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FILED

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DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13)
14 MFS/TA, INC.,) NO. H-4314 SD
14 ROBERT ALLEN KISLING, and)
15 BARBARA LEE McMANUS,) ACCUSATION
16 Respondents.)
17)

18 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
19 of the State of California, for cause of Accusation against MFS/TA, INC., individually and doing
20 business as "Future Security Financial", "Golden Real Estate Group", "Golden Valley Lending
21 Group", "Millennium Financial Systems", "Millennium Real Estate Group", "Nationwide Loan
22 Modification Services" and "RK Funding" ("MFS"); ROBERT ALLEN KISLING, individually
23 and doing business as "Associated Financial Systems", "Millennium Financial Systems" and
24 "V.A. Mortgage Express" ("KISLING"); and, BARBARA LEE McMANUS, ("McMANUS")
25 (herein collectively "Respondents"); is informed and alleges as follows:

27 The Complainant makes this Accusation in her official capacity.

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MFS is presently licensed by the Department of Real Estate (hereinafter "the Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code ("the Code") as a corporate real estate broker.

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KISLING is presently licensed and/or has license rights under the Code as a real estate broker, and is licensed by the Department as the designated broker/officer of MFS. As the designated broker/officer, KISLING was responsible, pursuant to Section 10159.2 (responsibility of corporate officer in charge) of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of MFS for which a real estate license is required.

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McMANUS is presently licensed by the Department and/or has license rights under the Code as a real estate salesperson. At all times relevant, neither MFS nor KISLING were the employing broker for McMANUS.

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Joel Saul Hernandez is presently licensed by the Department and/or has license rights under the Code as a real estate salesperson.

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At all times relevant herein, Sandi Alonzo (also known as "Sandra Lee Alonzo") was not licensed by the Department in any capacity in the State of California.

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At all times relevant herein, MFS performed services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders

1 in connection with loans secured directly or collaterally by one or more liens on real property;
2 operated and conducted a loan brokerage business with the public, wherein, on behalf of others,
3 for compensation or in expectation of compensation, Respondents solicited lenders and
4 borrowers for loans secured directly or collaterally by liens on real property, and wherein
5 Respondents arranged, negotiated, processed and consummated such loans; and charged,
6 demanded or collected an advance fee for any of the services offered.

7 FIRST CAUSE OF ACTION

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9 In or about the period of June 22, 2011, and continuing intermittently through
10 June 24, 2011, an audit was conducted of the records of MFS at its main office located at
11 105 N. Rose Street, Suite 201, Escondido, California, and the Department's Oakland District
12 Office. The auditor herein examined the records for the period of May 1, 2008, through April 30,
13 2011 (the audit period).

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15 While acting as a real estate broker as described in Paragraph 7, above, and within
16 the audit period, MFS accepted or received funds in trust (trust funds) from or on behalf of
17 lenders, investors, borrowers and others in connection with the sale/resale of real estate,
18 mortgage and loan brokerage activities, and deposited or caused to be deposited those funds into
19 a bank account maintained by MFS, including, but not limited to: ...

20 Bank Account #1

21 1st Centennial Bank/First California Bank
22 320 West Mission Avenue
Escondido, CA 92025

23 Account No.: XXXXX9984

24 Account Name: Abell Escrow

25 Signatories: Robert Kisling, REB/D.O.
26 Madeleine Kisling, Not licensed

27 Thereafter, MFS from time-to-time made disbursement of said trust funds.

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2 In the course of the activities described in Paragraph 7, above, in connection with
3 the collection and disbursement of trust funds:

4 (a) MFS failed to maintain adequate trust records resulting in an inability by
5 the Department's auditor to conduct a reconciliation of the adjusted bank balance to the
6 accountability of Bank Account #1. Such acts and/or omissions by MFS violate Section 10145
7 of the Code.

8 (b) MFS failed to designate Bank #1 as a trust account. Such acts and/or
9 omissions by MFS violate Section 10145 of the Code and Section 2832 (trust fund handling) of
10 Title 10 of the California Code of Regulations ("the Regulations").

11 (c) MFS failed to maintain adequate Control Records for Bank Account #1.
12 Such acts and/or omissions by MFS violate Section 2831 (trust fund records maintenance) of the
13 Regulations.

14 (d) MFS allowed non-licensee Madeleine Kisling to withdraw funds from Bank
15 Account #1. Such acts and/or omissions by MFS violate Section 10145 of the Code and Section
16 2834 (trust account withdrawals) of the Regulations.

17 (e) MFS failed to deposit advance fees it collected into a trust account. Such
18 acts and/or omissions by MFS violate Section 10146 (deposit of advance fees into trust account)
19 of the Code and Section 2832 (trust fund handling) of the Regulations.

