

FILED

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DEPARTMENT OF REAL ESTATE

By *pdw*

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8 **BEFORE THE DEPARTMENT OF REAL ESTATE**
9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of:)
12 MICHELLE ANN LUNG and) No. H-3162 FR
13 FAR WEST PROPERTIES &) SECOND AMENDED
14 FINANCIAL, INC.,) ACCUSATION
15 Respondents.)

16 The Complainant, BRENDA SMITH, in her official capacity as a Supervising
17 Special Investigator of the State of California, Department of Real Estate ("Department"), brings
18 this Second Amended Accusation against MICHELLE ANN LUNG ("LUNG") and FAR WEST
19 PROPERTIES & FINANCIAL, INC. ("FAR WEST"), (collectively "Respondents"), and is
20 informed and alleges as follows:

21 GENERAL ALLEGATIONS

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23 FAR WEST is presently licensed by the Department and/or has license rights under
24 the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
25 ("Code"), as a corporate real estate broker, CREB No. 01888981.

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LUNG is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker, REB No. 00920313.

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At all relevant times herein, LUNG and FAR WEST were and are licensed by the Department as mortgage loan originators, MLO/NMLS Id. Nos. 309771 (LUNG) and 260114 (FAR WEST).

4

At all relevant times herein, LUNG is and was the designated broker officer of FAR WEST.

5

At all relevant times herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate licensees within the State of California within the meaning of Section 10131(b) of the Code including the operation and conduct of a property management business with the public, wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented or offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

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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 in the State of California, within the meaning of section 10131(a) of the Code by engaging with the public in residential property resale activities, on behalf of others, for compensation or in expectation of compensation, Respondents sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property.

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2 Whenever reference is made in this Second Amended Accusation to an act or
3 omission of FAR WEST, such allegation shall be deemed to mean that the employees, agents and
4 real estate licensees employed by or associated with FAR WEST committed such act or omission
5 while engaged in furtherance of the business or operations of FAR WEST and while acting within
6 the course and scope of their authority and employment.

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8 Whenever reference is made in this Second Amended Accusation to an act or
9 omission of LUNG, such allegation shall be deemed to mean that LUNG committed such act or
10 omission while engaged in furtherance of the business or operations of FAR WEST and while
11 acting within the course and scope of her authority and employment.

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13 On or about May 18, 2017, Cheryl M. submitted an Enforcement Online Complaint
14 (#075952-167) against the real estate licenses of LUNG and FAR WEST alleging that LUNG, while
15 acting in her capacity as designated broker officer of FAR WEST, failed to market a property
16 located at 1551 N. Pacific Ave., Fresno, CA 93728 ("Fresno Property") for sale and, instead, rented
17 the property without the permission of one or both of the owners.

18 10

19 At all relevant times herein, Alan L. and Cheryl M., brother and sister, each owned
20 an undivided one-half interest in the Fresno Property. The Grant Deed for the Fresno Property was
21 recorded with the Fresno County Recorder on or about April 14, 2010.

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23 At all relevant times herein, Alan L. and LUNG were husband and wife.

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FIRST CAUSE OF ACTION
(Audit Violations)

A. Audit Violations (Audit No. FR 160083)

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Each and every allegation made in Paragraphs 1 through 11, inclusive, is incorporated by this reference as if fully set forth herein.

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Beginning on or about August 31, 2017, and continuing through September 1, 2017, an audit, No. FR160083, was conducted of the real estate business activities of FAR WEST, located at 5100 N. 6th St. #170, Fresno, CA 93710, and at the Department's office located at 2550 Mariposa Mall, Fresno CA 93721. The Department's auditor examined the business records of FAR WEST for the period of January 1, 2015, through July 31, 2017 ("audit period").

14

While engaging in the real estate activities as described in Paragraphs 5 and 6, above, and within the audit period, Respondents accepted or received funds in trust ("trust funds") and deposited or caused the trust funds to be deposited into a bank/trust account maintained as follows:

Bank Name:	Bank of the Sierra (Bank Account #1)
Bank Address:	636 E. Shaw Ave., Fresno, CA 93710
Account Name:	Far West Properties & Financial, Inc.
Account No.:	Last 4 Digits: 8170
Description:	A Business Checking Account used for deposits and disbursements related to management of properties. Deposits consisted of rents and security deposits collected from tenants. Disbursements consisted of payments for expenses related to the properties managed, remittances to owners, and payment of management fees to FAR WEST.

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In the course of the real estate activities described above in Paragraphs 5 and 6, and during the audit period, it was discovered:

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1 and deposited or caused the trust funds to be deposited into a bank/trust account maintained as
2 follows:

3 Bank Name: Bank of the Sierra
4 Bank Address: 5775 E. Kings Canyon Rd.,
Fresno, CA 93727
5 Account Name: Far West Properties & Financial, Inc. DBA Far West Property
Management
6 Account No.: Last 4 Digits: 4686
7 Description: Hold property owner funds for management of properties.

