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DEPARTMENT OF REAL ESTATE
BY: 

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
EASTERN MORTGAGE COMPANY; and)	No. H- 38312 LA
)	
JOHN R. SHAIKIN, individually and as)	<u>A C C U S A T I O N</u>
designated officer of Eastern Mortgage Company,)	
)	
)	
Respondents.)	
)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against EASTERN MORTGAGE COMPANY ("EMC") and JOHN R. SHAIKIN ("SHAIKIN"), individually and as designated officer of Eastern Mortgage Company (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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2.

From December 4, 1978, to the present, Respondent EMC has been licensed as a corporate real estate broker. At all times relevant herein, EMC was acting by and through Respondent SHAIKIN as its designated broker-officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law. From February 16, 1999, SHAIKIN has been the designated officer of EMC.

3.

A. On August 18, 1992, SHAIKIN was licensed as a real estate salesperson. From October 31, 1995, through the present, Respondent SHAIKIN has been licensed as a real estate broker.

Table: EMC Designated Officer Tenure

Designated Officer	Tenure
JOHN R. SHAIKIN	February 16, 1999 to date

B. From October 31, 1995, through the present, Sean Homayoun Dayani has been licensed as a real estate broker.

C. From June 14, 1999, through the present, Hank H. Dayani has been licensed as a real estate salesperson. At no time has Hank H. Dayani been licensed by EMC.

4.

EMC, a California corporation, is owned by Dayco Funding Corporation, which is owned by Sean H. Dayani aka Sean Homayoun Dayani and Hank H. Dayani aka Hank Homayoun Dayani. Sean H. Dayani is the designated officer of Dayco Funding Corporation.

5.

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents", such allegation shall be deemed to mean that the officers, directors,

1 employees, agents and real estate licensees employed by or associated with Respondents
2 committed such act or omission while engaged in the furtherance of the business or operations of
3 Respondents and while acting within the course and scope of their corporate authority and
4 employment, including SHAIKIN, Sean H. Dayani and Hank H. Dayani.

5
6 FIRST CAUSE OF ACCUSATION
(Mortgage Loan and Loan Servicing Audit of Eastern Mortgage Company)

7 6.

8 At all times mentioned, in the City and County of Los Angeles, State of
9 California, EMC and SHAIKIN acted as real estate brokers and conducted licensed activities
10 within the meaning of Code Section 10131(d) wherein EMC engaged in a mortgage loan and
11 loan servicing brokerage.

12 EMC solicits borrowers and lenders, negotiates, escrows and services mortgage
13 loans for compensation. EMC is a hard money lender negotiating and escrowing mortgage loans
14 for private lenders.

15 EMC negotiated two private investor loans totaling \$600,000 during the twelve
16 (12) month audit period from June 1, 2010 to June 30, 2011.

17 EMC collects monthly loan payments and principal payoffs from borrowers for
18 the lenders. EMC services approximately eighty five (85) loans on behalf of forty (40) investors
19 with a principal balance totaling \$60 million. Annual loan collections total approximately
20 \$7,951,859. EMC currently reports as a threshold broker and as a multi-lender to the DRE.

21
22 7.

23 Loan Servicing Audit

24 On December 6, 2011, the Department completed an audit examination of the
25 books and records of Respondent EMC pertaining to the mortgage loan and loan servicing
26 activities described in Paragraph 6, which require a real estate license. The audit examination
covered a period of time beginning on June 1, 2010 to June 30, 2011. The audit examination

1 revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations
2 ("Regulations") set forth in the following paragraphs, and more fully set forth in Audit Report LA
3 100323 and the exhibits and work papers attached thereto.

4 Loan Servicing Trust Account

5 8.

6 At all times mentioned, in connection with the activities described in Paragraph 6,
7 above, EMC accepted or received funds including funds in trust ("trust funds") from or on behalf
8 of actual or prospective parties involved in the loan servicing activities including borrowers and
9 lenders handled by EMC and thereafter made deposits and or disbursements of such funds. From
10 time to time herein mentioned, during the audit period, said trust funds were deposited and/or
11 maintained by EMC in the bank account as follows:

12
13 "Eastern Mortgage Company Collection Trust Account ("TA 1")

14 xxxxxxxx9460"

15 Pacific Western Bank

16 Los Angeles, California

17 (Loan Servicing Account)

18 Violations of the Real Estate Law

19 (Mortgage Loan and Loan Servicing Audit of Eastern Mortgage Company)

20 9.

