

**FILED**

**OCT 28 2020**

**DEPARTMENT OF REAL ESTATE**

By           *B. New*          

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of: .	)	DRE No. H-6795 SAC
	)	
AMAC REALTY & LENDING, INC.,	)	OAH No. 2019110952
MIN LE and	)	
DANIEL DUC VU,	)	
	)	
_____ Respondents.	)	

DECISION

The Proposed Decision dated September 28, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and

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11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondents.

This Decision shall become effective at 12 o'clock noon on NOV 18 2020.

IT IS SO ORDERED 10.19.20

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

Douglas R. McCauley

**BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**In the Matter of the First Amended Accusation against:  
AMAC REALTY & LENDING, INC., MIN LE AND DANIEL DUC  
VU, Respondents**

**Case No. H-6795 SAC**

**OAH No. 2019110952**

**PROPOSED DECISION**

Dena Coggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on August 4 and 5, 2020, in Sacramento, California.

Adriana Z. Badilas, Real Estate Counsel, represents Chika Sunquist, Supervising Special Investigator, Department of Real Estate (Department), State of California.

Min Le (respondent Le) is self-represented and represents AMAC Realty & Lending, Inc (AMAC).

Jeffrey Kravitz, Attorney, represents Daniel Duc Vu (respondent Vu).

Oral and documentary evidence was received. The record was left open to allow the parties to submit written closing arguments. The briefs were timely submitted, at which time the record closed and the matter was submitted for decision on August 28,

2020. Complainant objected to the evidence attached to respondent Le's brief as untimely. The objection is sustained; the evidence was not considered for purposes of this Decision.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On April 15, 2006, the Department issued AMAC corporate real estate broker license, License No. 01523249, which expires on April 14, 2022, unless renewed or revoked. AMAC also received company mortgage loan originator endorsement, MLO/NMLS Id. No. 329197, which is current. Respondent Le is the designated officer broker of AMAC, which will expire on April 14, 2022, unless renewed or revoked. Respondent Le was the designated officer at all relevant times.

2. On November 29, 2005, the Department issued respondent Le real estate broker license No. 01363015, which will expire on November 28, 2021, unless renewed or revoked. In 2010, respondent Le received mortgage loan originator license endorsement, MLO/NMLS Id. No. 329059, which is current.

3. On July 12, 2006, the Department issued respondent Vu a real estate salesperson license No. 01518393, which will expire on July 14, 2022, unless renewed or revoked. In 2010, respondent Vu received a mortgage loan originator license endorsement, MLO/NMLS Id. No. 344799, which is current.

4. On April 9, 2020, complainant signed, and subsequently filed, the First Amended Accusation in her official capacity.<sup>1</sup> Complainant seeks to discipline respondents for intentional and/or negligent misrepresentations of: (1) prepayment penalties; (2) the true identity of John A. Bui; (3) borrowers' college transcripts; and (4) borrowers' earnings. Complainant seeks to discipline all respondents for constructive fraud for breach of duties owed to principals and breach of the duties of good faith and fair dealing owed to third parties. Also, complainant seeks to discipline respondent Le for failing to supervise and control the activities of AMAC.

5. Respondents timely filed Notices of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

### **John A. Bui**

6. On December 16, 1988, the Department issued John A. Bui a conditional salesperson license pursuant to Business and Professions Code section 10153, which expired on December 15, 1992. The Department issued Mr. Bui real estate broker license No. 01012012, on January 12, 1993.

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<sup>1</sup> Complainant's motion to amend the First Amended Accusation to change "NINTH CAUSE OF ACTION" to "ELEVENTH CAUSE OF ACTION" on page 17, line 14, and "TENTH CAUSE OF ACTION" TO "TWELFTH CAUSE OF ACTION" on page 18, line 4, was granted at the hearing.

7. On March 5, 2010, in the United States District Court, Northern District of California, Case No. CR-09-00770-001-SI, Mr. Bui was convicted of violating United States Code, title 18, sections 1349 (wire fraud conspiracy); 1519 (destruction of records in a federal investigation); and 1512, subdivision (b)(3) (witness tampering); all felonies.

8. An Accusation was made by the then-Deputy Real Estate Commissioner, E.J. Haberer, II, against Mr. Bui based upon his convictions. Mr. Bui's broker license was revoked on June 13, 2011, pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

9. Between 2015 and August 2017, Mr. Bui processed loans for AMAC. He worked primarily with respondent Vu.<sup>2</sup>

### **Fremont Transaction**

10. On May 15, 2016, T. Duong and L. Bui (collectively referred to as Fremont Borrowers) entered into a Mortgage Loan Origination (MLO) Agreement with AMAC to apply for a residential mortgage from a participating lender. The residential mortgage was for a property located in Fremont, California. The MLO Agreement stated:

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<sup>2</sup> A loan processor gathers borrower documents requested by the lender before the lender funds the loan, including tax forms and asset information. A loan processor does not need to be licensed to perform the duties of a loan processor if the loan processor only works for one mortgage company or mortgage broker, and works under the direct supervision of the mortgage company or mortgage broker.

Section 3. Term of the loan.

