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FILED

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BUREAU OF REAL ESTATE

By 

8 BEFORE THE BUREAU¹ OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 WESTBERG INVESTMENT) No. H- 39570 LA
13 CORPORATION; and) ACCUSATION
14 FRED T. III WESTBERG ,)
15 individually and as designated officer of)
16 Westberg Investment Corporation,)
Respondents.)

17 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
18 of California, Bureau of Real Estate ("Bureau") for cause of Accusation against WESTBERG
19 INVESTMENT CORPORATION and FRED T. III WESTBERG, individually and as
20 designated officer of Westberg Investment Corporation (collectively "Respondents,") is
21 informed and alleges as follows:

22 1.

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

25 _____
26 ¹ Effective July 1, 2013, the California Department of Real Estate became the Department of Consumer Affairs, Bureau of Real Estate ("Bureau"). References in this Accusation are to the successor entity.

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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, except as otherwise specified.

Individuals and Entities

3.a

From March 1, 1985, through the present, Respondent WESTBERG INVESTMENT CORPORATION ("WIC") has been licensed as a corporate real estate broker. At all times relevant herein, WIC was acting by and through Respondent FRED T. III WESTBERG as its designated officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3.b

Respondent FRED T. III WESTBERG ("WESTBERG") was originally licensed as a real estate broker on February 25, 1980, and has been the designated officer of WIC since its inception.

3.c

Table: Westberg Investment Corporation Management Structure and Ownership

| Name | Licensee | Ownership/Title |
|----------------------|------------|---|
| Fred T. Westberg III | Broker | Designated Officer; President 50% owner |
| Richard F. Westberg | Expired | Vice President |
| Lauren A. Westberg | Unlicensed | Vice President |
| Susan L. Westberg | Unlicensed | Secretary; 50% owner |

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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 WESTBERG, Richard F. Westberg, Lauren A. Westberg, Susan L. Westberg, Erich D. Bachmann and Danny J. Carlton.

FIRST CAUSE OF ACCUSATION
(Mortgage Loan and Broker Escrow Audit)

5.

At all times mentioned, in the City of Long Beach, County of Los Angeles, State of California, Respondents WIC and WESTBERG acted as real estate brokers and conducted licensed activities within the meaning of:

(a) Code Section 10131(d). Respondents engaged in a mortgage and loan brokerage including conducting activities with the public wherein institutional and private 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, packaged and serviced on behalf of others for compensation or in expectation of compensation and for fees often collected in advance; and

(b) California Financial Code Section 17006(a)(4). WIC also conducted broker-controlled escrows through its escrow division, "Capital Network 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.

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1 (d) Failed to perform an accurate and complete monthly reconciliation of the
2 balance of all separate beneficiary or transaction records maintained pursuant to Regulation
3 2831.1 with the record of all trust funds received and disbursed by;

4 T/A 1, in violation of Code Section 10145 and Regulation 2831.2; and
5 T/A 2, in violation of Code Section 10145 and Regulations 2831.2 and 2951;

6 (e) Permitted Richard F. Westberg, real estate salesperson and vice president of
7 WIC, to be an authorized signatory on T/A 1 and T/A 2, in violation of Code Section 10145 and
8 Regulation 2834, without fidelity bond after his salesperson licensed expired on April 9, 2011;

9 (f) Charged financed points and fees in² excess of \$1,000 or 6% of the original
10 principal balance³, exclusive of points and fees in the covered loan⁴ transaction for borrower
11 Everett S, in violation of Financial Code Section 4979.6 of the Predatory Lending Act. WIC
12 collected an excess of \$1,246.70 in points and fees on the Everett S. loan;

13 (g) Originated higher priced consumer credit transactions⁵ secured by the principal
14 dwellings for borrowers James W. and Everett S., where the Annual Percentage Rate (APR)⁶ on
15 said borrowings exceeded the Average Prime Offer Rate (APOR)⁷ for a comparable transaction
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18
19 ² California Financial Code Section 4970(c).

20 ³ California Financial Code Section 4970(e).

21 ⁴ California Financial Code Section 4970(b).

