

FILED
MAR 30 2006
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By K. Kuderholt

* * * * *

In the Matter of the Accusation of)	No. H-31871 LA
)	
)	L-2005060073
)	
TAN HUY VU,)	
)	
)	
)	
Respondent(s).)	

DECISION

The Proposed Decision dated February 27, 2006, 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 APR 10 2006.

IT IS SO ORDERED March 30, 2006.

JEFF DAVI
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TAN HUY VU,
doing business as Mortgage Company of America

Respondent.

Case No. H-31871 LA

OAH No. L2005060073

PROPOSED DECISION

Robert S. Eisman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on January 30, 2006.

Elliott Mac Lennan, Staff Counsel, represented Deputy Real Estate Commissioner Maria Suarez (complainant).

Tan Huy Vu (respondent) appeared and represented himself.

Sworn testimony and documentary evidence was received, the record was closed, and the matter submitted on January 30, 2006.

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that complainant filed the Accusation while acting in her official capacity.

2. The Department of Real Estate originally licensed Tan Huy Vu as a broker, License No. 00573790, on December 22, 1981. At all times relevant to this matter, respondent was licensed and had all licensing rights issued by the Department of Real Estate.

3. As of January 1, 2001, and continuing through October 6, 2003, respondent acted as a real estate broker and conducted licensed activities, doing business as Mortgage Company of America, located in Rancho Cucamonga, California. Respondent operated a mortgage loan brokerage within the meaning of Business and Professions Code section 10131, subdivision (d), and conducted broker-controlled escrows through his escrow division, under the exemption set forth in California Financial Code section 17006, subdivision (a)(4).

4. Respondent stipulated that the charges and allegations in the Accusation are true and correct.

5. On April 1, 2003, the Department of Real Estate completed an audit and examination of the books and records Mortgage Company of America. The audit pertained to mortgage and loan and broker-escrow activities that required a real estate license and covered the period from July 1, 2001 to November 30, 2002. The audit and examination of books found numerous violations that are described in Audit Report Nos. LA 020195 and LA 020219 (Complainant's Exhibit 3) and are summarized as follows:

a. Respondent allowed or caused the disbursement of trust funds from the escrow trust account, which reduced the total aggregate of funds in the trust account to an amount that, on November 30, 2002, was \$153,067.14 less than the existing aggregate trust fund liability of respondent to every principal who was an owner of the funds. Respondent had not obtained the prior written consent of those owners to reduce the balance below the aggregate liability.

\$110,842.95 of the \$153,067.14 shortage was due to a deposit error; and on January 8, 2003, it was corrected.

b. Respondent failed to maintain an adequate or complete control record in the form of a columnar record, in chronological order, of all trust funds received in the escrow trust account.

c. Respondent failed to maintain an adequate separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited into, and disbursed from, the trust account.

d. Respondent failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records with the control record of all trust funds received and disbursed by the escrow trust account.

e. Respondent permitted Andrew Whitaker (Whitaker), an unlicensed person, who was not bonded, to be an authorized signatory on the escrow trust accounts.

f. Respondent failed to deposit all money received as an escrow agent, and as part of an escrow transaction, in a bank trust account or escrow account, on or before the close of the next full working day after receiving the money.

g. Respondent failed to notify the Department of Real Estate of the employment of real estate salesperson Carolyn Feenstra-Barton.

h. Respondent failed to display his name or his license number on Mortgage Loan Disclosure Statements.

i. Respondent failed to provide and/or maintain a written statement to various borrowers, containing all information required by Business and Professions Code section 10241, before the those borrowers became obligated to perform under the terms of their loans.

j. Respondent failed to retain the real estate salesperson license certificates of Carolyn Feenstra-Barton and Dustin Michael Reeves.

k. Respondent received undisclosed compensation in the form of rebates pertaining to the "Yield Spread Premium" earned in connection with respondent's mortgage loan activities. The premium, totaling \$9,975.23, was not disclosed in the Mortgage Loan Disclosure Statements/Good Faith Estimates provided to various borrowers.

l. Respondent had no system in place for regularly monitoring compliance with the Real Estate Law or for the supervision of his salespersons.

m. Respondent failed to advise all parties of his financial interest in, or ownership of, his escrow division.

