

FILED

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DEPT. OF REAL ESTATE

By *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation Against	)	No. H-42002 LA
	)	
ACTION FUNDING, INC.; and	)	
ARI NATHAN WALDSTEIN, individually	)	<u>ACCUSATION</u>
and as Designated Officer of Action Funding Inc.	)	
	)	
Respondents.	)	
	)	

The Complainant, Ruth Corral, a Supervising Special Investigator of the State of California, for cause of Accusation against ACTION FUNDING, INC. ("AFI") and ARI NATHAN WALDSTEIN ("WALDSTEIN"), individually and as designated officer of Action Funding, Inc. (sometimes referred to as "Respondents"), alleges as follows:

1.

The Complainant, Ruth Corral, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

2.

All references to the "Code" are to the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, of the California Code of Regulations.

ACCUSATION

1 LICENSE HISTORY

2 (ACTION FUNDING, INC.)

3 3.

4 a. Respondent AFI is presently licensed and/or has license rights under the Code  
5 as a corporate real estate broker with Department of Real Estate ("Department") license ID  
6 01912380.

7 b. On or about May 16, 2012, the Department issued AFI a broker license, which  
8 is scheduled to expire on May 15, 2024, unless renewed.

9 d. According to the Department's records to date, AFI's main office address is  
10 23875 Ventura Boulevard, Unit 202-B, Calabasas, California.

11 e. AFI's designated officer is Respondent ARI NATHAN WALDSTEIN  
12 ("WALDSTEIN").

13 (ARI NATHAN WALDSTEIN)

14 4.

15 a. Respondent WALDSTEIN is presently licensed and/or has license rights  
16 under the Code as a real estate broker with Department license ID 01243910.

17 b. On or about January 12, 2012, the Department issued WALDSTEIN a broker  
18 license, which is scheduled to expire on January 11, 2024, unless renewed.

19 c. WALDSTEIN maintains the fictitious business name "Action Funding" with  
20 the Department.

21 d. WALDSTEIN is the designated officer for Respondent AFI. WALDSTEIN's  
22 officer designation is scheduled to expire on May 15, 2024, unless renewed. As designated  
23 officer, WALDSTEIN is responsible for the supervision of the activities conducted on behalf of  
24 AFI by its officers, agents, real estate licensees, and employees pursuant to Section 10159.2 of  
25 the Code.

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27 ///

1 CAUSE OF ACCUSATION

2 5.

3 At all times relevant herein, Respondent AFI engaged in mortgage loan  
4 brokering within the meaning of Section 10131(d) of the Code, including the solicitation of  
5 borrowers or lenders for and/or negotiating loans, collecting payments and/or performing  
6 services for borrowers or lenders in connection with loans secured by liens on real property or  
7 on a business opportunity for compensation or in expectation of compensation.

8 (AUDIT NO. LA190131)

9 6.

10 On or about November 25, 2020, the Department completed an audit  
11 examination of the books and records of Respondent AFI pertaining to the real estate activities  
12 described in Paragraph 5 above. The audit examination covered the period of time from January  
13 1, 2019, through May 29, 2020 ("audit period"). The primary purpose of the examination was  
14 to determine AFI's compliance with the Real Estate Law and the Commissioner's Regulations.  
15 The audit examination revealed violations of the Code and the Regulations as set forth in the  
16 following paragraphs, and more fully discussed in Audit No. LA190131 and the exhibits and  
17 work papers attached to said audit report.

18 7.

19 According to WALDSTEIN, AFI's Compliance Consultant Pamela Strickland,  
20 and the limited records provided by Respondents, during the audit period, AFI arranged and  
21 negotiated business purpose loans using private investors. AFI also provided loan servicing to  
22 its own clients. During the last twelve months of the audit period, AFI arranged and/or  
23 negotiated approximately thirty-three (33) private investor loans and serviced approximately  
24 twenty (20) loans.

25 8.

26 At all times mentioned herein, and in connection with the mortgage loan  
27 activities described in Paragraph 5 above, AFI accepted or received funds, including funds in

ACCUSATION

1 trust ("trust funds") from or on behalf of actual or prospective parties to transactions handled by  
2 AFI, and thereafter made deposits and/or disbursements of such funds. AFI maintained one (1)  
3 bank account ("TA 1") to handle trust funds in connection with its mortgage loan broker  
4 activities during the audit period. From time-to-time during the audit period, said trust funds  
5 were deposited and/or maintained in Pacific Premier Bank, Account Number xxxxx1424.

6 Violations

7 9.

8 The audit examination revealed violations of the Code and the Regulations, as  
9 set forth in the following paragraphs, and more fully discussed in Audit No. LA190131 and the  
10 exhibits and work papers attached to the audit report:

11 (a) **Trust Fund Handling For Multiple Beneficiaries (Code section 10145**  
12 **and Regulations section 2832.1)**. As of May 29, 2020, TA 1 had a minimum shortage of  
13 <\$4,973.01> maintained for AFI's mortgage loan and servicing activities. The cause of the  
14 minimum shortage of <\$4,973.01> was unidentified as of May 29, 2020. AFI did not provide  
15 any evidence that the owners of the trust funds had given their written consent to allow AFI to  
16 reduce the balance of funds in TA 1 to an amount less than the existing aggregate trust fund  
17 liabilities.

