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FILED

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DEPARTMENT OF REAL ESTATE
By *L. Krapp*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:
12 LINH M. DUONG, BRAD HUNG LE and
13 HLB REALTY INC.,
14 Respondents.

No. H-12172 SF
FIRST AMENDED
ACCUSATION

15 The Complainant, ROBIN S. TANNER, acting in her official capacity as a
16 Supervising Special Investigator of the State of California, for cause of First Amended
17 Accusation against LINH M. DUONG ("DUONG"), BRAD HUNG LE ("LE"), and HLB
18 REALTY INC. ("HLB INC.") (collectively referred to herein as "Respondents"), is informed
19 and alleges as follows:

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21 DUONG is presently licensed by the California Department of Real Estate ("the
22 Department") and/or has license rights under Part 1 of Division 4 of the Business and
23 Professions Code ("Code") as a real estate broker. DUONG holds individual mortgage loan
24 originator license endorsement ("MLO Endorsement") number 245173.

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26 LE is presently licensed by the Department and/or has license rights under the
27 Real Estate Law as a real estate broker. LE holds individual MLO Endorsement number 245193.

1 At all relevant times herein, LE was the designated broker officer of HLB INC.

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3 HLB INC. is presently licensed by the Department and/or has license rights under
4 the Real Estate Law as a corporate real estate broker. HLB INC. holds company MLO
5 Endorsement number 399343. At all relevant times herein, HLB INC. was acting by and through
6 LE as its designated officer.

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8 Whenever reference is made in an allegation in this Accusation to an act or
9 omission of HLB INC., such allegation shall be deemed to mean that the employees, agents, real
10 estate licensees, and others employed by or associated with HLB INC. committed such act or
11 omission while engaged in furtherance of the business or operations of HLB INC., and while
12 acting within the course and scope of their authority and employment.

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14 At all times mentioned herein, Respondents engaged in the business of, acted in
15 the capacity of, advertised, or assumed to act as a real estate licensee, in the State of California,
16 within the meaning of Section 10131(a) of the Business and Professions Code ("the Code"),
17 including the operation and conduct of a real estate resale brokerage with the public, wherein, on
18 behalf of others, for compensation or in expectation of compensation, Respondents sold and
19 offered to sell, bought and offered to buy, solicited prospective seller and purchasers of, solicited
20 and obtained listings of, and negotiated the purchase and resale of real property.

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FIRST CAUSE OF ACTION
Dishonest Dealing
(As to DUONG, LE and HLB INC.)

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Each and every allegation in paragraphs 1 through 5, inclusive, above, is incorporated by this reference as if fully set forth herein.

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In or about June 2016, Minhchau Truong ("Truong") and Hun Kien Do ("Do") (collectively referred to herein as "Buyers") began talking with Respondents about purchasing a home in the Bay Area. Sometime thereafter, Buyers became interested in purchasing a new home manufactured by Standard Pacific Homes ("Seller") located at 1948 Ponderosa Drive, Tracy, California, 95376 ("Subject Property").

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On or about July 3, 2016, Buyers executed a "Reservation Checklist" and issued a check to Seller for \$10,000 to hold the Subject Property. The Reservation Checklist stated that Buyers had until July 10, 2016, to enter into a contract with Seller to purchase the Subject Property or Seller would return Buyer's \$10,000 hold check and place the Subject Property back on the market.

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Also on or about July 3, 2016, Seller, Buyers, and DUONG executed a "Co-Broker Agreement" with Seller. Section "1" of the "Co-Broker Agreement" stated Seller agrees to pay Buyer's real estate broker a 3% commission upon the purchase and sale of the Subject Property. DUONG signed the "Co-Broker Agreement" on behalf of HLB INC.

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On or about July 6, 2016, Truong sent an e-mail to DUONG requesting Respondents agree to the following commission split regarding the purchase of the Subject Property: 1.0% to Respondents, 2.0% to Buyers. Later that day, DUONG replied that she would first need to discuss the commission split with LE.

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On July 6, 2016, at 4:17 PM, DUONG sent Truong an e-mail stating “we have decided to share 2/3 of broker commission to you on this purchase and hope it could help you with carpet replacement.” DUONG also carbon copied LE on her July 6, 2016, e-mail.

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On July 6, 2016, at 9:32 PM, in reliance on DUONG’s e-mail detailing the commission split, Buyers executed a Purchase Contract and Escrow Instructions (“Purchase Contract”) to purchase the Subject Property from Seller.

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On July 7, 2016, Truong e-mailed DUONG for clarification on the commission split. Specifically, Truong asked “Will that 2/3 of share commission be put toward our down payment on Close of Escrow?” DUONG responded via e-mail later that day stating “Lender allows for closing costs of the loan only. The rest will be outside of escrow.”

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On or about July 11, 2016, Seller accepted the Purchase Contract and escrow was set to close on or about September 2, 2016.

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On or about August 4, 2016, Truong sent an e-mail to DUONG asking if she could send Buyers a check for \$12,000 after the close of escrow for Buyers’ 2/3 share of the commission split. DUONG did not reply.