6. Respondent testified that he never had an ownership interest in Mortgage Company of America and had resigned as its broker of record in October 2003 after becoming aware of the results of the audit and the examination of the company's books and records.

7. Respondent met Whitaker through a friend and trusted Whitaker to operate Mortgage Company of America under respondent's broker license. In return for the use of his license, respondent received \$500.00 each month "for transportation between Orange County and Rancho Cucamonga." However, respondent only visited the offices of Mortgage Company of America once or twice a week, and he retained the excess funds that were not expended for transportation. In effect, respondent "rented" use of his license to Whitaker and failed to effectively supervise the operation of Mortgage Company of America. Respondent admitted that he gave Whitaker too much authority, including authority to use a rubber stamp containing respondent's signature. Respondent testified that he had no actual knowledge of the acts and omissions that were identified

during the audit and examination of books and records. Respondent admitted he was negligent.

8. Respondent is 76 years old. He acknowledged he made a mistake regarding his involvement with Whitaker and Mortgage Company of America and, as a result, understands that he has subjected his broker license to discipline. However, respondent asked for leniency.

Respondent has been licensed as a broker for approximately 24 years and has no prior discipline. He has not used his license for the past several months but would like to resume using it to sell houses. He currently does business as "Action Mortgage," but has not been active in real estate for the last six months. Respondent has not decided when he will retire, but does not want to do so with the impression that he cheated clients or hired people who were not licensed.

However, respondent did enter into a real estate business association with Andrew Whitaker, an unlicensed person to whom respondent gave unfettered transactional and fiduciary authority. Respondent was compensated in the form of "travel expenses" for the use of his broker license. Under his relationship with Whitaker and Mortgage Company of America, respondent did allow client funds to be mishandled and unlicensed persons to engage in activities that required licensure.

When asked if respondent had learned anything as a result of this matter, he replied that he was "too old to change."

9. Respondent failed to fulfill his duties and responsibilities as a real estate broker. He failed to properly manage and account for client funds and failed to exercise reasonable supervision over the mortgage loan and escrow activities conducted by his salespersons and/or employees.

10. Respondent failed to provide any outside verification of his rehabilitation. Respondent alone testified at the hearing. He brought no supporting witnesses, declarations or letters of reference regarding his character. He did however testify that had done charitable work since 1991.

11. Respondent is not now actively participating in the real estate profession as a broker, and the option of being a silent or relatively silent member in a real estate endeavor may still be viewed by respondent as an attractive way to supplement his income.

///

///

///

LEGAL CONCLUSIONS

1. The standard of proof in this proceeding is "clear and convincing evidence to a reasonable certainty," meaning that complainant is obliged to adduce evidence that is clear, explicit, and unequivocal – so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1893; *In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Business and Professions Code section 10131 states, in pertinent part:

A real estate broker . . . is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

[¶] . . . [¶]

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

3. Business and Professions Code section 10177 states, in pertinent part:

The [Real Estate Commissioner] may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[¶] . . . [¶]

(d) Willfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law

[¶] . . . [¶]

(g) Demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

///

4. Business and Professions Code section 10145 states, in pertinent part:

(a)(1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

[¶] . . . [¶]

(b) A real estate broker acting as a principal . . . shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

[¶] . . . [¶]

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

[¶] . . . [¶]

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution

5. California Code of Regulations, title 10, section 2832.1, states:

The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

///

6. California Code of Regulations, title 10, section 2950, states, in pertinent part:

The following acts in the handling of an escrow by a real estate broker . . . are prohibited and may be considered grounds for disciplinary action:

[¶] . . . [¶]

(d) Failing to maintain books, records and accounts in accordance with accepted principles of accounting and good business practice.

[¶] . . . [¶]

(f) Failing to deposit all money received as an escrow agent and as part of an escrow transaction in a bank, trust account, or escrow account on or before the close of the next full working day after receipt thereof.

(g) Withdrawing or paying out any money deposited in such trustee account or escrow account without the written instruction of the party or parties paying the money into escrow.

(h) Failing to advise all parties in writing if he has knowledge that any licensee acting as such in the transaction has any interest as a stockholder, officer, partner or owner of the agency holding the escrow.

7. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), and (h), and 10145 and to California Code of Regulations, title 10, sections 2832.1, 2950, subdivision (d); 2950, subdivision (g); and 2951. (Factual Findings 4, 5.a., 6, 7, 8, and 9; Legal Conclusions 3, 4, 5, and 6.)

8. California Code of Regulations, title 10, section 2831, subdivision (a) provides that every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the information in columnar form.

9. California Code of Regulations, title 10, section 2951, states, in pertinent part:

The provisions of Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2834 and 2835 of these regulations shall apply to the handling of funds and the keeping of records by a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required.

10. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), and (h), and 10145 and to California Code of Regulations, title 10, sections 2831; 2950, subdivision (d); and 2951. (Factual Findings 4, 5.b., 6, 7, 8, and 9; Legal Conclusions 4, 6, and 9.)

11. California Code of Regulations, title 10, section 2831.1, subdivision (a) states, in pertinent part:

A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence . . . information in columnar form

12. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), and (h), and 10145 and to California Code of Regulations, title 10, sections 2831; 2950, subdivision (d); and 2951. (Factual Findings 4, 5.c., 6, 7, 8, and 9; Legal Conclusions 3, 4, 6, 8, and 11.)

13. California Code of Regulations, title 10, section 2831.2 states:

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

14. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), and (h), and 10145 and to California Code of Regulations, title 10, section 2831.2. (Factual Findings 4, 5.d., 6, 7, 8, and 9; Legal Conclusions 3, 4, and 13.)

///

///

15. California Code of Regulations, title 10, section 2834, states:

(a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

(1) a salesperson licensed to the broker.

(3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

(b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:

(1) an officer through whom the corporation is licensed pursuant to section 10158 or 10211 of the Code; or

(2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account.

(c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, or the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

16. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), and (h), and 10145 and to California Code of Regulations, title 10, section 2834. (Factual Findings 4, 5.e., 6, 7, 8, and 9; Legal Conclusions 3, 4, and 15.)

17. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), and (h), and 10145 and to California Code of Regulations, title 10, section 2950, subdivision (f). (Factual Findings 4, 5.f., 6, 7, 8, and 9; Legal Conclusions 3, 4, and 6.)

18. Business and Professions Code section 10161.8 states, in pertinent part:

(a) Whenever a real estate salesman enters the employ of a real estate broker, the broker shall immediately notify the commissioner thereof in writing.

(b) Whenever employment of a real estate salesman is terminated, the broker shall immediately notify the commissioner thereof in writing.

///

19. California Code of Regulations, title 10, section 2752 states, in pertinent part:

Whenever a real estate salesperson enters the employ of a real estate broker, the broker shall notify the commissioner of that fact within five days. This notification shall be given on a form prepared by the Department and shall be signed by the broker and the salesperson.

20. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), and (h), and 10161.8 and to California Code of Regulations, title 10, section 2952; subdivision (f). (Factual Findings 4, 5.g., 6, 7, 8, and 9; Legal Conclusions 3, 18, and 19.)

21. Business and Professions Code section 10236.4 provides that every licensed real estate broker shall display his or her license number on all advertisements where there is a solicitation for borrowers or potential investors and that disclosures required by sections 10232.4 and 10240 shall include the licensee's license number and the Department of Real Estate's license information telephone number.

22. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), and (h), and 10236.4. (Factual Findings 4, 5.h., 6, 7, 8, and 9; Legal Conclusions 3 and 21.)

23. Business and Professions Code section 10240, subdivision (a) states, in pertinent part:

Every real estate broker, upon acting within the meaning of subdivision (d) of Section 10131, who negotiates a loan to be secured directly or collaterally by a lien on real property shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. . . .

24. Business and Professions Code section 10241, subdivision (b) provides that the Real Estate Commissioner shall approve the form required by Business and Professions Code section 10240, which shall set forth separately 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.

25. California Code of Regulations, title 10, section 2840, provides the form that was approved by the Real Estate Commissioner, as required by Business and Professions Code section 10241.

26. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code section 10177, subdivisions (d), (g), and (h), and 10240 and to California Code of Regulations, title 10, section 2840. (Factual Findings 4, 5.i., 6, 7, 8, and 9; Legal Conclusions 3, 23, and 25.)

