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FILED

AUG 28 2012

DEPARTMENT OF REAL ESTATE
BY: CS

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	NO. H-38298 LA
12	JULIO MANUEL DONAIRE,)	<u>FIRST AMENDED ACCUSATION</u>
13	Respondent.)	
14	_____)	

15 This First Amended Accusation amends the Accusation
16 filed on July 26, 2012. The Complainant, Maria Suarez, a Deputy
17 Real Estate Commissioner of the State of California, for cause
18 of First Amended Accusation against JULIO MANUEL DONAIRE
19 ("Respondent"), is informed and alleges as follows:

21 1.

22 The Complainant, Maria Suarez, a Deputy Real Estate
23 Commissioner of the State of California, makes this First
24 Amended Accusation in her official capacity.

25 2.

26 From March 1, 2001, through the present, Respondent
27 has been licensed by the Department of Real Estate
28 ("Department") as a real estate broker, Department ID 01235212.

(ADVANCE FEE VIOLATIONS)

3.

Business and Professions Code ("Code") Section 10131 defines a real estate broker as a person who:

"(a) sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listing of, or negotiates the purchase, sale or exchange of real property or a business opportunity; or

(d) solicits borrowers or lenders for or negotiates loans or collects payment 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."

4.

Further, Code Section 10131.2 defines a real estate broker as:

"a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon."

5.

On October 11, 2009, then Governor Arnold Schwarzenegger signed Senate Bill 94 (Calderon), and the legislation took effect immediately upon his signature. Thus, California law prohibited any person, including real estate licensees and attorneys, from demanding or collecting an advance

1 fee from a consumer for loan modification or mortgage loan
2 forbearance services affecting 1 - 4 unit residential dwellings.

3 6.

4 The following notice was prominently featured on the
5 Department's website as of October 11, 2009:

6 "IF YOU ARE A REAL ESTATE BROKER, OR THE DESIGNATED
7 OFFICER OF A LICENSED CORPORATION, WHO HAS BEEN ISSUED A "NO
8 OBJECTION" LETTER BY THE DEPARTMENT OF REAL ESTATE FOR LOAN
9 MODIFICATION OR OTHER MORTGAGE LOAN FORBEARANCE SERVICES, YOU
10 CAN NO LONGER ENTER INTO THESE AGREEMENTS EFFECTIVE AS OF
11 OCTOBER 11, 2009, NOR CAN YOU COLLECT ANY ADVANCE FEES FOR SUCH
12 SERVICES. Agreements entered into and advance fees collected
13 prior to October 11, 2009 are not affected. Advance fees
14 inadvertently collected after October 11, 2009 must be fully
15 refunded. All real estate licensees should become familiar with
16 the provisions of SB94 as there are substantial administrative
17 and criminal penalties for violations."

18 7.

19 For an unknown period of time beginning no later than
20 October 24, 2009, Respondent solicited and offered loan services
21 to consumers including services to assist them in negotiating
22 with lenders, foreclosure forbearance, or obtaining a loan
23 modification. Respondent engaged in the business of claiming,
24 demanding, charging receiving, collecting or contracting for the
25 collection of advance fees, within the meaning of Code Section
26 10026 for activities in connection to loans which were secured
27 by liens on real property.

28

1 8.

2 On or about October 24, 2009, Respondent solicited and
3 offered to assist borrowers Albert and Teresa H. with loan
4 modification and negotiation services. On October 24, 2009,
5 Respondent collected a \$1,000 advance fee from Albert and Teresa
6 H. for loan modification and negotiation services in connection
7 with a loan secured by a lien on real property. On October 8,
8 2010, Respondent collected another \$1,000 advance fee from
9 Albert and Teresa H. for loan modification and negotiation
10 services. Respondent failed to perform the loan modification
11 and negotiation services that had been promised to Albert and
12 Teresa H. Respondent failed to provide an accounting of any
13 services done for Albert and Teresa H. or an accounting of the
14 advance fees collected from Albert and Teresa H. Respondent
15 refunded \$2,000 to Albert and Teresa H. on May 18, 2012, after
16 Albert and Teresa H. made a complaint to the Department against
17 Respondent.

18 9.

19 Respondent failed to comply with the requirements for
20 handling of advance fees in violation of Code Section 10146 and
21 Section 2972, Title 10, Chapter 6, California Code of
22 Regulations.

23 10.

24 The conduct, acts and/or omissions of Respondent as
25 set forth above are in violation of Code Sections 10085.6 and
26 10146 which constitutes grounds for the suspension or revocation
27 of the license and license rights of Respondent pursuant to Code
28 Sections 10177(d) and/or 10177(g).