All loans have a Pre-payment Penalty of 3% of the loan amount, if payoff or refinance within 6 months.

By signing below, applicant(s) acknowledge receiving a copy of this signed Agreement.

11. On June 3, 2016, respondent Vu also signed an MLO Agreement for the transaction, but the version signed by respondent Vu omitted the prepayment penalty clause. Respondent Vu was the loan officer for the transaction and John Bui was the loan processor.

12. L. Bui signed a Loan Estimate for a fixed rate refinance loan with Finance of America Mortgage LLC (Finance of America), on June 3, 2016. The loan terms contained in the Loan Estimate did not include a prepayment penalty clause.

13. On August 20, 2016, Finance of America issued a Conventional Loan Approval to the Fremont Borrowers, which included broker approval conditions. One of the conditions stated:

9006 **\*\*BROKER\*\*** Satisfactory verification that John Bui is not the same party indicated on the DataVerify report, John A. Bui prosecuted for mortgage crimes.

14. In a letter on AMAC letterhead, dated June 28, 2016, and submitted to Finance of America, John Bui confirmed that he was not the same person prosecuted for mortgage crimes.

15. On November 21, 2016, respondent Le entered into a broker agreement with Finance of America on behalf of AMAC. The broker agreement provided the duties of AMAC, which included agreements on broker compensation; and representations, warranties, and covenants as to applications and/or mortgage loans. The broker agreement stated the following, in relevant part:

Applicant: Means each seeking a Mortgage Loan.

[¶] . . . [¶]

6.4 No Other Agreements. Broker has not made, directly or indirectly, any payment on the Mortgage Loan, the Application, or any fee paid for goods and services rendered in connection with the origination and closing of the Mortgage Loan, or any other loan of Applicant from any other person or entity. Broker has also not made any agreement with the applicant providing for any variation of the Note rate, schedule of payment, or other terms and conditions of the related Mortgage Loan; and Broker has not received a request for approval of or notice of any proposed assumption, loss draft, or payoff of the Mortgage Loan.

[¶] . . . [¶]

1.02 Representations and Warranties with respect to Loans. Broker represents and warrants to [Finance of America] as to each Loan that:



[11] . . . [11]

b. there are no agreements with the borrower other than those set forth in the Loan documents; . . .

### **Vallejo Transaction**

16. On March 26, 2016, D. Hoang entered into a California Residential Purchase Agreement and Joint Escrow Instructions for the purchase of a property in Vallejo, California. The mortgage loan broker for the loan transaction was AMAC, respondent Vu was the loan officer, and Mr. Bui was the loan processor.

17. In April 2016, Finance of America issued a Conventional Loan Approval to D. Hoang, which included broker approval conditions. One of the broker approval conditions stated the following:

**Condition 9004 \*\*\*Broker\*\*\***

Please provide school record that the borrower graduated end of 2015[.]

18. To satisfy Condition 9004, respondent Vu submitted to Finance of America a copy of a University of California, Berkeley bachelor's degree purportedly issued to D. Hoang at Berkeley, California, on December 18, 2015. Additionally, respondent Vu submitted to Finance of America a copy of a University of Berkeley official transcript purportedly for D. Hoang. The transcript covered a period beginning

Fall Quarter 2010 through Fall Quarter 2015.<sup>3</sup> Although the top title of the transcript stated "University of California, Berkeley", a seal appeared on the bottom of the transcript for the "University of California Davis" along with the following:

This transcript is printed on special security paper with a [illegible] background, the seal of the University of California, Davis, and the signature of the University Registrar . . . .

The template used for the academic transcript is not used by the University of California, Berkeley. Also, the university is not on a quarter system. The academic transcript is fraudulent.

### **San Jose Property Transaction**

19. On July 20, 2016, V. Oum and C. Molina (San Jose Borrowers) entered into a loan brokerage agreement with respondent Vu, who was acting as the residential mortgage lender licensee. AMAC was the broker, respondent Vu was the loan officer, and Mr. Bui was the loan processor for the transaction. Respondent Vu was to advise and assist the San Jose Borrowers in obtaining a mortgage loan for a property located in San Jose, California. The agreement stated:

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<sup>3</sup> Complainant submitted in evidence another strikingly similar University of California, Berkeley bachelor's degree, dated December 19, 2015, and academic transcript for a different borrower. Those documents are fraudulent also. Evidence of those documents were considered as matters in aggravation.

We are acting as your agent in providing the services described below, and as such, owe you a fiduciary duty of utmost care, honesty, and loyalty in the transaction . . . .

20. On July 21, 2016, lender HomeBridge, issued a Conventional Loan Approval that contained conditions to be completed by AMAC for loan approval. One of those conditions was the following:

Condition 22 [Date clear] 8/29/2016 \*\*\*\*8/22

Provide satisfactory explanation why borrowers ytd earnings are substantially lower than his pay rate averaging for 40 hrs.

21. Respondent Vu submitted to lender HomeBridge an August 24, 2016 letter written by C. Molina to satisfy Condition 22. The letter stated:

[T]his letter is to address my [*sic*] year-to-date earnings is [*sic*] substantially lower than the pay rate averaging for 40 hours.

