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BUREAU OF REAL ESTATE
By *K. Contreras*

9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 NORBIE LABRADOR GAERLAN,) NO. H-11884 SF
14 Respondent.) ACCUSATION

15 The Complainant, ROBIN S. TANNER, in her official capacity as a Supervising
16 Special Investigator of the State of California, for cause of Accusation against NORBIE
17 LABRADOR GAERLAN ("Respondent"), is informed and alleges as follows:

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19 At all times relevant, Respondent was licensed and/or had license rights by the
20 Bureau of Real Estate ("the Bureau") as a real estate broker under the Real Estate Law, Part 1 of
21 Division 4 of the Business and Professions Code ("the Code") with Mortgage Loan Originator
22 License Endorsements (NMLS ID 339628 and NMLS ID 847188).

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24 At all times herein mentioned, Respondent was engaged in the business of, acted
25 in the capacity of, advertised or assumed to act as real estate broker in the State of California
26 within the meaning of Section 10131(a) (sale/purchase of real estate) of the Code, including
27 selling or offering to sell, buying or offer to buy, soliciting prospective sellers or purchasers of,

1 soliciting or obtaining lists of, or negotiating the purchase, sale or exchange of real property; and
2 Section 10131(b) of the Code (property management), including the operation and conduct of a
3 property management business with the public, wherein, on behalf of others, for compensation
4 or in expectation of compensation, Respondent leased or rented and offered to lease or rent, and
5 solicited for prospective tenants of real property or improvements thereon, and collected rents
6 from real property or improvements thereon.

7 FIRST CAUSE OF ACTION

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9 On or about September 3, 2014, and continuing through September 4, 2014, an
10 audit was conducted of Respondent at his main office located at 4104 Dyer Street, Union City,
11 California, where the auditor examined the records for the period of January 1, 2012, through
12 August 31, 2014 (the audit period).

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14 While acting as a real estate broker as described in Paragraph 2, above, and
15 within the audit period, Respondent accepted or received funds in trust (trust funds) in the
16 course of the real estate activities described in Paragraph 2, above, and deposited or caused to
17 be deposited those funds into a bank account maintained by Respondent, including, but not
18 limited to:

19 Bank Account #1

20 Bank of America
21 31800 Alvarado Boulevard
22 Union City, CA 94587

23 Account No.: XXXXXXXXX7289

24 Account Name: Norberto L. Gaerlan Sole Prop dba Taxxmart

25 Signatories: Norberto Gaerlan (REB)
26 Xiaoxiao Liu (unlicensed)

27 Thereafter, Respondent from time-to-time made disbursement of said trust funds.

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2 In the course of the activities described in Paragraph 2, above, in connection with
3 the collection and disbursement of trust funds:

- 4 (a) Respondent failed to designate Bank Account #1 as a trust account
5 with Respondent as the trustee. Such acts and/or omissions by
6 Respondent violate Section 10145 of the Code and Section 2832
7 (trust fund handling) of Title 10 of the California Code of
8 Regulations ("the Regulations").
- 9 (b) Respondent failed to maintain adequate Control Records for Bank
10 Account #1. Such acts and/or omissions by Respondent violate
11 Section 10145 of the Code and Section 2831 (trust fund records
12 maintenance) of the Regulations.
- 13 (c) Respondent failed to maintain complete and accurate separate
14 records of each beneficiary of funds held in Bank Account #1. Such
15 acts and/or omissions by Respondent violate Section 10145 of the
16 Code and Section 2831.1 (separate records for each beneficiary or
17 transaction) of the Regulations.
- 18 (d) Respondent allowed non-licensee Xiaoxiao Liu to be a signatory
19 on Bank Account #1. In addition, Respondent failed to maintain
20 adequate fidelity bond coverage for Xiaoxiao Liu. Such acts
21 and/or omissions by Respondent violate Section 10145 of the
22 Code and Section 2834 (trust account withdrawals) of the
23 Regulations.
- 24 (e) Respondent commingled trust funds with non-trust funds in Bank
25 Account #1. Such acts and/or omissions by Respondent violate
26 Section 10176(e) (commingling) of the Code and Section 2835
27 (commingling) of the Regulations.

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The facts alleged in Paragraph 5, above, are grounds for the discipline the license and license rights of Respondent under Sections 10177(d) (willful disregard of Real Estate Law) and/or 10177(g) (negligence/incompetence) of the Code. In addition, the Bureau is entitled to reimbursement from Respondent for the costs of its audit pursuant to Section 10148(b) (cost of audit in final decision following disciplinary hearing) of the Code.

SECOND CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 6, above, and incorporates the same herein by reference.

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Respondent failed to deliver the Mortgage Loan Disclosure Statement within three (3) business days after receipt of a completed loan application from borrowers Gildo B. and Anna B.

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The acts and/or omissions of Respondent alleged in Paragraph 8, above, violate Section 10240 (written disclosure statement requirement) of the Code and are grounds to discipline the license and license rights of Respondent under Sections 10177(d) and/or 10177(g) of the Code.

THIRD CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 9, above, and incorporates the same herein by reference.

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The website, www.xgigroup.com, which Respondent owns and controls, failed to disclose Respondent's real estate license identification number.

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The acts and/or omissions of Respondent alleged in Paragraph 11, above, violate Section 10140.6 (disclosure of license information in advertising) of the Code and Section 2773 (disclosure of license identification number on solicitation materials) of the Regulations, and are grounds to discipline the license and license rights of Respondent under Sections 10177(d) and/or 10177(g) of the Code.

FOURTH CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 12, above, and incorporates the same herein by reference.

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Respondent failed to retain the dual agency disclosure statement for the transaction involving the real property located at 6101 Bay Hill Court, Dublin, California.

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The acts and/or omissions of Respondent alleged in Paragraph 14, above, violate Section 10148 (record retention requirements) of the Code and are grounds to discipline the license and license rights of Respondent under Sections 10177(d) and/or 10177(g) of the Code.

COST RECOVERY

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

1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
3 disciplinary action against all licenses and license rights of Respondent under the Code, and for
4 such other and further relief as may be proper under the provisions of law.
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10 ROBIN S. TANNER
11 Supervising Special Investigator

12 Dated at Oakland, California
13 this 16 day of September, 2015.
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