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BUREAU OF REAL ESTATE

By L. J. West

7
8 **BEFORE THE BUREAU OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of:)
12)
13 PREMIER REAL ESTATE &)
14 FINANCIAL SERVICES and)
15 JENNY NGOC TRAC,)
16 Respondents.)

NO. H-11672 SF

ACCUSATION

16 The Complainant, ROBIN S. TANNER, acting in her official capacity as a
17 Deputy Real Estate Commissioner of the State of California, for cause of Accusation against
18 Respondents PREMIER REAL ESTATE & FINANCIAL SERVICES ("PREMIER") and
19 JENNY NGOC TRAC ("TRAC"), (collectively referred to as "Respondents"), is informed and
20 alleges as follows:

21 1.

22 PREMIER is presently licensed by the Bureau of Real Estate (herein "the
23 Bureau") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
24 Business and Professions Code ("the Code") as a corporate real estate broker, and at all times
25 relevant herein was acting by and through TRAC as its designated broker officer.

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2.

TRAC is presently licensed and/or had license rights under the Real Estate Law, Part 1 of Division 4 of the Code (herein "the Real Estate Law") as an individual real estate broker and, at all relevant times herein, was the designated broker officer of PREMIER. TRAC also holds control person mortgage loan originator license endorsement number 339865 and individual mortgage loan originator license endorsement number 247610.

3.

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

4.

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a corporate real estate broker within the State of California on behalf of others, for compensation or in expectation of compensation within the meaning of:

- (a) Section 10131(a) of the Code, including the operation and conduct of a real estate brokerage that included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or exchange of real property or a business opportunity;
- (b) Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation, leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated for sale, purchase or exchanges of leases on real property, or on a

1 business opportunity, or collected rent from real property, or improvements
2 thereon, or from business opportunities; and

3 (c) Section 10131(d) of the Code in the operation of a mortgage loan brokerage,
4 wherein Respondents solicited borrowers or lenders for or negotiated loans or
5 collected payments or performed services for borrowers or lenders or note owners
6 in connection with loans secured directly or collaterally by liens on real property
7 or on a business opportunity, and wherein Respondents arranged, negotiated,
8 processed, and consummated such loans.

9
10 COUNT ONE

11 AUDIT VIOLATIONS

(As to Respondents PREMIER and TRAC)

12 5.

13 Each and every allegation contained above in Paragraphs 1 through 4, inclusive,
14 is incorporated by this reference as if fully set forth herein.

15 6.

16 Beginning on November 28, 2012 and continuing intermittently through
17 December 18, 2012, the California Bureau of Real Estate conducted an audit of the books and
18 records related to the real estate activities of PREMIER and TRAC at PREMIER's main office
19 located at 7901 Oakport St. Suite 2888, Oakland, CA 94621, where the auditor examined
20 records for the period of November 1, 2011 to October 31, 2012 ("audit period").

21 7.

22 While doing business within the audit period, PREMIER and TRAC accepted or
23 received funds in trust (trust funds) from or on behalf of lenders, investors, borrowers and
24 others in connection with the mortgage loan brokerage activities and deposited or caused to be
25 deposited those funds into the following bank account maintained by PREMIER and TRAC:

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BANK ACCOUNT #1	
Bank Name and Location:	Chase Bank, 3241 Lakeshore Ave. Oakland, CA 94610
Account No.:	XXXX-XXXXXX3226-1
Entitled:	Premier Real Estate & Financial
Signatories:	Phillip Phat Diep (RES)
No. of Signatures Required:	One

From time to time, PREMIER made collections to and disbursement from said trust funds.

8.

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

(a) caused, suffered, or permitted the balance of funds in Bank Account #1 to be reduced to an amount which, as of October 31 2012, was approximately \$35,501.04 less than the aggregate liability of Bank Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 (handling of trust funds) of the Code and Section 2832.1 (written authorization of all beneficiaries required to reduce funds to below liability) of Title 10 of the California Code of Regulations (“the Regulations”);

(b) caused, suffered or permitted money of others which was received and held by Respondents in Bank Account #1 to be commingled with broker funds, in the form of management fees and other broker funds, in violation of Sections 10145 and 10176(e) of the Code and Section 2835 of the Regulations;

(c) failed to maintain or keep an accurate record in chronological sequence of all trust funds received and disbursed (control record) for Bank Account #1, containing all the information required by Section 2831 of the Regulations, in violation of Section 10148 of the Code;

