

FILED

October 14, 2013

TRULY SUGHRUE, Counsel
State Bar No. 223266
Bureau of Real Estate
P.O. Box 137007
Sacramento, CA 95815-7007

BUREAU OF REAL ESTATE



By _____

Telephone: (916) 263-8670
(916) 263-8676 (Direct)

Fax: (916) 263-8668

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

DAVID SILVA,

Respondent.

No. H-11594 SF

ACCUSATION

The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against DAVID SILVA ("Respondent"), is informed and alleges as follows:

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

2

Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) ("Code") as a real estate salesperson. At all times mentioned, Respondent's real estate salesperson license was affiliated under NAS Brokers Inc., doing business as Crystal Estates.

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

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On or about May 3, 2012, in the course of the activities described in Paragraph 3, Respondent entered into a written agreement whereby sellers, Abdulkrim A. and Nema N. ("sellers"), granted Respondent, on behalf of Crystal Estates, exclusive employment and authorization to sell and offer to sell, solicit prospective purchasers of, and negotiate the purchase and sale of real property identified as 5991 Blossom Avenue, San Jose, California ("property").

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On or about August 14, 2012, Respondent ordered and received a Wood Destroying Pest and Organism Inspection Report ("inspection report") on the property. The inspection report identified approximately \$30,000 in repairs.

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On or about September 7, 2012, the sellers accepted an offer to purchase the property from Thomas S. ("buyer"). The purchase contract called for seller to disclose all known material facts and defects and, within seven (7) days after acceptance, to deliver to buyer all reports, disclosures and information for which the Seller is responsible.

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2 As an agent, Respondent had an affirmative obligation to the buyer and seller of
3 honesty, fair dealing, and good faith, and a duty to disclose all facts known to the agent
4 materially affecting the value or desirability of the property that are not known to, or within the
5 diligent attention and observation of, the parties.

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7 At no time prior to October 3, 2012, was buyer provided a copy of the August 14,
8 2012 inspection report.

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10 On or about October 7, 2012, buyer communicated his desire to cancel the
11 purchase, as buyer did not approve the August 14, 2012, inspection report. Buyer demanded the
12 return of his earnest money deposit.

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14 The facts described above constitute cause to suspend or revoke all licenses and
15 license rights of Respondent pursuant to the provisions of Sections 10176(a), 10176(i), and/or
16 10177(g) of the Code.

17 COST RECOVERY

18 11

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

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

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8 ROBIN S. TANNER
9 Deputy Real Estate Commissioner

9 Dated at Oakland, California,
10 this 19th day of September, 2013

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12 DISCOVERY DEMAND:

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