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FILED

AUG 19 2011

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 )  
13 KEVIN SCOTT EANES, ) NO. H-2659 FR  
14 KEVIN GEVORK POGOSYAN, and )  
15 JONATHAN DUC NGUYEN, ) ACCUSATION  
16 Respondents. )

17 The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the  
18 State of California, for cause of Accusation against KEVIN SCOTT EANES (herein "EANES")  
19 dba Frankian Property Management (herein "FPM"), KEVIN GEVORK POGOSYAN (herein  
20 "POGOSYAN"), and JONATHAN DUC NGUYEN (herein "NGUYEN") dba Franklin Property  
21 Management (herein "FRANKLIN") (herein collectively "Respondents"), is informed and  
22 alleges as follows:

23 1.

24 The Complainant makes this Accusation in his official capacity.

25 2.

26 At all times herein mentioned, Respondents were and now are, licensed and/or  
27 have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and  
Professions Code) (herein "the Code").

1 3.

2 At all times herein mentioned, EANES was licensed by the State of California  
3 Department of Real Estate (herein the "Department") as a real estate broker from about  
4 January 6, 2006 until about December 9, 2009, when his broker license was revoked and he was  
5 issued a restricted real estate salesperson license. EANES was not affiliated with any broker  
6 beginning about December 9, 2009.

7 On about June 10, 2010, EANES' restricted salesperson license was suspended  
8 indefinitely.

9 4.

10 At all times herein mentioned, POGOSYAN was licensed by the Department as a  
11 ~~real estate salesperson from about September 20, 2001, and as a real estate broker from about~~  
12 April 14, 2010.

13 POGOSYAN was in the employ of EANES from about June 28, 2008 until about  
14 December 8, 2009; and in the employ of NGUYEN from about December 22, 2009 until about  
15 April 14, 2010.

16 5.

17 At all times herein mentioned, NGUYEN, was and now is licensed by the  
18 Department as a real estate broker.

19 6.

20 On about April 28, 2011, NGUYEN was approved by the Department for a  
21 mortgage loan originator license endorsement.

22 7.

23 At all times herein mentioned, Respondents engaged in the business of, acted in  
24 the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others,  
25 for compensation or in expectation of compensation within the State of California within the  
26 meaning of Section 10131(b) of the Code, including the operation and conduct of a property  
27 management business with the public, wherein Respondents leased or rented or offered to lease

1 or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective  
2 tenants, or negotiated the sale, purchase or exchanges of leases on real property, or on a business  
3 opportunity or collected rents from real property, or improvements thereon, or from business  
4 opportunities.

5  
6 FIRST CAUSE OF ACCUSATION – EANES

7 8.

8 The allegations of Paragraphs 1 through 7 are incorporated herein by reference.

9 9.

10 In so acting as a real estate broker, as described in Paragraph 7 above,  
11 EANES accepted or received funds in trust (herein "trust funds") from or on behalf of owners,  
12 tenants, and others in connection with the leasing, renting, and collection of rents on real property  
13 or improvements thereon.

14 10.

15 The aforesaid trust funds accepted or received by EANES were deposited or  
16 caused to be deposited by him, into one or more trust fund accounts maintained by him, for the  
17 handling of trust funds at the Clovis, California branch of Westamerica Bank, including but not  
18 necessarily limited to "Kevin Scott Eanes Frankian Property Management Trust Fund Account,"  
19 account number xxxxxx315 (herein "Trust #2").

20 11.

21 Between about January 1, 2009 and December 8, 2009, while licensed as a real  
22 estate broker, and between December 9, 2009 and May 28, 2010, in connection with the property  
23 management activities described in Paragraph 7, above, EANES:

24 (a) caused, suffered or permitted the balance of funds in Trust #2 to be  
25 reduced to amounts less than the liability of FPM resulting in trust fund shortages in violation  
26 of Section 2832.1 of Chapter 6, Title 10, California Code of Regulations (herein "the  
27 Regulations") as follows:

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<u>Date</u>	<u>Shortage Amount</u>
9/30/09	\$24,652.93
10/30/09	\$63,585.74
12/31/09	\$99,042.28
4/30/10	\$110,397.86
5/28/10	\$111,603.56;

(b) failed to keep a columnar record in chronological sequence of all trust funds received and disbursed from Trust #2 containing all the information required by Section 2831 of the Regulations;