The reason of low year-to-date earnings is because I took a few months leave of absent [*sic*] without pay to take care of my father in Mexico who was very sick and required a surgery.

I hope the above explanation will help in clarifying any concerns that you may have. . . .

22. A 2015 U.S. Individual Income Tax Return, Form 1040A, for C. Molina was submitted to HomeBridge on August 29, 2016. The form, which complainant asserts

was revised on June 12, 2016, indicates that C. Molina was unemployed. The document is not signed and no one testified regarding C. Molina's purported leave of absence or period of unemployment.

### **Rodeo Transaction**

23. On May 21, 2017, H. Ho. and L. Pham (Rodeo Borrowers) entered into a California Residential Purchase Agreement and Joint Escrow Instructions for the purchase of a property in Rodeo, California. The loan originator company on the transaction was AMAC and respondent Vu was the loan originator on the transaction.

24. In July 2017, Stearns Lending, LLC, (Stearns) issued a Loan Approval with loan approval conditions. One condition noted the following:

W. WRITTEN VOE COBORROWER AND CORRECT 1003 AS IT APPEARS BORROWER HAS NOT BEEN WITH EMPLOYER 2 YRS – ADDRESS LOW EARNINGS IN 2016 WITH CURRENT EMPLOYER AND COBORROWER TO ADDRESS ANY GAP 6 MO [*sic*] OR GREATER

(Capitalization in original.)

25. Respondent Vu submitted a completed Request for Verification for L. Pham dated July 13, 2017, to Stearns as part of the loan approval process to satisfy Condition W. The July 13, 2017 verification was purportedly signed by L. Pham's supervisor, who verified L. Pham's 2015 gross earnings as \$80,572, and 2016 gross earnings as \$72,910, with a start date of October 28, 2016, and hourly gross base pay of \$39.60. However, respondent Vu submitted a subsequent completed Request for Verification for L. Pham dated July 24, 2017. On the subsequent verification, L. Pham's

same purported supervisor verified that L. Pham made only \$4,795.08 in 2016 gross earnings and no earnings for prior years. The subsequent verification was not submitted to satisfy Condition W.

### **Milpitas Transaction**

26. On April 13, 2017, W. Iseman and T. Iseman (Milpitas Borrowers) entered into a Mortgage Loan Origination Agreement with AMAC to apply for a residential mortgage from a participating lender. Section 3 of the agreement stated:

This loan has a Pre-payment Penalty of 3% of the loan amount, if payoff or refinance within 6 months. Even, [sic] stated NO-PREPAYMENT PENALTY in closing disclosure (CD) statement from lender/bank. This mortgage loan origination agreement supersede [sic] of [sic] all the other lender/bank's closing disclosure (CD) statement [sic].

27. On April 17, 2017, the Milpitas Borrowers signed the Loan Estimate with lender Mega Capital Funding, Inc., which did not contain a prepayment penalty clause. The loan originator/mortgage broker representative on the transaction was respondent Vu, AMAC was the loan originator company/mortgage loan broker, and Mr. Bui processed the loan.

28. On February 25, 2010, respondent Le entered into a broker agreement with Mega Capital on behalf of AMAC as the mortgage broker. The broker agreement set forth the parties' mutual covenants and benefits relating to residential mortgage loan originations. At various times between 2016 and 2017, respondent Le signed compensation agreements with Mega Capital on behalf of AMAC. Respondent Le

agreed that when compensation is paid by Mega Capital, the compensation is and will be AMAC's sole source of compensation. The compensation agreements stated:

Broker will not charge of [sic] in any way assess borrower(s) any additional fees or charges. Broker will not receive or accept any compensation in any form, at any time, from any party other than the Lender.

[¶] . . . [¶]

- 100% of the Broker's compensation must be paid by Mega Capital Funding.

### **Ceres Transaction**

29. On March 17, 2017, K. Li and Y. Zeng (Ceres Borrowers) entered into a Mortgage Loan Origination Agreement with AMAC to apply for a residential mortgage from a participating lender for a property located in Ceres, California. Section 3 of the agreement stated:

This loan has a Pre-payment Penalty of 3% of the loan amount, if payoff or refinance within 6 months. Even, [sic] stated NO-PREPAYMENT PENALTY in closing disclosure (CD) statement from lender/bank. This mortgage loan origination agreement supersede [sic] of [sic] all the other lender/bank's closing disclosure (CD) statement [sic].

30. On March 22, 2017, Y. Zeng signed the Loan Estimate with lender Mega Capital Funding, Inc., which did not contain a prepayment penalty. The loan originator/mortgage broker representative/loan officer on the transaction was

respondent Vu, AMAC was the loan originator company/mortgage broker, and Mr. Bui processed the loan.

### **San Leandro Transaction**

31. On April 15, 2017, G. Liu and Y. Yang (San Leandro Borrowers) entered into a Residential Purchase Agreement and Joint Escrow Instructions with AMAC for a property in San Leandro, California. On April 18, 2017, the San Leandro Borrowers entered into an MLO agreement with AMAC to apply for a residential mortgage from a participating lender. Respondent Vu was the loan originator/mortgage broker representative and AMAC was the loan origination company/mortgage broker on the transaction. Mr. Bui was the loan processor.