21 In the course of activities described in Paragraphs 6 and 8, above, and during the
22 examination period, described in Paragraph 7, Respondents EMC and SHAIKIN, acted in
23 violation of the Code and the Regulations in that Respondents:

24 (a) Permitted, allowed or caused the disbursement of trust funds from the loan
25 servicing trust account, TA 1, where the disbursement of funds reduced the total of aggregate
26 funds in TA 1, to an amount which, on June 30, 2011, was at a minimum \$116,335.09, less than

1 the existing aggregate trust fund accountability of EMC to every principal who was an owner of
2 said funds, without first obtaining the prior written consent of the owners of said funds, in
3 violation of Code Section 10145(a) and 10176(i) and Regulation 2832.1.

4 EMC posted receipts from ten (10) borrowers as funds received and deposited into
5 TA 1, totaling \$68,992.71 on May 20, 2011 and \$68,992.71 on June 20, 2011 in both columnar
6 and separate records respectively. However, EMC did not actually receive these funds. EMC
7 collected only \$15,079.07.

8 Accordingly, EMC disbursed funds to thirty one (31) investors totaling
9 \$105,937.37 and to itself, EMC, as loan servicing fees totaling \$10,397.72 when in truth and in
10 fact there were insufficient funds by which to do so, thus creating negative balances in other
11 private lenders accounts in the table below:

12 (b) Failed to maintain an accurate and complete control record in the form of a
13 columnar record in chronological order of trust funds received, deposited and disbursed, in
14 violation of Code Section 10145 and Regulation 2831.

15 (c) Failed to maintain an accurate and complete separate record of trust funds
16 received, deposited and disbursed for each owner-beneficiary of the trust funds, in violation of
17 Code Section 10145 and Regulation 2831.1.

18 (d) Failed to perform a monthly reconciliation of the balance of all separate
19 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all
20 trust funds received and disbursed by TA 1, in violation of Code Section 10145 and Regulation
21 2831.2. The unreconciled amount equals the trust fund shortage of \$116,335.12 in TA 1.

22 (e) Permitted real estate salesperson Hank H. Dayani, EMC's corporate secretary,
23 to be an authorized signatory on TA 1, when Mr. Hank H. Dayani was not licensed to EMC, in
24 violation of Code Section 10145 and Regulation 2834.

25 (f) EMC converted trust funds to its own use and for its own purposes by posting
26 receipts from ten (10) borrowers as funds received and deposited into the mortgage loan trust

1 account, TA1, whereas EMC did not actually receive these funds. Accordingly, EMC disbursed
2 funds to thirty one (31) investors totaling \$105,937.37 and to itself, EMC, as loan servicing fees
3 totaling \$10,397.72, where in fact there were no sufficient funds by which to do so, thus creating
4 negative balances in other trust fund owners/beneficiaries. EMC then reduced the balance in TA
5 1, to an amount that was less than the amount deposited, constituting conversion, in violation of
6 Code Section 10145 and 10176(i), and/or 10177(g).

7 (g) Failed to display the Department's license number for borrower Ranney, Pence
8 and Mendez Mortgage Loan Disclosure Statements to borrowers Frank R. and Paula A., in
9 violation of Code Section 10236.4.

10 (h) (1) Failed to provide or deliver a statement in writing, to wit, a
11 Lender/Purchaser Disclosure Statement, containing all the information required by Code Section
12 10232.5 to lenders Dayco Funding Corporation/D. Kirchen, for the Paula Andro loan before said
13 lender became obligated to make the loan before the receipt by or on behalf of EMC of any funds
14 from said lenders for the Paula Andro loan, in violation of Code Sections 10232.4 and 10232.5.
15 Paula Andro's loan file was not signed by the aforesaid purchasers before these lenders became
16 obligated to make the loan.

