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FILED

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DEPARTMENT OF REAL ESTATE
BY: *d. B.*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-38293 LA
WESTERN SAVINGS, INC.)	<u>A C C U S A T I O N</u>
and DAVID MORRIS,)	
individually and as designated)	
officer of Western Savings, Inc.,)	
Respondents.)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against WESTERN SAVINGS, INC. and DAVID MORRIS, individually and as designated officer of Western Savings, Inc. (collectively "Respondents"), is informed and alleges as follows:

1.

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

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1 2.

2 Respondents are presently licensed and/or have license
3 rights under the Real Estate Law (Part 1 of Division 4 of the
4 California Business and Professions Code, "Code").
5

6 3.

7 From September 28, 2007, through September 27, 2011,
8 Respondent WESTERN SAVINGS, INC. ("WSL") was licensed by the
9 Department of Real Estate ("Department") as a corporate real
10 estate broker, Department ID 01823539. On July 21, 2011, the
11 Department indefinitely suspended WSL's license in Department
12 Case No. R-4542. On September 27, 2011, WSL's corporate real
13 estate broker license expired. The Department retains
14 jurisdiction pursuant to Code Section 10103.

15 4.

16 From August 17, 2007, through August 16, 2011,
17 Respondent DAVID MORRIS ("MORRIS") was licensed by the
18 Department as a real estate broker, Department ID 01406345. At
19 all times relevant herein, Respondent WSL was authorized to act
20 by and through Respondent MORRIS as its broker designated
21 pursuant to Code Section 10159.2 to be responsible for ensuring
22 compliance with the Real Estate Law. Respondent MORRIS' broker
23 license expired on August 17, 2011. The Departments retains
24 jurisdiction pursuant to Code Section 10103.

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1 FIRST CAUSE OF ACCUSATION

2 (Advance Fee Violations)

3 5.

4 Code Section 10131 defines a real estate broker as a
5 person who: (d) solicits borrowers, negotiates loans, collects
6 payments or perform services for borrowers in connection with
7 loans secured directly or collaterally by liens on real
8 property.

9 6.

10 Code Section 10026, in pertinent part, defines an
11 advance fee as a fee that is claimed, demanded, charged,
12 received, or collected by a licensee for services requiring a
13 license. A person who proposes to collect an advance fee as
14 defined in Code Section 10026 must submit to the Commissioner
15 not less than ten calendar days before publication or other use,
16 all materials to be used in advertising, promoting, soliciting
17 and negotiating an agreement calling for the payment of an
18 advance fee including the form of advance fee agreement proposed
19 for use, pursuant to Section 2970, Regulations of the Real
20 Estate Commissioner, Title 10, Chapter 6, Code of Regulations
21 ("Regulations"). Code Section 10085 also allows the
22 Commissioner to require that any all materials used in obtaining
23 advance fee agreements, including contract forms, be submitted
24 at least 10 calendar days before they are used.

25 7.

26 On or about September 10, 2009, MORRIS solicited and
27 offered to assist borrowers Gloria and Randy Murphy with loan
28

1 modification and negotiation services on behalf of WSL. The
2 Murphys entered into a written advance fee agreement with WSL
3 for loan modification and negotiation services in connection
4 with a loan secured by a lien on real property. The Murphys
5 paid an advance fee of \$1,500 to WSL for loan modification and
6 negotiation services. Respondents made misrepresentations to
7 the Murphys in order to induce the Murphys to enter into the
8 advance fee agreement including, among others, that Respondents
9 would refund part or all of the advance fee paid if Respondents
10 failed to obtain a loan modification for the Murphys.
11 Respondents failed to perform the loan modification and
12 negotiation services that had been promised to the Murphys.
13 Respondents failed to provide an accounting of any services done
14 for the Murphys or an accounting of the advance fees collected
15 from the Murphys. Respondents refused the Murphys' request for
16 a refund of their advance fee.
17

18 8.

19 Respondents collected the advance fees described in
20 Paragraph 7, above, pursuant to the provisions of a written
21 agreement which constitutes an advance fee agreement within the
22 meaning of Code Section 10085.
23

24 9.

25 Respondents failed to submit the written agreement
26 referred to in Paragraph 8, above, to the Commissioner ten days
27 before using it, in violation of Code Section 10085 and
28 Regulation 2970.

1 10.

2 Respondents failed to comply with the requirements for
3 handling of advance fees, in violation of Code Section 10146.

4 11.

5 The conduct, acts and/or omissions of Respondents as
6 set forth above are in violation of Code Sections 10085 and
7 10146 and Regulation Section 2970 and constitute grounds for the
8 suspension or revocation of the licenses and license rights of
9 Respondents WSL and MURPHY pursuant to Code Sections 10177(d) or
10 10177(g).

11 12.

12 Respondents' conduct, acts and/or omissions as set
13 forth above constitute grounds for the suspension or revocation
14 of the license and license rights of Respondents WSL and MURPHY
15 pursuant to Code Sections 10176(a) (making any substantial
16 misrepresentation), 10176(b) (making any false promises of a
17 character likely to influence, persuade or induce), 10176(i)
18 (conduct...which constitutes fraud or dishonest dealing), 10177(d)
19 (violation of the Real Estate Law), and/or 10177(g)
20 (negligence).

21 13.

22 The conduct, acts and/or omissions of Respondent
23 MORRIS, in allowing Respondent WSL to violate the Real Estate
24 Law, as set forth above, constitutes a failure by Respondent
25 MORRIS, as the officer designated by the corporate broker
26 licensee, to exercise the supervision and control over the
27 activities of Respondent WSL, as required by Code Section
28

1 10159.2 and Regulation 2725, and is cause to suspend or revoke
2 the real estate license and license rights of Respondent MORRIS
3 under Code Sections 10177(h), 10177(d) and/or 10177(g).

4 14.

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

12
13 WHEREFORE, Complainant prays that a hearing be
14 conducted on the allegations of this Accusation and that upon
15 proof thereof, a decision be rendered imposing disciplinary
16 action against all licenses and/or license rights of Respondents
17 WESTERN SAVINGS, INC. and DAVID MORRIS under the Real Estate Law
18 (Part 1 of Division 4 of the Business and Professions Code), for
19 the cost of investigation and enforcement as permitted by law,
20 and for such other and further relief as may be proper under
21 other provisions of law.

22 this 24 day of July, 2012.

23
24 
25 ROBIN TRUJILLO
26 Deputy Real Estate Commissioner

27 cc: Western Savings, Inc.
28 David Morris
Robin Trujillo
Sacto.