32. Respondent Vu submitted to Primary Capital Mortgage, a copy of a University of California degree of bachelor of arts with majors in international relations and economics purportedly issued to Y. Yang, in Davis, California, on December 17, 2016. Additionally, respondent Vu submitted to Primary Capital Mortgage a copy of a University of California, Davis, academic transcript purportedly for Y. Yang. The academic transcript covered a period beginning Fall Quarter 2011 through Fall Quarter 2016. The academic transcript is substantially similar to the transcript discussed in Factual Finding 18. For example, the classes, grades, and grade point averages are the same. It is not clear from the evidence whether this borrower attended and/or graduated from the University of California, Davis.

### **Department Investigation**

33. Kristy Rodrigues, special investigator for the Department, testified at the hearing. Investigator Rodrigues investigates alleged mortgage fraud and reviews applications for mortgage loan origination licenses, among other duties. She has been

employed with the Department for 10 years. She previously owned and operated a mortgage lending company for 10 years.

34. Investigator Rodrigues was assigned to conduct an investigation of this matter in August 2017, after becoming aware of the United States Department of Housing and Urban Development's (HUD) concerns of mortgage fraud relating to respondents. On September 25, 2017, Investigator Rodrigues along with two special agents from HUD's Office of Inspector General interviewed respondents Le and Vu while conducting a broker office survey of AMAC's business activities.

35. During his interview with Investigator Rodrigues, respondent Le confirmed that respondent Vu was a loan officer for AMAC, but stated that respondent VU had only been employed for three to four months. Respondent Le told Investigator Rodrigues that he reviewed all AMAC loans before they are submitted to the lender. The borrowers came to the AMAC office to provide required loan documents, which included tax returns, W-2s, paystubs and bank statements. Respondent Le then contacted borrowers' employers relating to verifications of employment using the provided work number and also requested tax transcripts. Respondent Le further stated that he scans the borrowers' documents, saves them to PDF file, and then returns the originals to the borrowers. He maintains the loan files on an external hard drive at his home office. Respondent Vu submits the loans he originates to respondent Le for electronic review then respondent Vu keeps the hard copies of the files at his home office.

36. Investigator Rodrigues interviewed respondent Vu with respondent Le present. Respondent Vu confirmed he worked for AMAC for three months. Respondent Vu received a 92 percent commission split and AMAC received the other eight percent. Respondent Vu shares his 92 percent commission split with Mr. Bui, who received 68



percent of respondent Vu's commission. Respondent Vu worked with Mr. Bui as his sole loan processor at AMAC since 2015. Both respondents Vu and Le denied knowing Mr. Bui's criminal background. When Investigator Rodrigues asked respondents Vu and Le whether they did a background check on Mr. Bui, they said they had but may have overlooked any issues.

37. During the interview, respondent Le mentioned he was aware Mr. Bui had been a loan processor for "them." Investigator Rodrigues believes Mr. Bui to be an employee of AMAC because he did not have a real estate broker license; therefore, the only way he could have been a loan processor working on AMAC transactions was as an employee of the company.

38. On January 17, 2019, Investigator Rodrigues spoke to Bill Murphy, the risk manager/General Counsel for Harder Mechanical Contractors, Inc. Mr. Murphy confirmed that L. Pham was employed with the company since December 2016. The paystubs provided by L. Pham for purposes of the Rodeo transaction were correct and accurate, but the July 13, 2017 verification of employment was a "fabrication."

39. During the investigation of the Fremont transaction, Investigator Rodrigues learned that Finance of America would have declined to fund the Fremont transaction loan if the company had been aware that Mr. Bui had been prosecuted for mortgage crimes.

40. During the investigation of the Vallejo transaction, Investigator Rodrigues determined D. Hoang did not attend nor graduate from University of California, Berkeley. The diploma and academic transcript for D. Hoang were fraudulent. Investigator Rodrigues's investigation further revealed that Finance of America would

have declined funding the loan if the company was aware the documents were falsified.

41. During the investigation of the Milpitas transaction, Investigator Rodrigues learned that Mega Capital Funding would not have funded the Milpitas transaction loan if the lender was aware the documents at issue were fraudulent.

### **Respondent Vu's Evidence**

42. Respondent Vu testified at the hearing. He is currently a realtor in San Jose, California. He has been working at H&L Realty since June 2020. He worked as a realtor at Selective Realty from 2017 through March 2020. He has been working in the real estate field since 2006, and real estate has been his sole source of income.

43. Respondent Vu was unsure when he started working at AMAC, but believes it was 2011 or 2012, and he remained employed there until August 2017, when he was terminated by respondent Le. When he began at AMAC, respondent Vu was involved in real estate transactions. Respondent Vu originated loans while employed at AMAC. His daily duties included working with clients, gathering information, and preparing loan packages to send to lenders. His supervisor was respondent Le.

44. Respondent Vu has kept up with his continuing education requirements, completing several consumer protection continuing education courses in 2018. He has not been previously disciplined by the Department. Respondent Vu holds no other professional licenses.

