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MAY 08 2012

DEPARTMENT OF REAL ESTATE

BY:

STATE OF CALIFORNIA

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No. H- 38117 LA

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1. 1

2 The Complainant, Maria Suarez, a Deputy Real Estate
3 Commissioner of the State of California, makes this Accusation in
4 her official capacity.

2. 5

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

9 LICENSE HISTORY

3. 10

11 A. At all times mentioned, ASR PROPERTIES INC.
12 (hereinafter "ASR" or "Respondent ASR") and MANUCHEHR KHOSHBIN
13 (hereinafter "KHOSHBIN" or "Respondent KHOSHBIN") were licensed
14 or had license rights issued by the Department of Real Estate
15 (hereinafter "Department").

16 B. ASR is presently licensed and/or has license rights
17 under the Real Estate Law (Part 1 of Division 4 of the Business
18 and Professions Code) as a corporate real estate broker.
19 Respondent ASR was originally licensed as a corporate real estate
20 broker by the Department on or about October 30, 2002. At all
21 times relevant herein, Respondent ASR was authorized to act by
22 and through Respondent KHOSHBIN as its designated broker pursuant
23 to Business and Professions Code Sections 10211 and 10159.2 to
24 supervise the activities requiring a real estate license
25 conducted on behalf of ASR and to be responsible for ensuring
26 compliance with the Real Estate Law.

1 C. Respondent KHOSHBIN is presently licensed and/or
2 has license rights under the Real Estate Law (Part 1 of Division
3 4 of the Code) as a real estate broker. Respondent KHOSHBIN was
4 originally licensed as a real estate broker by the Department on
5 or about March 18, 1997. KHOSHBIN is the designated officer for
6 ARS pursuant to Code Section 10159.2, responsible for ensuring
7 compliance with the Real Estate Law.

8 BROKERAGE

9 4.

10 At all times mentioned, in Irvine, Orange County,
11 Respondents ASR and KHOSHBIN acted as real estate brokers and
12 conducted licensed activities within the meaning of:

13 A. Code Section 10131(a): Respondents engaged in
14 activities relating to selling, buying, offering to buy,
15 soliciting prospective sellers or purchasers of, soliciting or
16 obtaining listings of, or negotiating the purchase, sale or
17 exchange of real property or a business opportunity.

18 B. Code Section 10131(b): Respondents engaged in
19 activities relating to leases or rents or offers to lease or
20 rent, or places for rent, or soliciting listings of places for
21 rent, or soliciting for prospective tenants, or negotiates the
22 sale, purchase or exchanges of leases on real property, or on a
23 business opportunity, or collects rents from real property, or
24 improvements thereon, or from business opportunities with the
25 public wherein lenders and borrowers were solicited for loans
26 secured directly or collaterally by liens on real property,
27 wherein such loans were arranged, negotiated, processed and

1 consummated on behalf of others for compensation or in
2 expectation of compensation and for fees often collected in
3 advance.

4 C. Code Section 10131(d): Respondents operated a
5 mortgage and loan brokerage engaging in activities with the
6 public wherein lenders and borrowers were solicited for loans
7 secured directly or collaterally by liens on real property,
8 wherein such loans were arranged, negotiated, processed and
9 consummated on behalf of others for compensation or in
10 expectation of compensation and for fees often collected in
11 advance.

12 5.

13 All further references to "Respondents" herein include
14 the parties identified in Paragraph 3, above, and also include
15 the officers, directors, employees, agents and real estate
16 licenses employed by or associated with said parties and who at
17 all times herein mentioned were engaged in the furtherance of the
18 business or operations of said parties and who were acting within
19 the course and scope of their authority and employment.

20 6.

21 Respondent KHOSHBIN ordered, caused, authorized or
22 participated in the conduct of Respondent ASR as is alleged in
23 this Accusation.

24 FIRST CAUSE OF ACTION

25 (Audit of ASR PROPERTIES INC. - LA 090210)

26 7.

