reference is made in this Accusation to an act or omission of AMAC, such allegation shall be deemed to mean that the employees, agents and real estate licensees employed by or associated with AMAC committed such act or omission while engaged in furtherance of the business or operations of AMAC and while acting within the course and scope of their authority and employment.

LICENSED ACTIVITY

Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the meaning of Section 10131(a) of the Code, in that Respondents performed licensed activities in the State of California for or in expectation of compensation, including the operation and conduct of a real estate brokerage that included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or exchange of real property or a business opportunity.

While engaging in the real estate activities described above in Paragraph 11, pursuant to the requirements of Section 10159.2 of the Code and Section 2725 of Title 10 of the Regulations of the Real Estate Commissioner ("Regulations"), LE was responsible for exercising reasonable supervision over the activities of AMAC's employees and/or its associates, including, but not limited to VU and J. Bui.

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1 FIRST CAUSE OF ACTION

2 **(Intentional and/or negligent misrepresentation of prepayment penalties in the Fremont**
3 **Property Transaction)**

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5 Each and every allegation in Paragraphs 1 through 12, inclusive, is incorporated
6 by this reference as if fully set forth herein.

7 14

8 On or about May 15, 2016, L. Bui and T. Duong entered into a Mortgage Loan
9 Origination Agreement ("MLO Agreement") with AMAC, wherein it was agreed that AMAC
10 would assist L. Bui and T. Duong to obtain a residential mortgage loan for the purchase of a
11 property located at 3402 Malibu Terrace, Fremont, CA 34539 ("Fremont Property
12 Transaction").

13 15

14 At all relevant times to the Fremont Property Transaction, VU was the Loan
15 Officer and J. Bui was the Loan Processor. Both VU and J. Bui were acting under the AMAC
16 company name.

17 16

18 The MLO Agreement included the following term: "All loans have a Prepayment
19 penalty of 3% of the loan amount, if payment or refinance within 6 months."

20 17

21 On or about June 3, 2016, L. Bui and T. Duong signed a Loan Estimate with
22 lender Finance of America Mortgage, LLC ("FAM, LLC"), which did not include a prepayment
23 penalty.

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25 FAM, LLC had no knowledge of the 3% prepayment penalty in the MLO
26 Agreement.

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Complainant is informed, believes, and thereon alleges that Respondents fraudulently and/or negligently submitted and/or allowed to be submitted to FAM, LLC the Loan Estimate, which Respondents knew or should have known contained a prepayment penalty term that was inconsistent with the prepayment penalty term in the MLO Agreement.

SECOND CAUSE OF ACTION

(Intentional and/or negligent misrepresentations as to the true identity of J. Bui in the Fremont Property Transaction)

20

Each and every allegation in Paragraphs 1 through 19, inclusive, is incorporated by this reference as if fully set forth herein.

21

On or about August 20, 2016, FAM, LLC issued a Conventional Loan Approval to T. Duong and L. Bui for Loan No. 4283 that included a list of broker approval conditions.

22

Condition 9006 of the Conventional Loan Approval asked Respondents to provide "satisfactory verification" that J. Bui was not the same individual as the John A. Bui who was prosecuted for mortgage crimes.

23

On or about June 28, 2019, Respondents submitted and/or allowed to be submitted to FAM, LLC a letter signed by J. Bui that read: "I just want to confirm that I am not the same person that [you] found in your QC [Quality Control]." The letter was on AMAC letterhead.

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Complainant is informed, believes, and thereon alleges that J. Bui is the same individual as the John A. Bui who was prosecuted for mortgage crimes.

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At the time Respondents submitted and/or allowed the letter described above in Paragraph 23 to be submitted to FAM, LLC, Respondents knew or should have known that J. Bui was the same individual as John A. Bui.

26

FAM, LLC would not have approved Loan No. 4283 had FAM, LLC known J. Bui was the same individual as John A. Bui.

27

Complainant is informed, believes, and thereon alleges that Respondents fraudulently and/or negligently submitted and/or allowed to be submitted to FAM, LLC the letter described above in Paragraph 23 so as to induce FAM, LLC to approve Loan No. 4283.

THIRD CAUSE OF ACTION

(Intentional and/or negligent misrepresentation as to the college transcripts of T. Huong in the Vallejo Property Transaction)

28

Each and every allegation in Paragraphs 1 through 27, inclusive, is incorporated by this reference as if fully set forth herein.

29

On or about March 26, 2016, D. Hoang entered into a California Residential Purchase Agreement and Joint Escrow Instructions for the purchase of a property located at 1002 Flagship Dr., Vallejo, CA 94592 ("Vallejo Property Transaction").

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At all relevant times to the Vallejo Property Transaction, Respondents were acting as mortgage loan brokers for D. Hoang.

