

FILED

MAR 02 2011

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
PRIME MORTGAGE FUNDING, INC. and)
CARLY ALEJANDRINO SANTOS,)
)
Respondents.)
_____)

NO. H-10970 SF

OAH NO. 2010091084

DECISION

The Proposed Decision dated January 27, 2011, 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.

This Decision shall become effective at 12 o'clock noon on MAR 22 2011

IT IS SO ORDERED 3-1-2011

JEFF DAY
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

PRIME MORTGAGE FUNDING, INC., and
CARLY ALEJANDRINO SANTOS,

Respondents.

Case No. H-10970 SF

OAH No. 2010091084

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on January 10, 2011, in Oakland, California.

Department of Real Estate Counsel Kenneth C. Espell represented complainant E.J. Haberer II, Deputy Real Estate Commissioner, State of California.

Respondent Carly Alejandrino Santos was self-represented.

Complainant made a motion to enter a default as to respondent Prime Mortgage Funding, Inc., because the powers, rights and privileges of this corporation were suspended by the Franchise Tax Board on September 2, 2008. The motion was tentatively granted at the hearing, and this ruling stands. The hearing proceeded as a default as to respondent Prime Mortgage Funding, Inc.

The matter was submitted on January 10, 2011.

FACTUAL FINDINGS

License History and Background

1. Respondents Prime Mortgage Funding, Inc. (PMF) and Carly Alejandrino Santos (Santos) are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

2. PMF was originally licensed by the Department of Real Estate as a real estate corporation on March 17, 2006. On April 1, 2007, Santos became the designated officer/broker. At that time, PMF's main office address was 2001 Gateway Place, #301E, San Jose, and there were five branch offices. On November 17, 2008, the department received from PMF applications changing its main office address to 1735 North First Street,

Suite 308, San Jose, and canceling its five branch offices (not all the same branch offices PMF had on April 1, 2007). PMF's license expired on March 16, 2010.

3. On September 2, 2008, the Franchise Tax Board suspended the powers, rights and privileges of PMF. On June 12, 2009, the Secretary of State certified that the suspension remained in effect. The suspension was still in effect as of the date of the hearing.

4. Santos was licensed by the department as a real estate salesperson on May 24, 2005. She was licensed as a real estate broker on September 25, 2006. The expiration date of her broker license is September 24, 2014. During the time Santos was licensed as the designated officer/broker of PMF, she was responsible for supervision of the activities of PMF officers, agents, real estate licensees and employees for which a license is required. (Bus. & Prof. Code, § 10159.2, subd. (a).)

5. At all times mentioned herein, PMF engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate corporation in the State of California within the meaning of Business and Professions Code section 10131, subdivisions (a), (d) and (e). PMF operated a mortgage loan brokerage and residential property resale business in which loans were arranged, negotiated, processed and consummated on behalf of others, and promissory notes or interests therein were sold or purchased on behalf of others, for compensation or in expectation of compensation.

2009 Audit

6. In January 2009, department auditor Jayendra Barbhaiya conducted an audit of PMF. The audit covered the period of January 1, 2007, to November 11, 2008. Barbhaiya reviewed PMF's records for a random sampling of transactions, including eight loan transactions, four sales transactions in which PMF represented the buyers, and three listing transactions. He found the following violations during his audit:

CORPORATE SUSPENSION

a. PMF continued to operate as a real estate broker after September 2, 2008, when the Franchise Tax Board suspended its powers, rights and privileges. Four of the eight loan transactions Barbhaiya reviewed closed after September 2, 2008.

Santos maintains she was unaware of the corporate suspension until Barbhaiya informed her. She did not shut down PMF's operations when she learned of the suspension, but "tried to fix it" with the department. Her accountant is now in the process of refileing income tax returns to address PMF's problems with the Franchise Tax Board.

