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FILED

APR 11 2014

BUREAU OF REAL ESTATE

By John Aguirre

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7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) CalBRE No. H-39406 LA
12 UNITED FUND MORTGAGE AND)
REALTY, INC.,) ACCUSATION
13 MAYA SWAMY, individually and as)
designated officer of United Fund Mortgage)
14 and Realty, Inc., and)
ROSA ELENA MONTIEL,)
15 Respondents.)
16

17 The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of
18 California, for cause of Accusation against UNITED FUND MORTGAGE AND REALTY,
19 INC., MAYA SWAMY, individually and as designated officer of United Fund Mortgage and
20 Realty, Inc., and ROSA ELENA MONTIEL (collectively "Respondents"), is informed and
21 alleges as follows:

22 1.

23 The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of
California, makes this Accusation in her official capacity.

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2.

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

Licensees

3.

From April 20, 2012, through the present, Respondent UNITED FUND MORTGAGE AND REALTY, INC. ("UNITED FUND") has been licensed and/or has license rights by the Bureau of Real Estate ("Bureau") as a real estate corporation, License ID 01913791. UNITED FUND has a mortgage loan originator ("MLO") license endorsement no. 946158.

4.

At all times relevant, Respondent was not licensed to do business under a fictitious business name or with any branch offices. Respondent's main office address from April 20, 2012, through February 5, 2013, was 25351 Commercecentre Dr., Suite 200, Lake Forest, California 92630.

5.

From February 24, 2006, through the present, Respondent MAYA SWAMY ("SWAMY") has been licensed by the Bureau as a real estate broker, License ID 01418058. SWAMY has a MLO license endorsement no. 325310.

6.

From April 20, 2012, through the present, UNITED FUND has acted as a corporate real estate broker by and through SWAMY, as the designated officer and broker responsible pursuant to Code Section 10159.2, for supervising the activities requiring a real estate license conducted

1 on behalf UNITED FUND by UNITED FUNDS's officers, agents and employees.

2 7.

3 From September 5, 2002, through the present, Respondent ROSA ELENA MONTIEL
4 ("MONTIEL") has been licensed and/or has license rights by the Bureau as a real estate
5 salesperson, License ID 01351768. MONTIEL's employing broker from February 7, 2012
6 through September 29, 2013, was Standing Rock Realty, Inc. UNITED FUND has been
7 MONTIEL's employing broker from September 30, 2013, through the present.

8 Unlicensed Persons

9 8.

10 United Fund, LLC, Daniel N. Reyes aka Daniel Reyes, Reynaldo Reyes aka Rey Reyes,
11 Rodrigo Rivera, and Javier Estrada have never been licensed by the Bureau in any capacity.

12 Entities

13 9.

14 UNITED FUND is a California corporation formed on March 13, 2012 by Daniel Reyes.
15 On November 20, 2012, a Statement of Information for UNITED FUND was filed with the
16 California Secretary of State which listed Daniel Reyes as CEO and SWAMY as the Secretary
17 and a director for UNITED FUND.

18 10.

19 On August 23, 2011, an Articles of Incorporation was filed for United Fund, LLC, listing
20 Daniel Reyes as the managing member and agent for service of process for the limited liability
21 company. The office address for United Fund, LLC was 25351 Commercentre Dr., Suite 200,
22 Lake Forest, CA 92630.

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1 Prior Orders to Desist and Refrain

2 11.

3 On May 11, 2009, in Bureau case no. H-35948 LA, the Bureau filed an Order to Desist
4 and Refrain against Rey Reyes for violation of Code section 10130, while doing business as Loss
5 Mitigation Services, Inc. (an unlicensed entity).

6 12.

7 On July 15, 2009, in Bureau case no. H-36114 LA, the Bureau filed an Order to Desist
8 and Refrain against Rey Reyes and Daniel Reyes for violation of Code section 10130, while
9 doing business as Synergy Financial Management (an unlicensed entity).

10 13.