20 (f) MFS failed to maintain a separate record for each beneficiary of Bank
21 Account #1. Such acts and/or omissions by MFS violate Section 10145 of the Code and
22 Section 2831.1 (maintenance of separate records for each beneficiary or transaction) of the
23 Regulations.

24 (g) MFS failed to maintain accurate written monthly reconciliations for the
25 balances of all of the separate records with the control records for Bank Account #1. Such acts
26 and/or omissions by MFS violate Section 10145 of the Code and Section 2831.2 (trust account
27 reconciliation) of the Regulations.

1 (h) MFS failed to furnish a verified copy of the accounting with respect to
2 advance fees it collected to the principals at the end of each calendar quarter and when each
3 contract was completely performed by MFS. Such acts and/or omissions by MFS violate
4 Section 10146 of the Code and Section 2972 (verified accounting content) of the Regulations.

5 (i) MFS failed to retain cancelled checks from Bank Account #1 and failed
6 to retain communications with lenders for loan modifications in its transaction files. Such
7 acts and/or omissions by MFS violate Section 10148 (record retention requirements) of the
8 Code.

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10 The acts and/or omissions of MFS as alleged in Paragraph 10, above, violate
11 Sections 10145, 10146 and 10148 of the Code, and Sections 2831, 2831.1, 2831.2, 2832, 2834
12 and 2972 of the Regulations.

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14 The facts alleged in Paragraph 10, above, are grounds for the suspension or
15 revocation of the license(s) and license rights of MFS under Sections 10177(d) (willful disregard
16 of Real Estate Law) and/or 10177(g) (negligence/incompetence) of the Code. In addition, the
17 Department is entitled to reimbursement for the costs of its audit pursuant to Section 10148(b)
18 (cost of audit in final decision following disciplinary hearing) of the Code.

19 SECOND CAUSE OF ACTION

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21 On or about March 9, 2009, Sandra Alonzo, while in the employ of and
22 representing MFS, doing business as Nationwide Modification Services, entered into a loan
23 modification services contract with Juan F. and Ysabel C. Under the terms of the loan
24 modification services contract, MFS agreed to negotiate a loan modification on behalf of Juan F.
25 and Ysabel C. for their real property located at 4063 Poppy Place, San Diego, California, in
26 exchange for an advance fee payment of \$3,500.00. On or about March 11, 2009, Juan F. and
27 Ysabel C., paid to MFS \$3,500.00 for loan modification services.

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2 After receiving advance fee payments from Juan F. and Ysabel C., MFS failed to
3 obtain a loan modification for them and did not repay the advance fees received from them.
4 MFS's failure to provide the services promised or to refund the funds paid by Juan F. and
5 Ysabel C., constitutes dishonest dealing.

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7 The facts alleged in Paragraphs 13 and 14, above, are grounds for the suspension
8 or revocation of the license(s) and license rights of MFS under Sections 10085 (advance fee
9 agreements and materials), 10085.6 (collection of unauthorized advance fees), 10131.2
10 (collection of advance fees), 10177(d) and/or 10177(g), and 10177(j) (fraud or dishonest dealing)
11 of the Code, and Section 2970 (submission of advance fee materials) of the Regulations.

12 THIRD CAUSE OF ACTION

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14 On or about March 11, 2009, Joel Saul Hernandez, while in the employ of and
15 representing MFS, doing business as Nationwide Modification Services, entered into a loan
16 modification services contract with Juan G., Adriana M., and Zoilo S. Under the terms of the
17 loan modification services contract, MFS agreed to negotiate a loan modification on behalf of
18 Juan G., Ysabel C., and Zoilo S. for their real property located at 2274 Montemar Avenue,
19 Escondido, California, in exchange for an advance fee payment of \$3,000.00. On or about
20 March 12, 2009, Juan G., Adriana M., and Zoilo S. paid \$1,500.00 in advance fees to MFS as
21 partial payment for loan modification services. On or about June 8, 2009, Juan G., Adriana M.,
22 and Zoilo S., paid the remaining advance fees of \$1,500.00 to MFS for loan modification services.

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24 After receiving advance fee payments from Juan G., Adriana M., and Zoilo S.,
25 MFS failed to obtain a loan modification for them and did not repay the advance fees received
26 from them. MFS's failure to provide the services promised or to refund the funds paid by
27 Juan G., Adriana M., and Zoilo S., constitutes dishonest dealing.

The facts alleged in Paragraphs 16 and 17, above, are grounds for the suspension or revocation of the license(s) and license rights of MFS under Sections 10085, 10085.6, 10131.2, 10177(d) and/or 10177(g), and 10177(j) of the Code, and Section 2970 of the Regulations.

FOURTH CAUSE OF ACTION

In connection with the collection and handling of advance fees as alleged in Paragraphs 13 through 18, above, MFS failed to submit the advance fee contract and all materials used in obtaining those advance fees to the Department for approval, prior to their use in obtaining the advance fees.