27 On July 23, 2010, the Department completed an audit

1 examination of the books and records of ASR pertaining to the
2 activities described in Paragraph 4B, above, which require a real
3 estate license. The audit examination covered a period of time
4 beginning on April 1, 2007 to March 31, 2010. The audit
5 examination revealed violations of the Code and the Regulations
6 as set forth in the following paragraphs, and more fully
7 discussed in Audit Report LA090210 and the exhibits and work
8 papers attached to said audit report.

9 Trust Account

10 8.

11 During the audit period, ASR did not maintain a trust
12 account for its property management activities. Respondent
13 Khoshbin maintains that he is the sole owner of The Khoshbin
14 Company Inc. and that the bank account in the name of "The
15 Khoshbin Company Inc Gemini Property" maintained at Wells Fargo
16 (A/C #8173306732) is used to handle trust fund receipts and
17 disbursements for the Gemini Property ("B/A 1"). The Khoshbin
18 Company Inc also maintains another bank account at Wells Fargo in
19 the name of "The Khoshbin Company inc - PGI" (A/C #9500165080) to
20 handle trust fund receipts and disbursements for the PGI Property
21 ("B/A 2").

22 Audit Violations

23 At all times mentioned, in connection with the
24 activities described in Paragraph 4B, above, Respondents acted in
25 violation of the Code and the Regulations in that Respondents:

26 (a) Failed to maintain accurate and complete control
27 records of dates recorded in "Trust Fund Received - Not Placed in

1 Broker's Trust Account" the trust fund log provided for the
2 audit, in violation of Code Section 10145 and Regulation 2831;

3 (b) Used the fictitious business name "The Khoshbin
4 Company" ("TKC") for conducting property management activities
5 for compensation in the name of "The Khoshbin Company Inc."
6 examined during the audit period without first obtaining a
7 license from the Department bearing such fictitious name, in
8 violation of Code Section 10159.5, and Regulation 2731;

9 (c) Made disbursements by TKC of trust funds totaling
10 \$370,000.00 from B/A 1 during the period February 4, 2009 to
11 August 31, 2009 without first obtaining written instructions or
12 consent from the persons entitled to the funds, in violation of
13 Section 10145(a);

14 (d) Failed to place trust funds received for property
15 management activities into a trust fund or bank account in the
16 name of ASR/TKC, and failed to designate ASR/TKC as the trustee
17 of the bank accounts B/A 1 and B/A 2, in violation of Code
18 Section 10145 and Regulation 2832; and

19 (e) Failed to make available during the audit, proof
20 of retention of: (i) trust fund records pertaining to
21 Respondents' property management activities in connection with
22 the Gemini and PGI properties and (ii) deposit records for
23 \$8,335.76 trust funds received from the property owner PB&F on or
24 about October 2006, both failure of which are in violation of
25 Section 10148.

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1 SECOND CAUSE OF ACTION

2 (Audit of ASR PROPERTIES INC. - LA 090235)

3 9.

4 On May 27, 2010, the Department completed an audit
5 examination of the books and records of ASR pertaining to the
6 activities described in Paragraph 4A, above, which require a real
7 estate license. The audit examination covered a period of time
8 beginning on April 1, 2007 to March 31, 2010. The audit
9 examination revealed violations of the Code and the Regulations
10 as set forth in the following paragraphs, and more fully
11 discussed in Audit Report LA 090235 and the exhibits and work
12 papers attached to said audit report.

13 Trust Account

14 10.

15 During the audit period, ASR did not maintain a trust
16 account for its real estate sales activities.

17 Audit Violations

18 At all times mentioned, in connection with the
19 activities described in Paragraph 4A, above, Respondents acted in
20 violation of the Code and the Regulations in that Respondents:

21 (a) Did not in fact possess the earnest money deposit
22 check as stated in the "California Residential Purchase Agreement
23 and Joint Escrow Instructions" when an offer was presented to the
24 seller, in violation of Section 10176(a); and

25 (b) Failed to include a definite, specified
26 termination date on the Residential Listing Agreement contained
27 in the sample files examined, in violation of Section 10176(f).