11 On September 3, 2013, in Bureau case no. H-39025 LA, the Bureau filed an Order to
12 Desist and Refrain against Daniel N. Reyes and Reynaldo Reyes for violation of Code section
13 10130, while doing business as New Century Solutions, Inc. and New Century Solutions
14 Processing Services (unlicensed entities). New Century Solutions and New Century Solutions
15 Processing Services operated out of several business addresses including 25351 Commercentre
16 Dr., Suite 200, Lake Forest, CA 92630.

17 Causes of Action

18 14.

19 Code Section 10131 defines a real estate broker as a person who:

- 20 (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or
21 purchasers of, solicits or obtains listing of, or negotiates the purchase, sale or
22 exchange of real property or a business opportunity;
- 23 (d) Solicits borrowers or lenders for or negotiates loans or collects payments or
24 performs services for borrowers or lenders in connection with loans secured
directly or collaterally by liens on real property; or

1 (e) Sells or offers to sell, buys or offers to buy or exchanges or offers to exchange
2 a real property sales contract, or a promissory note secured directly or
3 collaterally by a lien on real property or on a business opportunity, and
4 performs services for the holders thereof.

5 15.

6 Code Section 10131.1, subdivision (a) further defines a real estate broker as

7 “a person who engages as a principal in the business of making loans or buying
8 from, selling to, exchanging with the public, real property sales contracts or promissory
9 notes secured directly or collaterally by liens on real property, or who makes agreements
10 with the public for the collection of payments or for the performance of services in
11 connection with real property sales contracts or promissory notes secured directly or
12 collaterally by liens on real property.”

13 16.

14 Code section 10131.2 states:

15 “A real estate broker within the meaning of this part is also a person who engages
16 in the business of claiming, demanding, charging, receiving, collecting or contracting for
17 the collection of an advance fee in connection with an employment undertaken to
18 promote the sale or lease of real property or of a business opportunity by advance fee
19 listing, advertisement or other offering to sell, lease, exchange or rent property or a
20 business opportunity, or to obtain a loan or loans thereon.”

21 17.

22 Code Section 10085.5, subdivision (a) states:

23 “It shall be unlawful for any person to claim, demand, charge receive, collect, or
24 contract for an advance fee (1) for soliciting lenders on behalf of borrowers or performing
services for borrowers in connection with loans to be secured directly or collaterally by a
lien on real property, before the borrower becomes obligated to complete the loan or, (2)
for performing any other activities for which a license is required, unless the person is a
licensed real estate broker and has complied with the provisions of this part.”

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18.

Code Section 10085.6, subdivision (a) states:

“Notwithstanding any other provision of law, it shall be unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

- (1) Claim, demand, charge, collect or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform.
- (2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.”
- (3) Take any power of attorney from the borrower for any purpose.”¹

19.

Code Section 10137 states:

“It is unlawful for any licensed real estate broker to compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him or her...”

Elsa G. transaction

20.

In or around 2011, Javier Estrada, a senior analyst for New Century Solutions Processing Services solicited loan modification services to borrower, Elsa G. Javier Estrada referred Elsa G. to Rey Reyes, general manager for New Century Solutions Processing Services. Elsa G. paid \$2,995 to New Century Solutions Processing Services for loan modification and negotiation services in connection with a loan secured by real property owned by Elsa G. After waiting approximately six months for a loan modification, Elsa G. was informed by New Century that she could not obtain a loan modification. Elsa G. was then induced and influenced by UNITED

¹ Civil Code section 2944.7(a) prohibits any *person*, including foreclosure consultants, from similar conduct.

1 FUND's agents to sign up for UNITED FUND's "mortgage lay away program" in order to
2 qualify for the purchase of another home.

3 21.

