

FILED

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BUREAU OF REAL ESTATE

By S. Black

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9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 JAMES MICHAEL DUKE,)
14 Respondent.)

No. H-2924 FR
ACCUSATION

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16 The Complainant, BRENDA SMITH, a Deputy Real Estate Commissioner of the
17 State of California, for cause of Accusation against JAMES MICHAEL DUKE (Respondent), is
18 informed and alleges as follows:

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20 The Complainant, BRENDA SMITH, a Deputy Real Estate Commissioner of the
21 State of California, makes this Accusation in her official capacity.

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23 Respondent is presently licensed and/or has license rights under the Real Estate
24 Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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26 At all times mentioned, Respondent was and is licensed by the Bureau as a
27 restricted real estate broker.

At all times mentioned herein, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate licensee, in the State of California, within the meaning of:

a) Section 10131(b) of the Code in 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 and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon;

b) Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein Respondent 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, processed, and consummated by Respondent on behalf of others for compensation or in expectation of a compensation.

On or about May 6, 2014, and continuing intermittently through July 30, 2014, an audit was conducted of the records of Respondent. The auditor herein examined the records for the period of January 1, 2013, through June 1, 2014.

In acting as a real estate broker, as described in Paragraph 4(b), Respondent accepted or received funds in trust (trust funds) from or on behalf of lenders, investors, note purchasers, borrowers, and others in connection with the servicing, solicitation, negotiation, processing, and consummation of mortgage loan investments by Respondent.

The trust funds accepted or received by Respondent as described in Paragraph 6 were deposited or caused to be deposited by Respondent into trust accounts which were

1 maintained by Respondent for the handling of trust funds, and thereafter from time-to-time
2 Respondent made disbursements of said trust funds, identified as follows:

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ACCOUNT # 1	
4 Bank Name and Location:	West America 2150 W. Shaw Fresno, CA 93711
5 Account No.:	XXX-XX140-5
6 Entitled:	James Michael Duke DBA Heritage Investments Loan Servicing Trust Account

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ACCOUNT # 2	
9 Bank Name and Location:	West America 2150 W. Shaw Fresno, CA 93711
10 Account No.:	XXX-XX604-0
11 Entitled:	James Michael Duke DBA Heritage Investments Funding Trust Account

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16 In the course of the activities described in Paragraph 4(b), Respondent:

17 (a) caused, suffered, or permitted the balance of funds in Account #2 to be
18 reduced to an amount which, as of March 31, 2014, was approximately \$63,020.00 less than the
19 aggregate liability of Account #2 to all owners of such funds, and as of April 30, 2014, was
20 approximately \$82,135.00 less than the aggregate liability of Account #2 to all owners of such
21 funds, without the prior written consent of each and every owner of such funds, in violation of
22 Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations
23 (Regulations);

24 (b) failed to keep accurate separate records for each beneficiary or transaction,
25 accounting therein for all funds which were deposited into Account #'s 1 and 2, containing all of
26 the information required by Section 2831.1 of the Regulations;

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1 (c) failed to reconcile, for Account #'s 1 and 2, the balance of separate
2 beneficiary or transaction records with the control record of trust funds received and disbursed at
3 least once a month, and/or failed to maintain a record of such reconciliations for each account as
4 required by Section 2831.2 of the Regulations.

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6 Respondent commingled and/or converted trust funds in connection with the
7 mortgage loan activities described in Paragraph 4(b). Respondent converted and/or commingled
8 said trust funds to Respondent's own use and benefit or to purposes not authorized by the rightful
9 owners of said funds. The amount of said commingled and converted trust funds is unknown but
10 well known to Respondent and is not less than \$50,000.

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12 The facts alleged above are grounds for the suspension or revocation of
13 Respondent's licenses and license rights under the following sections of the Code and
14 Regulations:

15 (1) As to Paragraph 8(a), under Section 10177(d) of the Code in conjunction
16 with Section 10145 of the Code and Section 2832.1 of the Regulations;

17 (2) As to Paragraph 8(b), under Section 10177(d) of the Code in conjunction
18 with Section 2831.1 of the Regulations;

19 (3) As to Paragraph 8(c), under Section 10177(d) of the Code in conjunction
20 with Section 2831.2 of the Regulations;

21 (4) As to Paragraph 9, under Sections 10176(e), 10176(i), and/or 10177(g).

22 COST RECOVERY

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24 The acts and/or omissions of Respondent as alleged above, entitle the Bureau to
25 reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund
26 handling violation) of the Code.

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Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, 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.

PRIOR DISCIPLINARY ACTION

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Effective January 13, 2012, in Case No. H-2641 FR before the Department of Real Estate, the Real Estate Commissioner revoked the real estate broker license of Respondent, for violation of Section 10177(d) of the Code, but granted the right to a restricted real estate broker license, on terms, conditions, and restrictions set forth in the Order.

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Effective June 30, 1993, in Case No. H-2830 SAC before the Department of Real Estate, the Real Estate Commissioner revoked the real estate broker license of Respondent, for violation of Section 10177(d) of the Code, but granted the right to a restricted real estate broker license, on terms, conditions, and restrictions set forth in the Order.

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 Respondent under the Code, for the costs of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under the provisions of law.


BRENDA SMITH
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 24 day of November, 2014

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Bureau of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative Procedure Act*. Failure to provide Discovery to the Bureau of Real Estate may result in the exclusion of witnesses and documents at the hearing or other sanctions that the Office of Administrative Hearings deems appropriate.

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