

1 ELLIOTT MAC LENNAN, SBN 66674
2 Bureau of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 (213) 576-6982 (office)

FILED

MAR 11 2015

BUREAU OF REAL ESTATE

By 

7
8 BEFORE THE BUREAU¹ OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H- 39773 LA

12 MAXIMILLION JOHN PELAYO,)
13 doing business as co-registered fictitious)
14 business names of:)
15 Direct Mortgage Counseling,)
16 Direct Home Counseling, and)
17 Direct Loan Counseling; and)

ACCUSATION

17 WLPIANO MIRANDA, doing business as)
18 unregistered fictitious business name of:)
19 Direct Loan Counseling,)

20 Respondents.)

21
22 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the
23 State of California, acting in her official capacity, for cause of Accusation against
24

25 ¹ Effective July 1, 2013, the California Department of Real Estate became the Department of Consumer Affairs,
26 Bureau of Real Estate ("Bureau"). References in this Accusation are to the successor entity.

27 Accusation of Maxmillion John Pelayo and Wlpiano Miranda

Page 1 of 13

1 MAXIMILLION JOHN PELAYO doing business as unregistered fictitious business names of
2 Direct Mortgage Counseling, Direct Home Counseling, and Direct Loan Counseling, and
3 WLPIANO MIRANDA, also doing business as unregistered fictitious business name of Direct
4 Loan Counseling, is informed and alleges as follows:

5
6 1.

7 All references to the "Code" are to the California Business and Professions Code
8 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations,
9 unless otherwise specifically stated.

10 2.

11 A. At all times mentioned, MAXIMILLION JOHN PELAYO ("PELAYO") was
12 licensed or had license rights issued by the Bureau of Real Estate ("Bureau") as a real estate
13 broker. On January 22, 1997, PELAYO was originally licensed as a real estate broker.

14 B. At all times mentioned, WLPIANO MIRANDA aka Willy Miranda
15 ("MIRANDA") was licensed or had license rights issued by the Bureau of Real Estate ("Bureau")
16 as a real estate broker. On September 24, 1991, MIRANDA was originally licensed as a real
17 estate broker, and previously as a real estate salesperson.

18 3.

19 Whenever reference is made in an allegation in this Accusation to an act or
20 omission of "Respondents" such allegation shall be deemed to mean that the officers, directors,
21 employees, agents and real estate licensees employed by or associated with Respondents
22 committed such act or omission while engaged in the furtherance of the business or operations
23 of Respondents and while acting within the course and scope of their corporate authority and
24 employment, including revoked salesperson David Kashani aka David Anderson, and aka
25 David Mooshighi Kashani, and unlicensed persons Irene E. Smith, Charles A. Smith, Jason
26 Henry, Alan Rose, and other persons known or unknown persons operating under fictitious
27 names.

1 4.

2 A. At all times mentioned, in the City of Perris, County of Riverside, Respondent
3 PELAYO acted as a real estate broker and conducted licensed activities within the meaning of
4 Code Sections 10131(d) and 10131.2. Through the unlicensed fictitious business names of
5 Direct Mortgage Counseling, Direct Home Counseling, and Direct Loan Counseling, Respondent
6 advertised, solicited and offered to provide loss mitigation and loan modification services to
7 economically distressed homeowners seeking adjustments to the terms and conditions of their
8 home loans.

9 B. At all times mentioned, in the Counties San Diego, Orange and Los Angeles,
10 Respondent WLPIANO acted as a real estate broker and conducted licensed activities within the
11 meaning of Code Section 10131(d) and 10131.2. Through the unlicensed fictitious business
12 name Direct Loan Counseling, Respondent advertised, solicited and offered to provide loss
13 mitigation and loan modification services to economically distressed homeowners seeking
14 adjustments to the terms and conditions of their home loans.
15

16
17 FIRST CAUSE OF ACCUSATION
18 Maxmillion John Pelayo
19 (Audit)

20 5.

21 On April 30, 2013, the Bureau completed an audit examination of the books and
22 records of PELAYO, pertaining to loan modification and advance fee activities and brokerage
23 described in Paragraph 4, which require a real estate license. The audit examination covered a
24 period of time beginning on January 1, 2012 and ending on January 31, 2013. The audit
25 examination revealed violations of the Code and the Regulations as set forth below, and more
26 fully discussed in Audit Report SD 120024 and the exhibits and work papers attached.

27 ///

1 6.

2 At all times mentioned, in connection with the activities described in Paragraph
3 4A, above, PELAYO accepted or received funds including funds in trust (hereinafter "trust
4 funds") from or on behalf of actual or prospective parties to transactions handled by PELAYO
5 including loan modification applicants. PELAYO was not aware of any bank accounts and did
6 not provide any information with respect to bank accounts into which trust funds including
7 advanced fees were deposited.