4 On or about May 25, 2012, Elsa G. entered into an agreement with UNITED FUND and
5 completed a "mortgage lay away application." UNITED FUND's agreement noted a
6 subscription amount of \$63,000 which was intended to be used as a possible down payment
7 toward the purchase of a property by the borrower. Elsa G. was to pay monthly payments of
8 \$1,750 to UNITED FUND for purposes of saving this subscription amount. Clients'
9 subscription payments were to be pooled for the purpose of providing loans to the borrower
10 subscribers. In essence, UNITED FUND's "mortgage lay away program" was a pyramid
11 scheme. The advance fee agreements and materials used by UNITED FUND for its "mortgage
12 lay away program" were not submitted to the Bureau for review prior to their use as is required
13 pursuant to Code section 10085 and Regulation 2970.

14 22.

15 On May 25, 2012, UNITED FUND charged and collected an advance fee of \$3,500 from
16 Elsa G., by way of a deposit made directly to UNITED FUND's Bank of America Checking
17 Account No. XXXXXX9600. UNITED FUND deemed the payment as a "mortgage lay away
18 enrollment fee." From June 1, 2012, through October 9, 2012, Elsa G. made five mortgage lay
19 away subscription payments of \$1,750 to UNITED FUND. In total, Elsa G. paid \$12,250 to
20 UNITED FUND for its mortgage lay away plan.

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23.

Elsa G. repeatedly attempted to contact the agents from UNITED FUND and was not successful in obtaining any answers to her questions about the status of her purchase of a property through UNITED FUND. Eventually, Rey Reyes directed MONTIEL to go to Elsa G.'s home where MONTIEL explained to Elsa G. that she would not be able to obtain a loan through UNITED FUND to purchase the home that she desired.

24.

On October 26, 2012, Rodrigo Rivera, the financial controller for UNITED FUND, sent a letter to Elsa G. stating that she need to complete a cancellation request form in order for her to receive a refund of her money which was to be paid in three separate payments within a 30 day period. On October 30, 2012, Elsa G. signed a cancellation request form seeking a refund from UNITED FUND. Elsa G. failed to receive her full refund within 30 days. She then discovered that UNITED FUND's phone numbers had been disconnected. She personally drove to UNITED FUND's office at 25351 Commercentre Dr., Suite 200, Lake Forest, CA 92630 and discovered that UNITED FUND had vacated its office and failed to leave a forwarding address. Elsa G. filed a complaint with the Bureau on November 20, 2012. On November 30, 2012, UNITED FUND made a refund payment of \$3,500 to Elsa G. On December 31, 2012, UNITED FUND made a second refund payment of \$4,375 to Elsa G. On January 31, 2013, UNITED FUND made a final refund payment of \$4,375 to Elsa G.

25.

Respondents UNITED FUND and SWAMY allowed unlicensed persons including, but not limited to, Daniel Reyes, Rey Reyes, and Javier Estrado to engage in activities requiring a real estate license and receive compensation for said unlicensed activities. Based thereon,

1 Respondents UNITED FUND and SWAMY violated Code sections 10130 and 10137 which
2 constitute grounds for the suspension or revocation of all licenses and license rights of
3 Respondents UNITED FUND and SWAMY pursuant to Code sections 10177(d) and/or
4 10177(g), and for the suspension or revocation of all MLO license endorsements of Respondents
5 UNITED FUND and SWAMY pursuant to Code section 10166.051, subdivisions (a) or (b) and
6 Code section 10166.05, subdivision (c).

7 26.

8 Respondent UNITED FUND charged and collected advance fees, as that term is defined
9 under Code section 10026, from borrowers. UNITED FUND used advance fee agreements and
10 materials that were not submitted to the Bureau for review prior to use as is required under Code
11 section 10085 and Regulation 2970. Based thereon, Respondents UNITED FUND violated Code
12 sections 10085, 10085.5, 10085.6, and Regulation 2970, which constitute grounds for the
13 suspension or revocation of all licenses and license rights of Respondent UNITED FUND
14 pursuant to Code sections 10177(d) and/or 10177(g), and for the suspension or revocation of the
15 MLO license endorsement of Respondent UNITED FUND pursuant to Code section 10166.051,
16 subdivisions (a) or (b) and Code section 10166.05, subdivision (c).

17 27.