1 AGGRAVATION

2 (Audit of ASR PROPERTIES INC. - LA 090234)

3 11.

4 On May 27, 2010, the Department completed an audit
5 examination of the books and records of ASR pertaining to the
6 activities described in Paragraph 4C, above, which require a real
7 estate license. The audit examination covered a period of time
8 beginning on April 1, 2007 to December 31, 2008. The audit
9 examination revealed violations of the Code and the Regulations
10 as set forth in the following paragraphs, and more fully
11 discussed in Audit Report LA 090234 and the exhibits and work
12 papers attached to said audit report.

13 Trust Account

14 12.

15 During the audit period, ASR did not maintain a trust
16 account for its mortgage loan activities. ASR maintained one
17 general operating bank account for its mortgage loan packaging
18 activity in the name "ASR Properties dba Dupont Realty dba
19 Fidelity National Funding" at Wells Fargo (A/C #201-1892437)
20 ("G/A 1").

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Audit Violations

At all times mentioned, in connection with the activities described in Paragraph 4B, above, Respondents acted in violation of the Code and the Regulations in that Respondents:

(a) Overcharged borrowers \$202.04 for credit report fees at the close of escrow, in violation of Section 10176(a):

Borrower	Credit Report Fees Collected	Credit Report Fees Charged	Credit Report Fee Refund
Kazemi	\$20.16	\$55.00	\$34.84
Najimi	\$33.66	\$165.00	\$131.34
Salim	\$51.98	\$55.00	\$3.02
Irvani	\$22.16	\$55.00	\$32.84

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(b) Permitted, allowed or caused the mixing and commingling of appraisal and/or credit report fees collected at the close of escrow or from the lender after the close of the transaction with Respondent's general bank account, G/A 1, until the appraiser or credit report company was paid for services rendered or until ASR refunded the overcharged fees to the borrowers, in violation of Code Sections 10145(a) and 10176(e) and Regulation 2832:

Borrower	Appraisal/Credit Report Fees Collected	Date of Funding	Date of Deposit	Date of Disbursement
Kazemi	\$20.16	7/30/2008	8/1/2008	8/20/2008
Motamen	\$375.00	10/2/2008	10/6/2008	11/3/2008
Najimi	\$375.00	9/25/2008	9/29/2009	11/3/2008
Najimi	\$375.00	9/19/2008	10/6/2008	11/3/2008
Irvani & Rostami	\$375.00	9/19/2008	10/6/2008	11/3/2008

1 (c) Failed to maintain a columnar record for the credit
2 report and/or appraisal fees collected at the close of escrow or
3 collected from the lender after the close of a transaction, in
4 violation of Code Section 10145 and Regulation 2831;

5 (d) Failed to maintain a separate record for credit
6 report and/or appraisal fees collected at the close of escrow or
7 collected from the lender after the close of the transaction, in
8 violation of Section 10145 and Regulation 2831.1; and

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(e) Failed to retain a true and correct copy of Department of Real Estate approved California Mortgage Loan Disclosure Statements signed by the broker and bearing the broker's real estate license number, in violation of Code Section 10240 and Regulation 2840:

Loan Number	Borrower	Date of Closed
221616436	Kazemi	7/30/2008
24205	Motamen	10/2/2008
1596994073	Najimi	9/25/2008
0288959315	Najimi	8/27/2008
1596987605	Najimi	9/19/2008
0211783568	Salim & Elahi	7/31/2008
24203	Najimi	10/2/2008
24204	Najimi	9/19/2008
24198	Irvani & Rostami	9/19/2008

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1 Disciplinary Statutes

2 13.

3 The conduct of Respondents ASR and KHOSHBIN described
4 in Paragraphs 8, 10, 12, above, violated the Code and the
5 Regulations as set forth below:

6	7 <u>PARAGRAPH</u>	8 <u>PROVISIONS VIOLATED</u>
9	10 8(a)	11 Code Section 10145 and Regulation
12		13 2831;
14	15 8(b)	16 Code Section 10159.5 and Regulation
17		18 2731;
19	20 8(c)	21 Code Section 10145(a);
22	23 8(d)	24 Code Section 10145 and Regulation
25		26 2832;
27	28 8(e)	29 Code Section 10148;
30	31 10(a)	32 Code Section 10176(a); and
33	34 10(b)	35 Code Section 10176(f).

