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FILED
JAN 25 2013
DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of	)	No. H- 38672 LA
	)	
SEAN PATRICK GOODWIN, doing business as Real Investment Strategies,	)	ACCUSATION
	)	
Respondent,	)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California acting in her official capacity, for cause of Accusation against SEAN PATRICK GOODWIN, doing business as Real Investment Strategies, 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.

2.

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.

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License Status

3.

At all times mentioned, SEAN PATRICK GOODWIN (GOODWIN), was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. GOODWIN was originally licensed as a real estate salesperson on January 5, 2004, and as a real estate broker on November 25, 2008.

Brokerage

4.

At all times mentioned, in the City of Santa Ana, County of Orange, Respondent GOODWIN acted as a real estate broker conducting licensed activities within the meaning of:

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

B. Code Section 10131(d) and 10131.2. Respondent advertised, solicited and offered to provide loss mitigation and loan modification services to economically distressed homeowners seeking adjustments to the terms and conditions of their home loans including, but not limited to, repayment plans, forbearance plans, partial claims, and reduction in principal or interest, extenuations, foreclosure prevention and short sales; and

C. Code Section 10131(d). Respondent engaged in activities with the public wherein institutional and private hard money lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, 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, in addition to operating a mortgage and loan brokerage.

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FIRST CAUSE OF ACCUSATION

(Audit Examination)

5.

On December 14, 2012 the Department completed an audit examination of the books and records of GOODWIN, pertaining to the loan modification and loan servicing activities described in Paragraph 3, that require a real estate license. The audit examination covered a period of time beginning on June 1, 2009 and ending on November 30, 2010. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Report LA 110267 and the exhibits and work papers attached.

Trust Accounts

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, GOODWIN accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by GOODWIN. GOODWIN maintained the following trust account:

1. T/A 1

Account Name:	TD Investment Funding Inc. Trust Account
Account No.:	**********6687
Bank Name:	Citibank
Bank Address:	P.O. Box 26892 San Francisco, CA 94126-6892

T/A 1 is a depository for advance fees collected for loan modification services and for loan servicing fees.

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Violations of the Real Estate Law

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the audit examination period described in Paragraph 5, Respondent GOODWIN , acted in violation of the Code and the Regulations in that Respondent :

(a)(1) Permitted, allowed or caused the disbursement of trust funds from T/A 1 where the disbursement of funds reduced the total of aggregate funds in T/A 1, GOODWIN 's trust account to an amount which, on November 30, 2010, was $1,250.00, less than the existing aggregate trust fund liability 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 Sections 10145 and 10176(i) and Regulation 2832.1.

(a)(2) On January 15, 2010, converted trust funds in the amount of $1,000.00 through the instrumentality of making an unauthorized disbursement of trust funds from T/A 1 in order to pay Respondent's outstanding credit card debt.

(b) Failed to place trust funds collected from borrowers into a trust account in the name of the broker as trustee at a bank or other financial institution, in violation of Code Section 10145 of the Code and Regulations 2832(a). T/A 1 was titled in GOODWIN's unlicensed fictitious business name "TD Investment Funding Inc. Trust Account".

(c) Permitted Jill Goodwin, wife of GOODWIN, an unlicensed and unbonded person, to be an authorized signatory on the trust account, T/A 1, in violation of Code Section 10145 and Regulation 2834.

(d) Failed to maintain an accurate control record in the form of a columnar record in chronological order of all trust funds through T/A 1, in violation of Code Section 10145 and Regulation 2831;

(e) Failed to maintain an accurate separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed, in violation of Code Section 10145 and Regulation 2831.1;

(f) 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 T/A 1, in violation of Code Section 10145 and Regulation 2831.2;

(g) Mixed and commingled trust funds and personal funds, in violation of Code Sections 10145(a) and 10176(e) and Regulation 2832;

(h)(1) Failed to obtain written authorization from lenders, borrowers, owners and holders of real property promissory note on the Diaz transaction that was secured directly or collaterally by liens on real property or of real property sales contracts, after GOODWIN's undertaking to service said note or contracts, in violation of Code Section 10233(a). There was no written servicing agreement retained which authorized GOODWIN to act as loan servicing agent collecting and transmitting borrower payments for lender May A;

(h)(2) Failed to provide the lender or owner of the Diaz note with an accounting of the unpaid principal balance, collections and disbursements received and made during each year, in violation of Code Section 10233(b).

(i) Failed to notify owners of notes secured by liens on real property that funds other than funds received from the obligor on the note were applied toward a payment. GOODWIN did not provide written notice within the (10) days of the amount of the payment, the source of funds, and the reason for making the payment, in violation of Code Section 10233.1. GOODWIN advanced funds on behalf of the Diaz loan without informing the lender May A.

(j) Used the fictitious names of "TD Investment Funding" and "Quality Loan Modification", to conduct licensed activities including collecting loan modification service fees, advanced fees, and loan servicing fees, without first obtaining from the Department a license bearing said fictitious business names, in violation of Code Section 10159.5 and Regulation 2731.

(k) Failed to retain all records of GOODWIN's activity during the audit period requiring a real estate broker license, in violation of Code Section 10148.

Disciplinary Statures and Regulations

8.

The conduct of Respondent GOODWIN, as alleged and described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Sections 10145 and 10176(i) and Regulation 2832.1
7(b)	Code Section 10145 and Regulations 2832(a)
7(c)	Code Section 10145 and Regulations 2834
7(d)	Code Section 10145 and Regulations 2831
7(e)	Code Section 10145 and Regulations 2831.1
7(f)	Code Section 10145 and Regulations 2831.2
7(g)	Code Sections 10145, 10176(e) and Regulation 2832
7(h)	Code Section 10233(a)&(b)
7(i)	Code Section 10233.1
7(j)	Code Section 10159.5 and Regulation 2731
7(k)	Code Section 10148

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

SECOND CAUSE OF ACCUSATION

(Negligence)

9.

The overall conduct of Respondent GOODWIN constitutes negligence or incompetence. This conduct and violation are cause for discipline of the real estate license and license rights of Respondent pursuant to Code Section 10177(g).

THIRD CAUSE OF ACCUSATION

(Breach of Fiduciary Duty)

10.

The conduct, acts and omissions of Respondent GOODWIN constitutes a breach of fiduciary duty of good faith, trust, confidence and candor, within the scope of GOODWIN's relationship, owed to Respondent GOODWIN's loan modification and loan servicing clientele. This conduct and violation are cause for discipline of the real estate license and license rights of Respondent GOODWIN pursuant to Code Section 10177(g).

FOURTH CAUSE OF ACCUSATION

(Supervision)

11.

The overall conduct of Respondent GOODWIN constitutes a failure on his part to exercise reasonable supervision and control over the licensed activities his brokerage, in violation of Code Section 10177(h) and Regulation 2725. Respondent GOODWIN failed to keep his brokerage in compliance with the Real Estate Law, and is cause for discipline of the real estate license and license rights of Respondent GOODWIN, pursuant to the provisions of Code Sections 10177(d), 10177(g) and/or 10177(h).

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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 the license and license rights of Respondent SEAN PATRICK GOODWIN, under the Real Estate Law (Part 1 of Division 4 of the 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, but not limited to (1) restitution, where applicable (2) costs of audit pursuant to Code Section 10148; and (3) costs of investigation and enforcement pursuant to Code Section 10106, and as pursuant to applicable provisions of the California Administrative Procedure Act.

Dated at Los Angeles, California

this 22 day of January 2013

Deputy Real Estate Commissioner

cc: Sean Patrick Goodwin
Robin Trujillo
Audits - Anna Hartoonian
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