

**FILED**

**January 24, 2013**

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2 State Bar No. 223266  
3 Department of Real Estate  
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DEPARTMENT OF REAL ESTATE

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9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of	)	No. H-11505 SF
	)	
13 RAUL ALCARAZ,	)	<u>ACCUSATION</u>
	)	
14 Respondent.	)	

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16 The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of the State  
17 of California, for cause of Accusation against RAUL ALCARAZ (Respondent), is informed and  
18 alleges as follows:

19 PRELIMINARY ALLEGATIONS

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21 The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of the  
22 State of California, makes this Accusation in her official capacity.

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

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At all times mentioned, Respondent was and is licensed by the Department as a real estate broker. At no time mentioned was Respondent issued a mortgage loan originator license endorsement by the Department.

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

Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage and/or loan modification business with the public wherein Respondent solicited lenders and borrowers for or negotiated loans or collected payments and/or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property for or in expectation of compensation; and,

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

Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property

FIRST CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 4, inclusive, is incorporated by this reference as if fully set forth herein.

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On or about February 3, 2012, Respondent, in the course of the real estate activities described in Paragraph 4, via e-mail, solicited and/or offered an undercover Special Investigator to negotiate a residential loan modification concerning a piece of real property located within the State of California, in which Respondent would negotiate a loan modification for an advance fee of \$250 plus a monthly fee of \$150.

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On or about May 23, 2012, Respondent, in the course of the real estate activities described in Paragraph 4, solicited and/or offered an undercover Special Investigator to negotiate a residential mortgage loan refinance concerning a piece of real property located within the State of California, in which Respondent would negotiate a refinance for a fee of "one point" of the value of the loan.

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In connection with the operation and conduct of the activities and transactions described in Paragraphs 6 and 7, Respondent engaged in business as a mortgage loan originator as that term is defined by Section 10166.01(b)(1) of the Code, which includes but is not limited to the conduct of mortgage loan origination activities, and failed to obtain and maintain a real estate license endorsement identifying that Respondent is a licensed mortgage loan originator. in violation of Section 10166.02(b) (failure to obtain license endorsement) of the Code.

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The facts alleged in the First Cause of Action are grounds for the suspension or revocation of the licenses of Respondent under Sections 10166.051 (grounds for discipline-violation of license endorsement and notice requirements) and 10177(d) (willful disregard or violation of Real Estate Law) of the Code, in conjunction with Section 10166.02(a) (failure to notify Department of loan activity) of the Code.

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SECOND CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 9, inclusive, is incorporated by this reference as if fully set forth herein.

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While acting in the course and scope of a real estate licensee as described in Paragraph 4, Respondent claimed, demanded, charged, collected, and/or received advance fees from an undercover Special Investigator in connection with loan modification services concerning a piece of real property located within the State of California after October 10, 2009, in violation of Section 10085.6 (unlawful collection of advance fees related to loan modifications) of the Code and Section 2945.4 (unlawful collection of advance fees related to loan modifications) of the California Civil Code (Civil Code).

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In connection with the operation and conduct of the activities and transactions described in Paragraph 11, Respondent claimed, demanded, charged, received, collected and/or contracted for advance fees in connection with loan modification services and failed to submit the advance fee agreements and all materials used in obtaining the advance fee agreements to the Department prior to use, without first obtaining a "No Objection Letter" as required by Sections 10085 (failure to submit materials used in collection of advance fees to Department) of the Code, and Section 2970 (materials used in collection of advance fees must be approved by Department prior to use) of Title 10 of the California Code of Regulations (Regulations).

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The acts and/or omissions of Respondent as alleged in the Second Cause of Action constitute grounds for the suspension or revocation of all licenses and license rights of Respondent, pursuant to the following provisions of the Code and Regulations:

(a) As to Paragraph 11, under Section 10177(d) (willful disregard or violation of Real Estate Law) in conjunction with Section 10085.6 (unlawful collection of

1 advance fees related to loan modifications) of the Code, and/or 10177(g) (negligence or  
2 incompetence in performing licensed act) of the Code, and/or Section 10177(q) (violation of  
3 Civil Code) of the Code, in conjunction with Section 2945.4 (unlawful collection of advance  
4 fees related to loan modifications) of the Civil Code; and

5 (b) As to Paragraph 12, under Sections 10177(d) (willful disregard or  
6 violation of Real Estate Law) in conjunction with Section 10085 (failure to submit materials  
7 used in collection of advance fees to Department) of the Code and Section 2970 (materials used  
8 in collection of advance fees must be approved by Department prior to use) of the Regulations,  
9 and/or 10177(g) (negligence or incompetence in performing licensed act) of the Code.

10 THIRD CAUSE OF ACTION

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12 Each and every allegation in Paragraphs 1 through 13, inclusive, is incorporated  
13 by this reference as if fully set forth herein.

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15 In connection with the operation and conduct of the activities and transactions  
16 described in Paragraph 4, Respondent:

17 (a) Failed to retain the real estate salesperson license certificates at its main  
18 office as required by Section 10160 of the Code and Section 2753 of the Regulations. Said  
19 salespersons include, but are not limited to, Robert Rodriguez;

20 (b) Failed to immediately notify the Real Estate Commissioner  
21 (Commissioner) in writing that real estate salesperson, Jaime Quiroga, was employed by  
22 Respondent as required by Section 10161.8 (salesperson employment) of the Code and Section  
23 2752 (notice of change of broker) of the Regulations; and

24 (c) Failed to notify the Commissioner by the next business day that  
25 Respondent had closed its branch offices located at 160 Franklin Street, Suite 105 and 434,1  
26 Piedmont Avenue, Oakland, California, as required by Section 2715 of the Regulations.

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2 The facts alleged in the Third Cause of Action are grounds for the suspension or  
3 revocation of Respondent's licenses and license rights under the following sections of the Code  
4 and Regulations:

5 (1) As to Paragraph 15(a) under Section 10177(d) of the Code in conjunction  
6 with Section 10160 of the Code and Section 2753 of the Regulations;

7 (2) As to Paragraph 15(b), under Section 10177(d) of the Code in  
8 conjunction with Section 16161.8 of the Code and Section 2752 of the Regulations; and

9 (3) As to Paragraph 15(c), under Section 10177(d) of the Code in conjunction  
10 with Section 2715 of the Regulations.

11 COST RECOVERY

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

17 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
18 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
19 action against all licenses and license rights of Respondent under the Code, for the cost of  
20 investigation and enforcement as permitted by law, and for such other and further relief as may  
21 be proper under the provisions of law.

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24 ROBIN S. TANNER  
25 Deputy Real Estate Commissioner

26 Dated at Sacramento, California,  
27 this 10<sup>th</sup> day of December, 2012

DISCOVERY DEMAND

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