

F-116

FILED

1 JASON D. LAZARK, Counsel
2 State Bar No. 263714
3 Bureau of Real Estate
4 P.O. Box 137007
5 Sacramento, CA 95813-7007
6
7
8 Telephone: (916) 263-6070
9 (916) 263-8684 (Direct)

MAY 13 2014

BUREAU OF REAL ESTATE
By Lazark

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

<p>11 In the Matter of the Accusation of :</p> <p>12 TOPAZ FINANCIAL SERVICES, INCORPORATED</p> <p>13 and ALDO JOHN GIGLIOTTI,</p> <p>14 Respondents.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. H-11695 SF</p> <p><u>ACCUSATION</u></p>
---	---	--

16 The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of
17 the State of California, for cause of Accusation against TOPAZ FINANCIAL SERVICES
18 INCORPORATED ("TOPAZ"), dba Abacus Realty, and ALDO JOHN GIGLIOTTI
19 ("GIGLIOTTI") (collectively referred to as "Respondents"), is informed and alleges as follows:

PRELIMINARY ALLEGATIONS

21 1

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

24 2

25 Respondents are presently licensed and/or have license rights under the Real
26 Estate Law, Part 1 of Division 4 of the Business and Professions Code ("Code").

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3

At all times mentioned herein, Respondent TOPAZ was and is licensed by the State of California Bureau of Real Estate ("Bureau") as a corporate real estate broker. On or about August 1, 2011, the California Secretary of State suspended the corporate powers, rights and privileges of Respondent TOPAZ. On or after December 1, 2013, the California Secretary of State reinstated the corporate powers, rights and privileges of Respondent TOPAZ.

4

At all times mentioned herein, Respondent GIGLIOTTI was and is licensed by the Bureau individually as a real estate broker. At all times mentioned herein, Respondent GIGLIOTTI is and was the designated broker/officer of TOPAZ. As said designated broker/officer, Respondent GIGLIOTTI was at all times mentioned herein responsible pursuant to Section 10159.2 and 10177(h) of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of Respondent TOPAZ for which a real estate license is required.

5

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers 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 business with the public wherein they 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.

6

At all times mentioned herein, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate licensees, 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, in the name of Abacus Realty, wherein, on behalf of

1 others, for compensation or in expectation of compensation, Respondents sold and offered to
2 sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and
3 obtained listings of, and negotiated the purchase and resale of real property.

4 7

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

11 **FIRST CAUSE OF ACTION**
12 **Conducting Business While Not in Good Standing**
13 **(As to Respondent TOPAZ only)**

14 8

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

17 9

18 In the course and scope of the activities set forth above in Paragraph 5,
19 Respondent TOPAZ, through the solicitation and negotiation of its licensed employees, solicited
20 lenders and borrowers for or negotiated loans or collected payments and/or performed services
21 for borrowers or lenders or note owners in connection with loans secured directly or collaterally
22 by liens on real property for or in expectation of compensation, including, but not limited to, the
23 following transactions:

Borrower(s)	Property Address	Close Date
Tho H. and Cam T.	3427 Santiago St., San Francisco, CA 94116	10/19/11
Winnie D.	1201 Hawes St., San Francisco, CA 94124	3/16/12
Erik T.	2494 State St., San Leandro, CA 94577	2/11/13

In the course and scope of the activities set forth above in Paragraph 6, Respondent TOPAZ, through the solicitation and negotiation of its licensed employees, entered into listing agreements with sellers to market and sell their real property, solicited buyers, and/or negotiated the sale of said real properties on behalf of sellers including, but not limited to, the following transactions:

Property Address	Party	Who Respondent Represents	Offer Date	Close Date
3427 Santiago St. San Francisco, CA 94116	Tho H. and Cam T.	Buyer	8/17/11	10/19/11
125 Compass Ct. Vallejo, CA 94590	SRP Sub, LLC	Buyer	9/24/12	10/15/12
2494 State St. San Leandro, CA 94577	Erik T.	Buyer	1/8/13	2/8/13
1551 Southgate Ave. #252 Daly City, CA 94015	James K.	Buyer & Seller	6/12/13	7/26/13

As set forth above in Paragraphs 3, 5, 6, 9 and 10, at all times herein mentioned, Respondent TOPAZ engaged in activities requiring a real estate license while its corporate status was suspended.