TRUST FUND RECORDS

b. PMF failed to maintain a record of all trust funds received but not placed in a trust account. PMF did not maintain a trust account because the only trust funds it received

were in the form of checks payable to title companies. PMF received checks from buyers for earnest money deposits, and it transmitted those checks to the title companies. Santos did not realize that PMF was required to keep a record of these trust funds. Barbhaiyan provided her with a copy of the department's form RE 4524, which a broker may use to maintain the required record of trust funds received but not placed in a trust account. Santos asserts that she has used this form since then.

EARNEST MONEY DEPOSIT CHECKS

c. The accusation alleges that "PMF failed to place two earnest money deposit checks, in the amounts of \$5,000 and \$3,000, respectively, into a neutral depository account within three business days following acceptance of the offer, in violation of Section 2832(d) of the Regulations and Section 10145 of the Code."

California Code of Regulations, title 10, section 2832 sets forth rules for complying with Business and Professions Code section 10145 in handling trust funds.¹ Subdivision (a) of this regulation requires a broker to place trust funds into the hands of the owner of the funds, a neutral depository, or a trust fund account within three business days of receiving the funds. Subdivision (c) provides that a broker may hold an uncashed check received from the offeror until acceptance of the offer if "(1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and (2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance." Subdivision (d) provides:

In these circumstances if the offeror's check was held by the broker in accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and offeree expressly provide in writing, not later than three business days following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.

The facts and circumstances of the two transactions in question are set forth below.

In connection with the purchase of property in Ceres where PMF represented buyer Jaime Montero, the original purchase offer was dated June 4, 2008. The offer stated: "Buyer has given a deposit in the amount of \$5,000.00 to the agent submitting the offer, by personal check, made payable to _____, which shall be held uncashed until Acceptance and then deposited within 3 business days after acceptance, with Escrow Holder." The offer was accepted by the seller on July 1, 2008. PMF's file contains a copy of a cashier's check,

¹ Business and Professions Code section 10145 requires a broker who accepts trust funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal to deposit those funds into a trust fund account.

dated July 16, 2008, for the \$5,000 deposit payable to Stewart Title Co. Santos told Barbhaiya that PMF mailed the check to Stewart Title but they did not receive it. PMF's file contains a receipt from Stewart Title, dated August 12, 2008, for \$56,000 from the buyer, and a copy of a cashier's check of the same date for that amount. The transaction closed on September 4, 2008.

In connection with the purchase of property in San Jose where PMF represented buyer Steven Huang, the original purchase offer was dated May 16, 2008. The offer stated: "Buyer has given a deposit in the amount of \$3,000.00 to the agent submitting the offer, by personal check, made payable to _____, which shall be held uncashed until Acceptance and then deposited within 3 business days after acceptance, with Escrow Holder." The offer was accepted by the seller on June 6, 2008. PMF's file contains a copy of a personal check from Huang, dated August 7, 2008, for the \$3,000 deposit payable to Fidelity National Title, and a receipt from Fidelity National Title Company, dated August 11, 2008, for that check. The transaction closed on August 27, 2008.

Although each purchase offer stated that there was an earnest money deposit check from the offeror, and the document contained language to comply with subdivision (c) of California Code of Regulations, title 10, section 2832, the buyer did not actually give PMF a check until well after acceptance of the offer. Because PMF did not have the deposit check when the offer was accepted, it could not have failed to place the check into a neutral depository account within three days. This is not to say that there were not other violations in connection with these transactions, but the alleged violation was not proven.

MISREPRESENTATIONS RE: COLLECTION OF DEPOSITS

d. The accusation alleges that in at least two transactions, the purchase of property in Milpitas where PMF represented buyers Ma Cristina Callanta and Emmanuel Arciaga and the purchase of property in Santa Cruz where PMF represented buyer Victor Aquino, PMF made misrepresentations regarding the collection of earnest money deposits.

The original purchase offer by Callanta and Arciaga was dated May 6, 2007. The offer stated: "Buyer has given a deposit in the amount of \$10,000.00 to the agent submitting the offer, by personal check, made payable to _____ Title Company, which shall be held uncashed until Acceptance and then deposited within 3 business days after acceptance, with Escrow Holder." The offer was accepted by the seller on May 10, 2007. PMF's file contains a copy of a personal check from Callanta and Arciaga, dated May 11, 2007, for the \$10,000 deposit payable to Alliance Title, and a receipt from Alliance Title, dated May 11, 2007, for that check. The transaction closed on May 31, 2007.