18 (b) **Trust Fund Records to be Maintained (Code section 10145 and**  
19 **Regulations section 2831)**. During the audit period, AFI failed to maintain complete and  
20 accurate records of all trust fund receipts and disbursements ("control record") for TA 1 in  
21 connection with AFI's mortgage loan and servicing activities. AFI failed to maintain an  
22 accurate running daily balance for the control record.

23 (c) **Separate Record for Each Beneficiary or Transaction (Code section**  
24 **10145 and Regulations section 2831.1)**. During the audit period, AFI failed to maintain  
25 complete and accurate separate records for each beneficiary or transaction for TA 1. AFI's  
26 "Client Trial Balance Trust Account Report" ("separate records") provided for the audit did not  
27 have balances after posting the transaction on any date. Some of the separate records showed

ACCUSATION

1 deposits and/or disbursements that were not deposited into TA 1 or did not reflect withdrawals  
2 from TA 1's bank statements. In a few instances, TA 1's separate record had inaccurate  
3 recording dates of deposit.

4 **(d) Trust Account Reconciliation (Code section 10145 and Regulations**  
5 **section 2831.2).** During the audit period, AFI failed to maintain a complete and accurate  
6 monthly reconciliation comparing the balance of all separate records to the balance of the  
7 records of all trust funds received and disbursed for TA 1.

8 **(e) Handling of Trust Funds – Commingling (Code sections 10145 and**  
9 **10176(e) and Regulations section 2835).** As of May 29, 2020, AFI maintained at least  
10 \$1,265.13 of its own funds in TA for over twenty-five (25) business days. AFI's funds  
11 commingled with trust funds in TA 1 in excess of the \$200 allowable broker funds in a trust  
12 account.

13 **(f) Filing Fiscal Year Reports-Accounting Criteria/Report of Annual Trust**  
14 **Fund Accounts Review/Delayed Filing of Annual Trust Account Report (Code section**  
15 **10232.2 and Regulations sections 2846.5, 2846.7, and 2846(j).** AFI failed to timely file the  
16 Annual Trust Account Report ("TAR") of a Review of Trust Fund Financial Statements for the  
17 fiscal year ending December 31, 2019, which is required to be filed within ninety (90) days  
18 after the end of AFI's fiscal year, which was no later than May 31, 2020. AFI submitted its  
19 TAR on or about August 21, 2020.

20 **(g) Trust Account Report – Multi-Lender Quarterly Report (Code section**  
21 **10238(k)(3).** AFI failed to timely submit the required Trust Account Report/Multi-lender  
22 Transaction (RE 852) Report within thirty (30) days after the end of AFI's first quarter ending  
23 March 31, 2020. AFI submitted RE 852 on or about June 11, 2020.

24 **(h) Trust Fund Status Reports – Contents/Quarterly Trust Fund Status**  
25 **Report (Code section 10232.25 and Regulations section 2846.8.** AFI failed to timely submit  
26 the required Quarterly Trust Fund Status Report within thirty (30) days after the end of AFI's  
27

1 fiscal year for the quarters ending March 31, 2019, and June 30, 2020. The reports were due no  
2 later than April 30, 2020. AFI submitted its First Quarter Threshold on or about June 11, 2020.

3 **(i) Responsibility of Corporate Officer in Charge/Broker Supervision (Code**  
4 **sections 10159.2 and 10177(h) and Regulations section 2725).** Based on the violations set  
5 forth in above, WALDSTEIN did not exercise adequate supervision and control over AFI's  
6 mortgage loan and servicing activities conducted by its licensees and employees to ensure  
7 compliance with the Real Estate Laws and Regulations. WALDSTEIN failed to establish and/or  
8 implement policies, rules, procedures and system to review, oversee, inspect and manage  
9 transactions requiring a real estate license and the handling of trust funds.

10 10.

11 Each of the foregoing violations in Paragraphs 9(a)-(i) above constitute cause for  
12 the suspension or revocation of the real estate license and/or license rights of Respondents AFI  
13 and WALDSTEIN under the provisions of Sections 10177(d), and/or 10177(g).

14 **COSTS**

15 **(AUDIT COSTS)**

16 11.

17 Section 10148(b) of the Code, provides, in pertinent part, that the Real Estate  
18 Commissioner shall charge a real estate broker for the costs of any audit if the Commissioner  
19 has found in a final decision, following a disciplinary hearing, that the broker has violated  
20 Section 10145 of the Code or a regulation or rule of the Commissioner interpreting said Code  
21 section.

22 **(INVESTIGATION AND ENFORCEMENT COSTS)**

23 12.

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

ACCUSATION

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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 the licenses and/or license rights of Respondents ACTION FUNDING, INC. and ARI NATHAN WALDSTEIN, individually and as designated officer of Action Funding, Inc., under the Real Estate Law, for the costs of investigation, audit, and enforcement as permitted by law, and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Sacramento, California this 7<sup>th</sup> day of September, 2021.

  
\_\_\_\_\_  
Ruth Corral  
Supervising Special Investigator

cc: ACTION FUNDING, INC.  
ARI NATHAN WALDSTEIN  
Ruth Corral  
Sacto.  
Audits – Anna Hartoonian