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FILED

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BUREAU OF REAL ESTATE

By John C. Smith

9 BEFORE THE BUREAU OF REAL ESTATE
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

* * *

12 In the Matter of the Accusation against)
13 OCTAVIO PONCE MERCADO and)
14 EMPIRE OF STARS COMMERCIAL AND)
15 RESIDENTIAL REAL ESTATE SERVICES,)
INC.,)
16 Respondents.)

CalBRE No. H-40570 LA
ACCUSATION

17
18 The Complainant, Maria Suarez, acting in her official capacity as a Supervising Special
19 Investigator for the Bureau of Real Estate ("Bureau") of the State of California, for cause of
20 Accusation against OCTAVIO PONCE MERCADO and EMPIRE OF STARS COMMERCIAL
21 AND RESIDENTIAL REAL ESTATE SERVICES, INC. (collectively "Respondents"), alleges
22 as follows:

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24 ///

1. 1.

2 Respondents are presently licensed and/or have license rights under the Real Estate Law
3 (Part 1 of Division 4 of the Code¹).

2.

5 From June 25, 2008 through the present, Respondent OCTAVIO PONCE MERCADO
6 aka Octavio Ponce ("PONCE") has been licensed by the Bureau as a real estate broker, License
7 ID 01429126. Respondent PONCE was previously licensed by the Bureau as a real estate
8 salesperson from approximately April 14, 2004 through June 24, 2008.

3.

10 From October 7, 2008 through the present, Respondent EMPIRE OF STARS
11 COMMERCIAL AND RESIDENTIAL REAL ESTATE SERVICES, INC. ("EMPIRE") has
12 been licensed by the Bureau as a corporate real estate broker, License ID 01853246.

4.

14 Respondent PONCE owns and is the President of EMPIRE. Moreover, at all times herein
15 mentioned, Respondent EMPIRE was licensed as a real estate corporation, acting by and through
16 Respondent PONCE as its designated officer. As the officer designated by Respondent EMPIRE
17 pursuant to Section 10211 of the Code, PONCE was responsible for the supervision and control
18 of the activities conducted on behalf of Respondent EMPIRE, by its officers and employees, as
19 necessary to secure full compliance with Real Estate Law as set forth in Code Section 10159.2
20 and Regulation 2725.

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24 ¹ All references to the "Code" are to the California Business and Professions Code and all references to
"Regulations" are to Title 10, Chapter 6, California Code of Regulations.

1 CAUSES OF ACCUSATION

2 O.F.¹ Transaction

3 5.

4 On or about January 19, 2016, Respondent PONCE offered to assist O.F. with the
5 negotiation and purchase of real property secured by a lien. Respondent PONCE induced O.F. to
6 give PONCE \$2,000 by claiming that the money would be used as a deposit toward O.F.'s
7 purchase of a home. O.F. gave Respondent PONCE a personal check no. 174 for \$2,000.
8 Respondent PONCE instructed O.F. to leave the payee section blank. Respondent PONCE
9 cashed O.F.'s check without O.F.'s knowledge or approval and failed to give O.F. any
10 accounting for the trust funds. Respondent PONCE failed to return the trust funds to O.F. after
11 O.F. cancelled his agreement with Respondent PONCE and asked for return of his \$2,000.

12 6.

13 On February 17, 2016, the Bureau received a complaint against Respondent MERCADO
14 from O.F. On or about March 18, 2016, Respondent PONCE delivered to a Bureau Special
15 Investigator a cashier's check purchased by EMPIRE for \$2,000 made payable to O.F. On
16 March 26, 2016, O.F. received the \$2,000 cashier's check.

17 7.

18 The conduct, acts and/or omissions of Respondent PONCE as described in Paragraphs 6
19 and 7, above, are in violation of Code sections 10085, 10085.5, 10145, 10146, Regulations 2970
20 and 2972, and constitute cause for the suspension or revocation of all real estate license and
21 license rights of Respondent PONCE under the provisions of Code Sections 10176(a), 10176(b),
22 10177(d), 10176(i) or 10177(j), and/or 10177(g).

23
24 ¹ Initials are used in place of individuals' full names to protect their privacy. Documents containing individuals' full names will be provided during the discovery phase of this case to Respondent(s) and/or their attorneys, after service of a timely and proper request for discovery on Complainant's counsel.

1 8.

2 The conduct, acts and/or omissions of Respondent PONCE as described in Paragraphs 6
3 and 7, above, constitute cause for the suspension or revocation of all real estate license and
4 license rights of Respondent EMPIRE under the provisions of Code Sections 10177(d), 10177(j),
5 and/or 10177(g).

6 Audit LA 150174

7 9.

8 On October 27, 2016, the Bureau completed an audit examination of the books and
9 records of Respondent PONCE's real estate sales activities which require a real estate license
10 pursuant to Code section 10131. The audit examination covered a period of time from January 1,
11 2015, through July 31, 2016. The audit examination revealed violations of the Code and the
12 Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report
13 LA 150174 and the exhibits and work papers attached to said audit report.

14 10.

15 According to Respondent PONCE, there was no trust account maintained for his sales
16 activity. He claimed that he did not collect earnest money deposits but maintained copies of
17 earnest money deposit checks in his files. The earnest money deposits were sent directly by the
18 buyer(s) to escrow.

