

**FILED**

JUN 17 2014

BUREAU OF REAL ESTATE

By Choime

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

|                                       |   |                |
|---------------------------------------|---|----------------|
| In the Matter of the Accusation of    | ) |                |
|                                       | ) |                |
| <u>CHI HAU &amp; ANH HAU INC.;</u>    | ) |                |
| doing business as 10Days Funding, and | ) | No. H-38470 LA |
| Today Investments & Real Estate; and  | ) |                |
| and KEVIN TRAN TERRY, individually    | ) |                |
| and as former designated officer of   | ) |                |
| Chi Hau & Anh Hau Inc.,               | ) |                |
|                                       | ) |                |
| Respondents.                          | ) |                |
|                                       | ) |                |
|                                       | ) |                |
|                                       | ) |                |

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on May 19, 2014, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent CHI HAU & ANH HAU INC., express admissions; (2) affidavits; and (3) Bureau Audit Report LA 100267 & LA 110015 (Chi Hau & Anh Hau Inc.) (4) Complainant and Companion files; (5) Investigative Case Analysis; and (6) other evidence.

## FACTUAL FINDINGS

1.

On October 11, 2012, Maria Suarez made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed to Respondent's last known mailing addresses on file with the Bureau on October 12, 2012 and November 14, 2012, respectively by certified mail and by regular mail.

2.(a)

On May 19, 2014, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent CHI HAU & ANH HAU INC.'s ("CHAH") default was entered herein.

2.(b)

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

### Individuals and Entities

3.(a)

From October 22, 1992, through the present, Respondent CHAH has been licensed as a real estate corporation. At all times relevant herein, CHAH 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. CHAH is licensed by the Bureau to use the fictitious business names of 10Days Funding and Today Investments & Real Estate. The ownership and management structure of CHAH is set forth in the table below:

| Name                | Ownership Percentage | Title         | Licensed?          |
|---------------------|----------------------|---------------|--------------------|
| John Anthony Sesman | 51%                  | President/CEO | Designated Officer |
| Phung Nguyen        | 20%                  | Director      | Broker             |
| Anh Hau             | 29%                  | VP/COO        | No                 |

3.(b)

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

|                     |                                                             |                |
|---------------------|-------------------------------------------------------------|----------------|
| John Anthony Sesman | August 25, 2010 to August 31, 2011<br>(end of audit period) | 13 months days |
| Kevin Tran Terry    | July 16, 2008 to August 1, 2010                             | 25 months      |

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.

#### Mortgage Loan Audit

5.

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

(a) 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 and services on behalf of others for compensation or in expectation of compensation and for fees often collected in advance (Code Section 10131(d)).

(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) 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 incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required (California Financial Code Section 17006(a)(4). During the audit period CHAHI escrowed six (6) transactions and collected \$403,139.00.

6.

On December 29, 2011, the Bureau completed an audit examination of the books and records of Respondent CHAHI pertaining to the mortgage loan broker and broker escrow activities described in Finding 5, which require a real estate license. The audit examination covered a period of time beginning on September 1, 2008 and ending on August 31, 2011. The audit examination revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations ("Regulations") set forth in the following

following paragraphs, and more fully set forth in Audit Report LA 100267 and LA 110115, and the exhibits and work papers attached thereto.

7.

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

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.

8.

In the course of activities described in Findings 5 and 7, above, and during the examination period, described in Finding 6, Respondent, acted in violation of the Code and the Regulations in which Respondent:

(a) Permitted, allowed or caused the disbursement of trust funds from bank accounts P/A1, G/A1 to G/A 4, where the disbursement of funds reduced the total of aggregate funds in said account into which trust funds in the form of escrow receipts were deposited, to an amount which, on July 30, 2010, was at a minimum \$13,959.84, less than the existing aggregate trust fund accountability of CHAHI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145(a) and Regulations 2832.1, 2950(g) and 2951.

The un-restored shortage was caused by overdrawn escrow balances, poor record keeping, and unauthorized cash withdrawals to pay CHAHI's rent and for refunds connected to CHAHI's mortgage loan packaging activities.

(b) 2068 Snowbird Dr., Lodi, California.