The original purchase offer by Aquino was dated February 12, 2007. The offer stated: "Buyer has given a deposit in the amount of \$5,000.00 to the agent submitting the offer, by personal check, made payable to _____, which shall be held uncashed until Acceptance and then deposited within 3 business days after acceptance, with Escrow Holder." The offer was accepted by the seller on March 1, 2007. PMF's file contains a copy

of a personal check from Aquino, dated March 1, 2007, for the \$5,000 deposit payable to Santa Cruz Title Company, and a receipt from Santa Cruz Title Company, dated March 2, 2007, for that check. The transaction closed on May 25, 2007.

Santos claimed at the hearing that the usual procedure was to obtain a deposit check from the buyer made out to "title company" at the time of the offer, and then to replace that check with one made out to the particular title company once the offer was accepted. However, Santos had no specific information about the loans in question, and PMF's files contain no evidence of the buyers having given PMF an earnest money deposit check at the time the offers were made.

In both the Callanta/Arciaga and Aquino transactions, PMF's statement in the purchase offer that the buyer had given the agent a deposit check was false. PMF made the same false statement in the Montero and Huang transactions.

NON-COMPLIANCE WITH MLDS REQUIREMENTS

e. Auditor Barbhaiya found that the Mortgage Loan Disclosure Statements (MLDS) for three PMF loan transactions in 2007 (for borrowers Trent, Brown and Blanco) were missing certain required information.

On PMF's MLDS for the Trent loan and the Brown loan, the "No" box was checked after "Any Additional Compensation from Lender." PMF failed to disclose the yield spread premium (YSP) it received from the lender, \$9,400 on the Trent loan and \$2,562.50 on the Brown loan. (The YSP was listed on the settlement statement when the loan closed.)

Santos claimed that PMF failed to disclose the YSP on the MLDS for the Trent and Brown loans because it did not know the exact YSP. This does not explain why the "No" box was checked after "Any Additional Compensation from Lender." According to Santos, there should have been in each loan file a final MLDS which included the YSP. This was not the case for the Trent and Brown loans, however.

The PMF file for the Blanco loan contains an MLDS signed by the borrower on July 20, 2007, in which the section for estimated costs and expenses of making the loan was left blank. The file contains a Good Faith Estimate also signed by the borrower on July 20, 2007, which lists the estimated costs and expenses of making the loan. The Good Faith Estimate does not set forth PMF's real estate license number, nor does it include a statement that the Good Faith Estimate does not constitute a loan commitment.

Santos asserted that it was not the practice of PMF to have borrowers sign blank MLDS forms.

LICENSE NUMBER ON MLDS

f. The MLDS documents for the eight borrowers listed below do not include PMF's license number. The MLDS form PMF used had a space for the license number but this was left blank.

<u>Borrower(s)</u>	<u>Loan Amount</u>	<u>Date Closed</u>
Joshua & Edna Andres	\$525,000	09/29/08
Janet Chung	\$415,000	11/30/07
Maria Blanco	\$283,000	11/02/07
Franklin & Emma Trent	\$470,000	10/04/07
Remedios & David Brown	\$410,000	12/18/07
Consuelo Nicholls	\$985,000	11/07/08
Anthony & Catherine Pham	\$386,910	10/02/08
Gladys Flores	\$82,000	11/05/08

Santos claimed the failure to put PMF's license number on the MLDS forms was an oversight, and she corrected this problem after the audit.

OUTDATED VERSION OF MLDS FORM

g. The Real Estate Commissioner periodically revises the approved MLDS forms RE 882 and RE 883, and he revised these forms in January 2008 and in August 2008. Auditor Barbhaiya found that PMF had used the MLDS form RE 883 (Rev. 1/06), when it should have used the MLDS form RE 883 (Rev. 1/08) (for the Andres loan) or the MLDS form RE 883 (Rev. 8/08) (for Nicholls, Pham and Flores loans). PMF did not obtain prior written approval of the commissioner to use the MLDS form it did.