The facts alleged above in Paragraphs 3, 5, 6, 9, 10 and 11 constitute cause for the suspension or revocation of all licenses and license rights of Respondent TOPAZ under Chapter 6, Title 10, California Code of Regulations (“the Regulations”) and section 2742(c) (operating while not in good standing with Secretary of State), in conjunction with section 10177(d) and/or 10177(g) of the Code (willful disregard for the real estate law).

SECOND CAUSE OF ACTION
Misrepresentation
(As to Respondent GIGLIOTTI only)

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

14

On or about May 3, 2012, Respondent GIGLIOTTI made application to the Bureau of Real Estate of the State of California to serve as the designated broker officer of Respondent TOPAZ.

15

In response to Question 17 of said application, to wit: "Is the corporation currently in good standing with the Office of the Secretary of State?", Respondent GIGLIOTTI answered "yes", and in so doing concealed and failed to disclose that the corporate powers, rights and privileges of Respondent TOPAZ had been suspended by the California Secretary of State.

16

In response to Question 19a of said application, to wit: "Did the corporation, for compensation in the past 12 months, make or arrange (broker) loans secured by real property or sell existing notes secured by deeds of trust?" Respondent GIGLIOTTI answered "no", and in so doing concealed and failed to disclose the information regarding Respondent TOPAZ's involvement in making or arranging the following loans secured by real property described below:

Borrower(s)	Property Address	Close Date
Tho H. and Cam T.	3427 Santiago St., San Francisco, CA 94116	10/19/11
Winnie D.	1201 Hawes St., San Francisco, CA 94124	3/16/12

17

In failing to disclose that Respondent TOPAZ's corporate license was suspended by the California Secretary of State's Office, as set forth in Paragraph 15, Respondent GIGLIOTTI procured or attempted to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which constitutes grounds for the suspension or revocation of all licenses and license rights of Respondent GIGLIOTTI under section 10177(a) (misrepresentation) of the Code.

In failing to disclose the information regarding Respondent TOPAZ's involvement in making or arranging the loans secured by real property described above in Paragraph 16, Respondent GIGLIOTTI procured or attempted to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which constitutes grounds for the suspension or revocation of all licenses and license rights of Respondent GIGLIOTTI under section 10177(a) of the Code (misrepresentation).

THIRD CAUSE OF ACTION
Failure to Supervise
(As to Respondent GIGLIOTTI)

Each and every allegation in Paragraphs 1 through 18, inclusive, is incorporated by this reference as if fully set forth herein.

GIGLIOTTI, as the designated officer broker of TOPAZ, was required to exercise reasonable supervision and control over the activities of TOPAZ. GIGLIOTTI failed to exercise reasonable supervision over the acts and/or omissions of TOPAZ in such a manner as to allow the acts and/or omissions as described in Paragraphs 8 through 12, above, to occur in violation of section 10159.2 of the Code and section 2725 of the Regulations.

The facts described above as to the Third Cause of Action constitutes cause for the discipline of all licenses and license rights of GIGLIOTTI under section 10177(g) of the Code (negligence) and/or section 10177(h) of the Code (failure to supervise) in conjunction with section 10177(d) of the Code (willful disregard for the real estate law).

COST RECOVERY

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the

1 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
2 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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

8 
9 _____
10 ROBIN S. TANNER
11 Deputy Real Estate Commissioner

11 Dated at Oakland, California,
12 this 29th day of April, 2014

13
14 DISCOVERY DEMAND

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