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DEPT. OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation against BLACK OAK GROUP, INC. and CRISTOPHER R. LAPP, individually and as designated officer for BLACK OAK GROUP, INC., Respondents.	DRE No. H-41628 LA **ACCUSATION**

The Complainant, Chika Sunquist, a Supervising Special Investigator for the Department of Real Estate[1] ("Department") of the State of California, makes this Accusation in her official capacity for cause of Accusation against BLACK OAK GROUP, INC. and CRISTOPHER R. LAPP, individually, and as designated officer for Black Oak Group, Inc. (collectively "Respondents"), is informed and alleges as follows:

1. 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,

[1] Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

Title 10, Chapter 6, California Code of Regulations.

2. Respondents are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

3. From May 9, 2017 through the present, BLACK OAK GROUP, INC. ("BOGI") has been licensed by the Department as a corporate real estate broker, License ID 02034883.

4. Respondent BOGI has a Mortgage Loan Originator ("MLO") license endorsement, National Mortgage Licensing System and Registry ("NMLS") No. 1659024.

5. From May 9, 1995 through the present, Respondent CRISTOPHER R. LAPP ("Respondent LAPP") has been licensed by the Department as a real estate broker, License ID 01093529. Respondent LAPP was formerly licensed as a real estate salesperson from approximately November 3, 1990 through May 8, 1995.

6. Respondent LAPP has a MLO license endorsement, NMLS No. 337660.

7. Respondent LAPP has been licensed as the designated broker officer for BOGI since May 9, 2017. Respondent is the President, an Officer and Director for BOGI.

8. Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent LAPP, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with Respondents BOGI and LAPP committed such act or omission while engaged in the furtherance of the business or operations of such Respondents and while acting within the course and scope of their authority and employment.

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STATEMENT OF FACTS

9. The Department received a complaint against Respondents from borrowers T.J. and L.J.[2] ("borrowers"). The complaint concerned two separate mortgage loan transactions secured by real properties located in California. The borrowers' complaint alleged the following:

Loan #1 – Lennox property

10. On or about June 5, 2017, Respondent LAPP offered to perform loan services for the borrowers. Said services included obtaining a refinance loan secured by real property located at: 4530 Lennox Ave., Sherman Oaks, California ("the Lennox property").

11. The borrowers originally intended to use the funds to remodel the Lennox property.

12. Respondent LAPP negotiated a loan for the borrowers from lender, United Shore Financial Services, LLC dba United Wholesale Mortgage ("UWM"). The loan amount was $584,000.

13. Prior to the closing date of the loan, the borrowers decided to sell the Lennox property instead of remodeling it, due in part to an increase in estimated remodel costs. The borrowers informed Respondent LAPP of their desire to purchase a larger home instead of remodeling the Lennox property.

14. The borrowers allege that Respondent LAPP persuaded the borrowers to proceed with the refinance loan even though the borrowers informed LAPP that they would just immediately repay the entire loan if it completed. The borrowers proceeded with the refinance loan based on Respondent's representations and advice, including LAPP's telling the borrowers

[2] Initials are used in place of individuals' full names to protect their privacy. Documents containing individuals' full names will be provided during the discovery phase of this case to Respondent(s) and/or their attorneys, after service of a timely and proper request for discovery on Complainant's counsel.

that they would be subject to penalties and costs if they did not complete the refinance loan.

15. The refinance loan closed on or about July 7, 2017.

16. The Closing Disclosure states that there was no pre-payment penalty feature for the refinance loan. The loan origination fee paid to Respondents was $10,220.00.

17. The borrowers then sold the Lennox property.

<u>Loan #2 – Cottonwood property</u>

18. On or about July 23, 2017, the borrowers offered to purchase a larger residence located at: 26811 Cottonwood Court, Valencia, California ("the Cottonwood property").

