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**FILED**  
**MAR 10 2022**  
**DEPT. OF REAL ESTATE**  
By 

9 BEFORE THE DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of ) No. H-42157 LA  
13 )  
14 ARIXA CAPITAL CORPORATION, and ) ACCUSATION  
15 JAN BRADLEY BRZESKI, individually and as )  
16 designated officer of Arixa Capital Corporation, )  
17 Respondents. )

18 The Complainant, Ruth Corral, a Supervising Special Investigator of the State of  
19 California, for cause of Accusation against ARIXA CAPITAL CORPORATION and JAN  
20 BRADLEY BRZESKI (collectively "Respondents") alleges as follows:

21 1.

22 The Complainant, Ruth Corral, a Supervising Special Investigator of the State of  
23 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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ACCUSATION

1 LICENSE HISTORY

2 3.

3 (ARIXA CAPITAL CORPORATION)

4 (a) Respondent ARIXA CAPITAL CORPORATION ("ACC") is presently  
5 licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the  
6 California Business and Professions Code, as a real estate corporation ("REC"), Department  
7 license ID 02001940.

8 (b) The Department originally issued ACC's corporate license on March 10,  
9 2016. ACC's license is scheduled to expire on June 2, 2024, unless renewed.

10 (c) According to the Department's records to date, ACC has five (5) broker  
11 associates associated with its license. Real estate broker ("REB") Gregory Scott Hebner (license  
12 ID 01396057) ("Hebner") became a broker associate with ACC effective November 18, 2019.

13 (d) According to the Department's records to date, ACC does not have an  
14 mortgage loan originator ("MLO") license endorsement under the Nationwide Mortgage  
15 Licensing System ("NMLS") with the Department or any other agencies.

16 4.

17 (JAN BRADLEY BRZESKI)

18 (a) Respondent JAN BRADLEY BRZESKI ("BRZESKI") is presently licensed  
19 and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California  
20 Business and Professions Code, as a REB, Department license ID 01408081.

21 (b) The Department originally issued BRZESKI's REB license on or about  
22 December 16, 2003.

23 (c) BRZESKI's license is scheduled to expire on December 15, 2023, unless  
24 renewed.

25 (d) According to the Department's records, BRZESKI has been the designated  
26 officer of ACC since March 10, 2016 and is currently ACC's designated officer.

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1 (e) According to the Department's records to date, BRZESKI does not have an  
2 MLO license endorsement under the NMLS with the Department or any other agencies.

3 LICENSED ACTIVITIES

4 5.

5 At all times relevant herein Respondents were engaged in the business of, acted  
6 in the capacity of, advertised or assumed to act as a real estate corporation, within the meaning  
7 of Section 10131(d) of the Code. Respondents' activities included, but not limited to, soliciting  
8 borrowers or lenders for or negotiating loans or collecting payments or performing services for  
9 borrowers or lenders or note owners in connection with loans secured directly or collaterally by  
10 liens on real property or on a business opportunity.

11 (AUDIT LA190044)

12 6.

13 On or about June 15, 2020, the Department completed an audit examination of  
14 the books and records of ACC pertaining to the mortgage loan activities described in Paragraph  
15 5 above. The audit examination covered the period of time from January 1, 2018 through  
16 October 31, 2019 ("audit period"). The primary purpose of the examination was to determine  
17 whether Respondents conducted real estate activities complied with the Real Estate Law. The  
18 audit examination revealed violations of the Code and the Regulations as set forth in the  
19 following paragraphs, and more fully discussed in Audit No. LA190044, and the exhibits and  
20 work papers attached to said audit report.

21 7.

