

FILED

JUN 28 2013

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 INDEPENDENCE REALTY INC. doing)
13 business as Independence Realty; and)
14 EMILE NICOLAS MISIRACA, individually)
15 and as designated officer of Independence)
16 Realty Inc.,)
17 Respondents.)

No. H-38929 LA

ACCUSATION

18 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
19 of California, for cause of Accusation against INDEPENDENCE REALTY INC. dba
20 Independence Realty ("IRI") and EMILE NICOLAS MISIRACA ("MISIRACA"), individually
21 and as designated officer of Independence Realty Inc., alleges as follows:
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23 1.

24 The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real
25 Estate Commissioner of the State of California, makes this Accusation against IRI and
26 MISIRACA.
27

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.

3.

From October 19, 2004, through the present, Respondent IRI has been licensed as a real estate corporation. Effective October 18, 2012, Respondent IRI's corporate broker license expired. Pursuant to Code Section 10103, the Department retains jurisdiction over a lapsed license. At all times relevant herein, IRI was acting by and through Respondent MISIRACA 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.

4.

Respondent MISIRACA was licensed by the Department as a real estate broker on August 1, 1991.

5.

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 MISIRACA.

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FIRST CAUSE OF ACCUSATION
(Audit of IRI)

6.

At all times mentioned, in the City of La Mesa, County of Orange, Respondents IRI and MISIRACA acted as real estate brokers and conducted licensed activities within the meaning of Code Sections 10131(a), wherein they conducted a residential resale brokerage.

7.

On August 14, 2012, the Department completed an audit examination of the books and records of IRI pertaining to the activities described in Paragraph 6, which require a real estate license. The audit examination covered a period of time beginning on August 1, 2009 to May 31, 2012. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 110265 and the exhibits and work papers attached to said audit report.

8.

In the course of activities described in Paragraph 6, above, and during the examination period, described in Paragraph 7, Respondents IRI and MISIRACA, acted in violation of the Code and the Regulations in that Respondents:

(a) Abandoned IRI's office located at 8130 La Mesa Blvd., Suite 805, La Mesa, California without notification to the Department, in violation of Code Section 10162 and Regulation 2715;

(b) Failed to maintain a commencement date or ending date for the Listing Agreement with seller Joan Allton, in violation of Code Section 10176(f);

1 (c) Failed to maintain pest control documentation to show that IRI delivered the
2 inspection report certification, and notice of pest control work completed by buyer for Joan
3 Allton, in violation of Regulation 2905;

4 (d) On or about September 1, 2011, IRI's corporate status was suspended by the
5 California Franchise Tax Board, yet IFI continued to conduct operations to date, in violation of
6 Code Section 10177(f) and Regulation 2742(c); and

7 (e) Failed to notify the Department of the employment of MISIRACA's
8 salespersons Richard Archer, Ella Bauer, Ned Bennett, Suzanne Cupit, Sean Donovan, Robbin
9 Newlin, Cynthia Ramage, Connie Spitzer, and Gwendolyn Thompson, in violation of Code
10 Section 10161.8 and Regulation 2752.
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12 9.

13 The conduct of Respondents IRI and MISIRACA, described in Paragraph 7,
14 above, violated the Code and the Regulations as set forth below:
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<u>Paragraph</u>	<u>Provisions Violated</u>
17 8(a)	Code Sections 10159.2, 10177(h) and Regulation 2725
18 8(b)	Code Section 10162 and Regulation 2715
19 8(c)	Code Section 10176 (f)
20 8(d)	Regulation 2905
21 8(e)	Code Section 10177 (f) and Regulation 2742(c)
22 8(f)	Code Section 10161.8 and Regulation 2752

23
24 The foregoing violations constitute cause for the discipline of the real estate licenses and license
25 rights of Respondents IRI and MISIRACA under the provisions of Code Sections 10165,
26 10176(f), 10177(d) and/or 10177(g).
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SECOND CAUSE OF ACCUSATION
(Negligence)

10.

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

THIRD CAUSE OF ACCUSATION
(Supervision and Compliance)

11.

The overall conduct of Respondent MISIRACA constitutes a failure on his part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of IRI, and including his own individual brokerage, as required by Code Section 10159.2, and to keep IRI in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of MISIRACA pursuant to the provisions of Code Sections 10177(d), 10177(g) and/or 10177(h).

12.

Code Section 10106 provides, in part, that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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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 INDEPENDENCE REALTY INC.
4 and EMILE NICOLAS MISIRACA, under the Real Estate Law (Part 1 of Division 4 of the
5 Business and Professions Code) and for such other and further relief as may be proper under
6 other applicable provisions of law including but not limited to, costs investigation and
7 enforcement and in accordance with the Administrative Procedure Act, Government Code
8 Section 11519.
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10 Dated at Los Angeles, California

11 this 12th day of June 2013.

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13 MARIA SUAREZ
14 Deputy Real Estate Commissioner
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23 cc: Independence Realty Inc.
24 c/o Emile Nicolas Misiraca
25 Maria Suarez
26 Sacto
27 Audits – Jennifer Borromeo