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FILED

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DEPARTMENT OF REAL ESTATE

By K. Mar

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13) NO. H-10798 SF
14 BAYCAL CAPITAL SERVICES, INC.,)
15 and NATELLA R. BELICHEVA,) ACCUSATION
16 Respondents.)

17 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of
18 the State of California, for Accusation against Respondent BAYCAL CAPITAL SERVICES,
19 INC. (BCS), and Respondent NATELLA R. BELICHEVA, (BELICHEVA), is informed and
20 alleges as follows:

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22 The Complainant makes this Accusation against Respondents in his official
23 capacity.

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

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2 BCS is presently licensed by the Department of Real Estate (the Department)
3 as a corporate real estate broker dba Aurora Realty and Baycal Mortgage.

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5 At all times herein mentioned, BELICHEVA was licensed by the Department
6 as the designated broker/officer of BCS. As the designated broker/officer, BELICHEVA was
7 responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of
8 the officers, agents, real estate licensees and employees of BCS for which a real estate license
9 is required.

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11 At all times herein mentioned, Respondents engaged in the business of, acted
12 in the capacity of, advertised, or assumed to act as real estate brokers within the State of
13 California within the meaning of Section 10131(d) of the Code, including the operation and
14 conduct of a loan brokerage business with the public wherein, on behalf of others, for
15 compensation or in expectation of compensation, Respondents solicited lenders and borrowers
16 for loans secured directly or collaterally by liens on real property, and wherein Respondents
17 arranged negotiated, processed, and consummated such loans.

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

24 FIRST CAUSE OF ACTION

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26 Beginning August 11, 2009, and continuing intermittently through August 27,
27 2009, an audit was conducted of BCS's main office located at 21551 Foothill Boulevard,

1 Hayward, California and at the Oakland District Office of the Department of Real Estate located
2 at 1515 Clay Street, Suite 702, Oakland, California, where the auditor examined records for the
3 period of January 1, 2008 through July 31, 2009 (the audit period).

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5 While acting as a real estate broker as described in Paragraph 5, above, and
6 within the audit period, BCS accepted or received funds in trust (trust funds) from or on behalf
7 of lenders, investors, borrowers and others in connection with mortgage loan brokerage
8 activities, deposited or caused to be deposited those funds into a bank account maintained by
9 BCS at WaMu/JPMorgan Chase Bank, 3449 Castro Valley Boulevard, Castro Valley,
10 California 94546, Account #0180-098873-5, entitled "Baycal Capital Services, Inc.
11 dba Aurora Realty, Baycal Mortgage" (Account #1), and thereafter from time to time made
12 disbursements of said trust funds.

13 9

14 In the course of the activities described in Paragraph 8, in connection with the
15 collection and disbursement of trust funds, Respondents:

- 16 (a) Failed to designate Account #1 as a trust account as required by Section
17 2832 of Title 10, California Code of Regulations (Regulations);
- 18 (b) Failed to identify from whom all trust funds were received on the record
19 of all trust funds deposited into and disbursed from Account #1 as
20 required by Section 2831 of the Regulations;
- 21 (c) Failed to maintain separate beneficiary records for Account #1 as required
22 by Section 2831.1 of the Regulations;
- 23 (d) Failed to keep adequate records to determine trust fund accountability as
24 of July 31, 2009 as required by Section 10145 of the Code;
- 25 (e) Failed to perform and/or maintain records of the monthly reconciliation
26 of the balance of all beneficiary records as required by Section 2831.2 of
27 the regulations;