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On or about August 5, 2016, LE sent an e-mail to Truong stating he was “taking over this unusual case” and asked Truong not to call or text DUONG regarding the subject transaction. LE also told Truong in the e-mail “do not reply to this email, call or text me regarding this unique issue.” Instead, LE requested to meet with Buyers in person at his office to discuss the matter.

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Truong responded via e-mail on or about August 6, 2016, asking LE to provide an addendum stating Buyers were entitled to a 2/3 share of the commission split regarding the Subject Property. LE failed to respond to Truong's August 6, 2016, e-mail.

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On or about August 7, 2016, Truong sent LE a similar e-mail asking for an addendum stating Buyers were entitled to the 2/3 commission split, or an explanation as to how he intended to proceed on the commission split issue. LE failed to respond to Truong's August 7, 2016, e-mail as well.

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On or about August 10, 2016, as a result of the failure by LE and DUONG to clarify in writing their position regarding the commission split, Truong sent an e-mail to Seller's representative requesting cancellation of the Purchase Contract and a return of Buyers' \$10,000 deposit. On or about August 18, 2016, Seller cancelled the Sales Contract and returned Buyers' \$10,000 deposit.

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The acts and/or omissions of Respondents, as set forth above in Paragraphs 6 through 18, were substantially fraudulent, misleading, dishonest, and deceitful, and were known by Respondents to be substantially fraudulent, misleading, dishonest, and deceitful during the transaction of the Subject Property.

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The acts and/or omissions of Respondents, as alleged above in Paragraphs 6 through 20, are grounds for the revocation or suspension of Respondents' real estate licenses, license rights, MLO Endorsements, and MLO Endorsement rights, under Sections 10176(a) (misrepresentation), 10176(i) (fraud or dishonest dealing), 10177(j) (fraud or dishonest dealing) and/or 10177(g) (negligence/incompetence) of the Code.

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1 SECOND CAUSE OF ACTION

2 Failure to Retain Records

3 (As to LE and HLB INC. only)

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5 Each and every allegation in paragraphs 1 through 21, inclusive, above, is
6 incorporated by this reference as if fully set forth herein.

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8 On or about November 1, 2017, a Department investigator made demand,
9 pursuant to Section 10148 of the Code, that LE and HLB INC. make available for examination,
10 inspection and copying by the Department the transaction documents regarding the Subject
11 Property. DUONG responded on behalf of LE and HLB INC. to the Department's demand by
12 stating she had no transaction documents for the subject transaction described above in the First
13 Cause of Action.

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15 In connection with the Department's request described above in Paragraph 23,
16 Respondents failed and refused to make said records available for inspection and/or failed to
17 retain said records in violation of Section 10148 of the Code.

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19 The acts and/or omissions of Respondents, as described above in Paragraphs 22
20 through 24, violate Section 10148 (failure to maintain records) of the Code and constitute cause
21 for the suspension or revocation of the licenses, license rights, MLO Endorsements, and MLO
22 Endorsement rights of Respondents under Sections 10177(d) (violation of the real estate law)
23 and/or 10177(g) of the Code.

24 THIRD CAUSE OF ACTION

25 Failure to Supervise

26 (As to LE only)

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Each and every allegation in paragraphs 1 through 25, inclusive, above, is
incorporated by this reference as if fully set forth herein.

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At all relevant times, LE, as the supervising broker of HLB INC., was required to exercise reasonable supervision and control over the activities of HLB INC. and its employees pursuant to Sections 10159.2 (failure to supervise) and 10177(h) (failure to supervise) of the Code.

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LE failed to exercise reasonable supervision over the acts and/or omissions of HLB INC. in such a manner as to allow the acts and/or omissions as described in the First and Second Causes of Action to occur, which constitutes cause for the suspension or revocation of the licenses, license rights, MLO Endorsements, and MLO Endorsement rights of LE under Sections 10177(d) and/or 10177(g) of the Code, in conjunction with Sections 10159.2 and 10177(h) of the Code.

PRIOR DISCIPLINE
(As to LE only)

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Effective June 23, 2005, in Case No. H-9160 SF, the Real Estate Commissioner suspended for a period of thirty (30) days the real estate broker license of LE for violating Sections 10159.2 and 10177(h) of the Code.

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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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1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this First Amended Accusation and that upon proof thereof, a decision be
3 rendered revoking all licenses, license rights, MLO Endorsements, and MLO Endorsement
4 rights of all Respondents named herein under the Real Estate Law, for the cost of investigation
5 and enforcement as permitted by law, and for such other and further relief as may be proper
6 under other provisions of law.

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ROBIN S. TANNER
Supervising Special Investigator

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10 Dated at Oakland, California,
11 this 13th day of November, 2018.

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13 DISCOVERY DEMAND

14 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the
15 Department hereby makes demand for discovery pursuant to the guidelines set forth in the
16 *Administrative Procedure Act*. Failure to provide Discovery to the Department may result in the
17 exclusion of witnesses and documents at the hearing or other sanctions that the Office of
18 Administrative Hearings deems appropriate.