Santos did not realize PMF was using outdated MLDS forms. She buys a software package which contains these forms, and she did not have the updated software. After the audit, she corrected this problem.

CHANGE OF ADDRESS

h. Before November 17, 2008, the location of 1735 North First Street, Suite 308, San Jose, was not listed in department records as the main office or a branch office for PMF. On that date, the department received PMF's application changing its main office address to that location. However, PMF transacted business from 1735 North First Street, Suite 308, San Jose, before November 17, 2008. Auditor Barbhaiya found that the loan application for Joshua and Edna Andres, dated July 22, 2008, listed PMF's address as 1735 North First Street, Suite 308, San Jose.

Santos testified that in June or July 2008, half of PMF's team moved to 1735 North First Street, Suite 308, San Jose, while half remained at the old main office. By January

2009, everyone had moved to the new office. Santos did not explain why she did not add the new location as a branch office when PMF started doing business there.

POSSESSION OF SALESPERSON LICENSES

i. At the time of the audit, PMF did not have in its possession the real estate salesperson licenses for its employees Alan E. Menjivar, Miguel A. Quintero and Jeff A. Senchina.

Supervision by Designated Officer/Broker

7. Santos failed to exercise reasonable supervision and control over the activities of PMF, in that she failed to ensure that PMF's corporate status remained in good standing with the Franchise Tax Board and the Secretary of State, she failed to ensure that PMF did business only at locations for which it was licensed, and she permitted, ratified and/or caused the other violations found during the audit.

Negligence and/or Incompetence

8. Santos demonstrated negligence and/or incompetence in performing her duties as the designated officer/broker of PMF.

Other Matters

9. Before purchasing PMF from the first owner in 2007, Santos worked there as a real estate salesperson and loan processor. She maintains that after she took over PMF she made a lot of improvements, particularly in reviewing documents for quality control. Santos insists she never intentionally neglected her responsibilities in running PMF and she never did anything to harm a consumer. PMF is no longer operating; its license expired in March 2010. Santos is now engaged in real estate transactions under her individual broker license. She is not doing loans, because she has not yet taken the SAFE Act examination to obtain her mortgage loan originator license endorsement.

LEGAL CONCLUSIONS

2009 Audit

CORPORATE SUSPENSION

1. Finding 6a: California Code of Regulations, title 10, section 2742, subdivision (c), provides: "A corporation licensed under Section 10211 of the Code shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State." PMF's continued operation after the Franchise Tax Board suspension on September 2, 2008, violated this regulation and constitutes cause for discipline of its license

under Business and Professions Code section 10177, subdivision (d) (willful disregard or violation of the Real Estate Law or regulations promulgated under the Real Estate Law).

TRUST FUND RECORDS

2. Finding 6b: California Code of Regulations, title 10, section 2831, subdivision (a), requires a broker to "keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal." The records must set forth in columnar form: the date the trust funds were received (subd. (a)(1)); from whom the trust funds were received (subd. (a)(2)); the amount received (subd. (a)(3)); and for trust funds not deposited in an account, the identity of the other depository and the date the funds were forwarded (subd. (a)(6)). PMF's failure to keep a record of the trust funds it received in the form of checks payable to title companies violated this regulation and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

EARNEST MONEY DEPOSIT CHECKS

3. Finding 6c: It was not established that PMF failed to place two earnest money deposit checks into a neutral depository account within three business days following acceptance of the offer, in violation of California Code of Regulations, title 10, section 2832, subdivision (d), and Business and Professions Code section 10145. Cause for license discipline does not exist.

MISREPRESENTATIONS RE: COLLECTION OF DEPOSITS

4. Finding 6d: Business and Professions Code section 10176, subdivision (a), authorizes the discipline of a real estate licensee for "Making any substantial misrepresentation." PMF's false statement in the purchase offers regarding the collection of earnest money deposit checks constituted a substantial misrepresentation and cause for discipline of its license under this section.