19. Respondent LAPP offered to obtain a mortgage loan for the borrowers' purchase of the Cottonwood property.

20. On July 23, 2017, Respondents issued a pre-qualification letter to the borrowers for the Cottonwood property.

21. On or about August 3, 2017, Respondent LAPP submitted a loan application to UWM for the borrowers' purchase of the Cottonwood property.

<u>Early payoff of the Lennox refinance loan</u>

22. Respondents had a Wholesale Broker Agreement with UWM which included an "early payoffs" requirement which stated as follows: "should any Mortgage Loan delivered hereunder be paid off within one hundred eighty (180) days for any reason: Broker shall promptly deliver to UWM the greater of: (a) any rate spread premium paid by UWM to the borrower or Broker; or (b) one (1%) percent of the amount of the Mortgage Loan."

23. The borrowers' UWM refinance loan for the Lennox property was paid off on or about August 24, 2017.

24. UWM notified Respondent LAPP that he had incurred an "early payoff" for the Lennox Ave. property loan transaction and owed a balance of $11,890.24.

25. Respondent stated that he believed the early payoff period was ninety (90) days, not one hundred eighty (180) days per the contract with UWM.

26. Respondent contacted the borrowers and tried to persuade them to delay closing the Cottonwood transaction by 90 days to avoid the early payoff charge owed by Respondents.

27. The borrowers decided to use another mortgage broker and lender for the purchase of the Cottonwood property.

28. Thereafter, Respondents sent an invoice to the borrowers to demand payment for $1,670.24 for a "credit overage from cash out refinance on Lennox Ave."

29. Respondents also sent a separate invoice to the borrowers for $372.60 for the following charges: credit report #1 - $55.70, credit report #2 - $51.70, credit report #3 - $66.20, and a pre-qualification letter - $199.00.

30. Respondents demanded payment for their invoices from the escrow companies handling the escrows for both the refinance of the Lennox property and the borrowers' purchase of the Cottonwood property.

31. On August 30, 2017, UWM emailed Respondent LAPP and the borrowers to inform them that UWM had been made aware of Respondents' attempts to collect payment from the borrowers for costs associated with the early payoff of the refinance loan for the Lennox property and to confirm that Respondents would no longer pursue the borrowers in regards to those expenses as no prepayment penalty or fees could be imposed on the borrowers.

Department's investigation

32. The Department requested a copy of the complete transaction files for the Lennox property and Cottonwood property from Respondents and from UWM. UWM complied with the Department's subpoena duces tecum. Respondents provided some documents to the Department; however, Respondents failed to maintain and provide copies of

some documents that were provided to the Department by either the borrowers or UWM including, but not limited to, the following documents: 1) Respondents' invoices to the borrowers as described above in Paragraphs 28 and 29; 2) an email sent by Respondent LAPP to the borrowers on August 23, 2017; 3) the borrowers' loan application(s) submitted to UWM for the Lennox property; 4) a June 5, 2017 credit report for borrowers; 5) a signed loan estimate dated June 5, 2017; 6) the borrowers' loan application dated August 3, 2017 for the Cottonwood property; 7) a Loan Estimate and Supplement dated August 3, 2017; and 8) a Fair Lending Notice dated August 3, 2017.

33. Respondents met the reporting criteria for Mortgage Loan Business Activity Reports pursuant to Code section 10166.07 and failed to timely submit a Business Activity Report to the Department for 2017.

34. The Respondents' charge to the borrowers for the costs of a pre-qualification letter for the Cottonwood property constitutes an advance fee pursuant to Code section 10085. Respondents failed to submit any advance fee agreement or materials to the Department for prior approval.

35. Respondents claimed, charged, and demanded a total of $173.60 from the borrowers for credit reports. The transaction files showed that the credit reports costs were $66.70.

36. In the Lennox property refinance transaction, UWM offered a lender credit to the borrowers of $1,670.24. Respondents charged the borrowers $1,670.24 and claimed that the cost was a "credit overage."

