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FILED

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DEPARTMENT OF REAL ESTATE

By B. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation of)
11)
12 STERLING PACIFIC LENDING, INC.,) NO. H-2810 FR
13 a Corporation, and)
14 CHARLES ROY FISCHER,) ACCUSATION
15 Respondents.)

16 The Complainant, BRENDA SMITH, a Deputy Real Estate Commissioner of
17 the State of California, for cause of Accusation in her official capacity against STERLING
18 PACIFIC LENDING, INC. (herein "STERLING") and CHARLES ROY FISCHER (herein
19 "FISCHER") (herein collectively "Respondents), is informed and alleges as follows:

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

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23
24 At all times herein mentioned, STERLING was and now is licensed by the State
25 of California Department of Real Estate (herein the "Department") as a corporate real estate
26 broker by and through FISCHER as designated officer-broker of STERLING, to qualify said
27 corporation and to act for said corporation as a real estate broker.

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2 At all times herein mentioned, FISCHER was and now is licensed by the
3 Department as a real estate broker individually and as designated officer-broker of STERLING.
4 As said designated officer-broker, FISCHER was at all times mentioned herein responsible
5 pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers,
6 agents, real estate licensees, and employees of STERLING, for which a license is required.

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8 At all times herein mentioned Respondents engaged in the business of, acted in
9 the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others,
10 for compensation or in expectation of compensation within the State of California within the
11 meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage
12 loan brokerage with the public wherein Respondents solicited lenders or borrowers for or
13 negotiated loans or loan modifications or collected payments or performed services for borrowers
14 or lenders or note owners in connection with loans secured directly or collaterally by liens on
15 real property or on a business opportunity.

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17 In so acting as real estate brokers, as described in Paragraph 4 above, Respondent
18 STERLING accepted or received funds in trust (herein "trust funds") from or on behalf of
19 owners, tenants, and others in connection with the leasing, renting, and collection of rents on
20 real property or improvements thereon.

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22 The aforesaid trust funds accepted or received by Respondents were deposited or
23 caused to be deposited by Respondents into one or more bank accounts (herein "trust fund accounts")
24 maintained by Respondents for the handling of trust funds at the Watsonville, California branches of:

- 25 (a) Comerica Bank, "Sterling Pacific Lending Inc. dba Sterling Pacific
26 Financial, Servicing Trust Account 2," account number xxxxxx4399
27 (herein "Trust Account #1");

- 1 (b) Comerica Bank, "Sterling Pacific Lending Inc. dba Sterling Pacific
 2 Financial, Escrow Trust Account 2," account number xxxxxx4381
 3 (herein "Trust Account #2");
- 4 (c) Rabobank, "Sterling Pacific Lending Inc. dba Sterling Pacific Financial,
 5 Servicing Trust Account 2," account number xxxxxx7619 (herein "Trust
 6 Account #3");
- 7 (d) Rabobank, "Sterling Pacific Lending Inc. dba Sterling Pacific Financial,
 8 Escrow Trust Account 2," account number xxxxxx1150 (herein "Trust
 9 Account #4");
- 10 (e) Comerica Bank, "Sterling Pacific Lending Inc. dba Sterling Pacific
 11 Financial, Trust Account 2," account number xxxxxx7425 (herein "Trust
 12 Account #5"); and,
- 13 (f) Comerica Bank, "Sterling Pacific Lending Inc. dba Sterling Pacific
 14 Financial, Escrow Trust Account 2," account number xxxxxx7409 (herein
 15 "Trust Account #6").

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17 Between about January 2, 2010 and November 30, 2011, in connection with the
 18 activities described in Paragraphs 4 through 6, above, Respondent STERLING:

19 (a) caused, suffered or permitted the balance of funds in said trust accounts
 20 #1, #2, #3, and #4 to be reduced to amounts less than the liability of Sterling resulting in trust
 21 fund shortages in violation of Section 2832.1 of Chapter 6, Title 10, California Code of
 22 Regulations (herein "the Regulations") as follows:

| | | |
|-----------------------------|-------------|------------------------|
| 23 <u>Trust Account #1:</u> | <u>Date</u> | <u>Shortage Amount</u> |
| | 6/30/10 | \$57,424.28 |
| | 12/31/10 | \$35,693.70 |
| | 9/30/11 | \$35,693.70 |
| 26 <u>Trust Account #2:</u> | <u>Date</u> | <u>Shortage Amount</u> |
| | 12/31/10 | \$ 680.23 |

| | | |
|--------------------------|-------------|------------------------|
| <u>Trust Account #3:</u> | <u>Date</u> | <u>Shortage Amount</u> |
| | 12/31/10 | \$20,481.15 |
| | 9/30/11 | \$26,353.34 |
| <u>Trust Account #4:</u> | <u>Date</u> | <u>Shortage Amount</u> |
| | 9/30/11 | \$ 360.00 |

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

(c) failed to reconcile at least once a month, the balance of all separate beneficiary or transaction records with Trusts #1, #3 and #4, as required by Section 2831.2 of the Regulations;

(d) failed to submit to the Department in a timely manner: five (5) Quarterly Threshold Reports; Five (5) Quarterly Multi-Lender Reports; and the Trust Account Review Report for the year ending December 31, 2010, in violation of Sections 10232.25(a), 10232.2(a), and 10238(k)(3) of the Code;

(e) submitted inaccurate Quarterly Threshold Reports for the 2nd and 3rd quarters of 2010; and 1st, 2nd, 3rd quarters of 2011, as each reported Sterling's aggregate adjusted bank balance for the bank accounts holding trust funds was equal to the beneficiaries' aggregate accountability when in fact, there was a continuing trust fund shortage of at least \$15,786.60, in violation of Section 10232.25(a) of the Code; and

(f) failed to disclose license identification number on first point of contact materials, in violation of Section 10140.6 of the Code and Section 2733 of the Regulations.

At all times mentioned herein, FISCHER failed to exercise reasonable supervision over the acts of STERLING, and its agents and employees in such a manner as to allow the acts and omissions on the part of STERLING, described above, to occur in violation of Sections 10177(h) and (g) and 10159.2 of the Code and Section 2725 of the Regulations.

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 7(a) and Respondent STERLING, under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph 7(b) and Respondent STERLING, under Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) as to Paragraph 7(c) and Respondent STERLING, under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) as to Paragraph 7(d) and Respondent STERLING, under Sections 10232.25(a), 10232.2(a), and 10238(k)(3) of the Code in conjunction with Section 10177(d) of the Code;
- (e) as to Paragraph 6(e) and Respondent STERLING, under Section 10232.25(a) of the Code in conjunction with Section 10177(d) of the Code;
- (f) as to Paragraph 7(f) and Respondent STERLING, under Section 10140.6 of the Code and Section 2733 of the Regulations in conjunction with Section 10177(d) of the Code; and
- (g) as to Paragraph 8 and Respondent FISCHER, under Sections 10177(h) and (g) and 10159.2 of the Code and Section 2725 of the Regulations in conjunction with Section 10177(d) of the Code.

COST RECOVERY

Audit Costs

The acts and/or omissions of Respondents as alleged above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

Investigation and Enforcement Costs

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

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


BREND A SMITH
Deputy Real Estate Commissioner

Dated at Fresno, California
this 21 day of February, 2013.