

FILED

AUG 28 2012

DEPARTMENT OF REAL ESTATE
BY: 

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 ALLSTATE FINANCIAL SERVICES INC.,) No. H-38369 LA
14 doing business as Allstate Lending and Realty; and)
15 KIMBERLY ANN ELKHATIB, individually and)
as designated officer of Allstate Financial Services Inc.;) ACCUSATION
Respondents.)

16 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
17 of California, for cause of Accusation against ALLSTATE FINANCIAL SERVICES INC. doing
18 business as Allstate Lending and Realty; and KIMBERLY ANN ELKHATIB, alleges as follows:

19 1.

20 The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real
21 Estate Commissioner of the State of California, makes this Accusation.

22 2.

23 All references to the "Code" are to the California Business and Professions Code
24 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.
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1 3.

2 License Status

3 A. ALLSTATE FINANCIAL SERVICES INC. (AFSI). At all times mentioned,
4 Respondent AFSI was licensed or had license rights issued by the Department of Real Estate
5 (Department) as a real estate broker. On August 21, 2006, AFSI was originally licensed as a
6 corporate real estate broker. Respondent AFSI was authorized to act by and through Respondent
7 KIMBERLY ANN ELKHATIB as AFSI's designated broker pursuant to Business and
8 Professions Code (hereinafter Code) Sections 10159.2 and 10211 to be responsible for ensuring
9 compliance with the Real Estate Law.

10 B. KIMBERLY ANN ELKHATIB (ELKHATIB). At all times mentioned,
11 Respondent ELKHATIB was licensed or had license rights issued by the Department as a real
12 estate broker. On May 6, 2006, ELKHATIB was originally licensed as a real estate broker. On
13 August 21, 2006, ELKHATIB became the designated officer of AFSI. On December 9, 2010,
14 ELKHATIB cancelled his tenure as designated officer of AFSI.

15 C. AFSI is equally owned by Ibrahim Elkhatib, AFSI's president and real estate
16 salesperson. Respondent ELKHATIB is AFSI's Vice President.

17 Brokerage

18 4.

19 At all times mentioned, in the City of Fontana, County of San Bernardino, AFSI
20 and ELKHATIB acted as real estate brokers conducting licensed activities within the meaning of:

21 A. Code Section 10131(d). Respondents engaged in activities with the public
22 wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on
23 real property, wherein such loans were arranged, negotiated, processed and consummated on
24 behalf of others for compensation or in expectation of compensation and for fees often collected
25 in advance.

26 B. Code Section 10131(d) and 10131.2. Respondents solicited and represented
27 homeowner-borrowers in negotiating and modifying terms of their mortgage loans, and collected

1 advance fees within the meaning of Code Sections 10026 and 10131.2, pursuant to written
2 agreements which constituted advance fee agreements within the meaning of Code Section
3 10085.

4 C. During the audit period from May 1, 2009 to July 30, 2010, Respondent AFSI
5 negotiated seventeen (17) loan modifications charging an advance fee ranging approximately
6 from \$750.00 to \$3,500.00 per loan for each homeowner-applicant.

7 FIRST CAUSE OF ACCUSATION
8 (Audit Examination)

9 5.

10 On May 25, 2012, the Department completed an audit examination of the books
11 and records of AFSI pertaining to the loan modification services and advance fee collection
12 activities only described in Paragraph 4, which require a real estate license. The audit
13 examination covered a period of time beginning on May 1, 2009 to July 30, 2010. The audit
14 examination revealed violations of the Code and the Regulations as set forth in the following
15 paragraphs, and more fully discussed in Audit Report LA 110242 and the exhibits and work
16 papers attached to said audit report.

17 General Account

18 6.

19 At all times mentioned, in connection with the activities described in Paragraph 4,
20 above, AFSI and ELKHATIB accepted or received funds including funds in trust (hereinafter
21 "trust funds") principally in the form of advance fees collected from economically distressed
22 homeowner-applicants for loan modifications and/or on behalf of actual or prospective parties,
23 including lenders and borrowers for loan modifications brokered by AFSI. Thereafter AFSI
24 made deposits and or disbursements of such trust funds. From time to time herein mentioned
25 during the audit period, said trust funds were deposited and/or maintained by AFSI in the bank
26 account as follows:

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1 "Allstate Financial Services Inc.
2 Account No. xxxxxx 2300"
3 Citizens Business Bank
4 9244 Sierra Avenue
5 Fontana, CA 92335
6 (B/A 1)

7 (B/A 1 is AFSI's general account into which collected advanced fees for loan modification
8 services were deposited. AFSI did not maintain a trust account during the audit period).

9 Loan Modification Audit Violations

10 7.

11 In the course of activities described in Paragraphs 4 and 6, above, and during the
12 examination period described in Paragraph 5, Respondents AFSI and ELKHATIB acted in
13 violation of the Code and the Regulations in which Respondents:

14 (a) Permitted, allowed or caused the disbursement of trust funds in the form of
15 advance fees collected from homeowner-applicants for loan modifications from AFSI's general
16 operating account, B/A 1, where the disbursement of funds reduced the total of aggregate funds
17 in B/A 1, to an amount which, on July 30, 2010, was \$6,575.00, less than the existing aggregate
18 trust fund liability to every principal who was an owner of said funds, without first obtaining the
19 prior written consent of the owners of said funds, in violation of Code Section 10145 and
20 Regulations 2832.1. The shortage was caused by unauthorized disbursements of unearned fees
21 from four (4) loan modification applications as tabled below:

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1 collecting, depositing and disbursing advance fees, as required and in violation of Code Sections
2 10145, 10176(i) and/or 10177(j) and 10176(e) and Regulation 2832.

