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FILED

FEB 06 2019

DEPARTMENT OF REAL ESTATE
By R. Knapp

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	No. H-12355 SF
PETER CARL FOPPIANO,)	
)	<u>ACCUSATION</u>
Respondent.)	

The Complainant, ROBIN S. TANNER, acting in her official capacity as a
Supervising Special Investigator of the State of California, for cause of Accusation against
PETER CARL FOPPIANO (Respondent), is informed and alleges as follows:

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At all times herein mentioned, Respondent was and is presently licensed and/or
has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and
Professions Code (Code) by the Department of Real Estate (the Department) as a real estate
broker and a mortgage loan originator.

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At all times herein mentioned, Respondent conducted real estate activity under his individual broker license and the fictitious business names, "ARC Capital" and "Sonoma County Property Rentals".¹

At all times herein mentioned, Sonoma County Property Rentals was not registered as a fictitious business name with the Department until March 20, 2017.

At all times herein mentioned, Respondent met the criteria for threshold broker reporting status as set forth in Section 10232 of the Code.

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Sections:

(a) 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, Respondent leased or rented or offered to lease or rent, or solicited listings of places for rent or solicited for prospective tenants, or negotiated the sale, purchase or exchange of leases on real property, or on a business opportunity, or collected rent from tenants; and

(b) 10131 (d) and (e) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein Respondent solicited lenders and borrowers for loans secured directly or collaterally by

¹ "ARC Capital" was used for conducting mortgage loan activity at the Santa Rosa branch office. "Sonoma County Property Rentals" was used for conducting property management activity at the Rohnert Park branch office.

liens on real property or a business opportunity, and wherein such loans were arranged, negotiated, processed and consummated by Respondent on behalf of others and wherein promissory notes or interests therein were sold or purchased on behalf of another or others for compensation or in expectation of a compensation.

FIRST CAUSE OF ACTION

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

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On or about March 28, 2017, and continuing intermittently through July 20, 2017, an audit was conducted of the records of Respondent. The auditor examined the records for the period of July 1, 2015, through May 31, 2017 (the audit period).

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Respondent, while acting as a real estate broker, as described in Paragraph 5 (a), accepted or received funds in trust (trust funds) from or on behalf of owners, lessees and others in connection with property management activities, and deposited those funds into bank accounts maintained by Respondent, at JPMorgan Chase Bank, N.A., P.O. Box 659754, San Antonio, Texas 78265-9754, including but not limited to the following:

BANK ACCOUNT #1	
Account No.:	XXXXX8857
Entitled:	SONOMA COUNTY PROPERTY RENTALS INC

BANK ACCOUNT #3	
Account No.:	XXXXX8723
Entitled:	SOCOPROP MGT INC. DBA SONOMA COUNTY PROPERTY RENTALS-PROPERTY MANAGEMENT TRUST ACCOUNT

and thereafter from time-to-time made disbursement of said trust funds.

In the course of the activities described in Paragraph 5 (a), in connection with the collection and disbursement of trust funds, it was determined that:

- (a) An accountability was performed on Bank Account #1, and as of February 28, 2017, there was a shortage of \$2,214.84 revealed, in violation of Section 10145 of the Code;
- (b) Respondent failed to obtain written permission from owners of trust funds in Bank Account #1 to allow the balance to drop below accountability, in violation of Section 2832.1 of Chapter 6, title 10, California Code of Regulations (Regulations);
- (c) Respondent failed to designate Bank Account #1 as a trust fund account in the name of a holder of a license as trustee as required by Section 10145 of the Code and Section 2832 of the Regulations;
- (d) Respondent conducted real estate activity using the fictitious business name, "Sonoma County Property Rentals", prior to registering the fictitious business name with the Department as required by Section 2731 of the Regulations;
- (e) Respondent failed to maintain an accurate columnar record in chronological sequence of all trust funds received and disbursed (Control Record), containing all required information, for Bank Account #1, in violation of Section 2831 of the Regulations; and
- (f) Respondent failed to maintain accurate separate records for each beneficiary of trust funds accepted or received and disbursed for Bank Account #1, in violation of Section 2831.1 of the Regulations.