(c) failed to keep a separate record for each beneficiary or transaction for Trust #2 containing all the information required by Section 10145 of the Code and Section 2831.1 of the Regulations;

(d) failed to reconcile at least once a month, the balance of all separate beneficiary or transaction records with Trust #2, as required by Section 2831.2 of the Regulations;

(e) failed to place trust funds entrusted to him into the hands of a principal on whose behalf the funds were received, into a neutral escrow depository, or into a trust fund account in the name of EANES, as trustee at a bank or other financial institution, in conformance with the requirements of Section 10145 of the Code and Section 2832 of the Regulations; and,

(f) caused, suffered or permitted money of others which was received and held by EANES in Trust #2 to be commingled with EANES' own money, in violation of Section 10176(c) of the Code.

12.

On about December 18, 2001, EANES entered into a Property Management Agreement with Veronica Flores (herein "Flores") to manage her property located at 1822 East Brandywine Lane, Fresno, CA 93720 (herein "Brandywine property").

Between about October 2009 through May 2010, EANES failed to forward rent payments, security deposits and operating funds held in trust for Flores in the amount of about

1 \$10,351.00 in connection with the Brandywine property, in violation of Sections 10176(i) and  
2 10177(g) or (j) of the Code.

3 13.

4 On about June 14, 2008, EANES entered into a Property Management Agreement  
5 with Ross Hightower (herein "Hightower") to manage his property located at 2881 E. Huntington  
6 Blvd., Unit 107, Fresno, CA 93721 (herein "Huntington property").

7 In about May 2010, EANES failed to forward rent payments and security deposits  
8 held in trust for Hightower in the amount of about \$3,872.00, in connection with the Huntington  
9 property, in violation of Section 10177(g) or (j) of the Code.

10 14.

11 In about June 2009, EANES, through FPM, entered into a Property Management  
12 Agreement with Irma Condor (herein "Condor") for her property located at 1411 Annadale Ave,  
13 Sanger, CA 93657 (herein "Sanger property").

14 In about May 2010, EANES failed to forward rent payments in the amount of  
15 about \$1,206.00, security deposits in the amount of about \$900.00, and payments to vendors in  
16 the amount of about \$599.00, held in trust for Condor in connection with the Sanger property, in  
17 violation of Section 10177(g) or (j) of the Code.

18 15.

19 On about August 8, 2009, EANES, through FPM, entered into a Property  
20 Management Agreement with Lilibeth and Rudolfo Floro (herein "the Floro's") for their four  
21 (4) properties located at: 649 W. Ashcroft, Clovis, CA 93612; 4668 N. Bond Ave., Fresno, CA  
22 93726; 2881 E. Huntington Blvd., Unit 150, Fresno, CA 93721; and, 5145 E. Lane Ave.,  
23 Unit 235, Fresno, CA 93727 [herein "Floro's four (4) properties"].

24 In about May 2010, EANES failed to forward rent payments held in trust for the  
25 Floro's in the amount of about \$3,035.00 in connection with the Floro's four (4) properties  
26 described above, in violation of Section 10177(g) or (j) of the Code.

27 ///

1 16.

2 On about May 20, 2010, EANES, failed to forward rent payments in the amount  
3 of about \$1,251.00 and a security deposit in the amount of about \$1,400.00 to property owner  
4 Leah Fontanilla for her property located at 7656 N. Hanna Ave., Fresno, CA 93722, in violation  
5 of Section 10177(g) or (j) of the Code.

6 SECOND CAUSE OF ACCUSATION – POGOSYAN

7  
8 17.

9 The allegations of Paragraphs 1 through 16 are incorporated herein by reference.

10 18.

11 On about February 5, 2010, POGOSYAN and/or EANES, through FRANKLIN,  
12 entered into an Agreement to Find a Tenant with property owner Robert Auer (herein "Auer") for  
13 property located at 5140 E. Kings Canyon Ave., Unit 126, Fresno, CA 93727 (herein "Kings  
14 Canyon property").

15 On about February 9, 2010, POGOSYAN and/or EANES, as "Agent for Owner,"  
16 negotiated a one (1) year Lease Agreement with tenant Rita Lowe (herein "Lowe") and collected  
17 the first month's rent of about \$725.00 and a security deposit in the amount of about \$600.00 in  
18 connection with the Kings Canyon property, representing to Lowe on a Transfer of Security  
19 Deposit that her security deposit would be sent to property owner Auer, when in fact, no such  
20 security deposit was ever sent to Auer, in violation of Sections 10130, 10176(a) and (i), and/or  
21 10177(g) and/or 10177(j) of the Code.

