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FILED
OCT 21 2021
DEPT. OF REAL ESTATE
By *[Signature]*

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H-42135 LA
13)
14 SILVER BAY FUNDING CORP., and) ACCUSATION
15 JOHN RUSSELL HARRIS, individually and as)
16 designated officer of Silver Bay Funding Corp.,)
17 Respondents.)

18 The Complainant, Maria Suarez, a Supervising Special Investigator of the State
19 of California, for cause of Accusation against SILVER BAY FUNDING CORP. and JOHN
20 RUSSELL HARRIS (collectively "Respondents") alleges as follows:

21 1.

22 The Complainant, Maria Suarez, a Supervising Special Investigator of the State
23 of California, makes this Accusation in her official capacity.

24 2.

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

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1 LICENSE HISTORY

2 3.

3 (SILVER BAY FUNDING CORP.)

4 a. Respondent SILVER BAY FUNDING CORP. ("SBFC") is presently licensed
5 and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California
6 Business and Professions Code, as a real estate corporation ("REC"), Department license ID
7 02012371.

8 b. The Department originally issued SBFC's REC license on or about July 13,
9 2016.

10 c. SBFC's REC license is scheduled to expire on July 12, 2024, unless renewed.

11 d. According to the Department's records, SBFC maintains, among others, the
12 authorized fictitious business name of "Silver Bay Escrow, A Non Independent Broker
13 Escrow".

14 e. According to the Department's records to date, SBFC's main office address is
15 5857 Pine Avenue, Ste B, Chino Hills, CA 91709.

16 f. According to the Department's records to date, SBFC employs 2 salespersons
17 under its real estate license.

18 g. On or about January 19, 2017, the Department issued Respondent SBFC a
19 Mortgage Loan Originator ("MLO") license endorsement, National Mortgage Licensing System
20 and Registry ("NMLS") No. 1571506. Respondent SBFC's MLO license endorsement is
21 scheduled to expire in or about 2021.

22 4.

23 (JOHN RUSSELL HARRIS)

24 a. Respondent JOHN RUSSELL HARRIS ("HARRIS") is presently licensed
25 and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California
26 Business and Professions Code, as a real estate broker ("REB"), Department license ID
27 00950604.

1 ///
2 b. The Department originally issued HARRIS' REB license on or about March
3 18, 1991. HARRIS' REB license is scheduled to expire on September 6, 2023, unless renewed

4 c. On or about January 19, 2017, the Department issued Respondent a MLO
5 license endorsement, NMLS No. 1063040. Respondent HARRIS' MLO license endorsement is
6 scheduled to expire in or about 2021.

7 d. HARRIS is the designated officer for SBFC.

8 LICENSED ACTIVITIES

9 5.

10 At all times mentioned herein, Respondents engaged in the performance of
11 activities requiring a real estate license pursuant to Code Section 10130.

12 FACTS DISCOVERED BY THE DEPARTMENT

13 6.

14 On or about August 17, 2018, a California Residential Purchase Agreement and
15 Joint Escrow Instructions (C.A.R. Form RPA-CA, Revised 12/15) ("RPA") was executed for
16 the sale of a property located at 2440 Holly Drive in Los Angeles California ("2440 Holly
17 Property"). The purchase price for 2440 Holly Property was to be three million dollars
18 (\$3,000,000.00). The financing portion was to be two million and five hundred and fifty
19 thousand dollars (\$2,550,000.00) and the down payment was to be four hundred and fifty
20 thousand dollars (\$450,000.00).

21 7.

22 On the same date, a RPA was executed for the sale of a property located at 2444
23 Holly Drive in Los Angeles California ("2444 Holly Property"). The purchase price for the
24 2444 Holly Property was to be three million and one hundred thousand dollars (\$3,100,000.00).

25 8.

26 On or about October 12, 2018, Northern California Mortgage Fund XIII, LLC
27 ("NorCal") was contacted by Leonid Kamenetsky ("Kamenetsky") for financing on the

1 purchase of the 2440 Holly Property and 2444 Holly Property. The application submitted by
2 Kamenetsky stated that the 2440 Holly Property and 2444 Holly Property would be vested in
3 2440 Holly Dr., LLC and 2444 Holly Dr., LLC respectively.

4 9.

5 Thereafter, NorCal agreed to finance the purchase of the 2440 Holly Property for
6 one million nine hundred and fifty thousand dollars (\$1,950,000.00) and the 2444 Holly
7 Property for two million and fifteen thousand dollars (\$2,015,000.00).

8 10.