45. Mr. Bui's sister, who was respondent Vu's friend, introduced Mr. Bui to respondent Vu in in 2011; she knew respondent Vu needed a loan processor. Mr. Bui

and respondent Vu began working together a few months after respondent Vu started with AMAC. According to respondent Vu, Mr. Bui worked for respondent Vu, not AMAC. Originally, respondent Le did not know respondent Vu was working with Mr. Bui, but respondent Le later met Mr. Bui in about 2016, prior to speaking to Investigator Rodrigues. According to respondent Vu, respondent Le was not initially aware of the financial arrangement between respondent Vu and Mr. Bui, but became aware of the arrangement "later." Respondent Vu denied checking Mr. Bui's criminal background, and described trusting Mr. Bui's sister as "a mistake." Respondent Vu did not continue working with Mr. Bui after he became aware of his criminal background following Inspector Rodrigues's investigation. Respondent Vu was inconsistent in his testimony about the amount he paid Mr. Bui in commissions.

46. Respondent Vu testified that he knew the MLO Agreement forms containing the three percent prepayment penalty was "not right" and he raised a concern with respondent Le, who had given respondent Vu the form to use with clients. Respondent Vu did not draft the form. Respondent Le told respondent Vu that clients had to sign the form if they wanted to have their loan processed by AMAC. Respondent Vu testified that he had to follow his boss's instructions, stating, "I cannot go against him." Regarding the Fremont transaction, respondent Le allowed respondent Vu to omit the prepayment penalty clause from the MLO Agreement respondent Vu signed, but this was the only time respondent Le allowed him to do so.

47. On the Fremont transaction, respondent Vu acknowledged knowing the lender was concerned Mr. Bui had been prosecuted for mortgage crimes, and respondent Vu sought verification that he was not. According to respondent Vu, he questioned Mr. Bui and asked him to send the verification letter to the lender indicating that Mr. Bui was not the same individual who concerned the lender.

Respondent Vu took no other action to determine if Mr. Bui had a criminal background, which he called "my mistake that I regret."

48. On the Vallejo transaction, respondent Vu admitted to providing the borrower's college records to Finance of America. He looked over the academic transcript, but did not have time to review all documents "in detail."

49. Regarding the San Leandro transaction, respondent Vu sent the academic transcript to Mr. Bui who then packaged all of the requested documents and sent them to the lender. Respondent Vu asserted that the borrower was the one who provided the academic transcript to him. Respondent Vu did not know the borrower's education documents were falsified until the instant case commenced. Respondent Vu testified that, in the past, colleges he contacted would not verify borrowers' college degrees or academic transcripts.

50. Regarding the San Jose transaction, respondent Vu acknowledged sending the verification of employment to the lender. Respondent Vu's typical practice was for Mr. Bui to send the form to a borrower's employer, then once the completed form was received, Mr. Bui would give the borrower's documents to respondent Vu, then respondent Vu would submit them to the lender.

51. Respondent Vu denied altering any of the borrowers' documents. Respondent Vu also denied that he told Investigator Rodrigues that he worked at AMAC for three months at the time of his interview with her.

52. Respondent Vu wants to continue working in the real estate field. He regrets that he trusted people and will be more careful in the future. He learned a "hard lesson" from this incident. He was "naïve" and "innocent," and acknowledged that he should have verified Mr. Bui's criminal background.

53. Benjamin Kimseng Ng, a personal friend, wrote a support letter for respondent Vu, dated July 28, 2020. He described respondent Vu as "a man of honesty, integrity, transparency and responsibility." Mr. Ng is aware of the Accusation against respondent Vu.

### **Respondent Le's Evidence**

54. Respondent Le testified at the hearing. He has been a broker since 2005, and is the owner and President of AMAC. In 2006, he became the designated officer of AMAC. From 2005 to 2011, respondent Le has had approximately 30 real estate agents working for him as independent contractors. He provided daily training to the real estate agents. Since 2005, he has not had any lawsuits filed against him and has had no issues with the Department.

55. In 2016, respondent Le registered as respondent's Vu's employing broker, which continued until he terminated respondent Vu in September 2017. Respondent Le understood that his supervisory obligations as an employing broker was to oversee those he supervised and ensure that they complied with the law. He recalled that respondent Vu submitted some borrower documents for his review, but those files did not contain academic transcripts or diplomas. He believed respondent Vu hid certain documents from his review. He acknowledged that as the employing broker, he is "the one responsible for all agents" and that he was responsible for establishing a system to ensure respondent Vu was complying with real estate laws. He further understood that as the employing broker, he was responsible for reviewing documents presented to the lender on borrowers' transactions prior to their submission.

56. Respondent Le testified that during his interview with Investigator Rodrigues, he incorrectly stated that respondent Vu had been working for AMAC for only three or four months. Respondent Le denied "really know[ing]" Mr. Bui, and testified he did not know Mr. Bui was respondent Vu's loan processor until Investigator Rodrigues's investigation. He did not recall telling Investigator Rodrigues he had conducted a background check on Mr. Bui; he believes the response was from respondent Vu not him.