22 19.

23 Between about February 16, 2010 and February 23, 2010, POGOSYAN  
24 negotiated the following Leases for compensation or in expectation of compensation as  
25 owner/agent of FPM during the time that FPM was not operated by a licensed real estate  
26 broker, in violation of Sections 10130, 10176(a) and (i), and/or 10177(g) and/or 10177(j) of the  
27 Code.

	<u>Date</u>	<u>Tenant Name</u>	<u>Property Adresse</u>
1			
2	2/16/10	Crystal Arteaga	2909 E. Huntington Blvd., Unit 114,
3			Fresno, CA 93721
4	2/23/10	Jasmine Sedano	2881 E. Huntington Blvd., Unit 121,
5			Fresno, CA 93721

6 20.

7 During about April 2010, POGOSYAN delivered approximately 10 pre-signed  
8 blank checks from Trust #3 to Respondent EANES, including a check written to Joe Chaidez, in  
9 violation of Sections 10176(a) and (i) and/or 10177(g) and/or 10177(j) of the Code.

10 21.

11 Between about December 9, 2009 and April 13, 2010, POGOSYAN failed  
12 to immediately deliver all trust funds to his broker, NGUYEN, or into the custody of the  
13 broker's principal or a neutral escrow depository or deposit said funds into the broker's  
14 trust fund account, in that POGOSYAN delivered trust funds to EANES during a time  
15 when EANES was not affiliated with any broker, in violation of Sections 10145(c) and  
16 10176(i) and/or 10177(g) and/or (j) of the Code.

17 THIRD CAUSE OF ACCUSATION – NGUYEN

18  
19 22.

20 The allegations of Paragraphs 1 through 21 are incorporated herein by reference.

21 23.

22 In so acting as a real estate broker, as described in Paragraph 7 above, NGUYEN  
23 accepted or received trust funds from or on behalf of owners, tenants, and others in connection  
24 with the leasing, renting, and collection of rents on real property or improvements thereon.

25 24.

26 The aforesaid trust funds accepted or received by NGUYEN were deposited or  
27 caused to be deposited by him into one or more bank accounts (herein "trust fund accounts")

1 maintained by him for the handling of trust funds at the Clovis, California branch of  
2 Westamerica Bank, including but not necessarily limited to "Jonathan D. Nguyen DBA Franklin  
3 Property Management (Fund Account)", account number xxxxxx095 (herein "Trust #3").

4 25.

5 Between about December 22, 2009 and July 2, 2010, in connection with the  
6 property management activities described in Paragraph 7, above, NGUYEN:

7 (a) caused, suffered or permitted the balance of funds in Trust #3 to be reduced  
8 to amounts less than the liability of FRANKLIN resulting in a trust fund shortage in violation of  
9 Section 2832.1 of the Regulations as follows:

10	<u>Date</u>	<u>Shortage Amount</u>
11	1/29/10	\$30,090.38
12	2/26/10	\$62,306.65
13	3/31/10	\$78,595.49
14	4/30/10	\$67,517.19
14	5/28/10	\$73,548.10

15 (b) failed to keep a columnar record in chronological sequence of all trust  
16 funds received and disbursed from Trust #3 containing all the information required by  
17 Section 2831 of the Regulations;

18 (c) failed to keep a separate record for each beneficiary or transaction for  
19 Trust #3 containing all the information required by Section 10145 of the Code and Section  
20 2831.1 of the Regulations;

21 (d) failed to reconcile at least once a month, the balance of all separate  
22 beneficiary or transaction records with Trust #3, as required by Section 2831.2 of the Regulations;  
23 and,

24 (e) failed to place trust funds into the hands of a principal on whose behalf the  
25 funds were received, into a neutral escrow depository, or into a trust fund account in the name of  
26 NGUYEN as trustee at a bank or other financial institution, in conformance with the  
27 requirements of Section 10145 of the Code and Section 2832 of the Regulations.



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At all times mentioned herein, NGUYEN failed to exercise reasonable supervision over the acts of POGOSYAN in such a manner as to allow the acts and omissions on the part of POGOSYAN described above, to occur in violation of Section 10177(g) and (h) of the Code and Section 2725 of the Regulations.

