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FILED

JUN 11 2019

DEPT. OF REAL ESTATE

By Ingrid Alvarado

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

No. H-03256 FR

MARY JANE FLORES,
doing business as Wasco Realty,

ACCUSATION

Respondent.

The Complainant, Brenda Smith, a Supervising Special Investigator of the State of California, for cause of Accusation against MARY JANE FLORES, f.k.a. Mary Jane De La Torre, alleges as follows:

1.

The Complainant, Brenda Smith, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

2.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

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1 (2) Withdrawals may be made from a trust fund account of an individual broker
2 only upon the signature of that broker, or in the case of a corporate broker, only upon the
3 signature of an officer through whom the corporation is licensed pursuant to Section 10158 or
4 10211, or one, or more, of the following persons if specifically authorized in writing by the
5 individual broker or officer:

6 (A) A real estate salesperson licensed to the broker.

7 (B) Another broker acting pursuant to a written agreement with the
8 individual broker that conforms to the requirements of this part and any
9 regulations promulgated pursuant to this part.

10 (C) An unlicensed employee of the individual broker, if the broker has
11 fidelity bond coverage equal to at least the maximum amount of the trust
12 funds to which the unlicensed employee has access at any time. For
13 purposes of this section, bonds providing coverage may be written with a
14 deductible of up to 5 percent of the coverage amount. For bonds with a
15 deductible, the employing broker shall have evidence of financial
16 responsibility that is sufficient to protect members of the public against a
17 loss subject to the deductible amount.

18 Evidence of financial responsibility shall include one or more of the
19 following:

20 (i) Separate fidelity bond coverage adequate to cover the amount
21 of the fidelity bond deductible.

22 (ii) A cash deposit held in a separate account, apart from other
23 funds of the broker, the broker's employees, or the broker's
24 principals, in a bank or recognized depository in this state adequate
25 to cover the amount of the fidelity bond deductible and held
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1 exclusively and solely for the purpose of paying the fidelity bond
2 deductible amount.

3 (iii) Any other evidence of financial responsibility approved by the
4 commissioner.

5 (3) An arrangement under which a person enumerated in subparagraph (A),(B),
6 or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of a broker
7 shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from
8 responsibility or liability as provided by law in handling trust funds in the broker's custody.

9 ...

10 (4)(b) A real estate broker acting as a principal pursuant to Section 10131.1¹
11 shall place all funds received from others for the purchase of real property sales contracts or
12 promissory notes secured directly or collaterally by liens on real property in a neutral escrow
13 depository unless delivery of the contract or notes is made simultaneously with the receipt of the
14 purchase funds.

15 ...

16 (4)(g) The broker shall maintain a separate record of the receipt and disposition of
17 all funds described in subdivisions (a) and (b), including any interest earned on the funds..."

18 6.

19 Pursuant to Regulation 2831.1 *Separate Record for Each Beneficiary or*
20 *Transaction:*

21 "(a) A broker shall keep a separate record for each beneficiary or transaction,
22 accounting for all funds which have been deposited to the broker's trust bank account and
23 interest, if any, earned on the funds on deposit. The record shall include information sufficient to
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25 ²Code Section 10131.1 states, "(a) A real state broker within the meaning of this part is also a person who engages as
26 a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property
27 sales contracts or promissory notes secured directly or collaterally by liens on real property..."

1 identify the transaction and the parties to the transaction. Each record shall set forth in
2 chronological sequence the following information in columnar form:

3 (1) Date of deposit.

4 (2) Amount of deposit.

5 (3) Date of each related disbursement.

6 (4) Check number of each related disbursement.

7 (5) Amount of each related disbursement.

8 (6) If applicable, dates and amounts of interest earned and credited to the
9 account.

10 (7) Balance after posting transactions on any date.

11 (b) Maintenance of trust ledgers of separate beneficiaries or transactions, or
12 similar records, or automated data processing systems, including computer systems and
13 electronic storage and manipulation of information and documents, in accordance with generally
14 accepted accounting principles will constitute compliance with subdivision (a), provided that
15 such ledgers, records, or systems contain the elements required by subdivision (a) and that such
16 elements are maintained in a format that will readily enable tracing and reconciliation in
17 accordance with Section 2831.2.”

18 7.

19 Pursuant to Regulation 2831.2 *Trust Account Reconciliation*:

20 “The balance of all separate beneficiary or transaction records maintained
21 pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds
22 received and disbursed required by Section 2831, at least once a month, except in those months
23 when the bank account did not have any activities. A record of the reconciliation must be
24 maintained, and it must identify the bank account name and number, the date of the
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1 reconciliation, the account number or name of the principals or beneficiaries or transactions, and
2 the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.”

3 8.