17 (i) Failed to maintain a written loan servicing agreement with borrowers and
18 lenders or owners of the promissory notes demonstrating that EMC was authorized to service the
19 promissory note(s) secured directly or collaterally by liens on real property, in violation of Code
20 Sections 10233(a) and 10238(k). No written loan servicing agreements were maintained for
21 borrower/lender pairs: GACS Uniq. Inc/F. Tell/Benjamin Bagno; Ezza F./David B./Benjamin
22 Bagno /Congregation Mogen David; Royale Westminster/Alfred Spivak/Z.Farhang; Basem
23 Gatas/Evelyn Sherman./Carolyn Fried/Alfred Spivak/David Kirchen./David Beckman.; and Luxor
24 Properties Inc./ Benjamin Bagno/Carnelyn Fried./Diana Plotkin/WM.H.Ross.

25 (j) Failed to provide written notice to lenders or owners of notes being serviced of
26 the unpaid principal balances at the end of each year and/or the accounting of collections and

disbursements received and made during each year to the lenders or owners of the notes, in violation of Code Section 10233(b).

(k) Failed to provide written notice to lender or owner of the note or notes being serviced regarding receipt payoff payments together with a request for total reconveyance of the underlying real property, in which case the notice shall have also indicate any further transfer or delivery instructions, in violation of Code Section 10233(c).

(l) At all time herein mentioned, SHAIKIN was licensed by the Department as the designated officer of EMC to qualify it and to act for it as a real estate broker and, as provided by Code Section 10159.2, was responsible for the supervision and control of the activities conducted on behalf of EMC by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the broker-associate SEAN DAYANI licensed to EMC and salesperson HANK H. DAYANI not licensed to EMC in the performance of acts for which a real estate license is required, in violation of Code Section 10177(h) and Regulation 2725.

10.

The conduct of Respondents EMC and SHAIKIN, described in Paragraph 9, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9(a)	Code Section 10145 and Regulation 2832.1
9(b)	Code Section 10145 and Regulation 2831
9 (c)	Code Sections 10145 and Regulation 2831.1
9(d)	Code Section 10145 and Regulation 2831.2
9(e)	Code Section 10145 and Regulation 2834
9(f)	Code Section 10145 and 10176(i) and/or 10177(g)
9(g)	Code Section 10236.4(b)
9(h)	Code Sections 10232.4/10232.5

- 1 9(i) Code Sections 10233(a) and 10238(k)
2
3 9(j) Code Section 10233(b)
4 9(k) Code Section 10233(c)
5 9(l) Code Sections 10159.2 and 10177(h) and Regulation
6 2725 (SHAIKIN)

7 The foregoing violations constitute cause for the suspension or revocation of the real estate
8 licenses and license rights of Respondents EMC and SHAIKIN under the provisions of Code
9 Sections 10176(i), 10177(d) and/or 10177(g) and 10177(h)(SHAIKIN).

10 SECOND CAUSE OF ACCUSATION

11 (Broker-Controlled Escrow Audit of Eastern Mortgage Company)

12 11.

13 At all times mentioned, in Respondent EMC conducted in-house, broker-
14 controlled escrows through its escrow division under the exemption set forth in Section
15 17006(a)(4) of the California Financial Code for real estate brokers performing escrows
16 incidental to a real estate transaction where the broker is a party and where the broker is
17 performing acts for which a real estate license is required.

18 EMC provided broker escrow services to its own clientele during the twelve audit
19 period from June 1, 2010 to June 30, 2011. EMC closed approximately two (2) escrow
20 transactions during the audit period. EMC collected escrow trust funds amounting to \$600,000
21 during the audit period.

22 12.

23 Broker Escrow Audit

24 On November 4, 2011, the Department completed an audit examination of the
25 books and records of Respondent EMC pertaining to the broker-controlled escrow activities
26 described in Paragraph 11, which require a real estate license. The audit examination covered a
period of time beginning on June 1, 2010 to June 30, 2011. The audit examination revealed

1 violations of the Code Regulations set forth in the following paragraphs, and more fully set forth
2 in Audit Report LA 110056 and the exhibits and work papers attached thereto.

3 Escrow Trust Account

4 13.

5 At all times mentioned, in connection with the activities described in Paragraph
6 11, above, EMC accepted or received funds including funds in trust ("trust funds") from or on
7 behalf of actual or prospective parties involved with EMC's in-house escrow and thereafter made
8 deposits and disbursements of such funds. From time to time herein mentioned, during the audit
9 period, said trust funds were deposited and/or maintained by EMC in the bank account as
10 follows:

11 "Eastern Mortgage Company Escrow Trust Account ("TA 1")

12 xxxxxxxx9473"

13 Cedars Bank/Pacific Western Bank

14 Los Angeles, California

(Escrow Trust Account)

15
16 Violations of the Real Estate Law

17 (Broker-Controlled Audit of Eastern Mortgage Company)

18 14.

