

FILED

AUG 13 2010

DEPARTMENT OF REAL ESTATE

*R. Henry*

KENNETH C. ESPELL, Counsel (SBN 178757)  
Department of Real Estate  
P. O. Box 187007  
Sacramento, CA 95818-7007

Telephone: (916) 227-0789  
-or- (916) 227-0868 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of	)	
	)	
IQ SMARTER INVESTMENTS, INC.,	)	NO. H-10983 SF
ALI MIRZAEI, and,	)	
ANTOINETTE MARIE HENDRYX,	)	<u>ACCUSATION</u>
	)	
Respondents.	)	
	)	

The Complainant, E. J. HABERER II, in his official capacity as Deputy Real Estate Commissioner of the State of California, for cause of Accusation against IQ SMARTER INVESTMENTS, INC., (herein "IQ") and ALI MIRZAEI (herein "MIRZAEI") and ANTOINETTE MARIE HENDRYX (herein "HENDRYX"), is informed and alleges as follows:

THE RESPONDENTS

1

At all times herein mentioned, Respondents IQ, MIRZAEI and HENDRYX (collectively herein "Respondents") were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

2

At all times herein mentioned herein IQ was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a corporate real estate broker by and through MIRZAEI and/or HENDRYX as its designated officer-broker.

3

For the period September 14, 2007 until October 2, 2008, HENDRYX was licensed by the Department as real estate broker and as the designated officer of IQ. For the period June 3, 2008 to the present, MIRZAEI was and now is licensed by the Department as real estate brokers and as the designated officer of IQ. During each brokers' tenure as the designated officer-broker of IQ, MIRZAEI and/or HENDRYX were responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of IQ for which a license is required.

4

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

5

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Sections 10131(d) and 10131(e) of the Code, including the operation and conduct of a mortgage loan brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents serviced and collected payments on loans secured directly or collaterally by liens on real property, and wherein Respondents performed services for the holders of promissory notes secured directly or collaterally by a lien on real property, including collecting payments thereon, and in addition, Respondent conducted residential real estate resale activities.



1  
2 In the course of the activities described in Paragraph 5, above, for the audit  
3 period:

4 (a) During the Audit Period, IQ received advanced fees totaling  
5 approximately \$34,000.00 from at least three (3) homeowners (Norman Medina Loyola, 405  
6 Maral Dr., American Canyon, CA; Charles Voght, 8467 Steelhead Avenue, Kings Beach, CA;  
7 and, William Klug, 331 San Marino Lane, Brentwood, CA) for assistance with short sales of  
8 their homes without first submitting to the Department the contracts and materials used by IQ  
9 Smarter in connect with the short sales, all in violation of Section 10085 of the Code and  
10 Section 2970 of Chapter 6, Title 10, California Code of Regulations ("Regulations");

11 (b) For the advanced fees identified above, IQ failed to deposit same in a  
12 trust account with a bank or other recognized depository, but deposited the advance fees in  
13 either Bank Account #1, Bank Account #2 and/or Bank Account #3, in violation of Section  
14 10146 of the Code, and;

15 (b) Failed to designate Bank Account #1, Bank Account #2 and Bank  
16 Account #3 as trust accounts, in violation of Section 2832;

17 (c) Comingled trust funds in the form of advanced fees with broker funds in  
18 Bank Account #1, Bank Account #2 and/or Bank Account #3, in violation of Section 10176(e)  
19 of the Code and Section 2836 of the Regulations;

20 (d) Failed to maintain separate control records of all trust funds received and  
21 deposited in Bank Account #1, Bank Account #2 or Bank Account #3, in violation of Section  
22 2831 of the Regulations;

23 (e) Failed to reconcile the balance of all separate beneficiary records  
24 maintained with the record of all trust funds received and disbursed for Bank Account #1, Bank  
25 Account #2 or Bank Account #3, in violation of Section 2831.1 of the Regulations;

26 (f) Failed to provide principals with advance fee accountings on a quarterly  
27 basis and when contracts were completed, in violation of Section 2972 of the Regulations;

1 (g) Failed to retain for three years copies of all documents it executed in  
2 connection with any transaction for which a real estate broker license is required and failed to  
3 make available to the Auditor deposit receipts and copies of signature cards for Bank Account  
4 #1, Bank Account #2 or Bank Account #3, in violation of section 10148 of the Code.

5 12

6 The acts and/or omissions of IQ as alleged above violated Sections 10085, 10146  
7 and 10148 of the Code and Sections 2970, 2835, 2831, 2831.1, 2831.2 2832, 2972, and 2725, of  
8 the Regulations and are grounds for discipline under Sections 10176 and 10177(d) of the Code.

9  
10 SECOND CAUSE OF ACTION

11 Failure to Supervise

12 13

13 Each and every allegation in Paragraphs 1 through 12, inclusive, above, is  
14 incorporated by this reference as if fully set forth herein.

15 14

16 Respondents MIRZAEI and/or HENDRYX, as the designated officer/broker of  
17 Respondent IQ, were required to exercise reasonable supervision and control over the activities  
18 of Respondent IQ. Respondents MIRZAEI and/or HENDRYX failed to exercise reasonable  
19 supervision over the acts of IQ thereby allowing, permitting and/or ratifying the acts and  
20 omissions as described above to occur, all in violation of Section 10159.2 of the Code, which  
21 constitutes cause for suspension or revocation of all licenses and license rights of Respondents  
22 MIRZAEI and/or HENDRYX under Sections 10177(d) and 10177(h) of the Code.

23 THIRD CAUSE OF ACTION

24 Negligence and/or Incompetence

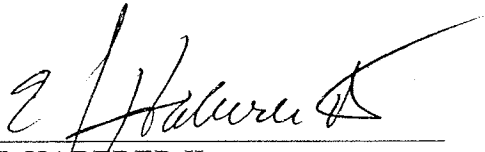
25 15

26 Each and every allegation in Paragraphs 1 through 14, inclusive, above are  
27 incorporated by this reference as if fully set forth herein.

////

The acts and omissions of Respondents IQ, MIRZAEI and/or HENDRYX, and each of them, described in Paragraphs 1 through 14, above, constitute negligence or incompetence in performing acts requiring a real estate license, and therefore is cause under Section 10177(g) of the Code for suspension or revocation of all licenses and license rights of Respondents IQ, MIRZAEI and/or HENDRYX, and each of them.

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 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.



E. J. HABERER II  
Deputy/Real Estate Commissioner

Dated at Oakland, California  
this 30<sup>th</sup> day of July, 2010.