The acts and/or omissions of MFS as alleged in Paragraph 19, above, violate Sections 10085.5, 10085.6 and 10177(d) in conjunction with Section 10085 of the Code, and Section 2970 of the Regulations.

The facts alleged in Paragraph 19, above, are grounds for the suspension or revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of the Code.

FIFTH CAUSE OF ACTION

MFS used the fictitious business names of "Nationwide Loan Modification Services" and "Nationwide Modification Services" in conducting the loan modification activity set forth in Paragraphs 13 through 18, above, without first obtaining licenses bearing those fictitious business names from the Department.

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The acts and/or omissions of MFS as alleged in Paragraph 22, above, violate Section 10159.5 (fictitious business name) of the Code, and Section 2731 (use of false or fictitious business name) of the Regulations.

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The facts alleged in Paragraph 22, above, are grounds for the suspension or revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of the Code.

SIXTH CAUSE OF ACTION

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In or about the period of March 2009 through August 2009, McMANUS conducted loan modification activities on behalf of MFS in at least four (4) real estate transactions. In exchange for those activities, McMANUS was paid \$500.00 for each transaction by MFS.

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While performing the activities alleged in Paragraph 25, above, McMANUS was not licensed under the real estate broker license of either MFS or KISLING.

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The acts and/or omissions by McMANUS as alleged in Paragraphs 25 and 26, above, violate Section 10137 (employment by and/or acceptance of compensation from someone other than employing broker) of the Code.

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The facts alleged in Paragraphs 25 and 26, above, are grounds for the suspension or revocation of McMANUS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of the Code.

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The acts and/or omissions by MFS as alleged in Paragraphs 25 and 26, above, violate Section 10137 (payment of compensation to salesperson not employed under broker's license) of the Code.

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The facts alleged in Paragraphs 25 and 26, above, are grounds for the suspension or revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of the Code.

SEVENTH CAUSE OF ACTION

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The Broker-Salesman Relationship Agreement between MFS and the following real estate salespersons employed by MFS failed to address material aspects of their relationship related to supervision of activities by KISLING:

- Philip Mitchell Anderson
- Christopher Filasky
- Sheryl Ann Alvarado

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The acts and/or omissions of MFS as alleged in Paragraph 31, above, violate Section 2726 (Required contents of broker-salesperson relationship agreements) of the Regulations.

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The facts alleged in Paragraph 31, above, are grounds for the suspension or revocation of KISLING's license(s) and license rights under Sections 10177(d) and/or 10177(g) of the Code.

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1 EIGHTH CAUSE OF ACTION

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3 MFS failed to maintain possession of the original real estate salesperson license
4 certificates for Jamie Ramona Ohlsen and Greg Weber.

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6 The acts and/or omissions of MFS as alleged in Paragraph 34 above, violate
7 Section 10160 (possession/inspection of salesperson license) of the Code and Section 2753
8 (retention of real estate salesperson license by broker) of the Regulations.

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10 The facts alleged in Paragraph 34, above, are grounds for the suspension or
11 revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of
12 the Code.

13 NINTH CAUSE OF ACTION

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15 At all times relevant herein, KISLING was responsible, as the designated
16 broker/officer for MFS, for the supervision and control of the activities conducted on behalf of
17 the corporation by its officers and employees. KISLING failed to exercise reasonable
18 supervision and control over the property mortgage loan brokering activities of MFS. In
19 particular, KISLING permitted, ratified and/or caused the conduct described in the First through
20 Eighth Causes of Action, above, to occur, and failed to take reasonable steps, including, but not
21 limited to, the supervision of employees and the implementation of policies, rules, procedures
22 and systems to ensure the compliance of the corporation with the Real Estate Law and the
23 Regulations.

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25 The acts and/or omissions of KISLING as set forth in Paragraph 37, above,
26 violate Section 10159.2 (responsibilities of corporate officer in charge) of the Code and
27 Section 2725 (broker supervision of salespersons) of the Regulations.

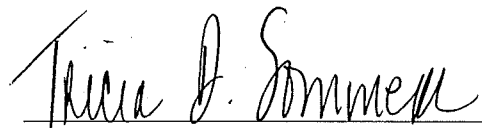
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The facts alleged in Paragraph 37, above, are grounds for the suspension or revocation of KISLING's license(s) and license rights under Sections 10177(d) and/or 10177(g), and 10177(h) (reasonable supervision requirements for broker) of the Code.

COST RECOVERY

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 the investigation and enforcement of the case.

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 license rights of Respondents under the Code, for the reasonable cost of investigation and prosecution of this case, including agency attorney's fees, and for such other and further relief as may be proper under applicable provisions of law.



TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 12th day of March, 2012.