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FIRST CAUSE OF ACCUSATION

37. There is hereby incorporated in this First Cause of Accusation, all of the allegations contained in Paragraphs 1 through 36, with the same force and effect as if herein fully set forth.

38. Respondents' failure to maintain or provide documents related to the Lennox property and Cottonwood property loan transactions, as described above in Paragraph 32, is a violation of Code sections 10148 and 10240, which constitutes cause to suspend or revoke the real estate licenses and license rights of Respondents BOGI and LAPP pursuant to Code section 10177, subdivisions (d) and/or (g).

SECOND CAUSE OF ACCUSATION

39. There is hereby incorporated in this Second Cause of Accusation, all of the allegations contained in Paragraphs 1 through 38, with the same force and effect as if herein fully set forth.

40. Respondents' failure to timely submit Business Activity Reports, as described above in Paragraph 33, is a violation of Code section 10166.07 which constitutes cause to suspend or revoke the real estate licenses, MLO license endorsements, and license rights of Respondents BOGI and LAPP pursuant to Code section 10177, subdivisions (d) and/or (g), and Code section 10166.051, subdivision (a).

THIRD CAUSE OF ACCUSATION

41. There is hereby incorporated in this Third Cause of Accusation, all of the allegations contained in Paragraphs 1 through 40, with the same force and effect as if herein fully set forth.

42. Respondents charged and demanded an advance fee from borrowers for a pre-approval letter and Respondents failed to submit or obtain preapproval of any advance fee

agreement or materials, as described above in Paragraphs 20, 29, and 34, which is a violation of Code sections 10085 and 10085.5 and constitutes cause to suspend or revoke the real estate licenses, MLO license endorsements, and license rights of Respondents BOGI and LAPP pursuant to Code section 10177, subdivisions (d) and/or (g), and Code section 10166.051, subdivision (a).

FOURTH CAUSE OF ACCUSATION

43. There is hereby incorporated in this Fourth Cause of Accusation, all of the allegations contained in Paragraphs 1 through 42, with the same force and effect as if herein fully set forth.

44. Respondents claimed, charged and demanded excess costs from borrowers, as described above in Paragraphs 22 through 36, in violation of Code section 10176, subdivision (a), and Code section 10240. Respondents' conduct, acts, and/or omissions constitute cause to suspend or revoke the real estate licenses, MLO license endorsements, and license rights of Respondents BOGI and LAPP pursuant to Code section 10176, subdivision (a), Code section 10177, subdivisions (d) and/or (g), Code section 10166.051, subdivisions (a) and (b), and Code section 10166.05, subdivision (c).

Statutory Provisions

45. Code section 10148 provides:

"(a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature. This subdivision shall not be construed to require a licensed real estate broker to retain electronic messages of an ephemeral nature, as described in subdivision (d) of Section 1624 of the Civil Code.

(b) The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.

(d) The commissioner may maintain an action for the recovery of the cost of an audit in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

(e) The bureau may suspend or revoke the license of any real estate broker, real estate salesperson, or corporation licensed as a real estate broker, if the real estate broker, real estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books, papers, writings, documents, or tangible objects that are required to be maintained by this section or that have been sought in connection with an investigation, audit, or examination of a real estate licensee by the commissioner."

46. Code section 10166.07 provides:

(a) A real estate broker who acts pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131, and who makes, arranges, or services one or more loans in a calendar year that are secured by real property containing one to four residential units, shall annually file a business activities report, within 90 days after the end of the broker's fiscal year or within any additional time as the commissioner may allow for filing for good cause. The report shall contain within its scope all of the following information for the fiscal year, relative to the business activities of the broker and those of any other brokers and real estate salespersons acting under that broker's supervision:

(1) Name and license number of the supervising broker and names and license numbers of the real estate brokers and salespersons under that broker's supervision. The report shall include brokers and salespersons who were under the supervising broker's supervision for all or part of the year.