57. Respondent Le explained that he added the three percent prepayment penalty clause to AMAC MLO Agreements to cover the commissions that had to be returned to the lender if a borrower paid off the mortgage loan early. Respondent Le believed that this prepayment penalty clause was a different agreement than the one between the lender and borrower. He recalled respondent Vu mentioning that he had an issue with the prepayment penalty clause and respondent Vu convincing him to remove the prepayment penalty clause on the Fremont transaction. Respondent Le subsequently added the prepayment penalty clause back into AMAC's MLO Agreements after learning that lenders would require AMAC to pay back commissions for all borrowers who refinanced their loan within six months. He insisted that all real estate agents use the form with the prepayment penalty clause. It is respondent Le's position that borrowers did not have to sign the AMAC MLO Agreement if they did not agree with its terms. He did not inform lenders of the prepayment penalty clause because the agreement was not with the lender. Respondent Le never enforced the prepayment penalty clause against any client-borrowers.

## **Analysis**

58. The evidence established that on the Fremont, Milpitas, and Ceres transactions, the borrowers entered into MLO agreements with AMAC. Those MLO

agreements included prepayment penalty clauses that were inconsistent with the respective Loan Estimates and/or Mortgage Loan Disclosure Statements from the lenders and the terms of the broker agreements that existed between AMAC and the lenders. Respondents intentionally submitted and/or allowed to be submitted to the lenders the Loan Estimates and/or Mortgage Loan Disclosure Statements that they knew or should have known contained terms that were inconsistent with the AMAC MLO agreements and, as to respondent Le, were inconsistent with the broker agreements. There was no showing that respondent Vu was aware of the broker agreements between AMAC and the lenders. Respondents' actions relating to the prepayment penalty clause shows dishonest dealings. Respondents continued to require AMAC clients to sign the MLO agreements containing the prepayment penalty clause, despite their awareness that it was inconsistent with the lenders' loan terms. Respondent Vu raised his concern about the prepayment penalty clause to respondent Le, who chose to ignore the concerns raised by respondent Vu. Respondent Vu's claim that he blindly followed respondent Le's direction to have borrowers sign the agreements his own concern about the prepayment penalty clause does not justify his actions.

59. Complainant established that since 2015, Mr. Bui acted as a loan processor for respondent Vu while respondent Vu was employed at AMAC. Respondent Le knew Mr. Bui was acting in that capacity. Respondent Le's testimony that he was unaware Mr. Bui was the loan processor for respondent Vu was unpersuasive, as his statements made to Investigator Rodrigues were closer in time to the transactions at issue and showed that respondent knew Mr. Bui was working with respondent Vu. Respondents Le and Vu admitted to Investigator Rodrigues that they did a background check on Mr. Bui, but "may have overlooked any issues." Additionally, respondent Le testified that he reviewed borrowers' loan documents prior

to submission to the lender. Those documents identified Mr. Bui as the loan processor for AMAC loan transactions. Respondents submitted and/or allowed the June 28, 2019 letter from Mr. Bui to be submitted to Finance of America, and knew or should have known that Mr. Bui was the individual whose license was revoked by the Department based on his criminal convictions. Respondents fraudulently submitted and/or allowed to be submitted to Finance of America the June 28, 2019 letter to induce the lender to approve the Fremont transaction mortgage loan.

60. Complainant further established that as to the Vallejo transaction, respondents fraudulently submitted and/or allowed to be submitted to Finance of America the borrower's diploma and academic transcript. Respondents did so in order to induce Finance of America to approve the mortgage loan. However, there was insufficient evidence to establish that the diploma and academic transcript for the borrower in the San Leandro transaction was fraudulent.

61. In the Rodeo transaction, the verification of employment, dated July 13, 2017, misrepresented the borrower's gross earnings, as the 2015 earnings were for a time period prior to the borrower's employment start date, and the 2016 reported gross earnings were not possible given the borrower's hourly pay rate. This misrepresentation was clear from the face of the verification. The misrepresentation was confirmed in the subsequent verification of earnings. Respondents submitted and/or allowed the initial verification to be submitted to the lender when they knew or should have known that the gross earnings were misrepresented. Respondents did so to induce the lender to approve the San Jose loan.

62. However, on the San Jose transaction, the evidence did not establish that the borrower's August 24, 2016 letter misrepresented the reason the borrower had low year-to-date earnings in 2016. Although the borrower's 2015 U.S. Individual Income



Tax Return, Form 1040A, submitted to HomeBridge states that the borrower was unemployed, it was not clearly established when the document was prepared or if the document was inconsistent with the August 24, 2016 letter. The tax form is not signed and the evidence did not establish when C. Molina was unemployed, if at all. To reach complainant's assertion that the borrower misrepresented his year-to-date earnings, too many inferences would have to be drawn that were not supported by the evidence provided at hearing.