27.

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code and/or the Regulations:

- (a) as to Paragraph 11(a) and EANES, under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph 11(b) and EANES, under Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) as to Paragraph 11(c) and EANES, under Section 10145 of the Code and Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) as to Paragraph 11(d) and EANES, under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;
- (e) as to Paragraph 11(e) and EANES, under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;
- (f) as to Paragraph 11(f) and EANES, under Section 10176(e) of the Code;
- (g) as to Paragraph 12 and EANES, under Sections 10176(i) and/or 10177(g) and/or (j) of the Code;
- (h) as to Paragraph 13-16 and EANES, under 10177(g) and/or (j) of the Code;

- 1 (i) as to Paragraph 18 and POGOSYAN and/or EANES under Sections  
2 10130, 10176(a) and (i), and/or 10177(g) and/or 10177(j) of the Code  
3 in conjunction with Section 10177(d) of the Code;
- 4 (j) as to Paragraph 19 and POGOSYAN under Sections 10130, 10176(a)  
5 and (i), and/or 10177(g) and/or 10177(j) of the Code in conjunction  
6 with Section 10177(d) of the Code;
- 7 (k) as to Paragraph 20 and POGOSYAN under Sections 10176(a) and (i)  
8 and/or 10177(g) and/or 10177(j) of the Code;
- 9 (l) as to Paragraph 21 and POGOSYAN under Sections 10145(c) and  
10 10176(i) and/or 10177(g) and/or (j) of the Code in conjunction with  
11 Section 10177(d) of the Code.
- 12 (m) as to Paragraph 25(a) and NGUYEN, under Section 2832.1 of the  
13 Regulations in conjunction with Section 10177(d) of the Code;
- 14 (n) as to Paragraph 25(b) and NGUYEN, under Section 2831 of the  
15 Regulations in conjunction with Section 10177(d) of the Code;
- 16 (o) as to Paragraph 25(c) and NGUYEN, under Section 10145 of the Code  
17 and Section 2831.1 of the Regulations in conjunction with Section  
18 10177(d) of the Code;
- 19 (p) as to Paragraph 25(d) and NGUYEN, under Section 2831.2 of the  
20 Regulations in conjunction with Section 10177(d) of the Code;
- 21 (q) as to Paragraph 25(e) and NGUYEN, under Section 10145 of the Code  
22 and Section 2832 of the Regulations in conjunction with Section  
23 10177(d) of the Code; and
- 24 (r) as to Paragraph 26 and NGUYEN, under Section 10177(g) and (h) of  
25 the Code and Section 2725 of the Regulations in conjunction with  
26 Section 10177(d) of the Code.

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3 PRIOR DISCIPLINE - EANES

4 Effective December 9, 2009, in Case No. H-2357 FR, the Real Estate  
5 Commissioner revoked Respondent's real estate broker license, with the right to a restricted real  
6 estate sales license, for violating Sections 10176(e) and (i) and 10148 of the Code and Sections  
7 2831.2, 2832(a), 2831, 2831.1, 2831.2 of the Regulations in conjunction with 10177(d) of the  
8 Code.

9 Effective June 10, 2010, in Case No. H-2357 FR, the Real Estate Commissioner  
10 suspended Respondent's restricted real estate sales license, for violation of Section 10177(k), in  
11 that Respondent performed activities requiring a license during a time when he was not affiliated  
12 with any broker from about December 9, 2009 and June 10, 2010; failed to pay for the cost of the  
13 prior audit; made a substantial misrepresentation in violation of Section 10176(a) of the Code;  
14 and failed to take and pass the Professional Responsibility Exam.

15 Effective December 14, 2010, in Case No. H-2357 FR, the Real Estate  
16 Commissioner again suspended Respondent's restricted real estate sales license, in violation of  
17 Section 10177(k), in that, as of September 9, 2010, Respondent failed to submit proof  
18 satisfactory to the Commissioner that Respondent had taken and successfully completed the  
19 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law.

20 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
21 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary  
22 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of  
23 Division 4 of the Business and Professions Code) and for such other and further relief as may be  
24 proper under other applicable provisions of law.

25 

26 LUKE MARTIN  
27 Deputy Real Estate Commissioner

28 Dated at Fresno, California  
29 this 22<sup>nd</sup> day of July, 2011.