- 1 (f) Failed to maintain a Record of All Trust Funds Received-Not Placed in
 2 Brokers Trust Account as required by Section 2831(a) (6) of the
 3 Regulations;
 4 (g) Failed to handle an earnest money deposit for real property known as
 5 9696 Thunderbird in a timely manner as required by Section 2832(d) of
 6 the Regulations;
 7 (h) Deposited trust funds into Account #1 which held non trust funds, thereby
 8 commingling in violation of Section 2835 of the Regulations and Section
 9 10176(e) of the Code;
 10 (i) Collected an advance fee for a loan modification without having obtained
 11 prior approval of the advance fee agreement as required by Section 10085
 12 of the Code;
 13 (j) Failed to deposit the advance fee in a trust account as required by Section
 14 10146 of the Code since Account #1 was not designated as a trust
 15 account;
 16 (k) Failed to furnish a verified copy of the accounting of the advance fee at
 17 the end of each quarter as required by Section 2972 of the Regulations
 18 and Section 10146 of the Code;
 19 (l) Failed to provide Mortgage Loan Disclosure Statements or a Good Faith
 20 Estimate to borrowers (below) as required by Section 10240 of the Code;

Name	Amount	Date Closed
G. & A. Levchenko	\$556,500.00	03/19/09
R. Kimball/J. Park	\$417,000.00	12/10/08
A. & H. Parker	\$184,900.00	04/10/09
A. Peyko	\$340,000.00	05/26/09

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(m) Failed to set forth their license number on a MLDS issued to Yuriy and Irina Layko for real property known as 3402 Manchester Common, Fremont, as required by Section 10236.4 of the Code and

(n) Failed to retain possession of Nana D. Gigolaeva's and Steve Koffeld's real estate salesperson licenses as required by Section 2753 of the Regulations and Section 10160 of the Code.

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The acts and/or omissions of BCS as alleged above violate Sections 2715, 2753, 2831, 2831.1, 2831.2, 2832 and 2972 of the Regulations and Sections 10085, 10145, 10146, 10160, 10176(e), 10236.4, and 10240 of the Code.

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The acts and/or omissions of BCS as alleged above are grounds for discipline under Sections 10176(e) and 10177(d) of the Code.

SECOND CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 11, above, and incorporates them herein by reference.

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On at least three occasions, BCS while representing buyers, indicated in the Residential Purchase Agreement that the Earnest Money Deposit had been given to BCS as set forth below:

Buyer	Property	Amount	Represented Date Received
Parkers	1820 Catalpa	\$ 2,500.00	02/15/09
Presleys	5656 Musick Avenue	\$ 1,000.00	06/09/08
Lii Xu Fam. Trust	562 Marin Avenue	\$10,000.00	12/31/08

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In fact, for each of the transactions above, Respondent was not in possession of the Earnest Money Deposit, which was made at later dates as set forth: Parkers on 03/18/09, Presleys on 09/18/08 and Lii Xu Family Trust on 01/15/09. In each case, the check was sent to the title company, rather than handed to Respondent.

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The representations made by Respondent to the sellers that it was in possession of the Earnest Money Deposits set out above were false, and Respondent knew that they were false when those representations were made. Respondent represented that it was in possession of the Earnest Money Deposits to induce the buyers to accept the offers of buyers.

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The acts/omissions described in Paragraphs 12 through 15, above, are grounds for discipline under Sections 10176(a) and/or (i) of the Code.

THIRD CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 16, above, and incorporates them herein by reference.

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At all times herein above mentioned, BELICHEVA was responsible, as the designated broker officer of BCS, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. BELICHEVA failed to exercise reasonable supervision and control over the mortgage loan brokering activities of BCS. In particular, BELICHEVA permitted, ratified and/or caused the conduct described in the First and Second Causes of Action, above, to occur, and failed to take reasonable steps, including but not limited to the handling of trust funds, supervision of employees, and the implementation of policies, rules, procedures, and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

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2 The above acts and/or omissions of BELICHEVA violates Section 10159.2 of
3 the Code and Section 2725 of the Regulations and constitute grounds for disciplinary action
4 under Section 10177(h) of the Code.

5 WHEREFORE, Complainant prays that a hearing be conducted on the
6 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
7 disciplinary action against all licenses and license rights of Respondents under the Real Estate
8 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
9 relief as may be proper under other provisions of law.

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12 E. J. HABERER, II
Deputy Real Estate Commissioner

13 Dated at Oakland, California,
14 this 30th day of October, 2009.