NON-COMPLIANCE WITH MLDS REQUIREMENTS

5. Finding 6e: The relevant provisions of Business and Professions Code section 10240, subdivision (a), require a broker who negotiates a loan secured by real property to provide the borrower a written statement containing all the information required by section 10241. This written statement is known as a Mortgage Loan Disclosure Statement (MLDS). Business and Professions Code section 10241 requires the MLDS to include, among other items, the following:

(a) The estimated maximum costs and expenses of making the loan, which are to be paid by the borrower, including but not limited to the following:

- (1) Appraisal fees.
- (2) Escrow fees.

- (3) Title charges.
- (4) Notary fees.
- (5) Recording fees.
- (6) Credit investigation fees.

(b) The total of the brokerage or commissions contracted for, or to be received by, the real estate broker for services performed as an agent in negotiating, procuring, or arranging the loan or the total of loan origination fees, points, bonuses, and other charges in lieu of interest to be received by the broker if he or she elects to act as a lender rather than agent in the transaction.

PMF's failure to disclose on the MLDS for the Trent loan and the Brown loan the YSP it received from the lender violated Business and Professions Code section 10241 and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

PMF's failure to disclose on the MLDS for the Blanco loan the estimated maximum costs and expenses of making the loan violated Business and Professions Code section 10241, subdivision (a), and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).² It is noted that if the Good Faith Estimate for Blanco had set forth PMF's real estate license number and included a statement that the Good Faith Estimate does not constitute a loan commitment, PMF could have satisfied the requirements of Business and Professions Code section 10240 without utilizing the MLDS. Business and Professions Code section 10240, subdivision (c), provides, in relevant part:

In a federally regulated residential mortgage loan transaction in which the principal loan amount exceeds the principal loan levels set forth in Section 10245 [\$30,000 for a first trust deed], a real estate broker satisfies the requirements of this section if the borrower receives (1) a "good faith estimate" that satisfies the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A. 2601 et seq.), and that sets forth the broker's real estate license number and a clear and conspicuous statement on the face of the document stating that the "good faith estimate" does not constitute a loan commitment, (2) all applicable disclosures required by the Truth in Lending Act (15 U.S.C.A. 1601 et seq.)

² By permitting Blanco to sign a largely blank MLDS, PMF also violated Business and Professions Code section 10240, subdivision (a), which provides: "No real estate licensee shall permit the statement to be signed by a borrower if any information required by Section 10241 is omitted." However, the accusation does not allege a violation of this section.

LICENSE NUMBER ON MLDS

6. Finding 6f: Business and Professions Code section 10236.4, subdivision (b), provides that the disclosures required by section 10240 (the MLDS) shall include the licensee's license number. PMF's failure to include its license number on the MLDS documents for eight loans violated this section and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

OUTDATED VERSION OF MLDS FORM

7. Finding 6g: Business and Professions Code section 10240, subdivision (a), requires the MLDS to contain all the information required by section 10241, and section 10241 provides that the form of the MLDS shall be approved by the commissioner. California Code of Regulations, title 10, section 2840, identifies in subdivision (a) the current revision of forms RE 882 and RE 883, and in subdivision (c) provides that a real estate broker must obtain the prior written approval of the commissioner in order to use a different form.

PMF's use of outdated MLDS forms violated Business and Professions Code section 10240, subdivision (a), and section California Code of Regulations, title 10, section 2840 and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

CHANGE OF ADDRESS

8. Finding 6h: Business and Professions Code section 10162 requires every licensed real estate broker to maintain a definite place of business, and states: "No real estate license authorizes the licensee to do business except from the location stipulated in the real estate license as issued" Business and Professions Code section 10163 allows a broker who maintains more than one place of business to apply for an additional license for each branch office.

By doing business at 1735 North First Street, Suite 308, San Jose, before November 17, 2008, PMF violated Business and Professions Code section 10162. Cause for discipline of its license exists under Business and Professions Code section 10177, subdivision (d).