4 Pursuant to Regulation 2832 *Trust Fund Handling*:

5 “(a) Compliance with Section 10145 of the Code requires that the broker place
6 funds accepted on behalf of another into the hands of the owner of the funds, into a neutral
7 escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if
8 the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other
9 financial institution not later than three business days following receipt of the funds by the broker
10 or by the broker’s salesperson.

11 (b) Except as expressly provided by subdivision (d) of Section 10145 of the Code
12 or by a regulation in this article, the account into which the trust funds are deposited shall not be
13 an interest-bearing account for which prior written notice can by law or regulation be required by
14 the financial institution as a condition to the withdrawal of funds.

15 (c) A check received from the offeror may be held uncashed by the broker until
16 acceptance of the offer if

17 (1) the check by its terms is not negotiable by the broker or if the offeror
18 has given written instructions that the check shall not be deposited nor cashed until acceptance of
19 the offer and

20 (2) the offeree is informed that the check is being so held before or at the
21 time the offer is presented for acceptance.

22 (d) In these circumstances if the offeror’s check was held by the broker in
23 accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a
24 neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and
25 offeree expressly so provide in writing, not later than three business days following acceptance of
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1 the offer unless the broker receives written authorization from the offerree to continue to hold the
2 check.

3 (e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker
4 who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when
5 acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan
6 transaction in which the broker is performing acts for which a real estate license is required shall
7 place all funds accepted on behalf of another into the hands of the owner of the funds, into a
8 neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious
9 name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or
10 other financial institution not later than the next business day following receipt of the funds by
11 the broker or by the broker's salesperson."

12 9.

13 Pursuant to Regulation 2832.1 *Trust Fund Handling for Multiple Beneficiaries:*

14 "The written consent of every principal who is an owner of the funds in the
15 account shall be obtained by a real estate broker prior to each disbursement if such a
16 disbursement will reduce the balance of funds in the account to an amount less than the existing
17 aggregate trust fund liability of the broker to all owners of the funds."

18 10.

19 Pursuant to Regulation 2834 *Trust Account Withdrawals:*

20 "(a) Withdrawals may be made from a trust fund account of an individual broker
21 only upon the signature of the broker or one or more of the following persons if specifically
22 authorized in writing by the broker:

23 (1) a salesperson licensed to the broker.

24 (2) a person licensed as a broker who has entered into a written agreement
25 pursuant to Section 2726 with the broker.
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1 (3) an unlicensed employee of the broker with fidelity bond coverage at least
2 equal to the maximum amount of the trust funds to which the employee
3 has access at any time.

4 (b) Withdrawals may be made from the trust fund account of a corporate broker
5 only upon the signature of:

6 (1) an officer through whom the corporation is licensed pursuant to Section
7 10158 or 10211 of the Code or

8 (2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision
9 (a) above, provided that specific authorization in writing is given by the officer through whom
10 the corporation is licensed and that the officer is an authorized signatory of the trust fund
11 account.

12 (c) An arrangement under which a person enumerated in paragraph (1), (2) or (3)
13 of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker
14 shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from
15 responsibility or liability as provided by law in handling trust funds in the broker's custody."

16 **Further Grounds for Disciplinary Action – Code Section 10177**

17 11.

18 Pursuant to Code Section 10177, "The commissioner may suspend or revoke the
19 license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the
20 issuance of a license to an applicant, who has done any of the following:

21 ...

22 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing
23 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and
24 regulations of the commissioner for the administration and enforcement of the Real Estate Law
25 and Chapter 1 (commencing with Section 11000) of Part 2."

1 ...
2 (g) Demonstrated negligence or incompetence in performing an act for which he
3 or she is required to hold a license..."

4 **DRE AUDIT FR 170048: MARY JANE FLORES**

5 12.

6 On May 30, 2018, the DRE completed its audit examinations of the books and
7 records of Respondent FLORES pertaining to her property management activities (FR 170048),
8 which require a real estate license. The audit examination covered a period of time beginning on
9 September 1, 2015 and ending on October 31, 2017 ("audit examination period" or "audit
10 period"), and was performed between December 4, 2017 and January 29, 2018. The final report
11 of May 30, 2018 revealed violations of the Code and the Regulations as set forth in the following
12 paragraphs, and more fully discussed in the Audit Report for FR 170048.

13 13.

14 **Property Management Activities**

15 According to FLORES and the records examined for the DRE audit examination,
16 as of December 4, 2017, she managed thirty-six (36) one-to-four family residences with sixty-one
17 (61) units and sixteen (16) owners. FLORES collected rent, paid expenses, and screened tenants
18 for compensation. There was a total monthly collection of approximately five hundred and fifty-
19 two thousand dollars (\$552,000) and approximately twenty-five percent (25%) of this monthly
20 amount consisted of cash. FLORES charged a management fee of seven percent (7%) of the
21 rents collected for the properties she managed.

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14.

