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FILED

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DEPARTMENT OF REAL ESTATE

By K. Contreras

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

11 * * *

12 In the Matter of the Accusation of)
13)
14 FREDERICK WINSTON WILLIAMS II, and) NO. H-10717 SF
15 JOSIE V. HOWE)
16 Respondents.) ACCUSATION

17 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of
18 the State of California, for cause of Accusation against FREDERICK WINSTON WILLIAMS II
19 (herein "WILLIAMS"), and JOSIE V. HOWE (herein "HOWE"), is informed and alleges as
20 follows:

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22 The Complainant makes this Accusation in his official capacity.

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24 At all times herein mentioned, WILLIAMS was and now is licensed by the State
25 of California Department of Real Estate (herein "the Department") as a real estate broker and/or
26 has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions
27 Code) (herein "the Code").

1 3

2 From July 8, 2005 through April 17, 2006, WILLIAMS was licensed to use the
3 DBA name "Clever Key Financial." From May 30, 2006, and continuing, WILLIAMS was
4 licensed to use the DBA name "All Source Funding."

5 4

6 At all times herein mentioned, WILLIAMS, in his own name or using the names
7 Clever Key Financial or All Source Funding, engaged in the business of, acted in the capacity of,
8 advertised, or assumed to act as a real estate broker within the State of California within the
9 meaning of Sections 10131(d) of the Code, including the operation and conduct of a mortgage
10 loan brokerage with the public wherein, on behalf of others, for compensation or in expectation
11 of compensation, WILLIAMS solicited lenders and borrowers for loans secured directly or
12 collaterally by liens on real property, and wherein WILLIAMS arranged, negotiated, serviced
13 and collected payments on such loans.

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15 At all times herein mentioned, HOWE was and now is licensed by the
16 Department as a real estate salesperson and/or has license rights under the Real Estate Law.

17 6

18 Respondent HOWE was employed in her licensed capacity as a real estate
19 salesperson by WILLIAMS from September 27, 2005 through July 11, 2006; employed in her
20 licensed capacity as a real estate salesperson by licensed real estate broker Gary Lopez Flores
21 from July 12, 2006 through July 24, 2006; and again employed in her licensed capacity as a real
22 estate salesperson by WILLIAMS from July 25, 2006 through March 17, 2007 and from
23 April 27, 2007 and continuing through the date of the filing of this Accusation.

24 FIRST CAUSE OF ACTION: "CANNING TRANSACTION"

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26 Between on or about May 4, 2006, and July 7, 2006, in the course of the activities
27 described in Paragraph 4, above, WILLIAMS solicited, obtained and processed an application for

1 a \$350,000.00 loan to Oscar Lee Wooten and Ollie Mae Wooten (herein "Borrowers") to be
2 secured by real property at 5904 Canning Street, Oakland, California, (herein the "Canning
3 transaction") to refinance the existing mortgage of said real property by representing to the
4 borrowers that WILLIAMS estimated in good faith that WILLIAMS would receive, as
5 compensation for arranging the loan, \$3,500.00 in commission, processing, and administration
6 fees.

7 8

8 Upon close of the escrow on July 7, 2006, consummating the Canning transaction,
9 above, WILLIAMS received, as compensation for arranging the loan, \$4,499.00 from escrow in
10 commission, processing, and administration fees and a \$7,000.00 rebate from the lender, known
11 as a "yield spread premium," paid outside escrow.

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13 In the Canning transaction described in Paragraphs 7 and 8, above, the
14 representation described in Paragraph 7 was false, as WILLIAMS well and truly knew at the time
15 the representation was made. In truth, WILLIAMS

- 16 (a) Expected to received an additional \$999.00 in commission, processing, and
17 administration fees, and
- 18 (b) Expected to receive a yield spread premium rebate from the lender paid
19 outside escrow in addition to the estimated commission.

20 WILLIAMS concealed and failed to disclose both of these facts to the borrower
21 throughout the time WILLIAMS was arranging, negotiating and processing the loans at least
22 until at or immediately prior to July 7, 2006, the date of the close of the escrow consummating
23 the loan.

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25 In the Canning transaction described in Paragraphs 7 and 8, above, the loan
26 application indicated that the licensee interviewing the borrower was Respondent HOWE. This
27 representation was false, as WILLIAMS well and truly knew at the time the representation was

1 made. In truth and in fact, HOWE did no work for WILLIAMS, but rather received
2 compensation from WILLIAMS via the DBA names Clever Key Financial and All Source
3 Funding for the use of her name and licensed status by unlicensed individuals employed by
4 WILLIAMS.

5 11

6 As noted in Paragraph 3, above, WILLIAMS' terminated the use of the DBA
7 name Clever Key Financial with the Department on April 17, 2006, seventeen (17) days prior to
8 commencing the mortgage loan transaction described in Paragraphs 7 and 8, above. In this
9 transaction, however, the loan documents relating to the transaction do not establish that
10 WILLIAMS was executing the loan transaction under his own name. Both WILLIAMS' name
11 and that of Clever Key Financial appear as "Broker" within the loan application. Compensation
12 to WILLIAMS, as described in Paragraph 8, above, took the form of a check from Alliance Title
13 Company made payable to the order of "Frederick Winston Williams III, c/o Clever Key
14 Financial."