POSSESSION OF SALESPERSON LICENSES

9. Finding 6i: Business and Professions Code section 10160 provides: "The real estate salesman's license shall remain in the possession of the licensed real estate broker employer until canceled or until the salesman leaves the employ of the broker, and the broker shall make his license and the licenses of his salesmen available for inspection by the commissioner or his designated representative." California Code of Regulations, title 10,

section 2753 specifies that a salesperson's license certificate shall be kept at the main office of the broker to whom the salesperson is licensed.

PMF's failure to maintain in its possession the salesperson licenses for three of its salespersons violated Business and Professions Code section 10160 and California Code of Regulations, title 10, section 2753, and constitutes cause for discipline of its license under Business and Professions Code section 10177, subdivision (d).

Supervision by Designated Officer/Broker

10. Finding 7: Cause to discipline Santos's license exists under Business and Professions Code section 10177, subdivision (d), for her willful disregard of her responsibility under Business and Professions Code section 10159.2, subdivision (a), to supervise and control the licensed activities of PMF's officers and employees as necessary to secure full compliance with the Real Estate Law.

Negligence and/or Incompetence

11. Finding 8: Cause to discipline Santos's license exists under Business and Professions Code section 10177, subdivision (g), by reason of her negligence and/or incompetence in performing her duties as the designated officer/broker of PMF.

License Discipline

12. Santos's failure to properly supervise the activities of PMF warrants the revocation of her broker license. However, there is no evidence that Santos has been dishonest or unprofessional in her own mortgage loan or real estate transactions. It would therefore not be contrary to the public interest to allow her to obtain a restricted salesperson license, where she would be working under the supervision of a broker.

ORDER

Prime Mortgage Funding, Inc.

All licenses and licensing rights of respondent Prime Mortgage Funding, Inc., under the Real Estate Law are revoked.

Carly Alejandrino Santos

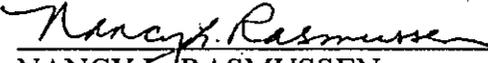
All licenses and licensing rights of respondent Carly Alejandrino Santos as a real estate broker under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if she makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this decision. The restricted license issued to respondent shall be subject to all of the

provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that code:

1. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents

such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: January 27, 2011



NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

FILED

JUL 23 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

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8

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 PRIME MORTGAGE FUNDING, INC. , and)
14 CARLY ALEJANDRINO SANTOS)
15 Respondent.)

No. H- 10970 SF

ACCUSATION

16
17 1

18 The Complainant, E.J. HABERER II, in his official capacity as a Deputy Real
19 Estate Commissioner of the State of California, for cause of Accusation against PRIME
20 MORTGAGE FUNDING, INC ("PMF") and CARLY ALEJANDRINO SANTOS ("SANTOS")
21 (hereinafter collectively "Respondents"), is informed and alleges as follows:

22 BACKGROUND

23 2

24 Respondent PMF is presently licensed and/or has license rights under the Real
25 Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code")
26 as a real estate corporation and at all times mentioned herein, for or in expectation of
27 compensation, was performing acts requiring a real estate license.

1 3

2 Respondent SANTOS is presently licensed and/or has license rights under the
3 Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the
4 Code") as a real estate broker and at all times mentioned herein, for or in expectation of
5 compensation, was performing acts requiring a real estate license.

6 4

7 Whenever reference is made in this Accusation to an act or omission of
8 Respondent PMF, such allegation shall be deemed to mean that the officers, directors,
9 employees, agents and real estate licensees employed by or associated with Respondent PMF
10 committed such acts or omissions while engaged in the furtherance of the business or operations
11 of Respondent PMF and while acting within the course and scope of their corporate authority
12 and employment.

13 5

14 At all times herein mentioned, Respondent SANTOS was and is the designated
15 officer/broker of Respondent PMF. Pursuant to Sections 10159.2 and 10177(h) of the Code, as
16 the designated officer/broker of Respondent PMF, Respondent SANTOS was at all times
17 mentioned herein, responsible for the supervision of the activities of the officers, agents, real
18 estate licensees and employees of Respondent PMF.