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8 In the course of the real estate activities described above in Paragraphs 5 and 6, and
9 during the second audit period, it was discovered:

10 A. As of May 31, 2019, the trust account ending in 4686 had a shortage of
11 \$13,513.70, in violation of Section 10145 of the Code and Section 2832.1 of the Regulations; and

12 B. Respondents failed to obtain prior written consent from the owners of the
13 trust funds in trust account ending in 4686 prior to reducing the balance of the funds to an amount
14 less than the existing aggregate trust fund liabilities, in violation of Section 10145 of the Code and
15 Section 2832.1 of the Regulations.

16 **SECOND CAUSE OF ACTION**
17 **(Negligence and/or Fraud or Dishonest Dealings)**

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19 Each and every allegation made in Paragraphs 1 through 19, inclusive, is
20 incorporated by this reference as if fully set forth herein.

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22 On or about March 8, 2017, FAR WEST (as "Owner/Agent") and Christina T. and
23 April T. (as "Resident") executed a Lease Agreement on the Fresno Property, wherein Christina T.
24 and April T. were to rent the Fresno Property for the time period of April 20, 2017, to September 7,
25 2017.

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On or about March 17, 2017, FAR WEST (as "Broker") and Alan L. and Cheryl M. (as "Seller"), executed a Residential Listing Agreement ("RLA"), wherein it was agreed that starting on March 17, 2017, and ending on March 16, 2018, FAR WEST had the exclusive and irrevocable right to sell or exchange the Fresno Property.

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On or about March 21, 2017, Cheryl M. notified LUNG in writing that she did not want to rent the Fresno Property while waiting for a buyer.

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On or about March 27, 2017, LUNG and Alan L. executed a Property Management Agreement ("PMA"), wherein FAR WEST was granted the exclusive right to rent, lease, and manage the Fresno Property for the period beginning March 27, 2017, and ending March 26, 2018.

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The PMA was executed by and between Alan L. and LUNG, acting on behalf of FAR WEST. Cheryl M. did not sign the PMA.

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On or about April 20, 2017, Christina T. and April T. moved into the Fresno Property.

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Complainant is informed, believes, and thereon alleges that LUNG intentionally and/or negligently, and without the knowledge, permission, consent, and/or approval of Cheryl M. executed the Lease Agreement described above in Paragraphs 24 and 25.

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Complainant is informed, believes, and thereon alleges that LUNG intentionally and/or negligently, and without the knowledge, permission, consent, and/or approval of Cheryl M. executed the PMA described above in Paragraphs 24 and 25.

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2 Complainant is informed, believes, and thereon alleges that LUNG knew or should
3 have known that Cheryl M. did not want to rent the Fresno Property at the time LUNG and Alan L.
4 executed the PMA described above in Paragraphs 24 and 25.

5 THIRD CAUSE OF ACTION
6 **(Failure to Supervise as to LUNG)**

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8 Each and every allegation made above in Paragraphs 1 through 29, inclusive, is
9 incorporated by this reference as if fully set forth herein.

10 31

11 As the designated broker officer for FAR WEST, LUNG was required to exercise
12 reasonable supervision and control over the activities of FAR WEST and/or its employees.

13 32

14 LUNG failed to exercise reasonable supervision over the acts and/or omissions of
15 FAR WEST and/or its employees in such a manner as to allow the acts and/or omissions described
16 above in Paragraphs 12 and 29 to occur.

17 GROUND FOR DISCIPLINE

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19 The acts and/or omissions of Respondents, as alleged above in the First Cause of
20 Action, Paragraphs 12 through 19, constitute grounds for the suspension or revocation of the license
21 and license rights of Respondents under Sections 10145(a) (trust fund handling), 10145(g)
22 (maintaining separate records), 10177(d) (willful disregard of real estate laws), and 10177(g)
23 (negligence of incompetence in performing an act for which a license is required) of the Code, in
24 conjunction with Sections 2831.1 (separate records), 2831.2 (trust account reconciliation), 2832
25 (trust fund handling), 2832.1 (trust fund handling for multiple beneficiaries), and 2834 (trust
26 account withdrawals) of the Regulations.

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The acts and/or omissions of Respondents, as alleged above in the Second Cause of Action, Paragraphs 20 through 29, constitute grounds for the suspension or revocation of the license and license rights of Respondents under Sections 10176(i) (conduct that constitutes fraud or dishonest dealings in the course of a real estate transaction), 10177(d) (willful disregard of real estate laws), 10177(g) (negligence of incompetence in performing an act for which a license is required), and 10177(j) (conduct that constitutes fraud or dishonest dealings) of the Code.

The acts and/or omissions of LUNG, as alleged above in the Third Cause of Action, Paragraphs 30 through 32, constitute further grounds for the suspension or revocation of the license and license rights of LUNG under Sections 10159.2 (responsibilities of corporate officer to supervise), 10177(d) (willful disregard of real estate law), 10177(g) (negligence), and/or 10177(h) (failure to supervise) of the Code, in conjunction with Section 2725 (broker supervision) of the Regulations.

AUDIT COSTS

The acts and/or omissions of Respondents as alleged above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund violations) of the Code.

COST OF INVESTIGATION AND ENFORCEMENT

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, 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.

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