(d) failed to maintain and/or keep accurate and complete separate records for the receipt and disposition of all trust funds deposited into Bank Account #1, in violation of

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1 Section 10145(g) (maintenance of separate beneficiary records required) of the Code and Section
2 2831.1 (records required for accounts with multiple beneficiaries) of the Regulations;

3 (e) failed to reconcile at least once per month, the balance of all separate
4 beneficiary or transaction records to the balance of the control records for Bank Account #1, in
5 violation of 10145 of the Code and Section 2831.2;

6 (f) failed to properly designate Bank Account #1 as a trust account in the
7 name of Respondent or her fictitious business name, as trustee, in violation of Section 10145 of
8 the Code and Section 2832 of the Regulations;

9 (g) failed to list TRAC, the designated officer of PREMIER, as the signor on
10 Bank Account #1, in violation of Section 10145 of the Code, and Section 2834 of the
11 Regulations;

12 (h) failed to provide and/or provided incomplete and/or inaccurate Mortgage
13 Loan Disclosure Statements ("MLDS") to borrowers containing all of the information required
14 by Section 10241 of the Code, in violation of Section 10240(a) of the Code, for transactions,
15 including, but not limited to borrowers Yee, Pearce, Chung, Pritchard and the Dicks Living
16 Trust;

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18 (i) failed to list a definite termination date in the listing agreement with
19 Community First Development Fund in violation of Section 10176(f) of the Code;

20 (j) failed to disclose TRAC's license number and/or MLO license
21 endorsement number on the purchase agreement in violation of Section 10140.6(b); and

22 (k) broker-salesperson relationship agreements failed to cover information
23 related to the supervision of licensed activities in violation of Section 2726 of the Regulations.

24 9.

25 The acts and/or omissions of Respondents, as alleged in Paragraph 8, above,
26 constitute grounds for the suspension or revocation of all licenses and license rights of
27 Respondents pursuant to the following provisions of the Code and Regulations:

1 As to Paragraph 8(a), under Section 10177(d) and/or 10177(g) of the Code, in
2 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

3 As to Paragraph 8(b), under Section 10176(e) and 10145 of the Code and Section
4 2835 of the Regulations;

5 As to Paragraph 8(c), under Section 10177(d) and/or 10177(g) of the Code, in
6 conjunction with Section 10148 of the Code and Section 2831 of the Regulations;

7 As to Paragraph 8(d), under Section 10177(d) and/or 10177(g) of the Code, in
8 conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

9 As to Paragraph 8(e), under Section 10177(d) and/or 10177(g) of the Code, in
10 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

11 As to Paragraph 8(f), under Section 10177(d) and/or 10177(g) of the Code, in
12 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

13 As to Paragraph 8(g), under Section 10177(d) and/or 10177(g) of the Code, in
14 conjunction with Section 2834 of the Regulations;

15 As to Paragraph 8(h), under Section 10177(d) and/or 10177(g) of the Code, in
16 conjunction with Section 10240(a) and 10241 of the Code;

17 As to Paragraph 8(i), Section 10176(f) of the Code;

18 As to Paragraph 8(j), under Section 10177(d) and/or 10177(g) of the Code, in
19 conjunction with Section 10140.6(b) of the Code;

20 As to Paragraph 8(k), under Section 10177(d) and/or 10177(g) of the Code, in
21 conjunction with Section 2726 of the Regulations;

22 10.

23 The acts and/or omissions of Respondents PREMIER and TRAC, as alleged
24 above in Paragraph 9, entitle the Department to reimbursement of the costs of its audit pursuant
25 to Section 10148(b) of the Code.

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1 enforcement as permitted by law, and for such other and further relief as may be proper under
2 other provisions of law.

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5 ROBIN S. TANNER
6 Deputy Real Estate Commissioner

7 Dated at Oakland, California,
8 this 2nd day of April, 2014.

9 DISCOVERY DEMAND

10 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Bureau of Real
11 Estate hereby makes demand for discovery pursuant to the guidelines set forth in the
12 *Administrative Procedure Act*. Failure to provide Discovery to the Bureau of Real Estate may
13 result in the exclusion of witnesses and documents at the hearing or other sanctions that the
14 Office of Administrative Hearings deems appropriate.