9 On or about October 26, 2018, SBFC sent NorCal a Final Consolidated Closing
10 Statement for the 2440 Holly Property ("2440 Holly Lender Statement"), which showed that
11 sales price was three million dollars (\$3,000,000.00). The 2440 Holly Lender Statement also
12 showed that there were deposits made on September 28, 2018 in the amount of sixty thousand
13 dollars (\$60,000.00) and on October 23, 2018 in the amount of one million sixty nine thousand
14 and nineteen dollars and four cents (\$1,069,019.04).

15 11.

16 On or about October 26, 2018, SBFC sent NorCal a Final Consolidated Closing
17 Statement for the 2444 Holly Property ("2444 Holly Lender Statement"), which showed that
18 sales price was three million and one hundred thousand dollars (\$3,100,000.00). The 2444
19 Holly Lender Statement also showed that there were deposits made on September 28, 2018 in
20 the amount of sixty thousand dollars (\$60,000.00) and on October 23, 2018 in the amount of
21 one million one hundred and four thousand and eight hundred and four dollars and twenty three
22 cents (\$1,104,804.23).

23 12.

24 Thereafter, buyers defaulted and NorCal foreclosed on the 2440 Holly Property
25 and 2444 Holly Property. During the litigation, it was discovered that SBFC submitted different
26 closing statements to NorCal as compared to the principals of the transactions.

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2 13.

3 On or about October 26, 2018, SBFC submitted a Final Seller Closing Statement
4 for the sale of the 2440 Holly Property to the seller ("2440 Holly Seller Statement"). The 2440
5 Holly Seller Statement differed from the 2440 Holly Lender Statement as follows:

- 6 a. The 2440 Holly Seller Statement included a seller equity gift of one million
7 dollars (\$1,000,000.00), which was not on 2440 Holly Lender Statement;
- 8 b. The 2440 Holly Seller Statement did not include the October 23, 2018
9 deposit of one million sixty nine thousand and nineteen dollars and four
10 cents (\$1,069,019.04), which was on the 2440 Holly Lender Statement;
- 11 c. The 2440 Holly Seller Statement included an early release of deposit in the
12 amount of sixty thousand dollars (\$60,000.00), which was not included in
13 the 2440 Holly Lender Statement;
- 14 d. The 2440 Holly Seller Statement included a fifty dollars (\$50) notary fee,
15 which was one hundred and fifty dollars (\$150) on the 2440 Holly Lender
16 Statement; and
- 17 e. The 2440 Holly Seller Statement has five hundred seventy four thousand and
18 two hundred and thirty six dollars and sixty nine cents (\$574,236.69) due to
19 seller, but the 2440 Holly Lender Statement has one million five hundred and
20 fourteen and one hundred and thirty six dollars and sixty nine cents
21 (\$1,514,136.69) due to seller – the difference between the two statements
22 \$939,900.00 ($\$1,514,136.69 - \$574,236.69$) is the reconciled by the one
23 million dollar seller equity gift minus the sixty thousand dollar early release
24 of deposit and one hundred dollar notary fee discrepancy ($\$1,000,000.00 -$
25 $\$60,000.00 - \$100 = \$939,900.00$).

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On or about October 26, 2018, SBFC submitted a Final Seller Closing Statement for the sale of the 2444 Holly Property to the seller ("2444 Holly Seller Statement"). The 2444 Holly Seller Statement differed from the 2444 Holly Lender Statement as follows:

- a. The 2444 Holly Seller Statement included a seller equity gift of one million one hundred thousand dollars (\$1,100,000.00), which was not on 2444 Holly Lender Statement;
- b. The 2444 Holly Seller Statement did not include the October 23, 2018 deposit of one million one hundred and four thousand and eight hundred and four dollars and twenty three cents (\$1,104,804.23), which was on the 2444 Holly Lender Statement;
- c. The 2444 Holly Seller Statement included an early release of deposit in the amount of sixty thousand dollars (\$60,000.00), which was not included in the 2444 Holly Lender Statement; and
- d. The 2444 Holly Seller Statement has four hundred twenty seven thousand three hundred and forty three dollars and thirty six cents (\$427,343.36) due to seller, but the 2444 Holly Lender Statement has one million four hundred sixty seven thousand three hundred and forty three dollars and thirty six cents (\$1,467,343.36) due to seller – the difference between the two statements \$1,040,000.00 ($\$1,467,343.36 - \$427,343.36$) is the reconciled by the one million and one hundred thousand dollars seller equity gift minus the sixty thousand dollar early release of deposit ($\$1,100,000.00 - \$60,000.00 = \$1,040,000.00$).

