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FILED

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BUREAU OF REAL ESTATE

By K. Contreras

9 BEFORE THE BUREAU OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13)
14 MONTEREY PENINSULA CAPITAL)
15 PARTNERS, INC., a Corporation,)
16 MARIO PADILLA, and)
17 RICHARD S. KOSTKAS,)
18 Respondents.)

NO. H-2853 FR

ACCUSATION

19 The Complainant, BRENDA SMITH, a Deputy Real Estate Commissioner of
20 the State of California, makes this Accusation in her official capacity against MONTEREY
21 PENINSULA CAPITAL PARTNERS, INC. (herein "MPCPI"), MARIO PADILLA (herein
22 "PADILLA"), and RICHARD S. KOSTKAS (herein "KOSTKAS") (herein collectively
23 "Respondents"), is informed and alleges as follows:

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

2 2

At all times herein mentioned, MPCPI was and now is licensed by the State of
California Bureau of Real Estate (herein the "Bureau") as a corporate real estate broker by and

1 through PADILLA, as designated officer-broker of MPCPI to qualify said corporation and to act
2 for said corporation as a real estate broker until February 27, 2013 and beginning February 28,
3 2013, by and through KOSTKAS, as designated officer-broker of MPCPI to qualify said
4 corporation and to act for said corporation as a real estate broker.

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6 At all times herein mentioned, PADILLA was and now is licensed by the Bureau
7 as a real estate broker individually and was licensed as designated officer-broker of MPCPI until
8 February 27, 2013. As said designated officer-broker, PADILLA was at all relevant times
9 mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the
10 activities of the officers, agents, real estate licensees, and employees of MPCPI, for which a
11 license is required.

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13 At all times herein mentioned, KOSTKAS was and now is licensed by the
14 Bureau as a real estate broker individually and has been licensed as designated officer-broker of
15 MPCPI beginning February 28, 2013. As said designated officer-broker, KOSTKAS was at all
16 relevant times mentioned herein responsible pursuant to Section 10159.2 of the Code for the
17 supervision of the activities of the officers, agents, real estate licensees, and employees of
18 MPCPI, for which a license is required.

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20 Whenever reference is made in an allegation in this Accusation to an act or
21 omission of MPCPI, such allegation shall be deemed to mean that the officers, directors, employees,
22 agents and/or real estate licensees employed by or associated with MPCPI committed such act or
23 omission while engaged in the furtherance of the business or operations of such corporate
24 respondent and while acting within the course and scope of their authority and employment.

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26 At all times herein mentioned, Respondents engaged in the business of, acted in
27 the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others,

1 for compensation or in expectation of compensation within the State of California within the
2 meaning of Section 10131(d) of the Code, the operation and conduct of a mortgage loan
3 brokerage with the public wherein, on behalf of others, for compensation or in expectation of
4 compensation, wherein Respondents solicited borrowers or lenders for or negotiated loans or
5 collected payments or performed services for borrowers or lenders or note owners in connection
6 with loans secured directly or collaterally by liens on real property.

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8 In so acting as a real estate brokers, as described in Paragraph 6 above,
9 Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of
10 lenders, investors, borrowers, and others in connection with Respondents' mortgage loan
11 brokerage activities, and thereafter from time to time made disbursements of said trust funds.

12 8

13 The aforesaid trust funds accepted or received by Respondents were deposited
14 or caused to be deposited by Respondents into one or more bank accounts (herein "trust fund
15 accounts") maintained by Respondents for the handling of trust funds at the following branches
16 of Comerica Bank in Carmel, California:

- 17 (a) "Monterey Peninsula Capital Partners Inc dba Peninsula Capital Group Trust
18 Account," account number xxxxxx5822 (herein "Trust Account #1"); and,
19 (b) "Monterey Peninsula Capital Partners Inc dba Peninsula Capital Group
20 Escrow Account," account number xxxxxx5830 (herein "Bank Account #1").

