

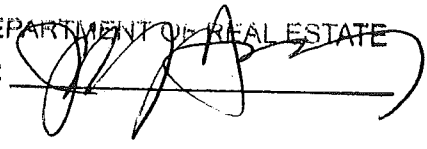
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FILED

MAY 10 2013

DEPARTMENT OF REAL ESTATE
BY: 

9 DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * * * *

12 In the Matter of the Accusation No. H-36859 LA

13	APARTMENT & COMMERCIAL)	<u>FIRST AMENDED</u>
14	LENDING GROUP INC.; FEI)	<u>ACCUSATION</u>
15	PHILIP HSU, individually,)	<u>RE: WAN TIN ONLY</u>
16	and as designated officer)	
17	for Apartment & Commercial)	
18	Lending Group Inc; <u>WAN TIN</u> ,)	
)	
	Respondents.)	
	_____)	

19 This First Amended Accusation amends the Accusation
20 filed on October 12, 2010.

21 The Complainant, Howard Alston, a Deputy Real Estate
22 Commissioner of the State of California, for cause of Accusation
23 against APARTMENT & COMMERCIAL LENDING GROUP INC. ("APARTMENT");
24 FEI PHILIP HSU ("HSU"), individually, and as designated officer
25 for Apartment & Commercial Lending Group Inc.; and WAN TIN
26 ("TIN"), is informed and alleges as follows:
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The Complainant, Howard Alston, a Deputy Real Estate Commissioner makes this accusation in his official capacity.

2.

Respondent APARTMENT is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code"), as a real estate corporation. On or about July 4, 2010, the license of APARTMENT expired.

3.

Respondent HSU is presently licensed and/or has license rights under the Real Estate Law as a real estate broker. From April 10, 2007, to November 28, 2007, HSU was the designated broker-officer of Respondent APARTMENT.

4.

Thereafter, Respondent APARTMENT's license history shows the following:

- a. From November 29, 2007, to July 13, 2008, APARTMENT had no designated officer.
- b. From July 14, 2008, to December 16, 2008, APARTMENT's designated officer was Chung Wei Wayne Yang, a licensed real estate broker.
- c. From December 17, 2008, to February 9, 2009, APARTMENT had no designated officer.
- d. From February 10, 2009, to July 28, 2009, APARTMENT's designated officer was Lawrence Eberhart, a licensed

1 real estate broker.

2 e. From July 29, 2009, to July 3, 2010, APARTMENT had
3 no designated officer.

4 5.

5 From April 10, 2007, to November 28, 2007, Respondent
6 HSU, as the officer designated by Respondent APARTMENT pursuant
7 to Section 10211 of the Code, was responsible for the supervision
8 and control of the activities conducted on behalf of Respondent
9 APARTMENT by its officers and employees as necessary to secure
10 full compliance with the Real Estate Law as set forth in Section
11 10159.2 of the Code, including the supervision of salespersons
12 licensed to the corporation in the performance of acts for which
13 a real estate license is required.

14 6.

15 Respondent TIN is presently licensed and/or has license
16 rights under the Real Estate Law as a real estate salesperson.
17 At all times relevant herein Respondent TIN was the president of
18 Respondent APARTMENT, and was employed by Respondent APARTMENT
19 continuously from July 9, 2006, to and including July 27, 2009.

20 7.

21 At all times material herein, Respondent APARTMENT was
22 engaged in the business of, acted in the capacity of, advertised
23 or assumed to act as real estate broker and/or real estate
24 corporation in the State of California, within the meaning of
25 Code 10131(d) of the Code. Said activity included soliciting
26 borrowers and lenders and negotiating the terms of loans secured
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1 by real property between borrowers and third party lenders for or
2 in expectation of compensation.

3 FIRST CAUSE OF ACCUSATION

4 (Code Section 10176(a), 10176(b), 10176(i) and/or 10177(j)
5 against Respondents TIN and APARTMENT)

6 8.

7 In or around July, 2007, Wu-sun Chia and Cecilia Chia
8 (the "Chias") were interested in refinancing their 16-unit
9 apartment building. The Chias were seeking a loan in the amount
10 of \$1,000,000 with an interest rate of 6% or less. The Chias
11 contacted TIN after they saw her newspaper advertisement which
12 advertised the availability of "apartment loans."

13 9.

14 TIN represented to the Chias that she could obtain a
15 loan for them at a fixed rate of 6% for ten years.

16 10.

17 At the Chias' request TIN entered into a fee agreement
18 ("Fee Agreement") whereby the percentage amount of the fee
19 payable to the broker, APARTMENT, was dependent upon the interest
20 rate of the loan ultimately obtained for the Chias.

21 11.

22 On or about August 1, 2007, TIN directed the Chias to
23 provide her with a check in the amount of \$10,000 made payable to
24 APARTMENT. TIN falsely represented to the Chias that the \$10,000
25 would be delivered to their lender to be used for the appraisal,
26 loan processing and other miscellaneous items. TIN further
27

1 represented to the Chias that the lender would credit them with
2 any money left over through the loan escrow. The Chias believed
3 TIN's representations and relied upon them in delivering their
4 check in the amount of \$10,000 to her.

5 12.