18 Daniel Reyes, Rey Reyes, Javier Estrada, MONTIEL, and Rodrigo Rivera, while acting
19 as officers, employees, agents, or independent contractors for UNITED FUND, made substantial
20 misrepresentations, false promises of a character likely to influence, persuade, or induce, and/or
21 engaged in dishonest dealing or fraud in connection with Elsa G.'s transaction, which constitute
22 grounds for the suspension or revocation of all licenses and license rights of Respondents
23 UNITED FUND and MONTIEL pursuant to Code sections 10176(a), 10176(b), and/or 10176(i)

1 and for the suspension or revocation of the MLO license endorsement of Respondent UNITED
2 FUND pursuant to Code section 10166.051, subdivisions (a) or (b) and Code section 10166.05,
3 subdivision (c).

4 28.

5 The overall conduct of Respondent SWAMY constitutes a failure on Respondent
6 SWAMY's part, as officer designated by a corporate broker licensee, to exercise the reasonable
7 supervision and control over the licensed activities of UNITED FUND, as required by Code
8 Section 10159.2, to keep UNITED FUND in compliance with the Real Estate Law and is cause
9 for the suspension or revocation of the real estate license and license rights of SWAMY pursuant
10 to the provisions of Code Sections 10177(h), 10177(d) and/or 10177(g) and for the suspension or
11 revocation of the MLO license endorsement of Respondent SWAMY pursuant to Code section
12 10166.051, subdivisions (a) or (b) and Code section 10166.05, subdivision (c).

13 Audit LA 130021

14 29.

15 On October 4, 2013, the Bureau completed an audit examination of the books and records
16 of Respondent's activities which require a real estate license. The audit examination covered a
17 period of time from August 1, 2011, to July 31, 2013. The audit examination covered UNITED
18 FUND's mortgage loan activities, broker escrows, and loan modification activities related to
19 UNITED FUND's mortgage lay away plan. The audit examination revealed violations of the
20 Code and the Regulations as set forth in the following paragraphs, and more fully discussed in
21 Audit Report LA 130021 and the exhibits and work papers attached to said Audit Report.

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30.

According to Respondent SWAMY, UNITED FUND did not maintain a trust account for mortgage loan activities during the audit period. UNITED FUND maintained general business accounts including, but not limited to, the following:

Bank Account #1 (BA1)

Account Name: United Fund Mortgage and Realty, Inc.

Account No. XXXXXX9600

Bank Account #1 (BA2)

Account Name: United Fund Mortgage and Realty, Inc.

Account No. XXXXXX3688

31.

Based on information provided by UNITED FUND to the Bureau's auditor, borrowers Mene C., Jose B., and Elsa G. paid advance fees to UNITED FUND in connection with UNITED FUND's mortgage lay away plan. The fees collected from borrowers were deposited directly into UNITED FUND's BA1 account.

32.

Violations

In the course of activities described in paragraph 29, above, and during the audit examination period described in paragraph 29, Respondent acted in violation of the Code and the Regulations as follows:

(A) UNITED FUND collected a total of \$23,294.44 in trust funds for mortgage loan activity during the audit period and failed to maintain a trust account or deposit said trust funds into a trust account. UNITED FUND deposited said trust funds into its general account (BA1),

1 in violation of Code sections 10176, subdivision (e) (commingling of funds), 10145 (trust fund
2 handling), and Regulation 2832 (trust fund handling).

3 (B) UNITED FUND failed to maintain a control record of trust funds (advance fees)
4 collected, received, and disbursed in connection with its loan modification activity during the
5 audit period, in violation of Code Section 10145 and Regulation 2831 (trust fund records to be
6 maintained).

7 (C) UNITED FUND failed to maintain a monthly reconciliation of all separate records to
8 the control record of all trust funds received and disbursed in connection with the loan
9 modification activity during the audit period, in violation of Code Section 10145 and Regulation
10 2831.2 (trust account reconciliation).

