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8

9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

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12 In the Matter of the Accusation of THE) File No.: 415-0014
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) ACCUSATION
14)
Complainant,)
15)
16 vs.)
17 LOANCITY.COM,)
18 Respondent.)
19)
20)

21 The Complainant is informed and believes, and based upon such information and belief,
22 alleges and charges Respondent as follows:

23 I

24 Respondent Loancity.com ("Loancity") is a residential mortgage lender licensed by the
25 California Corporations Commissioner ("Commissioner") pursuant to the California Residential
26 Mortgage Lending Act (California Financial Code § 50000 et seq.) ("CRMLA"). Loancity has its
27 principal place of business located at 5671 Santa Teresa Boulevard, Suite 100, San Jose, California
28 95123. Loancity also has branch locations situated at 3300 Douglas Boulevard, Suite 155, Roseville,

1 California 95661; 18301 Von Karman, Suite 120, Irvine, California 92614; 7600 N. 15th Street, Suite
2 165, Phoenix, Arizona 85020; and 600 North Westshore Boulevard, Suite 204, Tampa, Florida
3 33609.

4 II

5 On or about August 22, 2001, the Commissioner issued an Order to Discontinue Violations
6 Pursuant to California Financial Code Section 50321 against Loancity for violations involving trust
7 account shortages, debit balances, commingling and misuse of trust funds (“Order to Discontinue
8 Violations”). Pursuant to the Order to Discontinue Violations, Loancity was ordered, among other
9 things, to immediately discontinue (i) commingling trust funds with general operating funds, (ii)
10 causing debit balances to exist in the trust accounts, and (iii) using trust funds for operating
11 activities. On or about April 22, 2002, the Order to Discontinue Violations was made final through
12 the issuance of a Final Order to Discontinue Violations.

13 III

14 On or about November 1, 2005, the Commissioner commenced a regulatory examination of
15 the books and records of Loancity. The November 1, 2005 regulatory examination (“regulatory
16 examination”), disclosed that Loancity had caused debit balances (shortages) to exist in certain of its
17 trust accounts in violation of California Code of Regulations, title 10, section 1950.314.6. Section
18 1950.314.6 prohibits debit balances in any loan or servicing account maintained by CRMLA
19 licensees. Section 1950.314.6 does allow CRMLA licensees to advance funds on behalf of a loan or
20 servicing account for purposes of payment of taxes, insurance, and other payments, if such a
21 payment is required and the account has insufficient funds to its credit to cover such required
22 payment. The debit balances described below occurred as a result of Loancity’s failure to timely
23 advance funds on behalf of the tax and insurance and principal and interest accounts, which had
24 insufficient funds to their credit for payment of required taxes, insurance, principal and interest, prior
25 to disbursing the trust funds from the accounts.

26 In November 2005, Loancity maintained several of its trust accounts at Bridge Bank, which
27 included a tax and insurance trust account (“T&I account”), a principal and interest trust account
28 (“P&I account”), and an escrow disbursement trust account (“disbursement account”)(collectively

1 referred to as the “Bridge trust accounts”). The T&I account held borrower funds to be later paid for
2 taxes and insurance and the P&I account held funds paid by the borrower to be applied to principal
3 and interest. T&I and P&I funds would be held in these accounts until time for disbursement, at
4 which point the funds would be transferred into the disbursement account to then be disbursed to the
5 appropriate investor, tax authority, and/or insurance company.

6 The records of Loancity disclosed that, as of August 31, 2005, the escrow disbursement
7 account had a shortage of \$64,181.83. However, an extensive review by the Commissioner’s
8 examiner of the Bridge trust accounts¹ and the borrower accounts pertinent thereto conducted at a
9 follow-up examination commenced on or about March 20, 2006 (“follow-up examination”),
10 disclosed that the actual shortage that occurred during July and August 2005 was \$1,963.96, of
11 which \$1,213.40 had been cured by August 31, 2005. Loancity’s failure to timely transfer trust
12 funds from the T&I and P&I accounts to the escrow disbursement account caused the escrow
13 disbursement account to appear to have a much greater shortage than actually existed.