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22 Between about January 1, 2011 and January 31, 2013, Respondents MPCPI and
23 PADILLA, in connection with the mortgage loan brokerage activities described in Paragraph 6,
24 above:

- 25 (a) failed to place trust funds entrusted to Respondents into the hands of a
26 principal on whose behalf the funds were received, into a neutral escrow
27 depository, or into a trust fund account in the name of MPCPI, as trustee at

1 a bank or other financial institution, in connection with Bank Account #1,
2 in conformance with the requirements of Section 10145 of the Code and
3 Section 2832 of Title 10, Chapter 6, of the California Code of Regulations
4 (herein "the Regulations");

5 (b) failed to keep a columnar record in chronological sequence of all trust funds
6 received and disbursed from Trust Account #1 containing all the information
7 required by Section 2831 of the Regulations;

8 (c) failed to reconcile at least once a month, the balance of all separate
9 beneficiary or transaction records with Trust Account #1, as required by
10 Section 2831.2 of the Regulations;

11 (d) authorized Sherylin Morita and Monica Tseng, unlicensed persons without
12 fidelity bond coverage, to make withdrawals from Bank Account #1 and
13 Trust Account #1, in violation of Section 2834 of the Regulations;

14 (e) caused, suffered or permitted money of others which was received and held
15 by Respondents in Trust Account #1 to be commingled with Respondents'
16 own money, in violation of Section 10176(e) of the Code;

17 (f) failed to timely submit Trust Funds Status Reports for the first and second
18 quarter ending March 31, 2012 and June 30, 2012, respectively, in violation
19 of Section 10232.25(a) of the Code; and

20 (g) failed to timely submit Trust Account Reports for the first and second
21 quarter ending March 31, 2012 and June 30, 2012, respectively, in violation
22 of Section 10238(k)(3) of the Code.

23 10

24 Between about February 28, 2013 and September 5, 2013, Respondents MPCPI
25 and KOSTKAS, in connection with the mortgage loan brokerage activities described in
26 Paragraph 6, above, failed to place trust funds entrusted to Respondents into the hands of a
27 principal on whose behalf the funds were received, into a neutral escrow depository, or into a

1 trust fund account in the name of MPCPI, as trustee at a bank or other financial institution, in
2 connection with Bank Account #1, in conformance with the requirements of Section 10145 of
3 the Code and Section 2832 of the Regulations.

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

- 8 (a) as to Paragraph 9(a) and MPCPI and PADILLA, under Section
9 10145 of the Code and Section 2832 of the Regulations in
10 conjunction with Section 10177(d) of the Code;
- 11 (b) as to Paragraph 9(b) and MPCPI and PADILLA, under Section 2831
12 of the Regulations in conjunction with Section 10177(d) of the Code;
- 13 (c) as to Paragraph 9(c) and MPCPI and PADILLA, under Section 2831.2
14 of the Regulations in conjunction with Section 10177(d) of the Code;
- 15 (d) as to Paragraph 9(d) and MPCPI and PADILLA, under Section 2834
16 of the Regulations in conjunction with Section 10177(d) of the Code;
- 17 (e) as to Paragraph 9(e) and MPCPI and PADILLA, under Section
18 10176(e) of the Code;
- 19 (f) as to Paragraph 9(f) and MPCPI and PADILLA, under Section
20 10232.25(a) of the Code in conjunction with 10177(d) of the Code;
- 21 (g) as to Paragraph 9(g) and MPCPI and PADILLA, under Section
22 10238(k)(3) of the Code in conjunction with 10177(d) of the Code;
23 and
- 24 (h) as to Paragraph 10 and MPCPI and KOSTKAS, under Section 10145
25 of the Code and Section 2832 of the Regulations in conjunction with
26 Section 10177(d) of the Code.

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1 COST RECOVERY

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3 Audit Costs

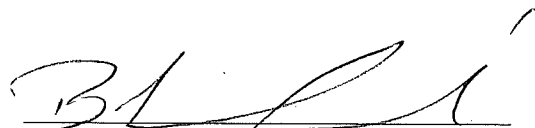
4 The acts and/or omissions of Respondents as alleged above entitle the Bureau to
5 reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

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7 Investigation and Enforcement Costs

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

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

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19 
20 BREND A SMITH
21 Deputy Real Estate Commissioner
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23 Dated at Fresno, California
24 this 12-6 day of 2013.
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