19 6

20 At all times mentioned, Respondent PMF was engaged in the business of, acted in
21 the capacity of, advertised or assumed to act as real estate corporation in the State of California
22 within the meaning of Sections 10131(d) and 10131(e) of the Code, including the operation and
23 conduct of a mortgage loan brokerage and residential property resale business, and wherein such
24 loans were arranged, negotiated, processed, and consummated by Respondents, and each of
25 them, on behalf of others and wherein promissory notes or interests therein were sold or
26 purchased on behalf of another or others for or in expectation of compensation.

27 ////

1 CURRENT AUDIT

2 7

3 Beginning January 2, 2009 and continuing intermittently until January 14, 2009,
4 an audit was conducted at PMF's main office located 1735 North First Street, Suite 308, San
5 Jose, California and at the Oakland District Office of the Department of Real Estate at 1515 Clay
6 Street, Suite 702, Oakland, CA wherein the auditor examined records for the period January 1,
7 2007 through November 11, 2008 (the audit period).

8 FIRST CAUSE OF ACTION

9 Audit Violations

10 8

11 Each and every allegation in Paragraphs 1 through 7, inclusive, above, is
12 incorporated by this reference as if fully set forth herein.

13 9

14 In the course of the activities described in Paragraph 6, above, for the audit
15 period:

16 (a) PMF failed to maintain a record of all trust funds received not placed in
17 broker's trust account to keep track of earnest money deposits received from prospective buyers
18 in violation of Section 2831 (a) (6) of Chapter 6, Title 10, California Code of Regulations
19 (Regulations);

20 (b) PMF failed to place two earnest money deposit checks, in the amounts of
21 \$5,000 and \$3,000 respectively, into a neutral depository account within three business days
22 following acceptance of the offer, in violation of Section 2832(d) of the Regulations and Section
23 10145 of the Code;

24 (c) In at least two (2) transactions, (the May 2007 (closed May 31, 2007)
25 Collanta and Arciaga purchase of 79 Polaris Court, Milpitas, California and the Victor Aquino
26 February 2007 purchase of 117 Campbell St, Santa Cruz, California (closed May 25, 2010)),
27

1 PMF made misrepresentations regarding the collection of earnest money deposits, in violation of
2 Section 10176(a) of the Code;

3 (d) In at least two transactions, (a February 12, 2007 purchase of a property
4 commonly referred to as 117 A-D Campbell Street, Santa Cruz, California, and a Jaime Montero
5 purchase of 2340 Millcreek Drive, Ceres, California), PMF failed to maintain a record with
6 respect to delivery of a structural pest control report, certification, and the notice of work
7 completed, if any, to the transferee/buyer, in violation of Section 2905 of the Regulations;

8 (e) On at least two closed transactions PMF failed to disclose to the borrower on
9 the Mortgage Loan Disclosure Statement ("MLDS"), (an October 4, 2007 Franklin and Emma
10 Trent transaction and a December 18, 2007 Remedios Brown and David Brown transaction),
11 additional compensation (YSP) paid by the lender to PMF. Further, on at least one loan
12 transaction, a Maria R. Blanco transaction, PMF failed to include on the MLDS the estimated
13 maximum costs and expenses of making the loan, which were to be paid by borrowers, and on at
14 least one transaction, a Maria R. Blanco transaction, PMF held a blank MLDS signed by the
15 borrower in the borrower's loan file, all in violation of Section 10241 of the Regulations;

16 (f) PMF failed to include its license number on the MLDS issued to at least the
17 following eight (8) borrowers in violation of Section 10236.4 of the Regulations:

Borrower	Loan Amount	Date Closed
Joshua A. Andres & Edna R. Andres	\$525,000.00	09/29/2008
Janet Chung	\$415,000.00	11/30/2007
Maria R. Blanco	\$283,000.00	11/02/2007
Franklin D. Trent & Emma D. Trent	\$470,000.00	10/04/2007
Remedios Brown & David A. Brown	\$410,000.00	12/18/2007
Consuelo Nicholls	\$985,000.00	11/07/2008
Anthony Pham & Catherine Pham	\$386,910.00	10/02/2008
Glady Flores	\$ 82,000.00	11/05/2008