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At all relevant times to the Vallejo Property Transaction, VU was the Loan Officer and J. Bui was the Loan Processor. Both VU and J. Bui were acting under the AMAC company name.

32

On or about April 20, 2016, FAM, LLC issued a Conventional Loan Approval to D. Hoang for Loan No. 2395 that included a list of broker approval conditions.

33

Condition 9004 of the Conventional Loan Approval asked Respondents to provide "school records that the borrower graduated end of 2015."

34

On or about April 22, 2016, Respondents submitted and/or allowed to be submitted to FAM, LLC copies of D. Hoang's diploma and an academic transcript allegedly issued by the University of California, Berkeley ("Berkeley").

35

Complainant is informed, believes, and thereon alleges that D. Hoang did not attend and/or did not graduate from Berkeley.

36

At the time Respondents submitted and/or allowed the diploma and academic transcript to be submitted to FAM, LLC, Respondents knew or should have known that D. Huong did not attend and/or graduate from Berkeley.

37

Complainant is informed, believes, and thereon alleges that Respondents knowingly and intentionally submitted or allowed the diploma and academic transcript to be submitted to FAM, LLC.

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Complainant is informed, believes, and thereon alleges that Respondents submitted and/or allowed the fraudulent diploma and academic transcript to be submitted so as to induce FAM, LLC to approve Loan No. 2395.

FOURTH CAUSE OF ACTION

(Intentional and/or negligent misrepresentation as to the earnings of C. Molina in the San Jose Property Transaction)

39

Each and every allegation in Paragraphs 1 through 38, inclusive, is incorporated by this reference as if fully set forth herein.

40

On or about July 20, 2016, V. Oum and C. Molina entered into a MLO Agreement with Respondents for the purchase of property located at 609 Balfour Drive, San Jose, CA 95111 ("San Jose Property Transaction").

41

At all relevant times to the San Jose Property Transaction, VU was the Loan Officer and J. Bui was the Loan Processor. Both VU and J. Bui were acting under the AMAC company name.

42

On or about July 21, 2016, lender HomeBridge issued a Conventional Loan Approval to V. Oum and C. Molina for Loan No. 9270 that included a list of broker approval conditions.

43

Condition No. 22 of the Conventional Loan Approval asked Respondents to provide a "satisfactory explanation for why borrowers [year to date] earnings are substantially lower than his pay rate average for 40 hrs."

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On or about August 25, 2016, Respondents submitted and/or allowed to be submitted to HomeBridge a letter signed by C. Molina, which read: "The reason of my low year-to-date earnings is because I took a few months leave of absent without pay to take care of my father in Mexico who was very sick and required surgery."

45

Complainant is informed, believes, and thereon alleges that C. Molina's letter misrepresented, in whole or in part, the reason C. Molina had low year-to-date earnings in 2016.

46

Respondents knew or should have known of the misrepresentation when Respondents submitted and/or allowed the letter to be submitted to HomeBridge

47

Complainant is informed, believes, and thereon alleges that Respondents fraudulently and/or negligently submitted and/or allowed the letter to be submitted so as to induce FAM, LLC to approve Loan No. 9270.

FIFTH CAUSE OF ACTION

(Intentional and/or negligent misrepresentation as to the 2016 gross earnings of L. Pham in the Rodeo Property Transaction)

48

Each and every allegation in Paragraphs 1 through 47, inclusive, is incorporated by this reference as if fully set forth herein.

49

On or about May 21, 2017, H. Ho and L. Pham entered into a California Residential Purchase Agreement and Joint Escrow Instructions for the purchase of a property located at 400 Garretson Avenue, Rodeo, CA 94572 ("Rodeo Property Transaction").

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At all relevant times to the Rodeo Property Transaction, Respondents were acting as mortgage loan brokers for H. Ho and L. Pham.

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At all relevant times to the Rodeo Property Transaction, VU was the Loan Officer and J. Bui was the Loan Processor. Both VU and J. Bui were acting under the AMAC company name.

52

On or about July 9, 2017, lender Sterns Lending, Inc. requested from Respondents a written verification of employment for borrowers H. Ho and L. Pham.

53

On or about July 24, 2017, Respondents submitted to Sterns Lending, Inc. a Request for Verification of Employment ("VOE") for L. Pham, dated July 13, 2017, wherein L. Pham's gross earnings for 2016 were listed as \$72,910.

54

On or about July 31, 2017, Respondents submitted to Sterns Lending, Inc. a second VOE from L. Pham, dated July 24, 2017, wherein L. Pham's gross earnings for 2016 were listed as \$4,795.08.

55

Complainant is informed, believes, and thereon alleges that the July 13, 2017 VOE, misrepresents L. Pham's 2016 gross earnings.