CHAHI refinanced borrower Kuldeep Hundal's real property located at 2068 Snowbird Dr., Lodi, California: Escrow Transaction #0172710-AH. CHAHI was also the escrow settlement agent for borrower Hundal. When Hundal's escrow closed on October 16, 2009, borrower Hundal should have received escrow proceeds of \$1,717.47. In addition, Hundal was entitled to \$1,450.00 loan commission from a loan transaction Hundal, himself a real estate broker, closed in the name of CHAHI for borrower "Singh", totaling \$3,167.47. To date, the total escrow proceeds and loan commission CHAHI owes to Kuldeep Hundal was \$3,167.47 remains due and owing, in violation of Code Sections 10176(i), 10177(d) and 10177(g).

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

(c)(2) Mortgage Loan Trust Account. Mixed and commingled trust funds and personal funds by depositing trust funds in the form of credit report fees collected by CHAHI at the closing into CHAHI's general operating account, BA 3, and CHAHI's

personal funds and accounts and issuing checks from said accounts after collection to the credit report companies, in violation of Code Sections 10145 and 10176(e) and Regulation 2832.

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

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

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

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

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

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

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

(h)(2) Mortgage Loan Activities. Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by personal and general accounts used for the mortgage loan activity and including all

credit report fees collected at closing and handled by CHAHI's general accounts, in violation of Code Section 10145 and Regulation 2831.2.

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

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

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

(k) Employed and compensated Anh Hau, Chief Operating officer, and part-officer of CHAHI, as loan agents who she knew was not licensed by the Department as a real estate broker or as a real estate salesperson employed by a real estate broker, for performing acts for which a real estate license is required, including soliciting mortgage loans, in violation of Code Sections 10130 and 10137, as set forth in the table below:

| <u>LOAN</u><br><u>NO.</u> | <u>BORROWER</u> | <u>DATE CLOSED</u> | <u>W/P</u><br><u>REF.</u> |
|---------------------------|-----------------|--------------------|---------------------------|
| 2084855                   | Y. Nguyen       | 11/04/08           | E                         |
| 10021435                  | Lee             | 12/07/09           | E                         |
| 10020087                  | Hundal          | 10/16/09           | C                         |
| 2085842                   | H. Nguyen       | 12/23/08           | E                         |
| 10019936                  | P. Nguyen       | 09/30/09           | E                         |
| 10026669                  | Q. Nguyen       | 08/03/10           | E                         |

(D.O. – Sesman)

| <u>LOAN</u><br><u>NO.</u> | <u>BORROWER</u> | <u>DATE CLOSED</u> | <u>W/P</u><br><u>REF.</u> |
|---------------------------|-----------------|--------------------|---------------------------|
| 10032366                  | Tran            | 12/14/10           | E                         |

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

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

## DETERMINATION OF ISSUES

1.

The conduct of Respondent CHAHI, as alleged and described in Findings 10 above, violated the Code and the Regulations hereunder, under the provisions as set forth below:

- (a) Code Section 10145 and Regulations 28332.1, 2950(g) and 2951
- (b) Code Sections 10176(i) and/or 10177(g)
- (c) Code Sections 10176(a), 10176(e) and Regulations 2832(e) and 2950(f)
- (d) Code Sections 10145 and 10177(j) and Regulations 2832 and 2950(d)
- (e) Code Section 10145 and Regulations 2950(g) and 2951
- (f) Code Section 10145 and Regulations 2831, 2950(d) and 2951
- (g) Code Section 10145 and Regulations 2831.1, 2950(d) and 2951
- (h) Code Section 10145 and Regulations 2831.2, 2950(d) and 2951
- (i) Code Sections 10145 and 10176(e) and Regulations 2835(b) and 2951
- (j) Code Sections 10240 and 10241 and Regulations 2840 and 2840.1
- (k) Code Sections 10130 and 10137
- (l) Code Section 10140.6(b) and Regulation 2773
- (m) Code Sections 10159.2 and 10177(h) and Regulation 2725

2.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

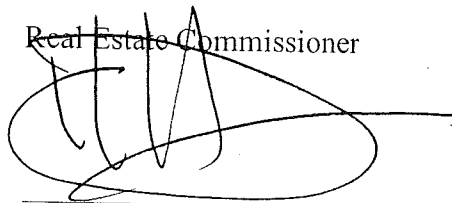
## ORDER

The real estate license and license rights of Respondent CHI HAU & ANH HAU INC. under the provisions of Part I of Division 4 of the Business and Professions Code is revoked.

This Decision shall become effective at 12 o'clock noon on JUL 08 2014

DATED: JUN 13 2014

Real Estate Commissioner



By: JEFFREY MASON  
Chief Deputy Commissioner