

1 Elliott Mac Lennan, Counsel (SBN 66674)  
2 Department of Real Estate  
3 320 West 4th Street, Suite 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982  
6 (Direct) (213) 576-6911

**FILED**

OCT 12 2012

DEPARTMENT OF REAL ESTATE  
BY: 

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

11 \* \* \*

12 In the Matter of the Accusation of )  
13 CHI HAU & ANH HAU INC.; ) No. H- 38470 LA  
14 doing business as 10Days Funding, and )  
15 Today Investments & Real Estate; and ) ACCUSATION  
16 KEVIN TRAN TERRY, individually )  
17 and as former designated officer of )  
Chi Hau & Anh Hau Inc., )  
Respondents. )

18  
19 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State  
20 of California, Department of Real Estate ("Department") for cause of Accusation against CHI  
21 HAU & ANH HAU INC. ("CHAH") and KEVIN TRAN TERRY ("TERRY"), individually and  
22 as former designated officer of Chi Hau & Anh Hau Inc., a corporate real estate broker  
23 (collectively "Respondents"), is informed and alleges as follows:

24 1.

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

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From August 10, 2004, through the present, Respondent CHAHI has been licensed as a real estate corporation. At all times relevant herein, CHAHI was acting by and through Respondent TERRY 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. CHAHI is licensed by the Department to use the fictitious business names of 10Days Funding and Today Investments & Real Estate. The ownership and management structure of CHAHI is set forth in the table below:

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The tenure of the designated officers pertinent to the audit period from September 1, 2008 to August 31, 2011, is tabled below:

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4.

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, employees, agents and real estate licensees employed by or associated with Respondents committed such act or omission while engaged in the furtherance of the business or operations of Respondents and while acting within the course and scope of their corporate authority and employment, including TERRY and John Anthony Sesman.

FIRST CAUSE OF ACCUSATION  
(Audit)

Brokerage

5.

At all times mentioned, in the City of Newport Beach, County of Orange, State of California, Respondents CHAHI and TERRY acted as a real estate brokers and conducted licensed activities within the meaning of:

(a) Code Section 10131(d). Respondents engaged in a mortgage and loan brokerage including conducting activities with the public wherein institutional lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, and wherein such loans were arranged, negotiated, processed, consummated, packaged and serviced on behalf of others for compensation or in expectation of compensation and for fees often collected in advance.

(b) CHAHI solicited borrowers and lenders, and negotiated mortgage loans for compensation. During the audit period, CHAHI packaged sixteen loans totaling four million (\$4,000,000.00) dollars.

(c) California Financial Code Section 17006(a)(4). In addition, CHAHI conducted broker-controlled escrows through its escrow division, "CHAHI Escrow", under the exemption set forth in California Financial Code for real estate brokers performing escrows

1 incidental to a real estate transaction where the broker is a party and where the broker is  
2 performing acts for which a real estate license is required During the audit period CHAHI  
3 escrowed six (6) transactions and collected \$403,139.00.

4 Audit Examination

5 6.

6 On December 29, 2011, the Department completed an audit examination of the  
7 books and records of Respondent CHAHI pertaining to the mortgage loan broker and broker  
8 escrow activity described in Paragraph 5, which require a real estate license. The audit  
9 examination covered a period of time beginning on September 1, 2008 and ending on August 31,  
10 2011. The audit examination revealed violations of the Code and the Title 10, Chapter 6,  
11 California Code of Regulations ("Regulations") set forth in the following paragraphs, and more  
12 fully set forth in Audit Report LA 100267 and LA 110115, and the exhibits and work papers  
13 attached thereto.

14 Trust Accounts

15 7.

16 At all times mentioned, in connection with the activities described in Paragraph 6,  
17 above, CHAHI accepted or received funds including funds in trust ("trust funds") from or on  
18 behalf of actual or prospective parties to transactions including lenders and borrowers handled by  
19 CHAHI through its in-house escrow division and thereafter made deposits and or disbursements  
20 of such funds. CHAHI did not maintain trust accounts for it broker escrow activity during the  
21 audit period. However, CHAHI did maintain four (4) general operating accounts which were  
22 used to handle escrowed trust funds collected during the audit period. From time to time herein  
23 mentioned, during the audit period, said trust funds were deposited and/or maintained by CHAHI  
24 in these four bank accounts as follows.

