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8	BEFORE THE DEPARTMENT OF REAL ESTATE
9	STATE OF CALIFORNIA
10	* * *
11	In the Matter of the Accusation of:) No. H-3162 FR
12	MICHELLE ANN LUNG and)
13	FAR WEST PROPERTIES &)SECOND AMENDEDFINANCIAL, INC.,)ACCUSATION
14) Respondents.
15)
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
22	1 EAD WEST is according lissues of her the Department on the her lissues with the set
23	FAR WEST is presently licensed by the Department and/or has license rights under the Peel Estate Law, Pert 1 of Division 4 of the California Pusiness and Professions Code
24	the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as a corporate real estate broker, CREB No. 01888981.
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	2	LUNG is presently licensed by the Department and/or has license rights under the
	3	Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker, REB No. 00920313.
	4	3
	5	At all relevant times herein, LUNG and FAR WEST were and are licensed by the
	6	Department as mortgage loan originators, MLO/NMLS Id. Nos. 309771 (LUNG) and 260114
	7	(FAR WEST).
	8	4
	9	At all relevant times herein, LUNG is and was the designated broker officer of FAR
	10	WEST.
	11	5
	12	At all relevant times herein, Respondents engaged in the business of, acted in the
	13	capacity of, advertised or assumed to act as real estate licensees within the State of California
	14	within the meaning of Section 10131(b) of the Code including the operation and conduct of a
	15	property management business with the public, wherein, on behalf of others, for compensation or
	16	in expectation of compensation, Respondents leased or rented or offered to lease or rent, and
	17	solicited for prospective tenants of real property or improvements thereon, and collected rents from
	18	real property or improvements thereon.
	19	6
	20	At all times herein mentioned, Respondents engaged in the business of, acted in the
	21	capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the
	22	meaning of section 10131(a) of the Code by engaging with the public in residential property resale
	23	activities, on behalf of others, for compensation or in expectation of compensation, Respondents
	24	sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of,
	25	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.	
	7	8	
	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.	
	12	9	
	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.	
	22	11	
	23	At all relevant times herein, Alan L. and LUNG were husband and wife.	
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1	FIRST CAUSE OF ACTION (Audit Violations)
2	A. <u>Audit Violations (Audit No. FR 160083)</u>
3	12
4	Each and every allegation made in Paragraphs 1 through 11, inclusive, is
5	incorporated by this reference as if fully set forth herein.
6	13
7	Beginning on or about August 31, 2017, and continuing through September 1, 2017,
8	an audit, No. FR160083, was conducted of the real estate business activities of FAR WEST, located
9	at 5100 N. 6th St. #170, Fresno, CA 93710, and at the Department's office located at 2550
10	Mariposa Mall, Fresno CA 93721. The Department's auditor examined the business records of FAR
11	WEST for the period of January 1, 2015, through July 31, 2017 ("audit period").
12	14
13	While engaging in the real estate activities as described in Paragraphs 5 and 6,
14	above, and within the audit period, Respondents accepted or received funds in trust ("trust funds")
15	and deposited or caused the trust funds to be deposited into a bank/trust account maintained as
16	follows:
17	Bank Name: Bank of the Sierra (Bank Account #1)
18	Bank Address: 636 E. Shaw Ave., Fresno, CA 93710
19	Account Name: Far West Properties & Financial, Inc. Account No.: Last 4 Digits: 8170
20	Description: A Business Checking Account used for deposits and
21	disbursements related to management of properties. Deposits consisted of rents and security deposits collected from tenants.
22	Disbursements consisted of payments for expenses related to the properties managed, remittances to owners, and payment
23	of management fees to FAR WEST.
24	15
25	In the course of the real estate activities described above in Paragraphs 5 and 6, and
26	during the audit period, it was discovered:
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1	A. FAR WEST failed to maintain a separate record of the receipt and disposition
2	of all trust funds deposited into Bank Account #1 such that Bank Account #1 contained unidentified
3	and/or unaccounted funds of at least \$653.59, as required by Section 10145(g) of the Code and
4	Section 2831.1, Title10, California Code of the Regulations ("Regulations");
5	B. FAR WEST failed to reconcile at least once a month the balance of all
6	separate records or transaction records with the record of all trust funds received and disbursed from
7	Bank Account #1, as required by Section 10145(g) and Section 2831.2 of the Regulations;
8	C. Bank Account #1, which was used to hold trust funds, was not designated as
9	a trust account in the name of FAR WEST, as trustee, as required by Section 10145(a) of the Code
10	and Section 2832 of the Regulations; and
11	D. The bank signature card for Bank Account #1 listed Alan L., an unlicensed
12	individual, as a signatory on the bank account without fidelity bond coverage, as required by
13	Section 2834 of the Regulations.
14	B. Follow-up Audit Violations (Audit No. FR180055)
15	16
16	Each and every allegation made in Paragraphs 1 through 15, inclusive, is
17	incorporated by this reference as if fully set forth herein.