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PARAGRAPH

AGGRAVATION

12(a)

Code Section 10176(a);

12(b)

Code Section 10145(a) and 10176(e)
and Regulation 2832;

12(c)

Code Section 10145 and Regulation
2831;

12(d)

Code Section 10145 and Regulation
2831.1;

12(e)

Code Section 10240 and Regulation
2840;

The foregoing violations, as described in Paragraphs 8 and 10, constitute cause for discipline of the real estate license and license rights of ASR and KHOSHBIN, as aforesaid, under the provisions of Code Sections 10176(a) for substantial misrepresentation; 10176(f) for claiming, demanding, or receiving a fee, compensation or commission under an exclusive agreement to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination; 10177(d) for violation of the Real Estate Law; 10177(h) for failure to supervise by KHOSHBIN; and/or 10177(g) for negligence.

1 Negligence

2 14.

3 The overall conduct of Respondents ASR and KHOSHBIN
4 constitutes negligence. This conduct and violation are cause for
5 the suspension or revocation of the real estate license and
6 license rights of said Respondents pursuant to the provisions of
7 Code Section 10177(g).

8
9 Breach of Fiduciary Duty

10 15.

11 The overall conduct of Respondents ASR and KHOSHBIN
12 constitutes a breach of fiduciary duty. This conduct and
13 violation are cause for the suspension or revocation of the real
14 estate license and license rights of said Respondents pursuant to
15 the provisions of Code Section 10177(g).

16 Failure to Supervise

17 16.

18 The overall conduct of Respondent KHOSHBIN constitutes
19 a failure on Respondent's part, as an officer designated by a
20 corporate broker licensee, to exercise the reasonable supervision
21 and control over the licensed activities of ASR, as required by
22 Code Sections 10159.2 and 10211, and to keep ASR in compliance
23 with the Real Estate Law, with specific regard to loan
24 modifications services and advance fee handling, requiring a real
25 estate license and is cause for the suspension or revocation of
26 the real estate license and license rights of ASR and KHOSHBIN
27 pursuant to the provisions of Code Sections 10177(d), 10177(g)

1 and 10177(h) .

2 17.

3 Code Section 10106 provides, in pertinent part, that in
4 any order issued in resolution of a disciplinary proceeding
5 before the Department of Real Estate, the Commissioner may
6 request the administrative law judge to direct a licensee found
7 to have committed a violation of this part to pay a sum not to
8 exceed the reasonable costs of the investigation and enforcement
9 of the case.

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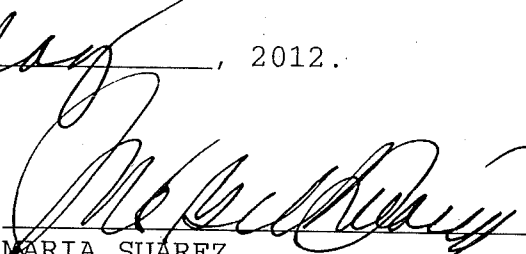
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondents
5 PROPERTIES INC and MANUCHEHR KHOSHBIN, under the Real Estate Law
6 (Part 1 of vision 4 of the Business and Professions Code), for
7 the cost of investigation and enforcement as permitted by law,
8 and for such other and further relief as may be proper under
9 other provisions of law, and for costs of audit.

10 Dated at Los Angeles, California

11 this 1st day of May, 2012.

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15 MARIA SUAREZ
16 Deputy Real Estate Commissioner
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22 CC: ASR PROPERTIES, INC.
23 c/o Manuchehr Khoshbin, D.O.
24 Maria Suarez
25 Sacto
26 Anthony Vo
27 Audits - Gina King