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FILED

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DEPARTMENT OF REAL ESTATE

BY: 

9 DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * * * *

12 In the Matter of the Accusation

No. H- 37700 LA

13 DOWNEY ON-LINE BROKERS)
14 INCORPORATED, doing business)
15 as Re/Max On Line; FILIBERTO)
16 LIMON, individually and as)
17 designated officer for Downey)
18 On-Line Brokers Incorporated,)
19 Respondents.)

ACCUSATION

19 The Complainant, Robin Trujillo, a Deputy Real Estate
20 Commissioner of the State of California, for cause of Accusation
21 against DOWNEY ON-LINE BROKERS INCORPORATED, doing business as
22 Re/Max On Line ("DOWNEY ON-LINE"); and FILIBERTO LIMON ("LIMON"),
23 individually, and as designated officer for DOWNEY ON-LINE, is
24 informed and alleges as follows:
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1.

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

2.

DOWNEY ON-LINE 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 acting by and through LIMON as its designated broker-officer.

3.

LIMON is presently licensed and/or has license rights under the Real Estate Law as a real estate broker and designated broker-officer of DOWNEY ON-LINE.

4.

All further references to respondents herein includes DOWNEY ON-LINE and LIMON, and also includes officers, directors, employees, agents and real estate licensees employed by or associated with DOWNEY ON-LINE and LIMON, and who at all times herein mentioned were engaged in the furtherance of the business or operations of DOWNEY ON-LINE and LIMON, and who were acting within the course and scope of their authority and employment.

5.

At all times relevant herein LIMON, as the officer designated by DOWNEY ON-LINE, pursuant to Section 10211 of the Code, was responsible for the supervision and control of the

1 activities conducted on behalf of DOWNEY ON-LINE by its officers
2 and employees as necessary to secure full compliance with the
3 Real Estate Law as set forth in Section 10159.2 of the Code.

4 6.

5 LIMON ordered, caused, authorized or participated in
6 the conduct of DOWNEY ON-LINE, as is alleged in this Accusation.

7 7.

8 At all times material herein, Respondents were engaged
9 in the business of, acted in the capacity of, advertised or
10 assumed to act as real estate brokers and/or real estate
11 corporations in the State of California, within the meaning of
12 Code Sections 10131(a) and 10131(d) of the Code. Said activities
13 included soliciting sellers and buyers for the listing, sale and
14 purchase of real property and negotiating the purchase and sale
15 of real property on behalf of buyers and sellers, as well as
16 soliciting borrowers and lenders and negotiating the terms of
17 loans secured by real property between borrowers and third party
18 lenders for or in expectation of compensation.

19 8.

20
21 In addition respondents conducted broker-controlled
22 escrows through the escrow division of DOWNEY ON-LINE, doing
23 business as Re/Max On Line Escrow Division ("Respondents' Escrow
24 Division"), under the exemption set forth in California Financial
25 Code Section 17006(a)(4) for real estate brokers performing
26 escrows incidental to a real estate transaction where the broker
27 is a party and where the broker is performing acts for which a

1 real estate license is required.

2 FIRST CAUSE OF ACCUSATION
(Violation of Code Section 10176(i))

3 Perez Transaction

4 9.

5 In or around January, 2009, Escrow No. SG08-381-LV
6 remained pending at Respondents' Escrow Division. The escrow was
7 opened in connection with the purchase and sale of the real
8 property located at 4231 Walnut Street, Bell, California 90201,
9 in which Respondents acted as broker for the buyer, George A.
10 Perez ("Perez").
11

12 10.

13 On or about January 27, 2009, an escrow cancellation
14 instruction was delivered to Respondents' Escrow Division by
15 virtue of which Perez became entitled to receive back \$4,300 of
16 the \$5,000 earnest money he deposited to Respondents' Escrow
17 Division in Escrow No. SG08-381-LV.

18 11.

19 Despite Perez' entitlement to receive back a portion of
20 the earnest money deposit alleged in Paragraph 10, above,
21 Respondents failed and refused to disburse Perez' funds to him.
22 By so doing Respondents converted escrow trust funds in the
23 amount of \$4,700 received from Perez' who was a beneficiary of
24 those funds.
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Spruston Transaction

12.

In or around March, 2009, Escrow No. SG08-411-LV remained pending at Respondents' Escrow Division. The escrow was opened in connection with the purchase and sale of the real property located at 1633 Coban Road, La Habra Heights, California 90631, in which Respondents acted as broker for the buyer, William Spruston ("Spruston").

13.

On or about March 18, 2009, an escrow cancellation instruction was delivered to Respondents' Escrow Division by virtue of which Spruston became entitled to receive back \$19,205 of the \$40,000 earnest money he deposited to Respondents' Escrow Division in Escrow No. SG08-411-LV.

14.

Despite Spruston's entitlement to receive back a portion of the earnest money deposit alleged in Paragraph 13, above, Respondents failed and refused to disburse Spruston's funds to him. By so doing Respondents converted escrow trust funds in the amount of \$19,205 received from Perez' who was a beneficiary of those funds.

Maraboto Transaction

15.

At all times relevant herein Rosa Maraboto ("Maraboto") was licensed as a real estate broker.

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16.

On or about January 26, 2009, Respondents acted as the escrow for a loan originated by Maraboto on behalf of Benjamin Diaz ("Diaz").

17.

Thereafter, as a result of the funding of the Diaz loan Maraboto became entitled to receive a disbursal from the loan proceeds on deposit in the escrow in the amount of \$18,511.18 as a commission for her services.

18.