3 (e) Failed to retain all records of AFSI's activity during the audit period requiring
4 a real estate broker license, related to advance fees AFSI collected related to its loan
5 modification/loss mitigation services, in violation of Code Section 10148. AFSI did not retain
6 the original contract for loan modification/loss mitigation services, or the transactions files for all
7 loan modifications performed by AFSI.

8 (f) ELKHATIB failed to exercise reasonable control and supervision over the
9 activities of AFSI to secure full compliance with the Real Estate Law, including but not limited
10 to trust fund handling for brokering, loan modification services and advance fee charge and
11 collection. Additionally, ELKHATIB had no system in place for regularly monitoring her
12 compliance with the Real Estate Law especially in regard to establishing, systems, policies and
13 procedures to review trust fund handling especially including advance fee deposits received from
14 homeowner-applicants seeking loan modification services, in violation of Code Sections
15 10159.2, 10177(h) and Regulation 2725.

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18 Discipline Statutes and Regulations

19 8.

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21 The conduct of Respondents AFSI and ELKHATIB, described in Paragraph 7,
22 above, violated the Code and the Regulations as set forth below:

| 23 <u>PARAGRAPH</u> | <u>PROVISIONS VIOLATED</u> |
|---------------------|--|
| 24 7(a) | Code Section 10145 and Regulation 2832.1 |
| 25 7(b) | Code Section 10085 and Regulation 2970 |
| 26 7(c) | Code Sections 10085.6 and 10146 |

1 7(d) Code Sections 10145, 10176(i) and/or 10177(j) and 10176(e) and
2 Regulation 2832

3 7(e) Code Section 10148

4 7(f) Code Sections 10159.2 and 10177(h) and Regulation 2725
(ELKHATIB)

5 The foregoing violations constitutes cause for discipline of the real estate license and license
6 rights of AFSI and ELKHATIB, under the provisions of Code Sections 10176(e), 10176(i) and/or
7 10177(j), 10177(d), 10177(g) and 10177(h).

8 SECOND CAUSE OF ACCUSATION

9 (Negligence)

10 9.

11 The overall conduct of Respondents AFSI and ELKHATIB constitutes negligence
12 and is cause for discipline of the real estate license and license rights of said Respondents
13 pursuant to the provisions of Code Section 10177(g).

14 THIRD CAUSE OF ACCUSATION

15 (Fiduciary Duty)

16 10.

17 (a) Respondents AFSI and ELKHATIB conducted loan modification operations
18 by soliciting economically distressed homeowner-applicants seeking downward adjustment to
19 their monthly mortgage payments including principal reductions and payment extenuations.

20 (b) Respondents obtained authorization from the Department to process loan
21 modifications on January 6, 2009. However, Respondents did not employ the authorized original
22 contract approved by the Department; solicited loan modification contracts after October 10,
23 2009, the SAFE Act start date; disbursed collected advance fees directly to AFSI's general
24 operating account, BA 1, wherein said advance fees had not been earned; and refused refund(s)
25 when requested despite contracting with homeowners for refunds based on "successfully
26 negotiate and/or accomplish [a loan modification]"; none of which were ever obtained as no
27 work on behalf of homeowners-consumers was performed.

1 (c) Recklessly, Respondents exposed advance fees trust funds of homeowner-
2 beneficiaries (1) to the general creditors of Respondents, and (2) to the general creditors of all
3 other said beneficiaries, and to federal and state taxing authorities including the Internal Revenue
4 Service, Franchise Tax Board and the California State Board of Equalization.

5 (d) The conduct, acts and omissions of Respondents AFSI and ELKHATIB
6 constitute a breach of fiduciary duty, owed the homeowners contracting for loan modification
7 services, of good faith, trust, confidence and candor, within the scope of their contractual
8 relationship.

9 (e) Respondents' failure to discharge the duties of their fiduciary responsibility is
10 in violation of Code Sections 10176(i) and/or 10177(g) and constitutes cause for discipline of the
11 real estate license and license rights of said Respondents pursuant to the provisions of said Code
12 Sections.

13 FOURTH CAUSE OF ACCUSATION
14 (Supervision and Compliance)

15 11.

16 The overall conduct of Respondent ELKHATIB constitutes a failure on said
17 Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable
18 supervision and control over the licensed activities of AFSI and its officers and employees, as
19 required by Code Section 10159.2 and Regulation 2725, and to keep AFSI in compliance with
20 the Real Estate Law, with specific regard to trust fund and advance fee handling for loan
21 modification services, and is cause for discipline of the real estate license and license rights of
22 Respondent pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

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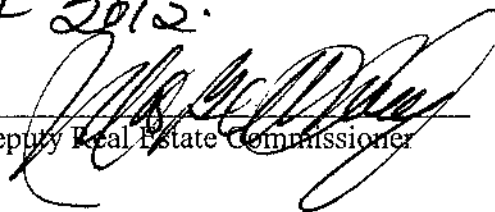
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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against the license and license rights of Respondents ALLSTATE FINANCIAL
4 SERVICES INC. and KIMBERLY ANN ELKHATIB, under the Real Estate Law (Part 1 of
5 Division 4 of the Business and Professions Code) and for such other and further relief as may be
6 proper under other applicable provisions of law including but not limited to restitution of
7 advanced fees paid for unauthorized disbursements of unearned advance fees for loan
8 modification services, for costs of audit pursuant to Business and Professions Code Section
9 10148 and costs of Investigation and Enforcement pursuant to Business and Professions Code
10 Section. 10106

11 Dated at Los Angeles, California

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13 this *21st day of August 2012.*

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15 Deputy Real Estate Commissioner

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23 cc: Allstate Financial Services Inc.
24 c/o Kimberly Ann Elkhatib D.O.
25 Maria Suarez
26 Sacto
27 Enforcement - Eleazar Galano
Audits - Gina King