1
2 (g) PMF failed to issue revised MLDS Form RE 883 (Rev. 1/08) for the
3 disclosures issued to borrowers after January 2008, and August 2008, respectively, in violation
4 of Section 10240(a) of the Code and Section 2840 of the Regulations;

5 (h) PMF failed to notify the Department of its change of main office address to
6 1735 North First Street, San Jose, California within 1 business day of the effective move date of
7 November 17, 2008 and PMF negotiated at least one (1) loan transaction from this address prior
8 to notifying the Department of the change. In addition, 1735 North First Street, San Jose,
9 California was not listed as a branch office address for PMF, all in violation of Section 10163
10 and 10162 of the Code;

11 (i) PMF failed to maintain in its possession the real estate salesperson licenses for
12 PMF employees Salvador S. Alejandrino, Alan E. Menjivar, Miguel A. Quintero and Jeff A.
13 Senchina, in violation of Section 10160 of the Code and Section 2753 of the Regulations.
14

15 10

16 The acts and/or omissions of PMF as alleged above violated Sections, 2831 (a)(6),
17 2832.2, 2840, 2905 of the Regulations and Sections 10145, 10160, 10162, 10163, 10236.4,
18 10240(a), and 10241 of the Code, and are grounds for discipline under Sections 10176(a) and
19 10177(d) of the Code.

20 SECOND CAUSE OF ACTION
Suspended Corporation

21 11

22 Each and every allegation in Paragraphs 1 through 10, inclusive, above, is
23 incorporated by this reference as if fully set forth herein.

24 12

25 On or about September 2, 2008, the California Franchise Tax Board suspended
26 PMF's powers, rights and privileges pursuant to the California Revenue and Taxation Code.
27 Pursuant to Section 2742 (c), of the Regulations a corporation licensed under Section 10211 of

1 the Code shall not engage in the business of a real estate broker while not in good standing with
2 the California Secretary of State. Continued operation of a suspended corporation constitutes
3 cause for suspension or revocation of all licenses and license rights of Respondent PMF under
4 Section 10177(d) of the Code.

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THIRD CAUSE OF ACTION
Failure to Supervise

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

14

Respondent SANTOS, as the designated officer/broker of Respondent PMF was
required to exercise reasonable supervision and control over the activities of Respondent PMF.
Respondent SANTOS failed to exercise reasonable supervision and control over the activities of
Respondent PMF by failing to insure that Respondent PMF maintained with the Department a
current main office address; by permitting the audit violations enumerated herein to occur, and
by failing to insure that Respondent PMF's corporate status remained in good standing with the
California Secretary of State. SANTOS' failures, and each of them, violate Section 10159.2 of
the Code and therefore, constitutes cause for suspension or revocation of all licenses and license
rights of Respondent SANTOS under Section 10177(d) of the Code.

FOURTH CAUSE OF ACTION
Negligence and/or Incompetence

15

Each and every allegation in Paragraphs 1 through 14, inclusive, above are
incorporated by this reference as if fully set forth herein.

16

The acts and omissions of Respondents PMF and/or SANTOS as described herein
constitute negligence or incompetence in performing acts requiring a real estate license, and are
cause under Section 10177(g) of the Code for suspension or revocation of all licenses and license

1 rights of Respondents PMF and/or SANTOS.

2 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
3 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondents PRIME MORTGAGE FUNDING,
5 INC., and CARLY ALEJANDRINO SANTOS under the Real Estate Law (Part 1 of Division 4
6 of the Business and Professions Code), and for such other and further relief as may be proper
7 under other provisions of law.

8
9 
10 E.J. HABERER II
Deputy Real Estate Commissioner

11 Dated at Oakland, California,
12 this 14th day of July, 2010

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