27. Business and Professions Code section 10160 states:

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 salesman available for inspection by the commissioner or his designated representative.

28. California Code of Regulations, title 10, section 2753, states:

The license certificate of a real estate salesperson licensee shall be retained at the main business office of the real estate broker to whom the salesperson is licensed. Upon the termination of employment of the salesperson, the broker shall return the license certificate to the salesperson within three business days following the termination.

29. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), and (h), and 10160 and to California Code of Regulations, title 10, section 2753. (Factual Findings 4, 5.j., 6, 7, 8, and 9; Legal Conclusions 3, 27, and 28.)

30. Business and Professions Code section 10176, subdivision (g), provides that the Real Estate Commissioner may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of his or her license has been guilty of claiming or taking any secret or undisclosed amount of compensation, commission or profit, or failing to reveal to the employer of the licensee the full amount of the licensee's compensation, commission or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required for compensation or commission prior to or coincident with the signing of an agreement evidencing the

meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.

31. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), and (h), 10176, subdivision (g), and 10240 and to California Code of Regulations, title 10, section 2840. (Factual Findings 4, 5.k., 6, 7, 8, and 9; Legal Conclusions 3, 25, and 30.)

32. California Code of Regulations, title 10, section 2725, provides, in pertinent part that a broker shall exercise reasonable supervision over the activities of his or her salespersons, including, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage transactions requiring a real estate license and the handling of trust funds. The broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems and can not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

33. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code section 10177, subdivisions (d), (g), and (h), and to California Code of Regulations, title 10, section 2725. (Factual Findings 4, 5.l., 6, 7, 8, and 9; Legal Conclusions 3 and 32.)

34. Complainant has established by clear and convincing evidence to a reasonable certainty that grounds exist to discipline respondent's license and/or licensing rights pursuant to Business and Professions Code section 10177, subdivisions (d), (g), and (h), and to California Code of Regulations, title 10, section 2950, subdivision (h). (Factual Findings 4, 5.m., 6, 7, 8, and 9; Legal Conclusions 3 and 6.)

35. The Department of Real Estate has established criteria for rehabilitation from conviction of a crime to be considered in a disciplinary proceeding. Although respondent's acts and omissions pertaining to Mortgage Company of America did not result in a criminal conviction, some of the rehabilitation criteria found at California Code of Regulations, title 10, section 2912, are applicable to this matter. They are summarized as follows:

- Restitution to any person who has suffered monetary losses through acts or omissions of the licensee.
- Correction of business practices
- New and different social and business relationships from those which existed at the time of the commission of the acts
- Family life stability and fulfillment of parental and familial responsibilities

- Completion of, or enrollment in, formal education or vocational training courses
- Involvement in community, church, or privately-sponsored programs designed to provide social benefits or to ameliorate social problems
- Change in attitude, as evidenced by respondent and other persons knowledgeable and competent to testify regarding respondent's previous conduct and with subsequent attitudes

36. Respondent has not submitted convincing evidence of his rehabilitation regarding most of the criteria that apply to him. Significantly, respondent did not present any evidence to demonstrate that, as a result of his involvement in Mortgage Company of America, he had changed his attitude or business practices.

Respondent canceled his association with Mortgage Company of America in 2003. He understands that his trust in Whitaker was misplaced and that he made serious errors by being involved in an entity that he did not supervise or control. However, respondent has not demonstrated that he would not engage in such a business relationship in the future. In fact, he testified that he was "too old to change." Therefore, there would be significant risk to the public if respondent were allowed to continue to function as a real estate broker. (Factual Findings 10 and 11.)

37. The objective of a disciplinary proceeding is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in real estate brokers.¹ The purpose of proceedings of this type is not to punish respondent. In particular, the statutes relating to real estate licenses are designed to protect the public from any potential risk of harm.² The law looks with favor upon those who have been properly reformed. To that end, respondent bears the burden to establish his reformation against his violation of real estate laws and regulations, demonstrated

///

///

///

///

///

¹ *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1030-1031; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

² *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.