6 TIN's representation to the Chias that the \$10,000
7 check made payable to APARTMENT would be delivered in its
8 entirety to their lender was false. The truth was that TIN
9 intended to and did deliver only \$5,000 of the total \$10,000 sum
10 to the Chias' lender, and retained the balance for herself. The
11 \$5,000 delivered to the lender was sufficient to cover all the
12 lender's charges for the Chia loan.

13 13.

14 On or about November 1, 2007, the Chias obtained a loan
15 in the amount of \$1,125,000 with an interest rate of 6.49%. Based
16 on the interest rate of the loan, the fee payable to APARTMENT
17 under the terms of the Fee Agreement was 0.5% of the loan amount,
18 or \$5,625.

19 14.

20 Without the Chias' knowledge or consent TIN, on behalf
21 of APARTMENT, demanded from the loan escrow a broker's fee which
22 was contrary to the terms of the Fee Agreement and, further, far
23 exceeded the amount due for the loan brokerage services rendered
24 on behalf of the Chias. Specifically, TIN demanded that
25 APARTMENT receive a sum equal to 1.0% of the loan amount, or
26 \$11,250, rather than the \$5,625 provided for by the terms of the
27

1 Fee Agreement. TIN also demanded that APARTMENT receive an
2 additional sum in the amount of \$1,610 from the loan escrow for
3 miscellaneous items. The total amount of APARTMENT's escrow
4 demand was \$12,860.

5 15.

6 In making the escrow demand set forth in Paragraph 14,
7 above, TIN knew that the amount of the broker demand was contrary
8 to the agreement with the Chias. TIN also knew that because TIN
9 continued to retain in her possession the sum of \$5,000 from the
10 Chias' initial payment, the escrow funds being withheld from the
11 Chias far exceeded the fee due under the terms of the Fee
12 Agreement. Despite this knowledge TIN continued to press her
13 wrongful demand, and refuses to permit the release of escrow
14 funds owed to the Chias.

15 16.

16 The conduct, acts and/or omissions of Respondents TIN
17 and APARTMENT as described herein above, constitute making a
18 substantial misrepresentation, the making of false promise(s)
19 of a character likely to influence, persuade or induce, engaging
20 in fraud or dishonest dealing, and/or negligence or incompetence,
21 are cause for the suspension or revocation of all real estate
22 licenses and license rights of Respondents TIN and APARTMENT
23 under the provisions of Code Sections 10176(a), 10176(b),
24 10176(g), 10176(i) and/or 10177(g).

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27 SECOND CAUSE OF ACCUSATION

(Failure to Supervise against Respondent HSU)

17.

Complainant incorporates by this reference the allegations set forth in Paragraphs 1 through 16, above.

18.

The conduct, acts and/or omissions of Respondent HSU in failing to exercise reasonable supervision over the activities of Respondents APARTMENT and TIN, as more fully set forth above, are cause for the suspension or revocation of the licenses and license rights of Respondent HSU pursuant to Code sections 10177(d), (g) and/or (h) for violation of Code section 10159.2.

THIRD CAUSE OF ACCUSATION

Against Respondent TIN

(Criminal Convictions)

19.

Complainant incorporates by this reference the allegations set forth in Paragraphs 1 through 18, above.

20.

On or about December 8, 2006, a misdemeanor complaint was filed against Respondent in the Superior Court of California, County of Los Angeles, as Case No. 6CA25854. Thereafter, on or about January 24, 2008, the entire bench of the Los Angeles Superior Court was recused, and the case referred to the Chairperson of the Judicial Council for the appointment of a judge. On or about February 19, 2008, the case was transferred to Orange County Superior Court, and a judge of the Orange County

1 Superior Court was assigned to the case for all purposes. On or
2 about May 14, 2010, Respondent was convicted of violating Penal
3 Code Section 653m(a) [Harassing Contact with Another Person by
4 Use of Obscenity or Threats] and Section 166(c)(1) [Willful and
5 Knowing Violation of Protective Order], both misdemeanors. The
6 foregoing conviction was affirmed on appeal on August 30, 2012.
7 These crimes are substantially related to the qualifications,
8 functions, or duties of a real estate licensee under Section
9 2910, Title 10, Chapter 6, California Code of Regulations
10 ("Regulations").

11 21.

12 On or about August 13, 2012, in the Superior Court of
13 California, County of Los Angeles, in Case No. 1LG03464,
14 Respondent was convicted of violating Penal Code Section 273.6(a)
15 [Intentional and Knowing Violation of Protective Order], a
16 misdemeanor. This crime is substantially related to the
17 qualifications, functions, or duties of a real estate licensee
18 under Section 2910 of the Regulations.
19

20 22.

21 The crimes of which Respondent was convicted, as
22 described above, constitute cause under California Business and
23 Professions Code Sections 490 and 10177(b) for the suspension or
24 revocation of the license and license rights of Respondent under
25 the Real Estate Law.

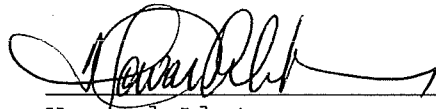
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of Respondent
5 WAN TIN, under the Real Estate Law (Part 1 of Division 4 of the
6 Business and Professions Code), and for such other and further
7 relief as may be proper under other applicable provisions of law.

8 Dated at Los Angeles, California

9 this 10th day of May, 2013.

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13 Howard Alston
14 Deputy Real Estate Commissioner

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26 cc: WAN TIN
27 Howard Alston
Sacto.