22 At all times mentioned herein, and in connection with the mortgage loan  
23 activities described in Paragraph 5, above, Respondents accepted or received funds, including  
24 funds in trust ("trust funds") from or on behalf of actual or prospective parties to transactions  
25 handled by Respondents and thereafter made deposits and/or disbursements of such funds.  
26 According to the documents provided, Respondents maintained two (2) trust accounts for  
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1 handling of the receipts and disbursements of funds during the audit period in connection with  
2 the property management activities. The bank accounts are as follows:

3 Trust Account 1 ("TA 1")

4 Bank: Torrey Pines Bank/Western Alliance Bank  
5 Account Name: Arixa Capital Corporation as Trustee for Loan Servicing Trust Account  
6 Account Number: xxxxxxxx9112  
7 Signatories: Jan B Brzeski and Greg Hebner  
8 Signatures Required: One  
9 Purpose: TA 1 was maintained to handle trust funds in the mortgage loan and  
10 servicing activities for multiple beneficiaries.

11 Bank Account 1 ("BA 1")

12 Bank: Mechanics Bank  
13 Account Name: Unknown  
14 Account Number: xxxxxxxx4589  
15 Signatories: Unknown  
16 Signatures Required: One  
17 Purpose: BA 1 was maintained to handle trust funds in the mortgage loan activities  
18 for multiple beneficiaries. On March 26, 2018, BA 1 was closed and trust funds of \$220,771.37  
19 was transferred to TA 1. Respondents failed to provide the signature card for BA 1 for  
20 examination during the audit.

21 Violations of the Real Estate Law

22 8.

23 The audit examination revealed violations of the Code and the Regulations, as  
24 set forth in the following paragraphs, and more fully discussed in Audit Report No. LA190044,  
25 and the exhibits and work papers attached to the audit report:

26 (a) Trust Fund Handling For Multiple Beneficiaries (Code section 10145  
27 and Regulations sections 2832.1). Based on an examination of TA 1's records, there was a

1 combined minimum trust fund shortage of \$13,249.80 as of October 31, 2019 in violation of  
2 Code section 10145 and Regulations sections 2832.1. There is no evidence that Respondents  
3 were given written consent from the owners of the trust funds to allow Respondents to reduce  
4 the balance of the funds in TA 1 to an amount less than the aggregate trust fund liabilities to all  
5 owners of the trust funds.

6 (b) **Trust Fund Records to be Maintained (Code section 10145 and**  
7 **Regulations sections 2831)**. Respondents failed to maintain complete and accurate columnar  
8 record for all trust funds received and disbursed (control record) for TA 1, which was used for  
9 Respondent's mortgage loan and servicing activities during the audit period in violation of  
10 Code section 10145 and Regulations sections 2831.

11 (c) **Separate Records for Each Beneficiary (Code section 10145 and**  
12 **Regulations sections 2831.1)**. Respondents failed to maintain complete and accurate separate  
13 records for each beneficiary or transaction of all trust fund receipts and disbursements for TA 1  
14 in connection with Respondents' mortgage loan and servicing activities during the audit period  
15 in violation of Code section 10145 and Regulations section 2831.1. The separate records,  
16 recreated by Respondents for the audit, were missing information to identify the transaction  
17 and/or parties. All incoming and outgoing trust funds were recorded as journal entries. Some  
18 disbursements did not have check numbers identifying the disbursements.

19 (d) **Trust Account Reconciliation (Code section 10145 and Regulations**  
20 **section 2831.2)**. Based on an examination of TA 1 records, Respondents failed to accurately  
21 perform monthly reconciliation for TA 1 during the audit period. Respondents' trust account  
22 reconciliation records did not have the account number or name of beneficiaries or transactions,  
23 and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

24 (e) **Handling of Trust Funds/Commingling (Code section 10145 and**  
25 **10176(e) and Regulations section 2835)**. Based on an examination of TA 1 records and  
26 according to ACC's controller Dung Phan (non-licensee), ACC maintained its fees of  
27 \$53,478.67 in TA 1 for over 25 days, as of October 31, 2019, in violation of Code section

1 10145 and 10176(e) and Regulations section 2835. Said fees have been in TA 1 since January  
2 5, 2018.

