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**FILED**

OCT 18 2012

DEPARTMENT OF REAL ESTATE

BY: James B. Olson

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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 TMC CAPITAL INC and ASHKAN MINAIE, )  
14 individually, and as designated )  
15 officer of TMC Capital Inc, )  
16 Respondents. )

No. H-38484 LA

A C C U S A T I O N

17 The Complainant, Maria Suarez, a Deputy Real Estate  
18 Commissioner of the State of California, for cause of Accusation  
19 against TMC CAPITAL INC and ASHKAN MINAIE, individually, and as  
20 designated officer of TMC Capital Inc, alleges as follows:

21 1.

22 The Complainant, Maria Suarez, acting in her official  
23 capacity as a Deputy Real Estate Commissioner of the State of  
24 California, makes this Accusation against TMC CAPITAL INC and  
25 ASHKAN MINAIE.

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27 ///

1 2.

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

5 LICENSE HISTORY

6 3.

7 A. At all times mentioned, TMC CAPITAL INC ("TMC") was  
8 licensed and/or had license rights issued by the Department of  
9 Real Estate ("Department") as a corporate real estate broker.  
10 TMC was originally licensed as a corporate real estate broker on  
11 August 14, 2008.

12 B. At all times mentioned, ASHKAN MINAIE ("MINAIE")  
13 was licensed and/or had license rights issued by the Department  
14 as a real estate broker. MINAIE was originally licensed as a  
15 real estate broker on February 10, 2005.

16 C. From August 14, 2008, through the present, TMC has  
17 been licensed by the Department as a corporate real estate broker  
18 by and through MINAIE, as the designated officer and broker  
19 responsible, pursuant to Code Section 10159.2 for supervising the  
20 activities requiring a real estate license conducted on behalf of  
21 TMC, or by TMC's officers, agents and employees.

22 BROKERAGE

23 TMC CAPITAL INC

24 4.

25 At all times mentioned, in the City of Irvine, County  
26 of Orange, TMC and MINAIE acted as real estate brokers,  
27 conducting licensed activities within the meaning of Code Section

1 10131(d): soliciting borrowers or lenders, negotiating loans,  
2 collecting payments or performing services for borrowers, in  
3 connections with loans secured by real property.

4 AUDIT

5 TMC CAPITAL INC

6 5.

7 On October 31, 2011, the Department completed an audit  
8 examination of the books and records of TMC pertaining to the  
9 activities described in Paragraph 4 which require a real estate  
10 license. The audit examination covered a period of time from  
11 August 14, 2008 to June 30, 2011. The audit examination revealed  
12 violations of the Code and the Regulations as set forth in the  
13 following paragraphs, and as more fully discussed in Audit Report  
14 LA100266 and the exhibits and workpapers attached to said audit  
15 report.

16 VIOLATIONS OF THE REAL ESTATE LAW

17 6.

18 In the course of activities described in Paragraph 4  
19 above and during the examination period described in Paragraph 5,  
20 Respondents TMC and MINAIE acted in violation of the Code and the  
21 Regulations in that:

22 (a) As of June 30, 2011, TMC has a shortage of \$1,760  
23 in one of its trust accounts, in violation of Code Section 10145  
24 and Regulation 2832.1.

25 (b) TMC allowed a salesperson not licensed under TMC  
26 and an unlicensed employee without fidelity bond insurance to be  
27

1 signatories on trust accounts, in violation of Code Section 10145  
2 and Regulation 2834.

3 (c) TMC commingled trust funds with its own funds by  
4 transferring at least \$1,760 in trust funds to its general  
5 account, in violation of Code Sections 10176(e) and 10145 and  
6 Regulation 2832.

7 (d) TMC collected advance fees from borrowers for at  
8 least 3 loan modification transactions without submitting the  
9 advance fee agreements to the commissioner at least 10 days  
10 before their use, in violation of Code Section 10085 and  
11 Regulation 2970.

12 (e) TMC offered to perform loan modification services  
13 after October 11, 2009 and failed to provide a separate notice of  
14 free services, in violation of Code Section 10147.6(a).

15 (f) After October 11, 2009, TMC collected fees from  
16 borrowers for loan modifications before TMC had fully performed  
17 the services promised to borrowers, in violation of Code Section  
18 10085.6.

19 (g) The Approved Mortgage Loan Disclosure Statements  
20 (MLDS) found in the loan files were not complete. The license  
21 number of TMC and the loan agents negotiating the loan  
22 transactions were not disclosed on the MLDS, in violation of Code  
23 Sections 10240(a), 10236.4 and Regulation 2840.

24 7.

25 The conduct of Respondents TMC and MINAIE, described in  
26 Paragraph 6, above, violated the Code and the Regulations as set  
27 forth below:



1 of Code Sections 10177(d), 10177(g) and 10177(h).

2  
3 WHEREFORE, Complainant prays that a hearing be  
4 conducted on the allegations of this Accusation and that upon  
5 proof thereof, a decision be rendered imposing disciplinary  
6 action against all licenses and license rights of Respondents  
7 TMC CAPITAL INC and ASHKAN MINAIE, individually and as designated  
8 officer of TMC Capital Inc, under the Real Estate Law, that  
9 Complainant be awarded its costs of investigation and prosecution  
10 of this case, and for such other and further relief as may be  
11 proper under the provisions of law.

12  
13 Dated at Los Angeles, California

14 this 18<sup>th</sup> day of October, 2012

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17   
18 Maria Suarez  
19 Deputy Real Estate Commissioner

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24  
25 cc: TMC CAPITAL INC  
26 ASHKAN MINAIE  
27 Maria Suarez  
Sacto  
Audits