(2) A list of the real estate-related activities in which the supervising broker and the brokers and salespersons under the supervising broker's supervision engaged during the prior year. This listing shall identify all of the following:

(A) Activities relating to mortgages, including arranging, making, or servicing.

(B) Other activities performed under the real estate broker's or salesperson's license.

(C) Activities performed under related licenses, including, but not limited to, a license to engage as a finance lender or a finance broker under the California Financing Law

(Division 9 (commencing with Section 22000) of the Financial Code), or a license to engage as a residential mortgage lender or residential mortgage loan servicer under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code).

(3) A list of the forms of media used by the broker and those under the broker's supervision to advertise to the public, including print, radio, television, the internet, or other means.

(4) For fixed rate loans made, brokered, or serviced, all of the following:

(A) The total number, aggregate principal amount, lowest interest rate, highest interest rate, and a list of the institutional lenders of record. If the loan was funded by any lender other than an institutional lender, the broker shall categorize the loan as privately funded.

(B) The total number and aggregate principal amount of covered loans, as defined in Section 4970 of the Financial Code.

(C) The total number and aggregate principal amount of loans for which Bureau of Real Estate form RE Form 885 or an equivalent is required.

(5) For adjustable rate loans made, brokered, or serviced, all of the following:

(A) The total number, aggregate principal amount, lowest beginning interest rate, highest beginning interest rate, highest margin, and a list of the institutional lenders of record. If the loan was funded by any lender other than an institutional lender, the broker shall categorize the loan as privately funded.

(B) The total number and aggregate principal amount of covered loans, as defined in Section 4970 of the Financial Code.

(C) The total number and aggregate principal amount of loans for which Bureau of Real Estate form RE Form 885 or an equivalent is required.

(6) For all loans made, brokered, or serviced, the total number and aggregate principal amount of loans funded by institutional lenders, and the total number and aggregate principal amount of loans funded by private lenders.

(7) For all loans made, brokered, or serviced, the total number and aggregate principal amount of loans that included a prepayment penalty, the minimum prepayment penalty length, the maximum prepayment penalty length, and the number of loans with prepayment penalties whose length exceeded the length of time before the borrower's loan payment amount could increase.

(8) For all loans brokered, the total compensation received by the broker, including yield spread premiums, commissions, and rebates, but excluding compensation used to pay fees for third-party services on behalf of the borrower.

(9) For all mortgage loans made or brokered, the total number of loans for which a mortgage loan disclosure statement was provided in a language other than English, and the number of forms provided per language other than English.

(10) For all mortgage loans serviced, the total amount of funds advanced to be applied toward a payment to protect the security of the note being serviced.

(11) For purposes of this section, an institutional lender has the meaning specified in paragraph (1) of subdivision (c) of Section 10232.

(b) A broker subject to this section and Section 10232.2 may file consolidated reports that include all of the information required under this section and Section 10232.2. Those consolidated reports shall clearly indicate that they are intended to satisfy the requirements of both sections.

(c) If a broker subject to this section fails to timely file the report required under this section, the commissioner may cause an examination and report to be made and may charge the broker one and one-half times the cost of making the examination and report. In determining the hourly cost incurred by the commissioner for conducting an examination and preparing the report, the commissioner may use the estimated average hourly cost for all department audit staff performing audits of real estate brokers. If a broker fails to pay the commissioner's cost within 60 days of the mailing of a notice of billing, the commissioner may suspend the broker's license or deny renewal of that license. The suspension or denial shall remain in effect until the billed amount is paid or the broker's right to renew a license has expired. The commissioner may maintain an action for the recovery of the billed amount in any court of competent jurisdiction.

(d) The report described in this section is exempted from any requirement of public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government Code.

(e) The commissioner may waive the requirement to submit certain information described in paragraphs (1) to (10), inclusive, of subdivision (a) if the commissioner determines that this information is duplicative of information required by the Nationwide Mortgage Licensing System and Registry, pursuant to Section 10166.08.