11 (D) UNITED FUND collected advance fees from principals and did not deposit said fees
12 into a trust account or provide an accounting to the principals showing the name of the agent and
13 the principal, services rendered, identification of the trust account into which the advance fees
14 had been deposited, the amount of advance fees collected, and details of how the funds were
15 disbursed, in violation of Code Section 10146 (advance fees to be deposited in trust account) and
16 Regulation 2972 (accounting content).

17 (E) UNITED FUND collected advance fees from borrowers for loan modifications or
18 services in connection with loan secured directly or collaterally by liens on real property, in
19 violation of Code sections 10085.5 (payment of advance fees) and 10085.6 (advance fee
20 prohibited-loan modification/forbearance).

21 (F) UNITED FUND received and deposited trust funds into its general account (BA1).
22 The balance of said account was reduced to an amount that was less than the \$23,944.44 of trust
23

1 funds deposited, in violation of Code sections 10145 (trust fund handling/conversion) and 10176,
2 subdivision (i) (dishonest dealing) or 10177, subdivision (j) (dishonest dealing).

3 (G) UNITED FUND received and deposited trust funds into its general account (BA1),
4 thereby commingling said trust funds with UNITED FUND's funds, in violation of Code
5 sections 10145 (trust fund handling) and 10176, subdivision (e) (commingling), and Regulation
6 2832.

7 (H) SWAMY failed to exercise reasonable control or supervision of UNITED FUND's
8 real estate activities to ensure compliance with the Real Estate Law and Regulations. SWAMY
9 and UNITED FUND failed to establish policies, rules, procedures, and systems to review,
10 oversee, inspect, and manage transactions requiring a real estate license and handling of trust
11 funds, in violation of Code sections 10177, subdivision (h) (broker supervision), 10159.2, and
12 Regulation 2725.

13 Disciplinary Statutes

14 33.

15 The conduct of Respondent described in Paragraph 32, above, violated the Code and the
16 Regulations as set forth below:

17 PARAGRAPH	PROVISIONS VIOLATED
18 32(A)	Code Section 10145 and Regulation 2832
19 32(B)	Code Section 10145 and Regulation 2831
20 32(C)	Code Section 10145 and Regulation 2831.2
21 32(D)	Code Section 10146 and Regulation 2972
22 32(E)	Code Sections 10085.5 and 10085.6
23 32(F)	Code Sections 10145, 10176(i) or 10177(j)
24 32(G)	Code Sections 10145, 10176(e), and Regulation 2832
	Code Sections 10177(h), 10159.2, and Regulation 2725

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34.

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent UNITED FUND, as aforesaid, under the provisions of Code Sections 10177(d) for violation of the Real Estate Law and/or 10177(g) for negligence and for the suspension or revocation of the MLO license endorsement of Respondent UNITED FUND pursuant to Code section 10166.051, subdivisions (a) or (b) and Code section 10166.05, subdivision (c).

35.

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent SWAMY, as aforesaid, under the provisions of Code Sections 10177(d) for violation of the Real Estate Law, 10177(h) for failure to exercise reasonable supervision, and/or 10177(g) for negligence, and for the suspension or revocation of the MLO license endorsement of Respondent SWAMY pursuant to Code section 10166.051, subdivisions (a) or (b) and Code section 10166.05, subdivision (c).

36.

Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau 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 of this
2 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
3 against all licenses and/or license rights of Respondents UNITED FUND MORTGAGE AND
4 REALTY, INC., MAYA SWAMY, individually and as designated officer of United Fund
5 Mortgage and Realty, Inc., and ROSA ELENA MONTIEL under the Real Estate Law (Part 1 of
6 Division 4 of the Business and Professions Code), for the cost of investigation and enforcement
7 as permitted by law, and for such other and further relief as may be proper under other provisions
8 of law.

9 Dated at Los Angeles, California

10 this 7 day of April, 2014.

11
12 
13 ROBIN TRUJILLO
14 Deputy Real Estate Commissioner
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16
17
18

19 cc: United Fund Mortgage and Realty, Inc.
20 Maya Swamy
21 Rosa Elena Montiel
22 Robin Trujillo
23 Benilda Emery
24 Sacto