14 The regulatory examination disclosed an additional shortage of \$51,506.89 in the clearing
15 trust account of Loancity at Bridge Bank (“Bridge Clearing Account”) that was created when
16 Loancity, on August 19, 2005, transferred \$51,506.89 from the Bridge Clearing Account to its
17 operating account at Bridge Bank (“Bridge Operating Account”) in violation of California Financial
18 Code section 50202(a). Section 50202(a) prohibits commingling of trust funds with the funds of the
19 licensee. Loancity then transferred the Bridge Clearing Account trust funds from its Bridge
20 Operating Account to a P&I account of Loancity at Heritage Bank designated for Washington
21 Mutual, and thereafter disbursed these trust funds from the Washington Mutual P&I account for the
22 benefit of Washington Mutual. Loancity did not cure this trust account shortage until on or about
23 November 18, 2005, which was after the regulatory examination had been commenced.

24 Additionally, the regulatory examination disclosed that the Washington Mutual P&I account was
25 short \$51,506.89 at the time of the transfer from the Bridge Clearing Account. Moreover, in that the
26 trust funds on deposit in the Bridge Clearing Account were unrelated to the Washington Mutual P&I
27

28 ¹ At the time of the follow-up examination, Loancity had moved the Bridge trust accounts to Heritage Bank.

1 account, the disbursement of the Bridge Clearing Account trust funds for the benefit of Washington
2 Mutual also constituted a misuse of trust funds in violation of California Financial Code section
3 50202(b).

4 IV

5 During the course of the follow-up examination, Loancity was requested to provide a report
6 of all its loan accounts with debit balances. The revised report provided by Loancity on or about
7 March 29, 2006 disclosed that Loancity had a trust account shortage of \$196,880.33 in the clearing
8 trust account located at Heritage Bank (“Heritage Clearing Account”). This trust account shortage
9 was the result of debit balances in violation of California Code of Regulations, title 10, section
10 1950.314.6 existing in approximately 385 loan accounts. In accordance with the Commissioner’s
11 demand, Loancity cured the \$196,880.33 trust account shortage on or about March 29, 2006 by
12 transferring funds from its operating account to the Heritage Clearing Account. However, due to the
13 pervasive and constant nature of Loancity’s commingling of trust funds with its funds, the
14 Commissioner is unable to determine if the \$196,880.33 trust fund shortage discovered as of March
15 29, 2006 was the full extent of the trust fund shortage in existence at that time.

16 V

17 Loancity, by engaging in the activities described above, not only engaged in serious
18 violations of the CRMLA, but also violated the April 22, 2002 Final Order to Discontinue Violations
19 described previously in Section II above. The April 22, 2002 Order prohibited Loancity from,
20 among other things, (i) commingling trust funds with general operating funds, (ii) causing debit
21 balances to exist in the trust accounts, and (iii) using trust funds for operating activities.

22 The pertinent findings of the March 5, 2001 regulatory examination that led to the April 22,
23 2002 Order were that Loancity (i) had been depositing all trust funds into its company operations
24 account in violation of California Financial Code section 50202(a), (ii) had used trust funds for
25 operating activities in violation of California Financial Code sections 50202(b) and 50503(a)(1) from
26 at least February 1, 2001 through May 31, 2001, and (iii) the use of trust funds for operating
27 activities had caused debit balances as high as \$967,863.86 to exist in the trust account from at least
28 February 1, 2001 through May 31, 2001 in violation of California Code of Regulations, title 10,

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section 1950.314.6.

VI

California Financial Code section 50327 provides in pertinent part:

(a) The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if the commissioner finds that:

(1) the licensee has violated any provision of this division or rule or order of the commissioner thereunder; or (2) any fact or condition exists that, if it had existed at the time of the original application for license, reasonably would have warranted the commissioner in refusing to issue the license originally.

VII

The Commissioner finds that, by reason of the foregoing, Loancity has repeatedly violated California Financial Code sections 50202(a) and 50202(b), California Code of Regulations, title 10, section 1950.314.6 and an order of the Commissioner, and based thereon, grounds exist to revoke the residential mortgage lender license of Loancity.

WHEREFORE, IT IS PRAYED that the residential mortgage lender license of Loancity be revoked and that pursuant to California Financial Code section 50311, Loancity be given a transition period of sixty (60) days within which to complete any loans for which it had commitments.

Dated: September 12, 2006
Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel