

FILED

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

APR 10 2014

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BUREAU OF REAL ESTATE

By J. Arredondo

In the Matter of the Accusation of)
)
 AMERICAN LOANS AND)
 FUNDING INC., and)
 RAUL SANDOVAL,)
)
 Respondents.)
)

No. H-38974 EA

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed against Respondent American Loans and Funding Inc. ("Respondent") on March 26, 2014, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

This Decision suspends or revokes one or more real estate licenses on the ground of the violation of the Real Estate Law (commencing with Section 10000 of the Business and Professions Code (Code)) or Chapter 1 (commencing with Section 11000 of the Code) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000 of the Code) of Part 2.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondents.

FINDINGS OF FACT

I

On July 29, 2013, Robin Trujillo made the Accusation in her official capacity as a Deputy Real Estate Commissioner of

the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to Respondent's last known mailing address on file with the Bureau on July 30, 2013.

Respondent failed to file a Notice of Defense within the time required by Section 11506 of the Government Code. Respondent's default was entered herein on March 26, 2014.

II

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

III

The evidence established that Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker and/or real estate corporation in the State of California, within the meaning of Code Section 10131(d). Said activity included soliciting borrowers and lenders and negotiating the terms of loans secured by real property between borrowers and third party lenders for or in expectation of compensation.

IV

Commencing in or around December, 2010, Respondent, acting through various unlicensed individuals including David Kaup ("Kaup"), engaged in a course of conduct designed to fraudulently induce potential mortgage borrowers who responded to Respondent's internet advertisements to wire funds to Respondent. Kaup, using the fictitious names "Jorge Ramirez," "David Smith," "Marco Anderson," "William Rivers," "Louis Sandoval" and "Rolando Wilson," falsely represented to individuals who responded to Respondent's mortgage loan advertisements that Respondent could offer thirty-year fixed rate mortgages at an interest rate below that customarily being offered at the time. Kaup and other unlicensed individuals instructed potential borrowers to wire to Respondent's bank account located at a branch in Monterey Park, California the equivalent of one-year's mortgage payments at a fictitious interest rate to be held in trust by Respondent. The wire transfers were falsely and fraudulently represented to the potential borrowers by Respondent to be necessary to demonstrate

the borrowers' liquidity to non-existent mortgage lenders. In truth Kaup, and other acting through Respondent, intended to convert the borrowers' wired funds and to retain the funds for their own personal use.

V

In reliance on the representations made by Respondent, as is alleged in Paragraph IV, above, the following individuals were induced to enter into transactions with Respondent as follows:

a. In December, 2010, Nicholas and Megan B., who were interested in obtaining mortgage loan financing, learned of Respondent from an advertisement on the internet. After completing an online survey on a Lending Tree or Quicken Loans website, Nicholas and Megan B. were contacted by Kaup, using the fictitious name "David Smith." Kaup represented that he was a loan specialist for Respondent. At Kaup's direction, on or about December 11, 2010, Nicholas and Megan B. filled out two separate Uniform Residential Loan Applications ("URLA"), one for the real property at 1131 N. Roddy Drive, La Habra, Ca 90631, and another for the real property at 432 Tanglewood, Big Bear City, Ca 92314. At the direction of Kaup, using the fictitious names David Smith and Jorge Ramirez, Nicholas and Megan B. wired the separate sums of \$15,469.68 and \$32,123.88 to Respondent's bank account in Monterey Park. Nicholas and Megan B. believed that the wired funds were required for the processing of their mortgage loan applications with RESPONDENT. On or about April 19, 2011, Nicholas and Megan B. learned that RESPONDENT was in bankruptcy, and that none of their funds had been placed in trust or would be refunded to them. At no time did Nicholas and Megan B. receive either loan brokerage services from RESPONDENT or a refund of the funds transferred to RESPONDENT's bank account.

b. In July, 2010, Philip Y., who was interested in obtaining mortgage loan financing, learned of RESPONDENT from an advertisement on the internet. Philip Y. completed an online survey on a Lending Tree or Quicken Loans website, and was contacted by Kaup, using the fictitious names William Rivers, David Smith and Jorge Ramirez. On or about July 13, 2010, Philip Y. applied to RESPONDENT for a \$1,170,000 pledged asset mortgage with respect to the real property located at 48908 Crest View Common, Fremont, Ca 94539. Kaup represented to Philip Y. that he would need to wire RESPONDENT a deposit of \$52,716.48 to secure a 30-year mortgage loan on the property at an interest

rate of 4.15%. Kaup further represented to Philip Y. that his deposit would be refunded at the close of escrow or within three months. At Kaup's direction on July 30, 2010, Philip Y. wired the funds to RESPONDENT's bank account in Monterey Park. Philip Y. believed that the wired funds were required for the processing of his pledged asset mortgage loan application with RESPONDENT. After a series of supposed delays in the purported closing of the loan, Philip Y. learned on or about April 22, 2011, that RESPONDENT was in bankruptcy, and that none of his funds had been placed in trust or would be refunded to him. At no time did Philip Y. receive either loan brokerage services from RESPONDENT or a refund of the funds transferred to RESPONDENT's bank account.