The acts and/or omissions described above constitute violations of Sections 2731 (Use of False/Fictitious Name), 2831 (Control Records), 2831.1 (Separate Beneficiary Records), 2832 (Bank Account Not Properly Designated as Trust Account), and 2832.1 (Written

1 Permission for Balance Below Accountability) of the Regulations, and Section 10145 (Trust
2 Fund Handling) of the Code, and are grounds for discipline under Sections 10177(d) (Willful
3 Disregard of Real Estate Laws) and/or 10177(g) (Negligence/Incompetence Licensee) of the
4 Code.

5 SECOND CAUSE OF ACTION

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7 Each and every allegation in Paragraphs 1 through 10, inclusive, is incorporated
8 by this reference as if fully set forth herein.

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10 In the course of the activities described in Paragraph 5 (b), Respondent:

- 11 (a) Failed to submit to the Department in a timely manner the annual Business
12 Activity Report (BAR) for the fiscal years 2015 and 2016 as required under
13 Section 10166.07 of the Code;
- 14 (b) Failed to submit to the Department in a timely manner the quarterly threshold
15 reports for the first, second and third quarter of 2016, as required under
16 Section 10232.25 (d) of the Code;
- 17 (c) Failed to file a Multi-Lender Notice (RE 860) notifying the Department within
18 thirty (30) days after the first multi-lender transaction (Loan No.
19 KALAVERAS1), as required under Sections 10238 (a) and 10238 (b) of the
20 Code;
- 21 (d) Failed to retain signed statements of investor qualification in three (3) loan
22 transactions (Loan Nos. COLES1, REYNA1, KALAVERAS1), as required
23 under Sections 10232.3 (b) and 10238 (f) of the Code;
- 24 (e) Fully funded the loan with the entire loan amount deposited in escrow prior to
25 recording of the deed of trust was not adhered to for a construction or
26 rehabilitation loan (Loan No. REYNA1), in which the current market value
27 was deemed to be the value of the completed rehabilitation project, as required
under Section 10232.3 (a)(5)(A) of the Code; and

1 (f) Failed to disclose his license number on solicitation materials intended to be
2 the first point of contact with consumers, including pages of a website under
3 the fictitious business name, "ARC Capital", as required by Section 10236.4
4 (a) of the Code and Section 2773 of the Regulations.

5 PRIOR ADMINISTRATIVE ACTION

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7 Effective November 23, 2009, in Case No. H-10647 SF, before the Department of
8 Real Estate of the State of California, the Real Estate Commissioner suspended the license and
9 licensing rights of Respondent for a period of 30-days for the following violations: Sections 2725
10 and 2726 of the Regulations, and Sections 10137, 10161.8 (a), 10176 (i), 10177 (d), 10177 (h),
11 10178, and 10240 of the Code.

12 COST RECOVERY

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14 Audit Costs

15 The acts and/or omissions of Respondent, as alleged above, entitle the
16 Department to reimbursement of the costs of its audits pursuant to Section 10148(b) (Audit Costs
17 for Trust Fund Handling Violations) of the Code.

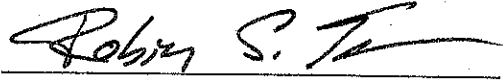
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19 Costs of Investigation and Enforcement

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

24 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
25 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
26 action against all licenses and license rights of Respondent under the Code, for the cost of
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1 investigation and enforcement as permitted by law, and for such other and further relief as may
2 be proper under the provisions of law.

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5 ROBIN S. TANNER
Supervising Special Investigator

6 Dated at Oakland, California,
7 this 4th day of February, 2019
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9 DISCOVERY DEMAND

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