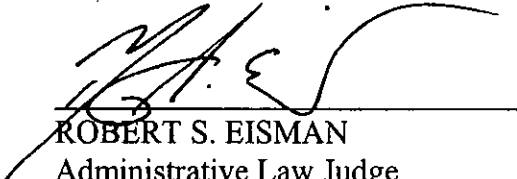
negligence, and failure to exercise reasonable supervision over salespersons and the activities of Mortgage Company of America. Respondent has not met that burden.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of respondent Tan Huy Vu under the Real Estate Law are revoked.

February 27, 2006.


ROBERT S. EISMAN
Administrative Law Judge
Office of Administrative Hearings

Handwritten initials/signature

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

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED
APR 26 2005
DEPARTMENT OF REAL ESTATE

By *K. Niderhelt*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-31871.LA
TAN HUY VU, doing business as)	<u>A C C U S A T I O N</u>
Mortgage Company of America,)	
)	
Respondent.)	
)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against TAN HUY VU dba Mortgage Company of America alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California makes this Accusation against TAN HUY VU ("VU").

///
///

1 2.

2 All references to the "Code" are to the California
3 Business and Professions Code and all references to "Regulations"
4 are to Title 10, Chapter 6, California Code of Regulations.

5 LICENSE HISTORY

6 3.

7 At all times mentioned, VU was licensed or had license
8 rights issued by the Department of Real Estate (Department) as a
9 real estate broker. On December 22, 1981, VU was originally
10 licensed as a real estate broker.

11 4.

12 At all times mentioned, in the City of Rancho
13 Cucamonga, County of Los Angeles, VU acted as a real estate
14 broker and conducted licensed activities within the meaning of:

15 A. Code Section 10131(d). VU operated a mortgage and
16 loan brokerage dba Mortgage Company of America; and

17 B. Conducted broker-controlled escrows through his
18 escrow division under the exemption set forth in California
19 Financial Code Section 17006(a)(4) for real estate brokers
20 performing escrows incidental to a real estate transaction where
21 the broker is a party and where the broker is performing acts for
22 which a real estate license is required.

23 5.

24 On April 1, 2003, the Department completed an audit
25 examination of the books and records of VU dba Mortgage Company
26 of America pertaining to the mortgage and loan and broker-escrow
27

1 activities described in Paragraph 4 that require a real estate
2 license for such activities. The audit examination covered a
3 period of time beginning on July 1, 2001 to November 30, 2002.
4 The audit examination revealed violations of the Code and the
5 Regulations as set forth in the following paragraphs, and more
6 fully discussed in Audit Report LA 020195 and LA 020219 and the
7 exhibits and workpapers attached to said audit report.

8 6.

9 At all times mentioned, in connection with the
10 activities described in Paragraph 4, above, VU accepted or
11 received funds in trust (trust funds) from or on behalf of
12 borrowers and lenders and thereafter made disposition of such
13 funds. VU maintained the following escrow trust account during
14 the audit period into which were deposited certain of these funds
15 at:

16 "Tan Vu dba Mortgage Co of America (Brokers Trust Account)
17 Account No. 238120446"
18 Citizens Business Bank
19 San Bernardino, Center
20 1555 E. Highland Avenue
21 San Bernardino, CA 92404

22 ("escrow trust account")

23 ///

24 ///

25 ///

26 ///

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

7.

With respect to the activities and trust funds referred to in Paragraphs 4, 5 and 6, it is alleged that VU:

(a) Permitted, allowed or caused the disbursement of trust funds from the escrow trust account where the disbursement of funds reduced the total of aggregate funds in the escrow trust account, to an amount which, on November 30, 2002, was \$153,067.14, less than the existing aggregate trust fund liability of VU to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951. On January 8, 2003, \$110,842.95 of the \$153,067.14 shortage, caused by a deposit error, was restored to the escrow trust account.

(b) Failed to maintain an adequate or complete control record in the form of a columnar record in chronological order of all trust funds received in escrow trust account, as required by Code Section 10145 and Regulations 2831, 2950(d) and 2951.

(c) Failed to maintain an adequate separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited into, and disbursed from the trust account, as required by Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

(d) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records

1 maintained pursuant to Regulation 2831.1 with the control record
2 of all trust funds received and disbursed by the escrow trust
3 account, as required by Regulation 2831, in violation of Code
4 Section 10145 and Regulation 2831.2.