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At the time Respondents submitted and/or allowed the July 13, 2017 VOE to be submitted to Sterns Lending, Inc., Respondents knew or should have known that L. Pham's 2016 gross earnings were misrepresented.

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Complainant is informed, believes, and thereon alleges that Respondents fraudulently and/or negligently submitted and/or allowed the July 13, 2017 VOE to be submitted so as to induce Sterns Lending, Inc. to approve Loan No. 3139.

SIXTH CAUSE OF ACTION

(Intentional and/or negligent misrepresentation of prepayment penalties in the Milpitas Property Transaction)

58

Each and every allegation in Paragraphs 1 through 57, inclusive, is incorporated by this reference as if fully set forth herein.

59

On or about April 13, 2017, W. Iseman and T. Iseman entered into an MLO Agreement with AMAC, wherein it was agreed that AMAC would assist W. Iseman and T. Iseman obtain a residential mortgage loan for the purchase of a property located at 872 Erie Circle, Milpitas, CA ("Milpitas Property Transaction").

60

At all relevant times to the Milpitas Property Transaction, VU was the Loan Officer and J. Bui was the Loan Processor. Both VU and J. Bui were acting under the AMAC company name.

61

The MLO Agreement contained the following term: "This loan has a Pre-payment Penalty of 3% of the loan amount, if [paid off] or refinance[d] within 6 months. Even, stated NO-PREPAYMENT PENALTY in closing disclosure (CD) statement from lender/broker. This mortgage loan origination agreement supersede[s] all the other lender/bank's closing disclosure (CD) statement."

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On or about April 17, 2017, W. Iseman and T. Iseman signed a Loan Estimate and a Mortgage Loan Disclosure Statement with lender Mega Capital Funding, Inc., which did not include a prepayment penalty.

63

At all times relevant to the Milpitas Property Transaction, Mega Capital Lending, Inc. had no knowledge of the 3% prepayment penalty in the MLO Agreement.

64

Mega Capital Lending, Inc. would not have approved the loan had they known about the 3% prepayment penalty in the MLO Agreement.

65

Complainant is informed, believes, and thereon alleges that Respondents fraudulently and/or negligently submitted and/or allowed to be submitted to Mega Capital Lending, Inc. the Loan Estimate and the Mortgage Loan Disclosure Statement, which Respondents knew or should have known contained terms that were inconsistent with the terms of the MLO Agreement.

SEVENTH CAUSE OF ACTION

(Intentional and/or negligent misrepresentation of prepayment penalties in the Ceres Property Transaction)

66

Each and every allegation in Paragraphs 1 through 65, inclusive, is incorporated by this reference as if fully set forth herein.

67

On or about May 10, 2017, K. Li and Y. Zeng entered into an MLO Agreement with AMAC, wherein it was agreed that AMAC would assist K. Li and Y. Zeng obtain a residential mortgage loan for the purchase of a property located at 1642 Joseph Lane, Ceres, CA 95307 ("Ceres Property Transaction").

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At all relevant times to the Ceres Property Transaction, VU was the Loan Officer and J. Bui was the Loan Processor. Both VU and J. Bui were acting under the AMAC company name.

69

The MLO Agreement included the following term: "This loan has a Pre-payment Penalty of 3% of the loan amount, if [paid off] or refinance[d] within 6 months. Even, stated NO-PREPAYMENT PENALTY in closing disclosure (CD) statement from lender/broker. This mortgage loan origination agreement supersede[s] all other lender/bank's closing disclosure (CD) statement."

70

On or about March 22, 2017, K. Li and Y. Zeng signed a Loan Estimate and Mortgage Loan Disclosure Statement with Mega Capital Funding, Inc., which did not include a prepayment penalty.

71

Mega Capital Lending, Inc. had no knowledge of the 3% prepayment penalty in the MLO Agreement and would not have contracted for the loan had they known about the penalty.

72

Complainant is informed, believes, and thereon alleges that Respondents fraudulently and/or negligently submitted and/or allowed to be submitted to Mega Capital Lending, Inc. the Loan Estimate and Mortgage Loan Disclosure Statement, which Respondents knew or should have known contained terms that were inconsistent with the terms of the MLO Agreement.

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1 EIGHTH CAUSE OF ACTION

2 **(Intentional and/or negligent misrepresentation as to the college transcripts of Y. Yang in**
3 **the San Leandro Property Transaction)**

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5 Each and every allegation in Paragraphs 1 through 72, inclusive, is incorporated
6 by this reference as if fully set forth herein.

7 74

8 On or about April 15, 2017, G. Liu and Y. Yang entered into a California
9 Residential Purchase Agreement and Joint Escrow Instructions for the purchase of a property
10 located at 14559 Juniper Street, San Leandro, CA 94579 ("San Leandro Property Transaction").