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General Operating Account 1 (G/A1) (LA100267:

Bank: Bank of America  
Bank Address: PO Box 37176  
San Francisco, CA 94137-0176  
Account Name: Chi Hau & Anh Hau Inc.  
DBA 10 Days Funding  
Account No.: \*\*\*\*\*1860  
Signatories: See Footnote 1, below  
Status: Active  
Description: G/A1 was used as CHAHI's general operating account. In addition, escrow trust funds collected were also handled through G/A 1.

General Operating Account 2 (G/A2) (LA100267:

Bank: Bank of America  
Bank Address: PO Box 37176  
San Francisco, CA 94137-0176  
Account Name: Chi Hau & Anh Hau Inc.  
DBA Today Investments & Real Estate  
Account No.: \*\*\*\*\*3187  
Signatories: See Footnote 1, below  
Status: Closed on September 22, 2010  
Description: G/A2 was used as CHAHI's general operating account. In addition, escrow trust funds collected were also handled through G/A 2.

General Operating Account 3 (G/A3) (LA100267:

Bank: US Bank  
Bank Address: Information not available  
Account Name: Chi Hau & Anh Hau Inc.  
General Account  
Account No.: \*\*\*\*\* 9549  
Signatories: See Footnote 1, below

Status: Closed on August 31, 2009  
Description: G/A3 was used as CHAHI's general operating account. In addition, escrow trust funds collected were also handled through G/A 3.

General Operating Account 4 (G/A4) (LA100267:

Bank: US Bank  
Bank Address: Information not available  
Account Name: Chi Hau & Anh Hau Inc.  
Account No.: \*\*\*\*\* 7183  
Signatories: See Footnote 1, below  
Status: Closed on August 30, 2010  
Description: Purportedly, G/A 4 was set up as a trust account to handle escrow trust funds. However, G/A4's bank signature card was not provided during the course of examination to make such determination.

Personal Bank Account 1 (P/A1) (LA100267:

Bank: Bank of America  
Bank Address: PO Box 37176  
San Francisco, CA 94137-0176  
Account Name: Anh D Hau  
Account No.: \*\*\*\*\*9526  
Signatories: See Footnote 1, below  
Status: Active  
Description: P/A 1 is Anh Hau's personal bank account but was also used to handle the escrow trust fund in connection to CHAHI's broker escrow activity.

Footnote 1: Bank signature cards for P/A1, G/A1 to G/A 4 were not provided for the audit. On information and belief, Anh Hau was the only signatory on the above mentioned bank accounts.

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1 (c)(1) Escrow Trust Accounts. Mixed and commingled trust funds and personal  
2 funds by depositing escrowed trust funds into CHAHI's general operating accounts and personal  
3 account, P/A1, G/A1 to G/A 4, and issuing checks from said accounts after the escrow checks  
4 were deposited, in violation of Code Sections 10145 and 10176(e) and Regulation 2832.

5 (c)(2) Mortgage Loan Trust Account. Mixed and commingled trust funds and  
6 personal funds by depositing trust funds in the form of credit report fees collected by CHAHI at  
7 the closing into CHAHI's general operating account, G/A 3, and CHAHI's personal funds and  
8 accounts and issuing checks from said accounts after collection to the credit report companies, in  
9 violation of Code Sections 10145 and 10176(e) and Regulation 2832.

10 (d) Converted escrow trust funds by depositing said trust funds into CHAHI's  
11 general operating accounts, P/A1, G/A1 to G/A 4, in violation of Code Sections 10145 and  
12 10177(j) and Regulations 2832 and 2950(d). CHAHI then reduced the amount in said CHAHI's  
13 accounts to an amount \$13,673.27 less than the amount of the trust funds deposited constituting  
14 conversion, in congruence with Paragraph 8(a), above..

