

Flog

MEGAN LEE OLSEN, Counsel, (SBN 272554)
Department of Real Estate
P. O. Box 137007
Sacramento, CA 95813-7007

Telephone: (916) 576-8700
(916) 263-3767 (Fax)
(916) 576-7846 (Direct)

FILED

FEB 26 2019

DEPARTMENT OF REAL ESTATE
By *R. Kropp*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
) No. H-12355 SF
PETER CARL FOPPIANO,)
) FIRST AMENDED
Respondent.) ACCUSATION

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:

1

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.

2

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

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.

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 Respondents solicited lenders and borrowers for loans secured directly or collaterally by liens on real property or a business opportunity, and wherein such loans were arranged, negotiated, process and consummated by Respondents 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.

///

///

1 FIRST CAUSE OF ACTION

2 6

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

5 7

6 On or about March 28, 2017, and continuing intermittently through July 20,
7 2017, an audit was conducted of the records of Respondent. The auditor examined the records
8 for the period of July 1, 2015, through May 31, 2017 (the audit period).

9 8

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

15

| BANK ACCOUNT #1 | |
|-----------------|------------------------------------|
| Account No.: | XXXXXX8857 |
| Entitled: | SONOMA COUNTY PROPERTY RENTALS INC |

16

| BANK ACCOUNT #3 | |
|-----------------|--|
| Account No.: | XXXXXX8723 |
| Entitled: | SOCOPROPMT INC. DBA SONOMA COUNTY PROPERTY RENTALS-PROPERTY MANAGEMENT TRUST ACCOUNT |

17

18

19

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

21 9

22 In the course of the activities described in Paragraph 5 (a), in connection with the
23 collection and disbursement of trust funds, it was determined that:
24

- 1 (a) An accountability was performed on Bank Account #1, and as of February 28,
2 2017, there was a shortage of \$2,214.84 revealed, in violation of Section
3 10145 of the Code;
- 4 (b) Respondent failed to obtain written permission from owners of trust funds in
5 Bank Account #1 to allow the balance to drop below accountability, in
6 violation of Section 2832.1 of Chapter 6, title 10, California Code of
7 Regulations (Regulations);
- 8 (c) Respondent failed to designate Bank Account #1 as a trust fund account in the
9 name of a holder of a license as trustee as required by Section 10145 of the
10 Code and Section 2832 of the Regulations;
- 11 (d) Respondent conducted real estate activity using the fictitious business name,
12 "Sonoma County Property Rentals", prior to registering the fictitious business
13 name with the Department as required by Section 2731 of the Regulations;
- 14 (e) Respondent failed to maintain an accurate columnar record in chronological
15 sequence of all trust funds received and disbursed (Control Record),
16 containing all required information, for Bank Account #1, in violation of
17 Section 2831 of the Regulations; and
- 18 (f) Respondent failed to maintain accurate separate records for each beneficiary
19 of trust funds accepted or received and disbursed for Bank Account #1, in
20 violation of Section 2831.1 of the Regulations.

21 10

22 The acts and/or omissions described above constitute violations of Sections 2731
23 (Use of False/Fictitious Name), 2831 (Control Records), 2831.1 (Separate Beneficiary Records),
24 2832 (Bank Account Not Properly Designated as Trust Account), and 2832.1 (Written
25 Permission for Balance Below Accountability) of the Regulations, and Section 10145 (Trust
26 Fund Handling) of the Code, and are grounds for discipline under Sections 10177(d) (Willful

27 ///

1 Disregard of Real Estate Laws) and/or 10177(g) (Negligence/Incompetence Licensee) of the
2 Code.

3 SECOND CAUSE OF ACTION

4 11

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

7 12

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

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

1 the first point of contact with consumers, including pages of a website under
2 the fictitious business name, "ARC Capital", as required by Section 10236.4
3 (a) of the Code and Section 2773 of the Regulations.

4 13

5 The acts and/or omissions described above constitute violations of Section 2773
6 (Disclosure of License Identification Number) of the Regulations, and Sections 10166.07
7 (Failure to File Annual Mortgage Loan Business Activity Report), 10232.25 (d) (Trust Funds
8 Status Report), 10232.3 (a) (5) (A), 10232.3 (b), 10236.4 (a) (Disclosure of License Number in
9 Advertisement), 10238 (a) and (b), and 10238 (f) of the Code, and are grounds for discipline
10 under Sections 10177(d) and/or 10177(g) of the Code.

11 PRIOR ADMINISTRATIVE ACTION

12 14

13 Effective November 23, 2009, in Case No. H-10647 SF, before the Department of
14 Real Estate of the State of California, the Real Estate Commissioner suspended the license and
15 licensing rights of Respondent for a period of 30-days for the following violations: Sections 2725
16 and 2726 of the Regulations, and Sections 10137, 10161.8 (a), 10176 (i), 10177 (d), 10177 (h),
17 10178, and 10240 of the Code.

18 COST RECOVERY

19 15

20 Audit Costs

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

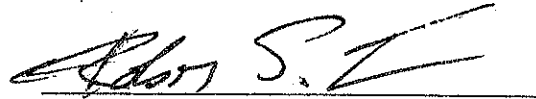
24 16

25 Costs of Investigation and Enforcement

26 Section 10106 of the Code provides, in pertinent part, that in any order issued in
27 resolution of a disciplinary proceeding before the Department, the Commissioner may request the

1 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
2 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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

8 

9 ROBIN S. TANNER
10 Supervising Special Investigator

11 Dated at Oakland, California,
12 this 21st day of February, 2019

13
14
15 DISCOVERY DEMAND

16 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the
17 Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set
18 forth in the *Administrative Procedure Act*. Failure to provide Discovery to the Department of
19 Real Estate may result in the exclusion of witnesses and documents at the hearing or other
20 sanctions that the Office of Administrative Hearings deems appropriate.
21
22
23
24
25
26
27