15 12

16 At all times herein mentioned between on or about May 4, 2006, and July 1, 2009,
17 in the course of the mortgage loan transaction described in Paragraphs 7 and 8, above and/or
18 subsequently, WILLIAMS violated and willfully disregarded the provisions of Section 10240 of
19 the Code, in that WILLIAMS failed to obtain the signature of the borrowers on the statement
20 required by Section 10240 (herein "Written Disclosure Statement"), containing all information
21 required as by Section 10241, failed to deliver a copy of the required Written Disclosure
22 Statement to the borrowers, and/or failed to retain on file for a period of three years a true and
23 correct copy of the required Written Disclosure Statement signed by the borrowers on the loan as
24 described in Paragraphs 7 and 8, above.

25 13

26 At all times herein mentioned between on or about May 4, 2006, and July 1, 2009,
27 in the course of the mortgage loan transaction described above and/or subsequently, WILLIAMS

1 violated and willfully disregarded the provisions of Section 10148 of the Code, in that
2 WILLIAMS failed to retain all documents executed by him and/or obtained by him in connection
3 with the transaction described in Paragraphs 7 and 8, for which a real estate broker license was
4 required.

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6 The acts and omissions of Respondent WILLIAMS described in Paragraphs 7
7 through 11, inclusive, constitute the substantial misrepresentation of a material fact and fraud
8 and dishonest dealing, and constitute grounds for the suspension or revocation of WILLIAMS'
9 license and license rights under Sections 10176(i) and/or 10177(j) of the Code.

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11 The acts and omissions of Respondent WILLIAMS described in Paragraphs 7, 8,
12 9, and 12, above, constitute the claiming or taking by a licensee of a secret or undisclosed
13 amount of compensation, commission or profit or the failure of a licensee to reveal to the
14 employer of the licensee the full amount of the licensee's compensation, commission or profit
15 under the agreement between the Borrowers and WILLIAMS, for which WILLIAMS was
16 required to be licensed under Sections 10130 and 10131, and constitute grounds for the
17 suspension or revocation of WILLIAMS' license and license rights under Section 10176(g) of
18 the Code.

19 16

20 The acts and omissions of Respondent WILLIAMS described in Paragraph 12,
21 above, constitute a violation of Section 10240 of the Code and are grounds for the suspension or
22 revocation of WILLIAMS' license and license rights under Section 10177(d) of the Code.

23 17

24 The acts and omissions of Respondent WILLIAMS described in Paragraph 13,
25 above, constitute a violation of Section 10148 of the Code and are grounds for the suspension or
26 revocation of WILLIAMS' license and license rights under Section 10177(d) of the Code.

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2 The acts and omissions of Respondent WILLIAMS described in Paragraphs 18
3 through 21, above, constitute a violation of Section 10177(h) of the Code and Section 2725 of
4 the California Code of Regulations (herein "the Regulations"), and are grounds for the
5 suspension or revocation of WILLIAMS' license and license rights under Section 10177(d) and
6 (h) of the Code.

7 THIRD CAUSE OF ACTION: FAILURE TO SUPERVISE

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9 In the course of the investigation into this matter, Respondent WILLIAMS made
10 the following assertions to Departmental staff assigned to investigate this matter regarding his
11 activities from the commencement of his licensure as a real estate broker on June 2, 2005, and
12 continuing to the date of the interview on December 27, 2007, including the period from July 3,
13 2006 through December 27, 2007:

- 14 (a) That WILLIAMS never saw any real estate transaction that closed under his
15 broker license;
- 16 (b) That WILLIAMS did not know who signed as broker on the real estate
17 transactions that closed under his license;
- 18 (c) That WILLIAMS did not interview the real estate salespeople that worked for
19 him, relying on other, unlicensed partners in Clever Key Financial to conduct
20 that activity;
- 21 (d) That compensation within Clever Key Financial was split "five ways between
22 the partners," including unlicensed individuals, after commissions.
- 23 (e) That WILLIAMS was unaware of the purpose for, or existence of, any
24 commission rolls related to his broker license;
- 25 (f) That, despite WILLIAMS' role as the sole broker of the firm, he recognized
26 that he was not taking a role of central responsibility for the firm, but rather
27 was kept uninvolved and out of a central, responsible role in the firm.

1 (g) That, despite WILLIAMS' role as sole broker of the firm and his awareness of
2 being kept out of a central and responsible role in the firm, WILLIAMS
3 maintained his role in the firm and allowed the appearance of proper licensing
4 for the firm until his partners locked him out of the office.

5 (h) That WILLIAMS had no policies or procedures to ensure compliance with the
6 Real Estate Law or the Regulations.

