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FILED

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DEPARTMENT OF REAL ESTATE

By K. Koyup

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:) NO. H- 12187 SF
12)
13 THEODORE AUGUST LASCOLA)
and LINDA SUE MCCHESENEY,) ACCUSATION
14)
15 Respondents.)

16 The Complainant, ROBIN S. TANNER, acting in her official capacity as a
17 Supervising Special Investigator of the State of California, for cause of Accusation against
18 Respondents THEODORE AUGUST LASCOLA ("LASCOLA") and LINDA SUE
19 MCCHESENEY ("MCCHESENEY"), (collectively referred to as "Respondents"), is informed and
20 alleges as follows:

21 1.

22 LASCOLA is presently licensed and/or has license rights under the Real Estate
23 Law, Part 1 of Division 4 of the Code ("the Real Estate Law") as an individual real estate
24 broker. At no time relevant to this Accusation was LASCOLA the supervising broker of
25 MCCHESENEY.

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2.

MCCHESENEY is presently licensed and/or has license rights under the Real Estate Law as an individual real estate salesperson. At all times relevant to this Accusation, MCCHESENEY held her real estate salesperson license under corporate real estate broker NRT West, Inc.

3.

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a corporate real estate broker within the State of California on behalf of others, for compensation or in expectation of compensation within the meaning of:

Section 10131(a) of the Code, including the operation and conduct of a residential resale brokerage wherein Respondents bought, sold, or offered to buy or sell, solicited or obtained listings of, and negotiated the purchase, sale or exchange of real property or business opportunities, all for or in expectation of compensation; and/or

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, leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated for sale, purchase or exchanges of leases on real property, or on a business opportunity, or collected rent from real property, or improvements thereon, or from business opportunities.

COUNT ONE
AUDIT VIOLATIONS
(As to Respondent LASCOLA Only)

4.

Each and every allegation contained above in Paragraphs 1 through 3, inclusive, is incorporated by this reference as if fully set forth herein.

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5.

Beginning on February 21, 2017, and continuing intermittently through February 23, 2017, the Department conducted an audit of the books and records related to the real estate activities of LASCOLA at his main office located at 410 N. Santa Cruz Ave., Los Gatos, CA 95030, where the auditor examined records for the period of January 1, 2016, to January 31, 2017 ("audit period").

6.

While doing business within the audit period, LASCOLA accepted or received funds in trust (trust funds) from or on behalf of lenders, investors, borrowers and others in connection with property management activities and deposited or caused to be deposited those funds into the following bank account maintained by LASCOLA:

BANK ACCOUNT #1	
Bank Name and Location:	JP Morgan Chase Bank 400 N. Santa Cruz Ave., Los Gatos, CA 95030
Account No.:	XXXXXX6990
Signatories:	Ted LaScola (REB); Nancy K. LaScola (REB)
No. of Signatures Required:	One

From time to time, LASCOLA made collections to and disbursements from said trust funds.

7.

In the course of the activities described above in Paragraph 3, in connection with the collection and disbursement of trust funds, LASCOLA:

(a) caused, suffered, or permitted the balance of funds in Bank Account #1 to be reduced to an amount which, as of January 31, 2017, was \$7,373.47 less than the aggregate liability of Bank Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code, and Section 2832.1 of Title 10 of the California Code of Regulations ("the Regulations");

(b) failed to properly designate Bank Account #1 as a trust account solely in the name of LASCOLA and/or a fictitious business name associated with LASCOLA, as trustee,

1 in violation of Section 10145 of the Code and Section 2832 of the Regulations;

2 (c) caused or permitted funds of others which were received and held in Bank
3 Account #1 to be commingled with LASCOLA's own money, in violation of Section 10176(e) of
4 the Code;

5 (d) allowed Nancy K. LaScola to serve as one of the signors on Bank Account
6 #1 when, at no relevant time, was Nancy K. LaScola working as an associate broker for
7 LASCOLA, in violation of Section 10145 of the Code, and 2834 of the Regulations;

8 (e) compensated MCCHESNEY for the performance of property management
9 activities on behalf of LASCOLA when MCCHESNEY was not licensed under LASCOLA's
10 broker license, in violation of Section 10137 of the Code; and

11 (f) failed to reconcile at least once per month, the balance of all separate
12 beneficiary or transaction records to the balance of the control records for Bank Account #1 in
13 violation of Section 10145 of the Code, and Section 2831.2 of the Regulations.

14 8.

15 The acts and/or omissions of LASCOLA, as alleged above in Paragraph 7,
16 constitute grounds for the suspension or revocation of all licenses and license rights of
17 LASCOLA pursuant to the following provisions of the Code and Regulations:

18 As to Paragraph 7(a), under Section 10177(d) and/or 10177(g) of the Code, in
19 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

20 As to Paragraph 7(b), under Section 10177(d) and/or 10177(g) of the Code, in
21 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

22 As to Paragraph 7(c), under Section 10177(d) and/or 10177(g) of the Code, in
23 conjunction with Section 10176(e) of the Code;

24 As to Paragraph 7(d), under Section 10177(d) and/or 10177(g) of the Code, in
25 conjunction with Section 10145 of the Code and Section 2834 of the Regulations;

26 As to Paragraph 7(e), under Section 10177(d) and/or 10177(g) of the Code, in
27 conjunction with Section 10137 of the Code; and

1 As to Paragraph 7(f), under Section 10177(d) and/or 10177(g) of the Code, in
2 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations.

3 COUNT TWO
4 ACCEPTING UNLAWFUL COMPENSATION
5 (As to Respondent MCCHESENEY Only)

6 9.

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

9 10.

10 At all relevant times, MCCHESENEY was licensed under employing broker NRT
11 West, Inc., and conducted real estate resale activities under NRT West, Inc.

12 11.

13 During the audit period, MCCHESENEY performed property management duties
14 and functions for LASCOLA that required a license, when MCCHESENEY was not licensed
15 under LASCOLA. MCCHESENEY performed the following property management duties and
16 functions for LASCOLA during the audit period:

- 17 • entered into property management agreements with owners of real property;
- 18 • entered into lease agreements with tenants; and
- 19 • solicited listings for places of rent, and/or solicited prospective tenants.

20 12.

21 For the performance of the duties and functions outlined above in Paragraph 11,
22 MCCHESENEY accepted compensation from LASCOLA.

23 13.

24 The acts and/or omissions of MCCHESENEY, as alleged above in Paragraphs 9
25 through 12, constitute grounds for the suspension or revocation of all licenses and license rights
26 of MCCHESENEY pursuant to Section 10177(d) and/or 10177(g) of the Code, in conjunction
27 with Sections 10130 and 10137 of the Code.

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1 COST RECOVERY

2 14.

3 The acts and/or omissions of LASCOLA, as alleged above in Count One, entitle
4 the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the
5 Code.

6 15.

7 Section 10106 of the Code provides, in pertinent part, that in any order issued in
8 resolution of a disciplinary proceeding before the Department, the Commissioner may request the
9 Administrative Law Judge to direct a licensee or licensees found to have committed a violation
10 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement
11 of the case.

12 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
13 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
14 action against all licenses and license rights of Respondents under the Code, for the cost of
15 investigation and enforcement as permitted by law, for the cost of the audit, and for such other
16 and further relief as may be proper under other provisions of law.

17 

18 ROBIN S. TANNER
19 Supervising Special Investigator

20 Dated at Oakland, California,
21 this 16th day of October, 2018

22 DISCOVERY DEMAND

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