1 SECOND CAUSE OF ACCUSATION

2 (Audit)

3 11.

4 There is hereby incorporated in this second, separate,
5 cause of accusation, all of the allegations contained in
6 Paragraphs 1 through 10, above, with the same force and effect
7 as if herein fully set forth.

8 AUDIT NO. LA 110237

9 12.

10 The Department attempted to complete an audit
11 examination of the books and records of Respondent pertaining to
12 his real estate activities including real estate sales and loan
13 modification and negotiation services, which require a real
14 estate license, for the period from October 1, 2009 to April 30,
15 2012. The audit examination was initiated to determine whether
16 Respondent handled and accounted for trust funds and performed
17 his real estate activities in accordance with the Code and
18 Regulations. The audit examination was completed on July 5,
19 2012. The audit examination revealed violations of the Code
20 and Regulations, as set forth in the following paragraphs, and
21 more fully set forth in Audit Report LA 110237 and the exhibits
22 and workpapers attached thereto.

23 TRUST ACCOUNT

24 13.

25 Respondent failed to maintain a trust account for the
26 audit period ending April 30, 2012.

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1 VIOLATIONS OF THE REAL ESTATE LAW

2 14.

3 In the course of activities described in Paragraphs 7
4 and 12, above, and during the examination period described in
5 Paragraph 12, Respondent acted in violation of the Code and the
6 Regulations in that Respondent:

7 (a) Failed to maintain control records of the trust
8 funds (advance fees collected) received and disbursed in
9 connection with loan modification and negotiation services
10 during the audit period, in violation of Code Section 10145 and
11 Regulation 2831.

12 (b) Collected advance fees from the principal for
13 loan modification and negotiation services without first
14 submitting and obtaining approval of an advance fee agreement
15 and all related materials, in violation of Code Section 10085
16 and 2970.

17 (c) Collected advance fees from a principal for loan
18 modification and negotiation services and failed to deposit said
19 advance fees into a trust account. Failed to maintain and
20 provide a verified copy of accounting to a principal showing the
21 name of the agent and the principal, services rendered,
22 identification of the trust account into which the advance fees
23 had been deposited, the amount of advance fees collected,
24 details of how the funds were disbursed at the end of each
25 calendar quarter, and when the contract had been completely
26 performed by Respondent, in violation of Code Sections 10145,
27 10146, and Regulations 2832 and 2972.

1 (d) Solicited loan modification and negotiation
2 services to borrowers Teresa and Albert H. and collected \$2,000
3 in advance fees for said services prior to fully performing the
4 services promised to the borrowers, in violation of Code Section
5 10145 and 10085.6.

6 (e) Made misrepresentations to the sellers of real
7 property that he received earnest money deposits from
8 prospective purchasers at the time that offers were made on
9 residential purchase agreements, when in fact, Respondent had
10 not received the earnest money deposits, in violation of Code
11 Section 10176(a).

12 (f) Failed to retain records in connection with
13 Respondent's loan modification and negotiation activities as
14 required pursuant to Code Section 10148.

15 15.

16 The conduct of Respondent, described in Paragraph 14,
17 above, violated the Code and the Regulations as set forth below:
18

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
14(a)	Code Section 10145 and Regulation 2831
14(b)	Code Section 10085 and Regulation 2970
14(c)	Code Sections 10145 and 10146 and Regulations 2832 and 2972
14(d)	Code Sections 10145 and 10085.6
14(e)	Code Section 10176(a)
14(f)	Code Section 10148

1 The foregoing violations constitute cause for the
2 suspension or revocation of the real estate license and license
3 rights of Respondent under the provisions of Code Section
4 10177(d).

5 16.

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

11 17.

12 Code Section 10106 provides, in pertinent part, that
13 in any order issued in resolution of a disciplinary proceeding
14 before the Department of Real Estate, the Commissioner may
15 request the administrative law judge to direct a licensee found
16 to have committed a violation of this part to pay a sum not to
17 exceed the reasonable costs of the investigation and enforcement
18 of the case.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this First Amended Accusation
3 and that upon proof thereof, a decision be rendered imposing
4 disciplinary action against all licenses and/or license rights
5 of Respondent JULIO MANUEL DONAIRE under the Real Estate Law
6 (Part 1 of Division 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.

10 Dated at Los Angeles, California

11 this 23rd day of August, 2012.

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15 _____
16 MARIA SUAREZ
17 Deputy Real Estate Commissioner
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23 cc: Julio Manuel Donaire
24 Maria Suarez
25 Audits - Benilda Emery
26 Sacto
27
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