19 In the course of activities described in Paragraphs 11 and 13, above, and during
20 the examination period, described in Paragraph 12, Respondents EMC and SHAIKIN, acted in
21 violation of the Code and the Regulations in that Respondents:

22 (a) Permitted real estate salesperson Hank H. Dayani, EMC's corporate secretary,
23 to be an authorized signatory on the escrow trust account TA 1, during a time when Mr. Dayani
24 was not licensed to EMC, in violation of Code Section 10145 and Regulations 2834, 2950(d) and
25 2951.
26

1 (b) Failed to maintain an accurate and complete control record in the form of a
2 columnar record in chronological order of trust funds received, in violation of Code Section
3 10145 and Regulation 2831, 2950(d) and 2951.

4 (c) Failed to maintain an accurate and complete separate record of trust funds
5 received, in violation of Code Section 10145 and Regulation 2831.1, 2950(d) and 2951.

6 (d) Failed to disclose in writing to all parties of EMC's financial interest and
7 ownership of EMC's in-house escrow division, in violation of Code Section 10145 and Regulation
8 2950(h).

9 15.

10 The conduct of Respondents EMC and SHAIKIN, described in Paragraph 14,
11 above, violated the Code and the Regulations as set forth below:

12 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
13 14(a)	Code Section 10145 and Regulation 2834, 2950(d) and 2951
14 14(b)	Code Section 10145 and Regulation 2831, 2950(d) and 2951
15 14 (c)	Code Sections 10145 and Regulation 2831.1, 2950(d) and 2951
16 14(d)	Code Section 10145 and Regulation 2950(h)

17
18 The foregoing violations constitute cause for the discipline of the real estate licenses and license
19 rights of Respondents EMC and SHAIKIN under the provisions of Code Sections 10177(d)
20 and/or 10177(g) and 10177(h)(SHAIKIN).

21 THIRD CAUSE OF ACCUSATION

22 (Negligence)

23 16.

24 The overall conduct of Respondents EMC and SHAIKIN constitutes negligence
25 and is cause for discipline of the real estate license and license rights of said Respondents
26 pursuant to the provisions of Code Section 10177(g).

FOURTH CAUSE OF ACCUSATION
(Fiduciary Duty)

17.

The conduct, acts and omissions of Respondents EMC and SHAIKIN constitute a breach of fiduciary duty, owed to EMC's clients within the scope of their contractual relationship and, in violation of Code Sections 10176(i) and/or 10177(g) and constitutes cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

FIFTH CAUSE OF ACCUSATION
(Supervision and Compliance)

18.

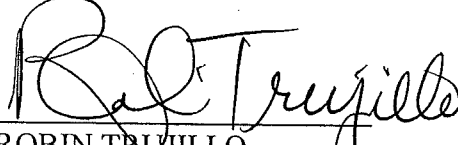
The overall conduct of Respondent SHAIKIN constitutes a failure on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of EMC and its officers and employees, as required by Code Section 10159.2 and Regulation 2725, and to keep EMC in compliance with the Real Estate Law, with specific regard to trust fund and advance fee handling, mortgage and loan brokering and loan modification services, and is cause for discipline of the real estate license and license rights of Respondent pursuant to the provisions of Code Sections 10177(d), 10177(g) and 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 licenses and/or license rights of Respondents EASTERN MORTGAGE COMPANY and JOHN R. SHAIKIN, individually and as designated officer of Eastern Mortgage Company under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law, including, but not limited to, (1) restorral of the trust fund shortage

1 of \$116,335.09, (2) restitution, (3) costs of audit pursuant to Code Section 10148; and (4) costs of
2 investigation and enforcement pursuant to Code Section 10106.

3
4 Dated at Los Angeles, California.

5
6 this 25 day of July, 2012.

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8 
9 ROBIN TRUJILLO
10 Deputy Real Estate Commissioner
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22

23 cc: Eastern Mortgage Company
24 John R. Shaikin
25 Robin Trujillo
26 Audits – Chona Soriano
Sacto