11 75

12 At all relevant times to the San Leandro Property Transaction, Respondents were
13 acting as mortgage loan brokers for G. Liu and Y. Yang.

14 76

15 At all relevant times to the San Leandro Property Transaction, VU was the Loan
16 Officer and J. Bui was the Loan Processor. Both VU and J. Bui were acting under the AMAC
17 company name.

18 77

19 In or around May 2017, Respondents submitted and/or allowed to be submitted
20 to Primary Capital Mortgage, LLC copies of Y. Yang's diploma and academic transcript, which
21 were allegedly issued by the University of California, Davis ("UC Davis").

22 78

23 Complainant is informed, believes, and thereon alleges that Y. Yang did not
24 attend and/or did not graduate from UC Davis.

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2 At the time Respondents submitted and/or allowed the diploma and the academic
3 transcript to be submitted to Primary Capital Mortgage, LLC, Respondents knew or should have
4 known that Y. Yang did not attend and/or graduate from UC Davis.

5 80

6 At the time Respondents submitted and/or allowed the diploma and the academic
7 transcript to be submitted, Respondents knew the documents were fraudulent.

8 81

9 Complainant is informed, believes, and thereon alleges that Respondents
10 fraudulently and/or negligently submitted and/or allowed the diploma and the academic
11 transcript to be submitted so as to induce Primary Capital Mortgage, LLC to approve Loan No.
12 4353.

13 NINTH CAUSE OF ACTION

14 **(Failure to Supervise as to LE)**

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16 Each and every allegation in Paragraphs 1 through 81, inclusive, is incorporated
17 by this reference as if fully set forth herein.

18 83

19 As the designated officer for AMAC, LE was responsible for the supervision and
20 control over the activities conducted on behalf of AMAC by the corporation's officers,
21 employees and agents, as necessary to ensure full compliance with all provisions of the Real
22 Estate Law, including the supervision of all salespersons licensed under the corporation in the
23 performance of acts for which a real estate license is required.

24 84

25 LE failed to exercise reasonable supervision and control over the activities of
26 AMAC. In particular, LE permitted, ratified and/or caused the conduct described above to occur,
27 and failed to take reasonable steps, including but not limited to, supervision of employees and

1 agents, and the implementation of policies, rules and systems to ensure the compliance of the
2 business with the Real Estate Law and the Regulations.

3 TENTH CAUSE OF ACTION

4 **(As to all Respondents constructive fraud for breach of fiduciary duties owed to principals**
5 **and breach of the duties of good faith and fair dealings owed to third parties)**

6 85

7 Each and every allegation in Paragraphs 1 through 84, inclusive, is incorporated
8 by reference as if fully set forth herein.

9 86

10 At all relevant times herein, while acting as real estate agents, Respondents owed
11 their principals fiduciary duties, including, but not limited to the following: duty of reasonable
12 care and skill; duty of good faith; duty of loyalty; and duty of diligence.

13 87

14 At all relevant times herein, while acting as real estate agents, Respondents owed
15 third parties to the subject transactions a duty of good faith and fair dealing.

16 88

17 Respondents breached their fiduciary duties owed to their principals by engaging
18 in the acts and/or omissions described above in all causes of action.

19 89

20 Respondents further breached the duties of good faith and fair dealings owed to
21 third parties in the subject transactions by engaging in the acts and/or omissions described above
22 in all causes of action.

23 CAUSE FOR DISCIPLINE

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25 The acts and/or omissions of Respondents as alleged above constitute grounds for
26 the suspension or revocation of the license and license rights of Respondents under Sections
27 10166.051(a) (grounds for denial, suspension, or revocation of a mortgage loan originator

1 license), 10176(a) (making a substantial misrepresentation), 10176(i) (conduct that constitutes
2 fraud or dishonest dealing), 10177(d) (willful disregard or violation of real estate laws), 10177(g)
3 (negligence), and/or 10177(j) (engaging in conduct that constitutes fraud or dishonest dealings)
4 of the Code, in conjunction with California Civil Code Section 2923.1 (breach of fiduciary
5 duties).

6 91

7 The acts and/or omissions of LE as alleged above further constitute grounds for
8 the suspension or revocation of the license and license rights of LE under Sections 10177(h)
9 (failure to exercise reasonable supervision) and/or 10159.2 (failure of supervision by designated
10 officer) of the Code.

11 COST RECOVERY

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

17 WHEREFORE, Complainant prays that a hearing be conducted on the
18 allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all
19 licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the
20 Business and Professions Code), for the cost of investigation and enforcement of this matter as
21 permitted by law, and for such other and further relief as may be proper under other provisions
22 of law.

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25 CHIKA SUNQUIST
26 Supervising Special Investigator

25 Dated at Sacramento, California,
26 this 19th day of March, 2019.

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DISCOVERY DEMAND

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