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1 APPLICABLE SECTIONS OF THE REAL ESTATE LAW

2 Financial Code Section 17006

3 15.

4 Financial Code Section 17006(a)(4) provides that "(a) This division does not
5 apply to:

6 . . .

7 (4) Any broker licensed by the Real Estate Commissioner while performing acts
8 in the course of or incidental to a real estate transaction in which the broker is an
9 agent or a party to the transaction and in which the broker is performing an act
10 for which a real estate license is required."

11 Code Section 10159.2

12 16.

13 Code Section 10159.2(a) provides, in pertinent part, that "The officer
14 designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the
15 supervision and control of the activities conducted on behalf of the corporation by its officers
16 and employees as necessary to secure full compliance with the provisions of this division,
17 including the supervision of salespersons licensed to the corporation in the performance of acts
18 for which a real estate license is required."

19 Code Section 10176

20 17.

21 Code Section 10176 provides, in pertinent part, that "The commissioner may,
22 upon his or her own motion, and shall, upon the verified complaint in writing of any person,
23 investigate the actions of any person engaged in the business or acting in the capacity of a real
24 estate licensee within this state, and he or she may temporarily suspend or permanently revoke a
25 real estate license at any time where the licensee, while a real estate licensee, in performing or
26 attempting to perform any of the acts within the scope of this chapter has been guilty of any of
27 the following:

1 (a) Making any substantial misrepresentation.

2 ...

3 (e) Commingling with his or her own money or property the money or other
4 property of others which is received and held by him or her.

5 ...

6 (i) Any other conduct, whether of the same or of a different character than
7 specified in this section, which constitutes fraud or dishonest dealing. . .”

8 Regulations Section 2725

9 18.

10 Regulations Section 2725 provides, in pertinent part, that “A broker shall
11 exercise reasonable supervision over the activities of his or her salespersons. Reasonable
12 supervision includes, as appropriate, the establishment of policies, rules, procedures and
13 systems to review, oversee, inspect and manage . . .”

14 Regulations Section 2950

15 19.

16 Regulations Section 2750 provides, in pertinent part, that “The following acts in
17 the handling of an escrow by a real estate broker exempted from the provisions of the Escrow
18 Law (by Section 17006(a)(4) of the Financial Code) are prohibited and may be considered
19 grounds for disciplinary action:

20 ...

21 (c) Failing to deliver at the time of execution of any escrow instruction or
22 amended or supplemental escrow instruction a copy thereof to all persons
23 executing the same.

24 (d) Failing to maintain books, records and accounts in accordance with accepted
25 principles of accounting and good business practice.

26 ...

27 (h) As a broker licensee, failed to exercise reasonable supervision over the

1 activities of that licensee's salespersons, or, as the officer designated by a
2 corporate broker licensee, failed to exercise reasonable supervision and control
3 of the activities of the corporation for which a real estate license is required.

4 (i) Failing upon closing of an escrow transaction to render to each principal in
5 the transaction a written statement of all receipts and disbursements together
6 with the name of the person to whom any such disbursement is made. . .”

7 Grounds for Disciplinary Action – Code Section 10177

8 20.

9 Pursuant to Code Section 10177, “The commissioner may suspend or revoke the
10 license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny
11 the issuance of a license to an applicant, who has done any of the following:

12 . . .

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

17 . . .

18 (g) Demonstrated negligence or incompetence in performing an act for which the
19 officer, director, or person is required to hold a license.

20 (h) As a broker licensee, failed to exercise reasonable supervision over the
21 activities of that licensee's salespersons, or, as the officer designated by a
22 corporate broker licensee, failed to exercise reasonable supervision and control
23 of the activities of the corporation for which a real estate license is required.

24 . . .

25 (j) Engaged in any other conduct, whether of the same or of a different character
26 than specified in this section, that constitutes fraud or dishonest dealing. . . .”
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1 Division 4 of the California Business and Professions Code) of SILVER BAY FUNDING
2 CORP. and JOHN RUSSELL HARRIS, for the cost of investigation and enforcement as
3 permitted by law, and for such other and further relief as may be proper under applicable
4 provisions of law.

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6 Dated at Los Angeles, California this 21st day of October, 2021.
7
8

9 *Maria Suarez*
10 _____
11 Maria Suarez
12 Supervising Special Investigator

11 cc: SILVER BAY FUNDING CORP.,
12 JOHN RUSSELL HARRIS
13 Maria Suarez
14 Sacto.
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