8 7.

9 With respect to the licensed activities referred to in Paragraphs 4A, and the audit
10 examination including the exhibits and work papers referenced in Paragraph 5, it is alleged that
11 Respondent PELAYO:

12 (a) Purported to provide loan modification services and collected advance fees
13 totaling \$4,250.00 in May and June 2012 from Samantha B. for her real property located at
14 15399 Road 29 ½, Madea, CA 93636, in violation of Code Section 10085.6 referencing Civil
15 Code Section 2944.7 (Loan Modification Services – Prohibition of Advance Fees);

16
17 (b) Conducted loan modification activities at 11312 Santa Monica Blvd. #3, Los
18 Angeles, CA 90025, prior to obtaining a branch office license from the Bureau, in violation of
19 Code Section 10163 and Regulation 2715;

20
21 (c) Used the fictitious name of "Direct Home Counseling" to conduct licensed
22 activities, without first obtaining from the Bureau a license bearing said fictitious business name,
23 in violation of Code Section 10159.5 and Regulation 2731;

24 (d) Failed to retain copies of loan modification brokerage documentation, and
25 retain bank account records and bank statements in relation to advance fee trust fund handling, in
26 violation of Code Section 10148; and
27

1 (e) Failed to exercise reasonable control and supervision over the activities of his
2 branch office and conducted by his employees and/or licensees as necessary to secure full
3 compliance with the Real Estate laws, with respect to his brokerage activity, as required by and
4 pursuant to Code Section 10159.2 and Regulation 2725, in violation of Code Section 10177(h);

5 8.

6 The conduct of Respondent PELAYO described in Paragraph 7, violated the Code
7 and the Regulations as set forth:
8

9

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
10 7(a)	Code Section 10085.6, referencing Civil Code Section 2944.7
11 7(b)	Code Section 10163 and Regulation 2715
12 7(c)	Code Section 10159.5 and Regulation 2731
13 7(d)	Code Section 10148
14 7(e)	Code Section 10177(h) and Regulation 2725

15

16 Each of the foregoing violations constitute cause for discipline of the real estate license and
17 license rights of Respondent PELAYO under the provisions of Code Sections 10177(d),
18 10177(g) and 10177(h).
19
20
21
22

23 [This section intentionally left blank]
24
25
26
27

1 Table DMC: Advance Fees Loan Modification/Fraud Scheme: Direct Mortgage Counseling

2

3

4

5

6

7

8

9

10

11

Complainant	Agent	Advance Fee Paid to DMC	Loan Modification Status
Michael D.	Charles Smith/David Anderson	\$3,480 May/June 2012	Not obtained; no refund
Samantha B.	Charles Smith/David Anderson	\$4,250 May/June 2012	Not obtained; no refund
Anthony S.	Charles Smith/David Anderson	\$3,500 May/August 2012	Not obtained; no refund
John P.	Charles Smith/David Anderson	Solicitation March 2013	
Total		\$ 11,230	

12 Table DHC: Advance Fees Loan Modification/Fraud Scheme: Direct Home Counseling

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

Complainant	Agent	Advance Fee Paid to DHC	Loan Modification Status
Helen H.	Charles Smith/David Anderson	\$2,000 November/December 2012	Not obtained; no refund
Boyd P.	Charles Smith/David Anderson	\$3,000 January 3, 2013	Not obtained; no refund
Janet S.	Charles Smith/David Anderson	Solicitation February 2013	Not obtained; no refund
Marie N.	Charles Smith/David Anderson	\$3,500 January 2013	
Susie S.	Charles/Irene Smith/David Anderson, Jason Henry	\$3,000 November 11, 2012	False Representatio n
Cassandra P.	Charles/Irene Smith/David Anderson, Jason Henry	\$3,500 April 24, 2012	
Total		\$ 15,000	

1 14.

2 During the investigation period and continuing thereafter beginning on or about
3 June 6, 2013 to date, Respondent MIRANDA, has used the fictitious business name of Direct
4 Loan Counseling, as co-registrant with Irene E. Smith. Direct Loan Counseling is owned,
5 operated and managed by Irene E. Smith and Charles Smith aka "Andy" Smith, her son, both
6 unlicensed persons. Revoked and unlicensed salesperson David Kashani aka David Anderson,
7 and unlicensed loan agents Jason Henry and Alan Rose were also agents for Direct Loan
8 Counseling. The foregoing unlicensed persons solicited economically distressed homeowners
9 facing foreclosure and eviction from their homes, offered and negotiated loss mitigation and loan
10 modification services, and foreclosure rescue, and charged, claimed and collected advance fees
11 for loan modification services not rendered, for fees not refunded, and for said loan modifications
12 not obtained.