15 (e) Withdrew or paid out escrow trust funds deposited into P/A1, G/A1 to G/A 4  
16 without the prior written consent of every principal or party paying the monies into these  
17 respective escrow accounts, in violation of Code Section 10145 and Regulations 2950(g) and  
18 2951. CHAHI's unauthorized withdrawals were used to pay CHAHI's rent and to make refunds  
19 to parties to CHAHI's mortgage loan brokerage.

20 (f)(1) Escrow Accounts. Failed to maintain an accurate and complete control  
21 record in the form of a columnar record in chronological order of all trust funds received,  
22 deposited and disbursed into P/A1, G/A1 to G/A 3, in violation of Code Section 10145 and  
23 Regulation 2831, 2950(d) and 2951.

1 (f)(2) Mortgage Loan Activities. Failed to maintain an accurate and complete  
2 control record in the form of a columnar record in chronological order of all "Trust Funds  
3 Received, Not Placed Broker's Trust Account", to wit, B/A 3, for credit reports collected at the  
4 close of escrow and handled though B/A 3, in violation of Code Section 10145 and Regulation  
5 2831.  
6

7 (g) (1) Escrow Accounts. Failed to maintain an accurate and complete separate  
8 record for all escrowed trust funds received, deposited and disbursed into P/A1, in violation of  
9 Code Section 10145 and Regulation 2831.1, 2950(d) and 2951.

10 (g)(2) Mortgage Loan Activities t. Failed to maintain an accurate and complete  
11 separate record for all escrowed trust funds received, deposited and disbursed by G/A 3, for  
12 credit reports collected at the close of escrow and handled though G/A 3, in violation of Code  
13 Section 10145 and Regulation 2831.1.  
14

15 (h)(1) Escrow Accounts Failed to perform a monthly reconciliation of the balance  
16 of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with  
17 the record of all trust funds received and disbursed by personal and general accounts, P/A1, G/A1  
18 to G/A, used for the escrow activity, in violation of Code Section 10145 and Regulations 2831.2,  
19 2950(d) and 2951.

20 (h)(2) Mortgage Loan Activities. Failed to perform a monthly reconciliation of the  
21 balance of all separate beneficiary or transaction records maintained pursuant to Regulation  
22 2831.1 with the record of all trust funds received and disbursed by personal and general accounts  
23 used for the mortgage loan activity and including the all credit report fees collected at closing and  
24 handled by CHAH's general account G/A 3s, in violation of Code Section 10145 and Regulation  
25 2831.2.  
26

1 (i) Escrow Accounts. Failed to disburse from P/A1, G/A1 to G/A 4 a total of  
2 \$6,090.91 in retained broker funds, within twenty-five (25) days of deposit, in violation of Code  
3 Sections 10145 and 10176(e) and Regulations 2835(b).

4 (j)(1) Mortgage Loan Activities. Failed to provide Mortgage Loan Disclosure  
5 Statement to borrowers, in violation of Code Section 10240 and Regulation 2840; and  
6

7 (j)(2) Mortgage Loan Activities Failed to provide and/or maintain a statement in  
8 writing, to wit, a Good Faith Estimate, which precedes the Mortgage Loan Disclosure Statement  
9 provided to borrowers, containing all the information required by Code Section 10241(c) to  
10 borrowers before the borrowers became obligated to perform under the terms of their respective  
11 loans, in violation of Code Section 10240(c), including failing to state in a clear and conspicuous  
12 manner on the Good Faith Estimate that it: does not constitute a loan commitment, in violation of  
13 Code Section 10240 and Regulation 2840.  
14

15 (k) Failed to disclose the eight digit real estate license number of CHAHI on  
16 CHAHI's first point of contact with consumers, in violation of Code Section 10140.6(b) and  
17 Regulation 2773.

18 (l) Failed to adequately supervise and control the mortgage loan and broker  
19 escrow activity conducted under CHAHI's real estate broker license. Additionally, had no system  
20 in place for regularly monitoring CHAHI's compliance with the Real Estate Law especially in  
21 regard to establishing, systems, policies and procedures to review trust fund handling, and to  
22 keep CHAHI in compliance with the Real Estate Law, in violation of Code Sections 10159.2,  
23 10177(h) and Regulation 2725.  
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9.