19 11.

20 According to Respondent PONCE, he maintained the following general bank account for
21 his real estate sales activities during the audit period:

22 Bank Account #1 (GA1)

23 Bank: Bank of America

24 Account Name: Empire of Stars Com & Res R.E. Serv

1 Account #: xxxxx7761

2 Signer(s): Respondent PONCE

3 Violations

4 12.

5 In the course of Respondent PONCE's activities during the audit examination period
6 described above in Paragraph 9, Respondent PONCE acted in violation of the Code and the
7 Regulations as follows:

8 12(a). Code Section 10176(e), 10145, and Regulation 2832. Commingling/Handling of
9 Trust Funds

10 Although GA1 was not a trust account, Respondent PONCE received a check from O.F.
11 for \$2,000 for advance fees and deposited and commingled said funds in GA1, in violation of
12 Code sections 10176(e), 10145, and Regulation 2832.

13 12(b). Code Section 10145 and Regulation 2831. Trust fund records to be maintained

14 Respondent PONCE failed to maintain a columnar record of trust funds received from
15 O.F. in the form of a \$2,000 advance fee which was deposited into GA1, in violation of Code
16 section 10145 and Regulation 2381.

17 12(c). Code Section 10085 and Regulation 2970.

18 Respondent PONCE collected an advance fee from prospective buyer, O.F., and failed to
19 maintain an advance fee agreement with him. In addition, Respondent PONCE failed to submit
20 to the Bureau all materials to be used in obtaining an advance fee agreement and payment, in
21 violation of Code section 10085 and Regulation 2970.

22 ///

23 ///

-1 12(d). Code Sections 10145, 10146, and Regulation 2972. Handling of trust
2 funds/Advance fee to be deposited in Trust Account/Accounting Content

3 During the audit period, Respondent PONCE collected a \$2,000 advance fee and
4 deposited said funds into GA1, failed to comply with accounting requirements, and violated
5 Code sections 10145, 10146, and Regulation 2972.

6 12(e). Code Section 10140.6(b) and Regulation 2773. Disclosure of License
7 Identification Number on Solicitation Material

8 During the audit period, Respondent PONCE failed to disclose his accurate Bureau
9 license ID number on two residential purchase agreements for the following properties: 161 W.
10 48th St., Los Angeles, CA 90037 and 327-329 E. 98th St. Los Angeles, CA 90003, in violation of
11 Code section 10140.6 and Regulation 2773.

12 12(f). Code Section 10159.5 and Regulation 2731. Use of unlicensed false or fictitious
13 business name

14 During the audit period, Respondent used the unlicensed fictitious business names,
15 “Empire of Stars” and “Empire of Stars Com & Res” to engage in activities requiring a real
16 estate license without first obtaining a license from the Bureau in violation of Code section
17 10159.5 and Regulation 2731.

18 13.

19 The conduct of Respondent as described above in Paragraphs 12(a) through 12(f),
20 violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
21 12(a)	Code Sections 10176(e), 10145, and Regulations 2832
22 12(b)	Code Section 10145 and Regulations 2831
23 12(c)	Code Section 10085 and Regulation 2970

1 12(d) Code Sections 10145, 10146, and Regulation 2972

2 12(e) Code Section 10140.6 and Regulation 2773

3 12(f) Code Section 10159.5 and Regulation 2731

4 The foregoing violations constitute cause for the suspension or revocation of the real
5 estate licenses and license rights of Respondent PONCE under the provisions of Code Sections
6 10177(d), 10176(e), and/or 10177(g).

7 Audit Costs

8 14.

9 Code Section 10148(b) provides, in pertinent part, that the Commissioner shall charge a
10 real estate broker for the cost of any audit, if the Commissioner has found in a final decision
11 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation
12 or rule of the Commissioner interpreting said section.

13 Investigation/Enforcement Costs

14 15.

15 Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a
16 disciplinary proceeding before the Bureau of Real Estate, the Commissioner may request the
17 administrative law judge to direct a licensee found to have committed a violation of this part to
18 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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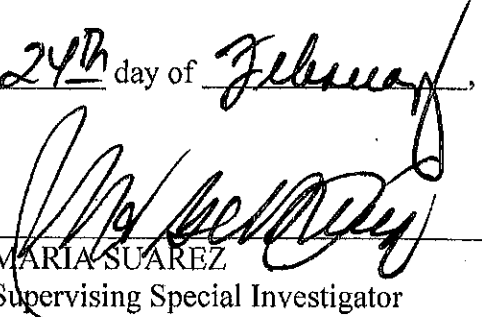
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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
2 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
3 against all licenses and/or license rights of Respondents under the Real Estate Law (Part 1 of
4 Division 4 of the Business and Professions Code), for the costs of the audit, investigation, and
5 enforcement as permitted by law, and for such other and further relief as may be proper under
6 other provisions of law.

7 Dated at Los Angeles, California this 24th day of February, 2017.

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9 
10 MARIA SUAREZ
11 Supervising Special Investigator
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20 cc: Octavio Ponce Mercado
21 Empire of Stars Commercial and Residential Real Estate Services, Inc.
22 Maria Suarez
23 Sacto
24 Audits/Anitha Wijaya