13 15.

14 On June 6, 2013, MIRANDA entered into a Broker Agreement Contract with
15 Direct Loan Counseling, an unlicensed entity, with a fictitious business name co-registered with
16 Irene E. Smith, to provide supervision for loan modifications conducted by Direct Loan
17 Counseling. Said agreement was signed by owner Irene E. Smith.

18 16.

19 Respondent MIRANDA, contracted to supervise the loan modification of Direct
20 Loan Counseling. Direct Loan Counseling's aforesaid unlicensed and revoked salespersons also
21 solicited homeowners-borrower-applicants and collected advanced fees after the proscriptive date
22 of October 10, 2009, pursuant to Code Section 10085.5. Thereafter, Respondent MIRANDA
23 failed to supervise said unlicensed persons of Direct Loan Counseling. To date none of the
24 homeowners tabled below have received a refund or restitution of their monies paid.

25 ///

26 ///

27 ///

1 Table DLC: Advance Fees Loan Modification/Fraud Scheme: Direct Loan Counseling

2

3

4

5

6

7

8

9

10

Complainant	Agent	Advance Fee Paid to DMC	Loan Modification Status
William C.	Charles Smith/David Anderson	\$3,000 June 2013	Not obtained; no refund
Robert O.	Charles Smith/David Anderson	Solicitation July 2013	Not obtained; no refund
James T. P.	Alan Rose	\$3,600 February/March 2014	Fraud Alert Withdrawal No Refund
Total		\$ 6,600	

11

12 Violations and Disciplinary Statutes

13 17.

14 The conduct of Respondent MIRANDA violated the Code and the Regulations as
15 set forth below in the following paragraphs.

16 13-16 (a) Code Section 10085.5 and 10085.6.

17 13-16 (b) Code Section 10177(d) for violation of the Real Estate Law.

18 13-16 (c) Code Section 10177(g) for negligence.

19 13-16 (d) Code Section 10176(i) and 10177(g) for breach of fiduciary duty.

20 13-16 (e) Code Section 10176(i) and 10177(g) for fraud and dishonest dealing.

21 13-16 (f) Code Section 10137 for unlawful employment/compensation.

22 13-16 (g) Code Section 10177(h) for failure to supervise.

23

24

25 [This section intentionally left blank]

1 FOURTH CAUSE OF ACCUSATION
2 (Negligence/Incompetence)

3 18.

4 The overall conduct of Respondents PELAYO and MIRANDA constitutes
5 negligence or incompetence. This conduct and violation is cause for the suspension or
6 revocation of the real estate license and license rights of said Respondent pursuant to Code
7 Section 10177(g).

8 FIFTH CAUSE OF ACCUSATION
9 (Breach of Fiduciary Duty)

10 19.

11 The conduct, acts and omissions of Respondents PELAYO and MIRANDA
12 constitutes a breach of fiduciary duty, owed to the loan modification borrower-applicants of
13 Direct Mortgage Counseling, Direct Home Counseling, and Direct Loan Counseling of good
14 faith, trust, confidence and candor, within the scope of brokerage relationship, in violation of
15 Code Section 10177(g) and constitutes cause for discipline of the real estate license and license
16 rights of said Respondents pursuant to the provisions of said section.

17 SEVENTH CAUSE OF ACCUSATION
18 (Failure to Supervise)

19 20.

20 The overall conduct of Respondents PELAYO and MIRANDA constitutes a
21 failure to exercise supervision and control over the licensed activities of Respondents' respective
22 brokerages: Direct Mortgage Counseling, Direct Home Counseling, and Direct Loan
23 Counseling. Nor did either Respondent maintain a system in place for regularly monitoring his
24 compliance with the Real Estate Law especially in regard to establishing policies to reviewing
25 trust fund handling for advance fees, including but not limited to ascertaining the license status of
26 the owners and salesperson of the aforesaid entities, in violation of Code Sections 10177(d),
27 10177(g) and/or 10177(h).

Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau of Real Estate, 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 the license and license rights of Respondents MAXIMILLION JOHN PELAYO and WLPIANO MIRANDA, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law including restitution in minimum amount of \$26,230.00 (Pelayo) and \$6,600.00 (Miranda) and for costs of investigation and enforcement pursuant to Code Section 10106, pursuant to Government Code Section 11519(d).

Dated San Diego, California

this ^{6th} day of March, 2015


VERONICA KILPATRICK
Deputy Real Estate Commissioner

cc: Maximillion John Pelayo
Wlpiano Miranda
Veronica Kilpatrick
Zaky Wanis
Sacto