63. Based on the misconduct described above, the evidence further established respondent Le, as the designating officer and employing broker/supervisor of respondent Vu, failed to exercise reasonable supervision and control over the activities of AMAC. Borrowers' fraudulent documents and documents containing substantial misrepresentations were submitted by respondent Vu and Mr. Bui to lenders in order to induce the lenders to approve the mortgage loans. Respondent Le reviewed borrower documents prior to submission to the lender and allowed them to be submitted despite their fraudulent nature and/or substantial misrepresentations. Respondent Le, aware of concerns about the prepayment penalty clause raised by respondent Vu, still insisted that Respondent Vu continue to ask borrowers to agree to the clause or find business elsewhere. Respondent Le permitted, ratified and/or caused the misconduct to occur and failed to take reasonable steps to supervise respondent Vu and Mr. Bui, and the implementation of policies, rules and systems to ensure the compliance of AMAC with the Real Estate Law and applicable regulations.

64. Certain relationships in California involve a substantial degree of confidence and trust. Those fiduciary relationships include relationships between a mortgage loan broker and its clients. AMAC acknowledged in its agreements with borrowers that it owed borrowers a "fiduciary duty of utmost care, honest, and

loyalty.” The fiduciary duties owed by a mortgage broker include placing the economic interest of the borrower ahead of the broker's own interest. Here, respondents breached the fiduciary duties owed to their clients, based on the misconduct outlined above.

65. The totality of the evidence shows that respondents engaged in a pattern of fraud and dishonest dealings relating to the transactions at issue. Respondents shifted blame to others and did not take responsibility for their misconduct. Respondents lacked insight into their misconduct and the potential and actual harm they caused to others. At this time, respondents' licenses and MLO endorsements must be revoked to protect the public safety and welfare.

### **Costs of Investigation and Enforcement**

66. Pursuant to Business and Professions Code section 10106, complainant has requested reimbursement of the costs incurred for the investigation and enforcement of this matter, in the amount of \$8,154. Specifically, the Department incurred \$3,526, in investigation costs, and \$4,628, in enforcement costs. The costs of enforcement and investigation are detailed in the Certified Statement of Investigation Costs by complainant, dated March 25, 2019, and the Certified Statement of Costs, by Ms. Badilas, dated August 6, 2020. Both statements provide information describing the general tasks performed, the time spent on each task, the hourly pay rate, and the method of calculating the costs.

67. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Court identified the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's

subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. (*Id.* at p. 45.)

68. In this case, nearly all of the charges were established and the scope of the investigation was appropriate to the alleged misconduct. Respondents did not contest the reasonableness of the costs, and did not represent that they cannot pay the requested costs. When all the factors in *Zuckerman* are considered, the investigation and enforcement costs are reasonable and assessment of the costs requested by the Department is appropriate.

## LEGAL CONCLUSIONS

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) And he must do so by producing clear and convincing evidence to a reasonable certainty in support of those allegations. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212 [discussing the appropriate standard of proof in license discipline proceedings].) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Business and Professions Code section 10131, subdivision (a), defines a real estate broker as:

[A] person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment,

does or negotiates to do one or more of the following acts for another or others:

(a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or buyers of, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of real property of a business opportunity.

3. The designated officer of a corporate broker licensee has certain responsibilities. Those responsibilities are contained in Business and Professions Code section 10159.2, which provides:

The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

4. The California Code of Regulations, title 10, section 2725, states the following regarding broker supervision, in relevant part:

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

(a) Transactions requiring a real estate license. . . .

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. . . .

5. The Commissioner may "deny, suspend, revoke, restrict, or decline to renew a mortgage loan originator license endorsement for a violation of this article, or any rules, or regulations adopted hereunder." (Bus. & Prof. Code, § 10166.051, subd. (a).)

6. A real estate licensee may be disciplined by the Commissioner for certain misconduct. Business and Professions Code section 10176, provides the following, in relevant part:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

[11] . . . [11]

(i) Any other conduct, whether of the same or of a different character than specified in this section, which constitutes fraud or dishonest dealing.

7. Business and Professions Code section 10177, states the following, in relevant part:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, . . . , who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[¶] . . . [¶]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

[¶] . . . [¶]

(g) Demonstrated negligence or incompetence in performing an act for which the officer, director, or person is required to hold a license.

[11] . . . [11]

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of that licensee's salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

[11] . . . [11]

(j) Engaged in any other conduct, whether of the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing.

8. California Civil Code section 2923.1, subdivision (a), provides:

A mortgage broker providing mortgage brokerage services to a borrower is the fiduciary of the borrower, and any violation of the broker's fiduciary duties shall be a violation of the mortgage broker's license law. This fiduciary duty includes a requirement that the mortgage broker place the economic interest of the borrower ahead of his or her own economic interest. A mortgage broker who provides mortgage brokerage services to the borrower owes this

fiduciary duty to the borrower regardless of whether the mortgage broker is acting as an agent for any other party in connection with the residential mortgage loan transaction.

### **Prepayment Penalties (Causes of Action 1, 6, and 7)**

9. As set forth in Factual Findings 10 through 12, 26, 27, 29, 30, and 58, as to the Fremont, Milpitas, and Ceres transactions, respondent Vu made substantial misrepresentations to the lenders when he intentionally submitted Loan Estimate and/or Mortgage Loan Disclosure Statements to the lenders that were inconsistent with the prepayment penalty terms in the MLO Agreements signed by the borrowers. Therefore, respondent Vu engaged in dishonest dealing. Consequently, cause exists to discipline respondent Vu's licenses under Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d) and (j).