5 (e) Permitted Andrew Whitaker, an unlicensed person who
6 was not bonded, to be an authorized signatory on the escrow trust
7 accounts in violation of Code Section 10145 and Regulation 2834.

8 (f) Failed to deposit all money received as an escrow
9 agent and as part of an escrow transaction in a bank trust
10 account, or escrow account on or before the close do the next
11 full working day after receipt thereof, in violation of Code
12 Section 10145 and Regulations 2950(d), 2950(f) and 2951.

13 (g) Failed to notify the Department of the employment
14 of Carolyn Feenstra-Barton, in violation of Code Section 10161.8
15 and Regulation 2752.

16 (h) Failed to display his name or his license number on
17 the Mortgage Loan Disclosure Statements, in violation of Code
18 Section 10236.4.

19 (i) Failed to provide and/or maintain a statement in
20 writing containing all the information required by Code Section
21 10241 to various borrowers including but not limited to for
22 borrowers Wayne and Gardner, before these borrowers became
23 obligated to perform under the terms of their loans, in violation
24 of Code Section 10240 and Regulation 2840.
25
26
27

1 (j) Failed to retain the salesperson license
2 certificates for Carolyn Feenstra-Barton and Dustin Michael
3 Reeves, in violation of Code Section 10160 and Regulation 2753.

4 (k) Received undisclosed compensation in the form of
5 rebates pertaining to the "Yield Spread Premium" earned in
6 connection with Respondent's mortgage loan activities requiring a
7 real estate license. The Premium was not disclosed in the
8 Mortgage Loan Disclosure Statements/Good Faith Estimates provided
9 to various borrowers including but not limited to Rodriguez
10 (\$3,044.48), Lagranns/Burns (\$3,600), Rucker (\$1,047.00), Higgins
11 (\$1,848.75) and Wright (\$435.00), totaling \$9,975.23, in
12 violation of Code Sections 10176(g) and 10240 and Regulation
13 2840.

14 (l) had no system in place for regularly monitoring
15 VU's compliance with the Real Estate Law or for the supervision
16 of VU's salespersons, in violation of Regulation 2725; and

17 (m) Failed to advise all parties of financial interest
18 in or ownership of Vu's escrow division, in violation of
19 Regulation 2950(h).
20

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27

The conduct of Respondent VU, described in Paragraph 8, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7(a)	Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951
7(b)	Code Section 10145 and Regulations 2831, 2950(d) and 2951
7(c)	Code Section 10145 and Regulations 2831.1, 2950(d) and 2951
7(d)	Code Section 10145 and Regulations 2831.2
7(e)	Code Section 10145 and Regulation 2834
7(f)	Code Section 10145 and Regulation 2950(f)
7(g)	Code Section 10161.8 and Regulation 2752
7(h)	Code Section 10236.4
7(i)	Code Section 10240 and Regulation 2840
7(j)	Code Section 10160 and Regulation 2753
7(k)	Code Section 10176(g) and 10240 and Regulation 2840

1 7(1)

Regulation 2725

2 7(m)

Regulation 2950(h)

3 The foregoing violations constitute cause for the suspension or
4 revocation of the real estate license and license rights of VU
5 under the provisions of Code Sections 10177(d), 10177(g) and/or
6 10177(h).


7 9.

8 The overall conduct of Respondent VU constitutes
9 negligence or incompetence. This conduct and violation are cause
10 for the suspension or revocation of the real estate license and
11 license rights of VU pursuant to Code Section 10177(g).

12 WHEREFORE, Complainant prays that a hearing be
13 conducted on the allegations of this Accusation and that upon
14 proof thereof, a decision be rendered imposing disciplinary
15 action against the license and license rights of Respondent TAN
16 HUY VU, under the Real Estate Law (Part 1 of Division 4 of the
17 Business and Professions Code) and for such other and further
18 relief as may be proper under other applicable provisions of law.
19
20

21 Dated at Los Angeles, California

22 this

18th day of April 2005


Deputy Real Estate Commissioner

23
24 cc: Tan Huy Vu
25 Maria Suarez
26 Sacto
27 LWA
Audits - Rolly Acuna