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8 The acts and omissions of Respondent WILLIAMS described in Paragraph 23,
9 above, constitute a failure on the part of WILLIAMS as a broker licensee to exercise reasonable
10 supervision over the activities of his salespersons in violation of Section 10177(h) of the Code
11 and Section 2725 of the Regulations, and are grounds for the suspension or revocation of
12 WILLIAMS' license and license rights under Section 10177(d) and (h) of the Code.

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14 The acts and omissions of Respondent WILLIAMS described in Paragraph 23(d),
15 above, constitutes direct or indirect compensation by a licensed real estate broker to an
16 unlicensed person for that person's performance of acts within the scope of the Real Estate Law,
17 a violation of Section 10137 of the Code and are grounds for the suspension or revocation of
18 WILLIAMS' license and license rights under Section 10137 and Section 10177(d) of the Code.

19 MATTER IN AGGRAVATION: SHAM EMPLOYMENT OF HOWE

20 26

21 From on or about November 8, 2005 through on or about July 2, 2006, HOWE
22 accepted a series of 76 (seventy-six) \$100.00 payments from WILLIAMS via his DBA names
23 Clever Key Financial and All Source Funding. During that same period, HOWE did no work for
24 WILLIAMS requiring a real estate license. Rather, HOWE was compensated as described by
25 Clever Key Financial and All Source Funding for each instance in which her name and licensed
26 status were used by those entities to process mortgage loans generated by unlicensed employees
27 of Respondent WILLIAMS using the DBA names Clever Key Financial and All Source Funding.

In the course of the Esmond transaction, Tran, although unlicensed, is listed as "loan agent" on the Open Order Request Forms faxed to North American Title on or about October 26, 2005, from Clever Key Financial.

In the course of the Esmond transaction, Clever Key Financial's Mortgage Loan Disclosure Statements/Good Faith Estimate documents indicated that real estate salesperson HOWE was the Broker's Representative for the loan transaction. As described in Paragraphs 18 through 20 and Paragraph 26, above, HOWE did not do this work; HOWE's name was used on Clever Key Financial's documents when an unlicensed individual's name could not be used because the work required a license.

WILLIAMS paid Tran \$12,720.00 as compensation for the Esmond transaction, based upon advance payments of \$10,000.00 on November 18, 2005, and \$2,000.00 on November 21, 2005, and a payment of \$720.00 after close of escrow on November 23, 2005. The Esmond transaction also included a \$74,284.38 payment from escrow from the "Seller's proceeds" to Tran, which payment was not disclosed to the Flores.

"SOMERVILLE TRANSACTION"

Between on or about December 9, 2005, and February 1, 2006, in the course of her employment with WILLIAMS, Tran arranged the sale of 532 Somerville Circle, Vacaville, California (herein "Somerville transaction").

In the course of the Somerville transaction, Tran represented to financially distressed sellers Kenneth Jones and Sandra Jones (herein "the Joneses") that their home would be sold to an investor, Rossana Barrueto, but they would be entitled to remain in the home and repurchase it at a later time.

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2 In the course of the Somerville transaction, Tran obtained the Joneses' signatures
3 on multiple documents and in the notary public book of Williams Laus outside of Williams Laus'
4 presence, including placing the Joneses' fingerprints in the notary public book. Williams Laus
5 later certified the Joneses' signatures despite never meeting the Joneses in person.

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7 In the course of the Somerville transaction, Tran, although unlicensed, is listed as
8 "loan agent" on the Open Order Request Forms faxed to North American Title on or about
9 October 26, 2005 (the same date as the Esmond transaction, above) from Clever Key Financial.

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11 In the course of the Somerville transaction, Clever Key Financial's Mortgage
12 Loan Disclosure Statements/Good Faith Estimate documents indicated that real estate
13 salesperson HOWE was the Broker's Representative for the loan transaction. As described in
14 Paragraphs 18 through 20 and Paragraph 26, above, HOWE did not do this work; HOWE's name
15 was used on Clever Key Financial's documents when an unlicensed individual's name could not
16 be used because the work required a license.

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18 On or about December 8, 2005, WILLIAMS paid Tran \$14,260.00 as compensation
19 for the Somerville transaction. The Somerville transaction also included a \$74,284.38 payment from
20 escrow from the "Seller's proceeds" to Tran, which payment was not disclosed to the Joneses.

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22 On or about July 28, 2008, in the Superior Court of California, County of Solano,
23 Williams Laus was convicted of violation of California Penal Code Section 115(a), Attempt to
24 Record a False or Forged Instrument, a felony that is substantially related under Section 2910,
25 Title 10, of the Regulations. This conviction arose from circumstances surrounding the two real
26 estate transactions conducted by Tran and described in Paragraphs 26 through 40, above, while
27 both Williams Laus and Tran were employed by WILLIAMS.

Effective February 2, 2009, in case number H-10514 SF before the Department of Real Estate, the Commissioner revoked the real estate salesperson license of Williams Laus on the basis of her conviction, described in Paragraph 41, above.

PRAYER

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.



JOE M. CARRILLO
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 3rd day of July, 2009.