3 (f) **Filing Fiscal Year Reports – Accounting Criteria/Report of Annual**  
4 **Trust Fund Accounts Review/Delayed Filing of Annual Trust Account Report (Code**  
5 **section 10232.2 and Regulations sections 2846.5 and 2846.7).** ACC was delinquent (within  
6 30 days) in filing the Annual Trust Account Report (“TAR”) for the fiscal year ending  
7 December 31, 2018, which should have been filed no later than May 31, 2019. According to the  
8 Department’s records, ACC’s TAR was not received by the Department until January 9, 2020,  
9 in violation of Code section 10232.2 and Regulations sections 2846.5 and 2846.7.

10 (g) **Trust Fund Status Reports – Contents/Quarterly Trust Fund Status**  
11 **Reports (Code section 10232.25 and Regulations section 2846.8).** ACC failed to timely  
12 (within 30 days) submit the required Quarterly Trust Fund Status Report for the quarters ending  
13 March 31, 2019, June 30, 2019, and September 30, 2019 in violation of Code section 10232.25  
14 and Regulations section 2846.8. The March 31, 2019 report was due no later than April 30,  
15 2019, but was received by the Department on June 11, 2019. The June 30, 2019 report was due  
16 no later than July 31, 2019, but was received by the Department on November 4, 2019. The  
17 September 30, 2019 report was due no later than October 31, 2019, but was received by the  
18 Department on November 13, 2019.

19 (h) **Disclosure Statement Delivery – Exception – Funds Handling/Disclosure**  
20 **Statement Content/Approved Lender/Purchaser Disclosure Statement (Code sections**  
21 **10232.4 and 10232.5 and Regulations section 2846).** In connection with non-institutional loan  
22 transactions examined for the audit, there were no Lender/Purchaser Disclosure Statement  
23 found in violation of Code sections 10232.4 and 10232.5 and Regulations section 2846.

24 (i) **Disclosure of License Number in Advertising/Disclosure of License**  
25 **Identification Number on Solicitation Material – First Point of Contact with Consumers**  
26 **(Code section 10140.6 and Regulations section 2773).** Respondent BRZESKI did not disclose  
27 his license number on his business card provided for the audit examination.

1 (j) Responsibility of Corporate Office in Charge/Broker Supervision (Code  
2 sections 10159.2 and 10177(h) and Regulations section 2725). Based on the violations in  
3 Paragraphs 8 (a)-(i) above, Respondent BRZESKI failed to exercise adequate supervision and  
4 control over ACC's mortgage loan and servicing activities in violation of Code section  
5 10159.2. Respondent BRZESKI failed to provide established policies, rules, procedures, and  
6 systems to review, oversee, inspect, and manage transactions requiring a real estate license and  
7 the handling of trust funds in violation of Regulations section 2725.

8 Additional Violations of the Real Estate Law

9 9.

10 The overall conduct of Respondents violates the Real Estate Law and constitutes  
11 cause for the suspension or revocation of their real estate license and license rights under the  
12 provisions of **Code Section 10177(g)** for negligence and **Code Section 10177(d)** for willful  
13 disregard of the Real Estate Law.

14 10.

15 Each of the foregoing violations in Paragraphs 8 (a)-(c) above constitute cause  
16 for the suspension or revocation of the real estate license and/or license rights of Respondents  
17 under the provisions of Code sections 10177(d), 10177(g), and 10177(h) (as to BRZESKI).

18 COSTS

19 (AUDIT COSTS)

20 11.

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

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(INVESTIGATION AND ENFORCEMENT COSTS)


12.

Section 10106 of the Code, provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, 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 investigation and enforcement of the case.

PRAYER

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 under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) of Respondent ARIXA CAPITAL CORPORATION and JAN BRADLEY BRZESKI, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under applicable provisions of law.

Dated at Sacramento, California this 7<sup>th</sup> day of March, 2022.

  
Ruth Corral  
Supervising Special Investigator

cc: ARIXA CAPITAL CORPORATION  
JAN BRADLEY BRZESKI  
Ruth Corral  
Sacto.  
Audits – Anna Hartoonian