47. Code section 10085 provides:

The commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used. Should the commissioner determine that any such matter, when used alone or with any other matter, would tend to mislead he or she may, within 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published. Any person or entity using, disseminating, or publishing any matter which the commissioner has ordered, pursuant to this section, not to be used, published, or disseminated shall be guilty of a misdemeanor punishable by a fine not exceeding two thousand five hundred dollars ($2,500) or by imprisonment in the county jail not exceeding six months, or both, for each such use, dissemination, or publication.

The commissioner may determine the form of the advance fee agreements, and all material used in soliciting prospective owners and sellers shall be used in the form and manner which he or she determines is necessary to carry out the purposes and intent of this part.

Any violation of any of the provisions of this part or of the rules, regulations, orders or requirements of the commissioner thereunder shall constitute grounds for disciplinary action against a licensee, or for proceedings under Section 10081 of this code, or both. These sanctions are in addition to the criminal proceedings hereinbefore provided.

48. Code section 10085.5 provides:

(a) It shall be unlawful for any person to claim, demand, charge, receive, collect, or 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.

(b) This section does not prohibit the acceptance or receipt of an advance fee by any bank, savings association, credit union, industrial loan company, or person acting within the scope of a license issued to that person pursuant to Division 9 (commencing with Section 22000) of the Financial Code, in connection with loans to be secured directly or collaterally by a lien on real property. This section does not apply to charges made by title insurers and controlled escrow companies pursuant to Chapter 1 (commencing with Section 12340) of Part 6 of Division 2 of the Insurance Code.

(c) A violation of this section is a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail for a term not to exceed six months, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding fifty thousand dollars ($50,000).

49. Code section 10240 provides:

(a) Every real estate broker, upon acting within the meaning of subdivision (d) of Section 10131, who negotiates a loan to be secured directly or collaterally by a lien on real property shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of the statement as signed by the borrower.

No real estate licensee shall permit the statement to be signed by a borrower if any information required by Section 10241 is omitted.

(b) For the purposes of applying the provisions of this article, a real estate broker is acting within the meaning of subdivision (d) of Section 10131 if he or she solicits borrowers, or causes borrowers to be solicited, through express or implied representations that the broker will act as an agent in arranging a loan, but in fact makes the loan to the borrower from funds belonging to the broker.

(c) In a federally regulated residential mortgage loan transaction in which the principal loan amount exceeds the principal loan levels set forth in Section 10245, a real estate broker satisfies the requirements of this section if the borrower receives (1) a "good faith estimate" that satisfies the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A. 2601 et seq.), and that sets forth the broker's real estate license number and a clear and conspicuous statement on the face of the document stating that the "good faith estimate" does not constitute a loan commitment, (2) all applicable disclosures required by the Truth in Lending Act (15 U.S.C.A. 1601 et seq.), and (3) if the loan contains a balloon payment provision, the disclosure described in subdivision (h) of Section 10241, the balloon disclosure required for that loan by Fannie Mae or Freddie Mac, or an alternative disclosure determined by the commissioner to satisfy the requirements of the Truth in Lending Act.

Prior to becoming obligated on the loan the borrower shall acknowledge, in writing, receipt of the "good faith estimate" and all applicable disclosures required by the Truth in Lending Act. The real estate broker shall retain on file for a period of three years a true and correct copy of the signed acknowledgment and a true and correct copy of the "good faith estimate" and all applicable disclosures required by the Truth in Lending Act as acknowledged by the borrower.

50. Code section 10176 provides, in pertinent part, as follows:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

51. Code section 10177 provides, in pertinent part, as follows:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

Investigation and Enforcement Costs

52. Code section 10106 provides, in pertinent 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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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 all licenses and/or license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law.

Dated at Sacramento, California this 25th day of February, 2020.

CHIKA SUNQUIST
Supervising Special Investigator

cc: Black Oak Group, Inc.
Cristopher R. Lapp
Chika Sunquist
Sacto.