Bank Account

During the audit period, FLORES maintained one (1) bank account to deposit and hold real estate trust funds in the form of rents and security deposits from tenants:

Account #####9991("Bank Account #1")

Bank: Union Bank, 1049 7th Street, Wasco, CA 93280

Account Name: Flores, Mary Jane DBA Wasco Realty

Account Number: #####9991

Signatories: MARY JANE FLORES

Bank Account #1 was a business checking account used for deposits and disbursements related to the management of properties. Deposits consisted of rents and security deposits collected from tenants. Disbursements were payments for expenses related to the properties managed, remittances to owners, and payment of management fees to FLORES.

AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW

15.

In the course of property management activities described above in Paragraph 13 and during the audit examination period described in Paragraph 12, Respondent FLORES violated the Code and the Regulations, as described below:

16.

Trust Fund Balances and Accountability

(Code Section 10145(a) and Regulation 2832.1)

A. As of September 29, 2017, there was a shortage of <\$28,091.55> in Bank Account #1 due to negative property balances totaling <\$2,272.45>, a bank deficit totaling <\$10,931.35> and unidentified shortage of <\$14,887.75>, in violation of Code Section 10145(a) and Regulation 2832.1. FLORES provided no evidence that the owners of the trust funds had

1 given their written consent to allow her to reduce the balance of funds in the trust account to an
2 amount less than the aggregate trust fund liabilities.

3 17.

4 **Trust Account Designation**

5 **(Code Section 10145(a) and Regulation 2832)**

6 A. Bank Account #1 was used to hold trust funds; however, it was not in the name
7 of REB FLORES or FLORES' DBA as trustee, in violation of **Code Section 10145 and**
8 **Regulation 2832.**

9 B. As of December 4, 2017 (outside of the audit period), FLORES corrected the
10 designation for Bank Account #1 by designating it as a trust account.

11 18.

12 **Reconciliation of the Trust Records**

13 **(Code Section 10145 and Regulation 2831.2)**

14 During the audit period, FLORES failed to perform and maintain a monthly
15 reconciliation comparing the balance of all separate beneficiary or transaction records (separate
16 records) to the balance of the record of all trust funds received and disbursed (control record) for
17 Bank Account #1, in violation of **Code Section 10145 and Regulation 2831.2.**

18 19.

19 **Separate Beneficiary Records**

20 **(Code Section 10145 and Regulation 2831.1)**

21 A. FLORES failed to maintain accurate separate records for each beneficiary for
22 Bank Account #1, in violation of **Code Section 10145 and Regulation 2831.1.**

23 B. On December 4, 2017, a bank reconciliation was performed on Bank Account
24 #1 using the cut-off date of September 29, 2017. During the reconciliation, the accountability
25 was determined to be \$29,090.49. However, after examining the separate records provided by
26

1 FLORES, it was noted there were multiple transactions missing from the separate records.
2 FLORES indicated that she believed her bookkeeper, Barbara Lucas ("Lucas") was posting
3 invoices to each beneficiary record and maintaining accurate records. Instead, FLORES
4 discovered invoices dating from December 2016 to October 2017 that had been paid for from
5 Bank Account #1, but never posted to the respective separate records. The final accountability
6 after adjustments were made for the records discovered by FLORES was determined to be the
7 amount \$17,160.20 and resulted in the shortage identified above in Paragraph 16.

8 20.

9 **Withdrawals from Bank Account Holding Trust Funds**

10 **(Code Section 10145 and Regulation 2834)**

11 Checks from Bank Account #1 were signed by Lucas, an unlicensed individual,
12 without fidelity bond coverage, in violation of **Code Section 10145 and Regulation 2834**.
13 According to the documents examined, Lucas signed multiple checks from Bank Account #1,
14 including management fee checks made payable to FLORES.

15 21.

16 **Additional Violations of the Real Estate Law**

17 The overall conduct of Respondent FLORES is violative of the Real Estate Law
18 and constitutes cause for the suspension or revocation of her real estate license and license rights
19 under the provisions of **Code Section 10177(g)** for negligence and **Code Section 10177(d)** for
20 willful disregard of the Real Estate Law.

21 **COSTS**

22 **Investigation and Enforcement Costs**

23 22.

24 **Code Section 10106** provides, in pertinent part, that in any order issued in
25 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner
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1 may request the administrative law judge to direct a licensee found to have committed a violation
2 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement
3 of the case.

4 **Audit Costs**

5 23.

6 **Code Section 10148(b)** provides, in pertinent part, the Commissioner shall charge
7 a real estate broker for the cost of any audit, if the Commissioner has found in a final decision
8 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation
9 or rule of the Commissioner interpreting said section.

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

16 Dated at Fresno, California

17 this 7 day of June, 2019.

18 
19 Brenda Smith
20 Supervising Special Investigator

21
22 cc: MARY JANE FLORES
23 Enforcement – D. Meade, B. Smith
24 Audits – A. Patterson, C. de Sonnaville
25 Sacto.
26
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