The conduct of Respondents CHAHI and TERRY, described in Paragraph 8, above, violated the Code and the Regulations as set forth below:

| <u>PARAGRAPH</u> | <u>PROVISIONS VIOLATED</u>                                    |
|------------------|---------------------------------------------------------------|
| 7(a)             | Code Section 10145 and Regulations 2832.1, 2950(g) and 2951   |
| 7(b)             | Code Sections 10176(i) and/or 10177(g)                        |
| 7(c)             | Code Sections 10145, 10176(e) and Regulation 2832(e)          |
| 7(d)             | Code Sections 10145 and 10177(j)                              |
| 7(e)             | Code Section 10145 and Regulations 2950(g) and 2951           |
| 7(f)             | Code Section 10145 and Regulations 2831, 2950(d) and 2951     |
| 7(g)             | Code Section 10145 and Regulations 2831.1, 2950(d) and 2951   |
| 7(h)             | Code Section 10145 and Regulations 2831.2, 2950(d) and 2951   |
| 7(i)             | Code Sections 10145 and 10176(e) and Regulation 2835(b)       |
| 7(j)             | Code Sections 10240 and 10241 and Regulations 2840 and 2840.1 |
| 7(k)             | Code Section 10140.6(b) and Regulation 2773                   |
| 7(l)             | Code Sections 10159.2 and 10177(h) and Regulation 2725        |

The foregoing violations constitute cause for discipline of the real estate licenses and license rights of Respondents CHAHI and TERRY under the provisions of Code Sections 10176(e), 10176(g), 10176(i), 10177(d) and/or 10177(g), 10177(j), and 10177(h).

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1                                    SECOND CAUSE OF ACCUSATION  
2                                    (Negligence)

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4                                    The overall conduct of Respondents CHAHI and TERRY constitutes negligence  
5 and is cause for discipline of the real estate license and license rights of said Respondents  
6 pursuant to the provisions of Code Section 10177(g).

7                                    THIRD CAUSE OF ACCUSATION  
8                                    (Fiduciary Duty)

9                                    11.

10                                  The conduct, acts and omissions of Respondents CHAHI and TERRY constitutes  
11 a breach of fiduciary duty, owed to CHAHI's loan brokerage clientele and escrow trust fund  
12 beneficiaries of good faith, trust, confidence and candor, within the scope of their brokerage and  
13 business relationship, in violation of Code Section 10177(g) and constitutes cause for discipline  
14 of the real estate license and license rights of said Respondents pursuant to the provisions of  
15 Code Section 10177(g).

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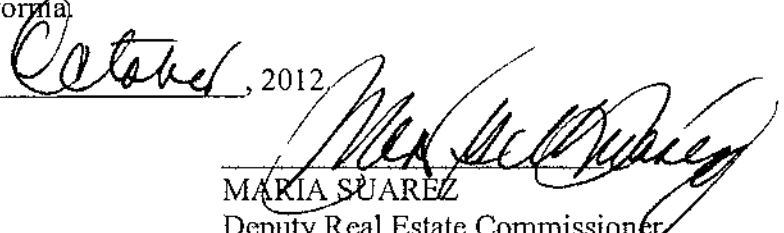
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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
3 action against all licenses and/or license rights of Respondents CHI HAU & ANH HAU INC.  
4 and KEVIN TRAN TERRY, individually and as former designated officer of Chi Hau & Anh  
5 Hau Inc., under the Real Estate Law (Part 1 of Division 4 of the California Business and  
6 Professions Code) and for such other and further relief as may be proper under other applicable  
7 provisions of law, including but not limited to, restitution where applicable costs of audit; and  
8 costs of enforcement and investigation pursuant to Code Sections 10148 and 10106, respectively.

9 Dated at Los Angeles, California

10 this 11/14 day of October, 2012

11   
12 MARIA SUAREZ

13 Deputy Real Estate Commissioner  
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22 cc: Chi Hau & Anh Hau Inc.  
23 Kevin Tran Terry  
24 Maria Suarez  
25 Audits - Gina King  
26 Sacto