On or about January 30, 2009, Respondents gave Maraboto a check in the amount of \$18,511.18 drawn on the bank account of Respondent DOWNEY ON-LINE as payment of her commission.

19.

When Maraboto attempted to negotiate the foregoing commission check Respondents' bank refused to honor the check and returned the check unpaid for insufficient funds on deposit with the bank.

20.

Despite Maraboto's demand to Respondents that the amount of her commission be paid, Respondents have failed and refused to pay Maraboto the \$18,511.18 sum due to her from the funds on deposit in the Diaz loan escrow.

21.

The conduct, acts and/or omissions of Respondents, as described herein above, constitute conversion, fraud or dishonest

1 dealing, and are cause for the suspension or revocation of all
2 real estate licenses and license rights of Respondents under the
3 provisions of Code Sections 10176(i) and 10177(g).

4 SECOND CAUSE OF ACCUSATION

5 (Fraud Judgment)

6 22.

7 Complainant hereby incorporates by reference the
8 allegations set forth in Paragraphs 1 through 21, above.

9 23.

10 On or about November 19, 2009, the final judgment of
11 the Superior Court of the State of California, County of Los
12 Angeles, Case No. VC054126, was entered against Respondents based
13 on the ground of fraud, misrepresentation, or deceit with
14 reference to a transaction for which a real estate license is
15 required. Punitive damages in the form of treble damages were
16 awarded against Respondents pursuant to the provisions of
17 California Civil Code Section 1719.

18 24.

19 The facts set forth in Paragraph 23, constitute cause
20 under Section 10177.5 of the Code for the suspension or
21 revocation of all licenses and license rights of Respondents
22 under the Real Estate Law.
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THIRD CAUSE OF ACCUSATION

(Audit Violations)

25.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 24, above.

26.

On or about June 28, 2010, the Department completed an audit examination of the books and records of Respondent DOWNEY ON-LINE pertaining to the real estate activities described in Paragraphs 7 and 8, above, covering a period from July 12, 2007, to March 31, 2010.

27.

The audit examination revealed violations of the Code by Respondent DOWNEY ON-LINE, as set forth in the following paragraphs, and more fully discussed in Audit Report No. LA 090203 and the exhibits and work papers attached to the audit report:

(a) In the course of the transaction activities undertaken by Respondent DOWNEY ON LINE during the audit period, Respondent DOWNEY ON-LINE failed to retain or provide the auditor with any records of its activities requiring a real estate broker license during the past three years including escrow transaction files for Respondent DOWNEY ON-LINE's real estate clients and further including listings, real estate contracts, canceled checks, escrow and trust records, and specifically including

documents pertaining to the transactions alleged in the Second Cause of Action, above, as is required by Code Section 10148.

(b) At a time known to Respondents, but unknown to the Department, Respondents left and/or abandoned their former business and mailing address without informing the Department. Respondents are thereby presently maintaining no definite place of business in the State of California which shall serve as office for the transaction of business requiring a real estate license, in violation of Code section 10162 and Section 2715, Title 10, Chapter 6, California Code of Regulations ("Regulations").

DISCIPLINE STATUTES AND REGULATIONS

28.

The conduct of Respondent DOWNY ON-LINE described in Paragraph 27, above, violated the Code and the Regulations as set forth below:

PARAGRAPH

PROVISIONS VIOLATED

27(a)

Code Section 10148

27(b)

Code Sections 10162;
Section 2715 of the Regulations

29.

The foregoing violations, as set forth hereinabove, constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent DOWNEY ON-LINE under the provisions of Code Sections 10177(d) for violation of

1 the Real Estate Law and/or 10177(g) for negligence or
2 incompetence.

3 FOURTH CAUSE OF ACCUSATION
4 (Use of Unauthorized Fictitious Business Name)

5 30.

6 Complainant incorporates herein by this reference the
7 allegations contained at Paragraphs 1 through 29, above.

8 31.

9 At a time within the last three years Respondents used
10 a fictitious business name "RE/MAX Online Escrow Division" for
11 activities requiring the issuance of a real estate license
12 without filing an application for the use of such name with the
13 Department as required by the provisions of Code Section 10159.5
14 and Section 2731(a) of the Regulations.

15 32.

16 The conduct, acts and/or omissions of Respondents, as
17 set forth in Paragraph 31, above, violate Code Section 10159.5
18 and Section 2731(a) of the Regulations, and is cause for the
19 suspension or revocation of the licenses and license rights of
20 Respondents pursuant to Code Sections 10177(d) and/or 10177(g).

21 FIFTH CAUSE OF ACCUSATION
22 (Failure to Supervise against Respondent LIMON)

23 33.

24 Complainant hereby incorporates by reference the
25 allegations set forth in Paragraphs 1 through 32, above.

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The conduct, acts and/or omissions of LIMON in allowing DOWNEY ON-LINE to violate the Real Estate Law, as set forth above, constitutes a failure by LIMON, as the officer designated by the corporate broker licensee, to exercise the supervision and control over the activities of DOWNEY ON-LINE as required by Code Section 10159.2, and is cause to suspend or revoke the real estate licenses and license rights of LIMON under Code Sections 10177(d), 10177(g) and/or 10177(h).

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all the licenses and license rights of Respondents DOWNEY ON-LINE BROKERS INCORPORATED and FILIBERTO LIMON under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this 30 day of November, 2011.


Robin Trujillo
Deputy Real Estate Commissioner

cc: DOWNEY ON-LINE BROKERS INCORPORATED
FILIBERTO LIMON
Robin Trujillo
Sacto