22 ⁵ California Financial Code Section 4970(d).

23 ⁶ California Financial Code Section 4970(a).

24 ⁷ Bureau of Consumer Financial Protection-12 CFR Chapter X Part 1026 — Truth in Lending
25 (Regulation Z)
Subpart E—Special Rules for Certain Home Mortgage Transactions
§1026.35 Requirements for higher-priced mortgage loans.

1 as of the date the interest rate Lock-In by a minimum of 1.5% percentage points for first-lien
2 loans, in violation of Financial Code Section 4995; and

3
4 (h) Failed to retain a true and correct copy of a Bureau of Real Estate approved
5 Mortgage Loan Disclosure Statement signed by the broker for borrowers Walker and Gonzales,
6 in violation of Code Section 10240 and Regulation 2840.

7 9.

8 The conduct of Respondents WIC and WESTBERG, described in Paragraph 8,
9 above, violated the Code and the Regulations as set forth below:

| 10 <u>PARAGRAPH</u> | <u>PROVISIONS VIOLATED</u> |
|---------------------|---|
| 11 8(a) | Code Section 10145 and Regulation 2832.1 |
| 12 8(b) | Code Section 10232.5 and Regulation 2846.8 |
| 13 8(c) | Code Sections 10145 and 10176(e) and Regulation 2832 |
| 14 8(d) | Code Section 10145 and Regulation 2831.2, 2950(d), 2951 |

15
16 (a) *Definitions.* For purposes of this section:

17 (1) "Higher-priced mortgage loan" means a closed-end consumer credit transaction secured by the consumer's principal dwelling
18 with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest
rate is set:

19 (i) By 1.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that does not
20 exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for
purchase by Freddie Mac;

21 (ii) By 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the
22 limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by
Freddie Mac; or

23 (iii) By 3.5 or more percentage points for loans secured by a subordinate lien.

24 (2) "Average prime offer rate" means an annual percentage rate that is derived from average interest rates, points, and other loan
25 pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk
pricing characteristics. The Bureau publishes average prime offer rates for a broad range of types of transactions in a table updated
26 at least weekly as well as the methodology the Bureau uses to derive these rates.

- 1 8(e) Code Section 10145 and Regulations 2834 and 2951
2 8(f) Financial Code Section 4974 and 4979.6
3 8(g) Financial Code Section 4995
4 8(h) Code Section 10240
5

6 The foregoing violations constitute cause for the discipline of the real estate licenses and license
7 rights of Respondents WIC and WESTBERG under the provisions of Code Section 10145;
8 10176(e), 10177(d), and 10177(g).

9
10 SECOND CAUSE OF ACCUSATION
(Negligence)

11 10.

12 The overall conduct of Respondents WIC and WESTBERG constitutes
13 negligence and is cause for discipline of the real estate license and license rights of said
14 Respondents pursuant to the provisions of Code Section 10177(g).

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16 THIRD CAUSE OF ACCUSATION
(Breach of Fiduciary Duty)

17 11.

18 The conduct, acts and omissions of Respondents WIC and WESTBERG
19 constitute a breach of fiduciary duty owed to Respondents' clientele of good faith, trust,
20 confidence and candor, within the scope of their brokerage relationship, in violation of Code
21 Section 10177(g) and constitutes cause for discipline of the real estate license and license rights
22 of said Respondents pursuant to the provisions of said Code Section.
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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 all licenses and/or license rights of Respondents WESTBERG INVESTMENT
4 CORPORATION and FRED T. III WESTBERG, individually and as designated officer of
5 Westberg Investment Corporation under the Real Estate Law (Part 1 of Division 4 of the
6 California Business and Professions Code) and for such other and further relief as may be proper
7 under other applicable provisions of law, including but not limited to repatriation of trust fund
8 shortage, restitution, costs of investigation, enforcement and audit.
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10 Dated at Los Angeles, California

11 This 31st day of July, 2014.

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14 MARIA SUAREZ
15 Deputy Real Estate Commissioner
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23 cc: Westberg Investment Corporation
24 Fred T. III Westberg
25 Maria Suarez
26 Gina King - Audits
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