10. As set forth in Factual Findings 10 through 12, 15, 26 through 29, and 58, as to the Fremont, Milpitas, and Ceres transactions, respondent Le on behalf of AMAC made substantial misrepresentations to the lenders when he intentionally submitted Loan Estimates and/or Mortgage Loan Disclosure Statements to the lenders, which he knew or should have known contained a prepayment penalty terms that were inconsistent with the MLO Agreements. Further, respondent Le knew the MLO agreements were inconsistent with the broker agreements between AMAC and the lenders. Therefore, respondent Le engaged in dishonest dealing. Consequently, cause exists to discipline the licenses of respondents Le and AMAC under Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d) and (j).



## **Mr. Bui (Cause of Action 2)**

11. As set forth in Factual Finding 59, as to the Fremont transaction, respondents submitted and/or allowed the June 28, 2019 letter to be submitted to the lender, and knew or should have known that Mr. Bui was an individual who had his license revoked because of criminal convictions. Respondents fraudulently submitted and/or allowed to be submitted to Finance of America the June 28, 2019 letter to induce the lender to approve the Fremont transaction loan. Therefore, respondents engaged in fraud and dishonest dealing. Consequently, cause exists to discipline respondents' licenses under Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d) and (j).

## **College Transcripts (Causes of Action 3 and 8)**

12. As set forth in Factual Findings 17, 18, and 60, as to the Vallejo transaction, respondents submitted and/or allowed the borrower's fraudulent college diploma and academic transcript to the lender so as to induce the lender to approve the mortgage loan. Therefore, respondents engaged in fraud and dishonest dealing. Consequently, cause exists to discipline respondents' licenses under Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d) and (j).

13. However, as set forth in Factual Findings 32 and 60, as to the San Leandro transaction, complainant did not establish the borrower's diploma and/or academic transcript were fraudulent. Consequently, cause does not exist to discipline respondents' licenses as to Cause of Action 8.

### **Earnings (Causes of Action 4 and 5)**

14. As set forth in Factual Findings 23 through 25, and 61, as to the Rodeo transaction, respondents submitted and/or allowed the July 13, 2017 verification of employment to be submitted to the lender, and knew or should have known that the borrower's 2015 and 2016 gross earnings were misrepresented. Respondents fraudulently submitted the verification so as to induce the lender to approve the mortgage loan. Therefore, respondents engaged in fraud and dishonest dealing. Consequently, cause exists to discipline respondents' licenses under Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d) and (j).

15. However, as set forth in Factual Findings 19 through 22, and 62, as to the San Jose transaction, complainant did not establish the borrower's August 24, 2016 letter misrepresented the borrower's 2016 year-to-date earnings. Consequently, cause does not exist to discipline respondents' licenses as to Cause of Action 4.

### **Failure to Supervise (Cause of Action 9)**

16. As set forth in Factual Findings 63, and Legal Conclusions as a whole, respondent Le failed to exercise reasonable supervision and control over the activities of AMAC as required by Business and Professions Code section 10159.2. Consequently, cause exists to discipline respondent Le's licenses under Business and Professions Code sections 10177, subdivision (h), 10159.2.

## **Breach of Fiduciary Duty and Duties of Good Faith and Fair Dealings (Cause of Action 10)**

17. As set forth in Factual Finding 64, and the Legal Conclusions as a whole, respondents breached their fiduciary duties when they failed to place the economic interest of the borrowers identified in the transactions above ahead of their own economic interest, in violation of California Civil Code section 2923.1, subdivision (a). Consequently, cause exists to discipline respondents' licenses under Business and Professions Code section 10177, subdivision (j).

### **Investigation and Enforcement Costs**

18. Business and Professions Code section 10106 provides that in any order issued in resolution of a disciplinary proceeding before it, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of Real Estate Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

19. As set forth in Factual Findings 66 through 68, complainant reasonably incurred investigation and enforcement costs totaling \$8,154. Accordingly, assessment of costs in the amount of \$8,154 against respondents are reasonable and appropriate. The total amount due should be divided between the respondents.

### **ORDER**

1. All licenses and licensing rights of respondent AMAC Realty & Lending, Inc. under the Real Estate Law are revoked.


2. All licenses and licensing rights of respondent Min Le under the Real Estate Law are revoked.

3. All licenses and licensing rights of respondent Daniel Duc Vu under the Real Estate Law are revoked.

4. Respondent Le shall pay the Department of Real Estate the amount of \$4,077, as reimbursement for the costs of investigation and enforcement of this matter, within 30 days of the effective date of this Decision. Respondent Le may pay these costs according to a payment plan approved by the Department or its designee.

5. Respondent Vu shall pay the Department of Real Estate the amount of \$4,077, as reimbursement for the costs of investigation and enforcement of this matter, within 30 days of the effective date of this Decision. Respondent Vu may pay these costs according to a payment plan approved by the Department or its designee.

DATE: September 28, 2020

DocuSigned by:  
  
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DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings