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DEPARTMENT OF REAL ESTATE

By *K. Krapp*

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8 **BEFORE THE DEPARTMENT OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of)
 12) NO. H-3076 FR
 13 STERLING PACIFIC LENDING, INC.,)
 and JOSHUA CHRISTOPHER FISCHER) SECOND AMENDED ACCUSATION
 14)
 Respondents.)
 15)

16 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
 17 State of California, for Accusation against Respondents STERLING PACIFIC LENDING, INC.
 18 (SPL) and JOSHUA CHRISTOPHER FISCHER (FISCHER), sometimes collectively referred
 19 to as Respondents, is informed and alleges as follows:

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21 The Complainant makes this Accusation against Respondents in her official
 22 capacity.

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24 At all times herein mentioned, SPL was and is presently licensed and/or has
 25 license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and
 26 Professions Code (the Code) by the Department of Real Estate (the Department) as a corporate
 27 real estate broker.

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2 FISCHER is presently licensed and/or has license rights under the Code as a real
3 estate broker.

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5 At all times herein mentioned, FISCHER was licensed by the Department as the
6 designated broker/officer of SPL. As the designated broker/officer, FISCHER was responsible,
7 pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers,
8 agents, real estate licensees, and employees of SPL for which a real estate license is required.

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10 At all times herein mentioned, Respondents engaged in the business of, acted in
11 the capacity of, advertised, or assumed to act as, real estate brokers within the State of
12 California within the meaning of Section 10131(d) of the Code, including the operation and
13 conduct of a loan brokerage business with the public wherein, on behalf of others, for
14 compensation or in expectation of compensation, Respondents solicited lenders and borrowers
15 for loans secured directly or collaterally by liens on real property, and wherein Respondents
16 arranged, negotiated, processed, and consummated such loans.

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

23 FIRST CAUSE OF ACTION

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25 Complainant refers to Paragraphs 1 through 6, above, and incorporates the same
26 herein.

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Beginning August 10, 2015, and continuing intermittently through October 20, 2015, an audit was conducted of Respondents' mortgage loan business at SPL's main office located at 1205 Freedom Blvd., Ste. 2, Watsonville, California, and at the Oakland District Office of the Department of Real Estate at 1515 Clay Street, Suite 702, Oakland, California, where the auditor examined records for the period of January 1, 2014, through July 31, 2015 (the audit period).

While acting as a real estate broker as described in Paragraph 5, above, and within the audit period, SPL accepted or received funds in trust from investors and others in connection with those activities, and deposited or caused to be deposited those funds into bank accounts maintained by SPL, at Santa Cruz County Bank, 595 Auto Center Drive, Watsonville, CA 95076, as described below:

TRUST ACCOUNT #1	
Account No.:	XXXXXX5838
Entitled:	Sterling Pacific Lending Inc dba Sterling Pacific Financial Servicing Trust Account

TRUST ACCOUNT #2	
Account No.:	XXXXXX5820
Entitled:	Sterling Pacific Lending Inc dba Sterling Pacific Financial Escrow Trust Account

TRUST ACCOUNT #3	
Account No.:	XXXX5846
Entitled:	Sterling Pacific Lending Inc dba Sterling Pacific Financial Construction Trust Account

and thereafter from time to time made disbursement of said trust funds.

In the course of the activities described in Paragraph 5, in connection with the collection and disbursement of trust funds, it was determined that:

(a) For Loan No. B1506016, SPL failed to provide a complete Lender Purchase Disclosure Statement as required by Section 10232.5 of the Code;

(b) For Loan No. 1406005, SPL did not insure that the investment was not oer 10% of the net worth of the investors as required by Section 10238(f) of the Code;

(c) SPL solicited individuals for investments, which are set forth below, which were used to fund loans. For the single investor loans, Nos. B1506002 and B1506016, SPL failed to name the lender as beneficiary on the deed of trust as required by Section 2841.5 of the Regulations and Section 10234(a) of the Code;

(d) For the multi-investor loan No. B1406005, SPL failed to record interests of the individual investors, as required by Section 10238(g) of the Code;

(e) For all three loans, set forth below, SPL failed to record deeds of trust prior to the release of funds as required by Section 10234(a) of the Code:

Loan #	Borrower	Investor(s)
B1506002	Arnold B.& Coleen B.	Westate Acquisitions, LLC
B1506016	Kenneth M. & Muriel M.	Gilbert K.
B1406005	Soquel Technologies, LLC	Sal L. & Dawn L.

B1506002	\$150,000	06/19/15	06/19/15	06/11/15	07/08/15
B1506016	\$100,000	06/30/15	06/30/15	06/04/15	07/08/15
B1406005	\$125,000	08/15/14	08/15/14	08/01/14	10/03/14

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1 (f) For Loan No. B1504002, SPL calculated the loan-to-value
2 ratio incorrectly, in violation of Sections 10238(h)(1) and 10238(h)(2) of the Code. The loan-to-
3 value calculations by SPL for these loans did not fall within the exceptions set for in Section
4 10238(h)(2) of the Code;

5 (g) For Loan No. B15046002, SPL failed to provide an independent appraisal
6 or a written broker evaluation of fair market value of real property securing the note(s) as
7 required by Section 10238(h)(3) of the Code;

8 (h) SPL accepted funds from Sal L. and Dawn L. without a specific loan
9 amount, in violation of Section 10238(j) of the Code;

10 (i) SPL failed to provide a complete Lender Purchaser Disclosure Statement
11 (LPDS) No. B1406005, as required by Section 10238(l) of the Code;

12 (j) SPL failed to obtain information from any of the lenders for the three loans
13 set forth above, or complete the Investor Questionnaire, as required by Section 10232.45 of the
14 Code;

15 (k) SPL failed to deliver the Mortgage Loan Disclosure Statements (MLDS)
16 to any of the borrowers on the three loans set forth above, as required by Section 10240 of the
17 Code.

18 11

19 The acts and/or omissions of SPL as alleged above violate Sections 2726, 2731,
20 2841.5 of the Regulations and Sections 10232.45, 10232.5, 10234(a), 10238(f), 10238(g),
21 10238(h)(1), 10238(h)(2), 10238(h)(3), 10238(l), and 10240 of the Code and are grounds for
22 disciplinary action under Section 10177(d) (willful disregard/violation of Real Estate Law) and
23 10177(g) (negligence/incompetence of real estate licensee) of the Code.

24 SECOND CAUSE OF ACTION

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26 Complainant refers to Paragraphs 1 through 11, above, and incorporates them
27 herein by reference.

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At no time mentioned here was SPLA a broker dealer under Section 10133.1 of the Code.

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At no time mentioned herein was FISCHER a broker dealer under Section 10133.1 of the Code.

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At no time from and since 2012, did SPL hold an Offering Permit from the Department of Business Oversight.

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At no time from and since 2012, did FISCHER hold an Offering Permit from the Department of Business Oversight.

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At all times mentioned herein SPLA did hold a California Finance Lender (CFL) License issued by the Department of Business Oversight.

18

Respondents assert that they sold securities under an exemption pursuant to Section 25102(n) of the Corporations Code when they were soliciting borrowers and will contend that they were selling securities.

19

Under Corporations Code Section 25206, a Corporation cannot raise private equity money to invest in real property, which is what Respondents were doing in the transactions set forth above, in the First Cause of Action

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Under Corporations Regulation Section 260.204.1, real estate brokers may not rely on the exemption set forth in Section 25102(n) of the Corporations Code.

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Respondents' Private Placement Memorandum (PPM) does not legally provide for loans to be made under the CFL License. It provides for lenders to directly fund loans. Respondents brokered loans to private parties, in violation of Financial Code Sections 22059, 22340, and 22600, since only funds from institutional investors or other CLF lenders may be accepted.

22

The PPM states that the Disclosure Statement shall be controlling. The LPDS for the transactions set forth above indicate that the transaction is loan origination, not a note sale.

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The Subscription Agreements state that investors will receive a fractional tenant-in-common interest in property. This language describes loan origination, not a note sale.

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The above acts and/ or omissions and reliance on the PPM and Subscription Agreements violate Finance Code Sections 22059, 22340 and 22600 of the Corporations Code and are grounds for disciplinary action under Sections 10177(d) and 10177(g) of the Code.

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The above acts and/or omissions as set forth above, including soliciting loans under Section 25102(n) of the Corporations Code, violates Regulation 260.2204.1 and Section 25206 of the Corporations Code and are grounds for disciplinary action under Sections 10177(d) and 10177(g) of the Code.

THIRD CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 25, above, and incorporates the same herein by reference.

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At all times herein above mentioned, FISCHER was responsible, as the designated broker/officer of SPL, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. FISCHER failed to exercise reasonable supervision and control over the property management brokering activities of SPL. In particular, FISCHER permitted, ratified and/or caused the conduct described above, to occur, and failed to take reasonable steps, including but not limited to the handling of trust funds, supervision of employees, and the implementation of policies, rules, procedures, and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

The above acts and/or omissions of FISCHER violate Section 10159.2 of the Code and Section 2725 of the Regulation and are grounds for disciplinary action under Sections 10177(d) and 10177(g) of the Code.

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

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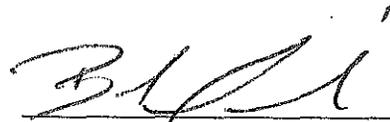
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1 disciplinary action against all licenses and license rights of Respondents under the Real Estate
2 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
3 relief as may be proper under other provisions of law.

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7 BREANDA SMITH
Supervising Special Investigator

8 Dated at Fresno, California,
9 this 15 day of November, 2019.

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12 DISCOVERY DEMAND

13 The Department of Real Estate hereby requests discovery pursuant to Section
14 11507.6 of the California Government Code. Failure to provide discovery to the Department
15 may result in the exclusion of witnesses and/or documents at the hearing, and other sanctions as
16 the Administrative Law Judge deems appropriate.

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