18	17
19	Beginning on or about July 29, 2019, and continuing through August 16, 2019, an
20	audit, No. FR180055, was conducted of the real estate business activities of FAR WEST, located at
21	5100 N. 6th St. #170, Fresno, CA 93710, and at the Department's office located at 2550 Mariposa
22	Mall, Fresno CA 93721. The Department's auditor examined the business records of FAR WEST
23	for the period of July 1, 2017, through June 30, 2019, ("second audit period").
24	18
25	While engaging in the real estate activities as described above in Paragraphs 5 and 6,
26	and within the second audit period, Respondents accepted or received funds in trust ("trust funds")
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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: 4686Description:Hold property owner funds for management of properties.
	7	19
	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)
	18	20
	19	Each and every allegation made in Paragraphs 1 through 19, inclusive, is
	20	incorporated by this reference as if fully set forth herein.
	21	21
	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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2	On or about March 17, 2017, FAR WEST (as "Broker") and Alan L. and Cheryl M.
3	(as "Seller"), executed a Residential Listing Agreement ("RLA"), wherein it was agreed that
4	starting on March 17, 2017, and ending on March 16, 2018, FAR WEST had the exclusive and
5	irrevocable right to sell or exchange the Fresno Property.
6	23
7	On or about March 21, 2017, Cheryl M. notified LUNG in writing that she did not
8	want to rent the Fresno Property while waiting for a buyer.
9	24
10	On or about March 27, 2017, LUNG and Alan L. executed a Property Management
11	Agreement ("PMA"), wherein FAR WEST was granted the exclusive right to rent, lease, and
12	manage the Fresno Property for the period beginning March 27, 2017, and ending March 26, 2018.
13	25
14	The PMA was executed by and between Alan L. and LUNG, acting on behalf of
15	FAR WEST. Cheryl M. did not sign the PMA.
16	26
17	On or about April 20, 2017, Christina T. and April T. moved into the Fresno
18	Property.
19	27
20	Complainant is informed, believes, and thereon alleges that LUNG intentionally
21	and/or negligently, and without the knowledge, permission, consent, and/or approval of Cheryl M.
22	executed the Lease Agreement described above in Paragraphs 24 and 25.
23	28
24	Complainant is informed, believes, and thereon alleges that LUNG intentionally
25	and/or negligently, and without the knowledge, permission, consent, and/or approval of Cheryl M.
26	executed the PMA described above in Paragraphs 24 and 25.
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1	29
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)
7	30
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	GROUNDS FOR DISCIPLINE
18	33
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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2	The acts and/or omissions of Respondents, as alleged above in the Second Cause of
3	Action, Paragraphs 20 through 29, constitute grounds for the suspension or revocation of the license
4	and license rights of Respondents under Sections 10176(i) (conduct that constitutes fraud or
5	dishonest dealings in the course of a real estate transaction), 10177(d) (willful disregard of real
6	estate laws), 10177(g) (negligence of incompetence in performing an act for which a license is
7	required), and 10177(j) (conduct that constitutes fraud or dishonest dealings) of the Code.
8	35
9	The acts and/or omissions of LUNG, as alleged above in the Third Cause of Action,
10	Paragraphs 30 through 32, constitute further grounds for the suspension or revocation of the license
11	and license rights of LUNG under Sections 10159.2 (responsibilities of corporate officer to
12	supervise), 10177(d) (willful disregard of real estate law), 10177(g) (negligence), and/or 10177(h)
13	(failure to supervise) of the Code, in conjunction with Section 2725 (broker supervision) of the
14	Regulations.
15	AUDIT COSTS
16	36
17	The acts and/or omissions of Respondents as alleged above, entitle the Department
18	to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund
19	violations) of the Code.
20	COST OF INVESTIGATION AND ENFORCEMENT
21	37
22	Section 10106 of the Code provides, in pertinent part, that in any order issued in
23	resolution of a disciplinary proceeding before the Department, the Commissioner may request the
24	Administrative Law Judge to direct a licensee found to have committed a violation of this part to
25	pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
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. 1	WHEREFORE, Complainant prays that a hearing be conducted on the allegations of	
2	this First Amended Accusation and that upon proof thereof, a decision be rendered revoking all	
3	licenses and license rights of Respondents under the Real Estate Law, for the cost of investigation	
4	and enforcement as permitted by law, for the cost of the audit as permitted by law, and for such	
5	other and further relief as may be proper under other provisions of law.	
6		
7	BILL	
8	BRENDA SMITH Supervising Special Investigator	
9	Supervising Special investigator	
10 11	Dated at Fresno, California,	
11	this <u>10</u> day of <u>Detober</u> , 2019.	
12	DISCOVERY DEMAND	
14	Pursuant to Sections 11507.6, et seq. of the Administrative Procedure Act, the	
15	Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth	
16	in the Administrative Procedure Act. Failure to provide Discovery to the Department of Real Estate	
17	may result in the exclusion of witnesses and documents at the hearing or other sanctions that the	
18	Office of Administrative Hearings deems appropriate.	
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