c. In September, 2010, Regina S. was interested in obtaining mortgage loan financing from RESPONDENT to refinance the property at 783 El Cerrito Way, Gilroy, Ca 95020. RESPONDENT's representative, Kaup using the fictitious name Jorge Ramirez, represented to Regina S. that in order to obtain the best interest rate on her loan she would be required to demonstrate one-year of liquidity covering all expenses related to the Gilroy property. Regina S. completed a URLA, and returned it to RESPONDENT. At RESPONDENT's direction on or about March 8, 2011, Regina S. wired the sum of \$137,000 to RESPONDENT's bank account in Monterey Park. Regina S. believed that the wired funds were required for the processing of her mortgage loan applications with RESPONDENT. On or about April 18, 2011, Regina S. learned that RESPONDENT was in bankruptcy, and that none of her funds had been placed in trust or would be refunded to her. At no time did Regina S. receive either loan brokerage services from RESPONDENT or a refund of the funds transferred to RESPONDENT's bank account.

d. In or around December, 2010, Stuart M. was interested in obtaining mortgage loan financing from RESPONDENT to refinance the property at 1059 S. York Street, Denver, Colorado 90209. On or about December 27, 2010, RESPONDENT's representatives, Kaup using the names David Smith and Jorge Ramirez, represented to Stuart M. that in order to obtain the best interest rate on his loan he would be required to demonstrate one-year of liquidity covering all expenses related to the Denver property. On or about December 28, 2010, after completing a URLA, and returning it to RESPONDENT, Stuart M. wired \$28,973.28 to RESPONDENT's bank account in Monterey Park. Stuart M. believed that the wired funds were required for the processing of his mortgage loan application with RESPONDENT. On or about April 18, 2011, Stuart M. received an e-mail from

RESPONDENT advising him that RESPONDENT was in bankruptcy, and that none of his funds had been placed in trust or would be refunded to him. At no time did Stuart M. receive either loan brokerage services from RESPONDENT or a refund of the funds transferred to RESPONDENT's bank account.

VI

The conduct, acts and/or omissions of Respondents, as set forth in Paragraphs II through V, above, violates Code Sections 10176(a), 10176(b) and 10176(i).

VII

On the occasions set forth in Paragraph V, above, Kaup engaged in the business of negotiating, or offering to negotiate, mortgage loans secured directly or collaterally by liens on real property for compensation or in expectation of compensation so as to require a real estate license under Code Section 10131(d). Respondent violated Code Section 10137 by employing and/or compensating Kaup who was not licensed as a real estate salesperson or as a broker to perform activities requiring a license.

VIII

In the course of the activities described in Paragraphs II through V, above, Respondent acted in violation of Code Section 10148 in that it failed to retain all records of its activities requiring a real estate broker license for a period of three years, including loan transaction files for its real estate clients and further including loan applications, deposit receipts, canceled checks, escrow and trust records, and specifically including the loan documentation pertaining to the mortgage loans described in Paragraph V, above, as is required by Code Section 10148.

DETERMINATION OF ISSUES

I

Based on the information contained in Paragraphs I through VI, above, Respondent's violation of Code Sections 10176(a), 10176(b) and 10176(i) is cause for the suspension or revocation of the licenses and license rights of Respondent pursuant to the provisions of Code Section 10177(d).

II

Based on the information contained in Paragraph VII, above, the conduct, acts and/or omissions of Respondent violate Code Section 10137, and is cause for the suspension or revocation of the licenses and license rights of Respondent pursuant to Code Section 10177(d).

III

Based on the information contained in Paragraph VIII, above, the conduct, acts and/or omissions of Respondent is in violation of Code Section 10148, and is cause for the suspension or revocation of the licenses and license rights of Respondent pursuant to Code Section 10177(d).

IV

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

The licenses and licensing rights of Respondent AMERICAN LOANS AND FUNDING INC. under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon MAY 01 2014.

DATED: _____

APR 08 2014

Real Estate Commissioner


By: Jeffrey Mason
Chief Deputy Commissioner

FILED

MAR 26 2014

BUREAU OF REAL ESTATE

By *Honig*

1 Bureau of Real Estate
320 W. 4th Street, Room 350
2 Los Angeles, California 90013

3 Telephone: (213) 576-6982
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9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of)	
12)	NO. H-38974 LA
13 AMERICAN LOANS AND,)	
14 FUNDING INC., and RAUL)	<u>DEFAULT ORDER</u>
15 SANDOVAL,)	
16 Respondent(s).)	

17 Respondent AMERICAN LOANS AND FUNDING INC., having
18 failed to file a Notice of Defense within the time required by
19 Section 11506 of the Government Code, is now in default. It is,
20 therefore, ordered that a default be entered on the record in
21 this matter.

22 IT IS SO ORDERED March 24, 2014.

23 WAYNE S. BELL
Real Estate Commissioner

24 *Phillip Ihde*
25 By: PHILLIP IHDE
Regional Manager
26
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