

SEP 14 2020

DEPARTMENT OF REAL ESTATE

By P. dew

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 7
 8 BEFORE THE DEPARTMENT OF REAL ESTATE
 9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:)	
)	No. H-3330 FR
12 COAST ESTATE REAL ESTATE PROPERTY)	
MANAGEMENT, INC.,)	
13 STEPHEN JOHN POLETTI)	
and MARY JANE CAPUTO)	<u>ACCUSATION</u>
)	
14)	
)	
15 Respondents.)	
)	

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17 The Complainant, BREND SMITH, in her official capacity as Supervising Special
 18 Investigator of the State of California, Department of Real Estate ("Department"), brings this
 19 Accusation against COAST ESTATE REAL ESTATE PROPERTY MANAGEMENT, INC.
 20 ("COAST ESTATE"), STEPHEN JOHN POLETTI ("POLETTI"), and MARY JANE CAPUTO
 21 ("CAPUTO"), (collectively "Respondents"), and is informed and alleges as follows:

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23 COAST ESTATE is presently licensed by the Department and/or has license rights
 24 under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
 25 ("Code"), as a corporate real estate broker, License No. 02085209.

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2 POLETTI is presently licensed by the Department and/or has license rights under
3 the Real Estate Law, Part 1 of Division 4 of the Code as a real estate broker, License No.00482426.
4 POLETTI first became licensed as a real estate broker with the Department on or about April 17,
5 1977.

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7 At all relevant times to this transaction, POLETTI was the Secretary and 100%
8 shareholder of COAST ESTATE.

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10 CAPUTO is presently licensed by the Department and/or has license rights under
11 the Real Estate Law, Part 1 of Division 4 of the Code as a real estate broker, License No.
12 01438868. CAPUTO first became licensed as a real estate broker on April 10, 2020.

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14 From on or about July 16, 2004, through on or about April 10, 2020, CAPUTO was
15 licensed as a real estate salesperson.

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17 At all relevant times herein, CAPUTO was the Chief Executive Officer of COAST
18 ESTATE.

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20 On or about February 4, 2019, POLETTI became the designated broker officer for
21 COAST ESTATE.

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23 At all relevant times herein, POLETTI employed CAPUTO under POLETTI's real
24 estate broker license.

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26 Whenever reference is made in this Accusation to an act or omission of COAST
27 ESTATE, such allegation shall be deemed to mean that the employees, agents and real estate

1 licensees employed by or associated with COAST ESTATE committed such act or omission while
2 engaged in furtherance of the business or operations of COAST ESTATE and while acting within
3 the course and scope of their authority and/or employment.

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5 At all relevant times herein, COAST ESTATE engaged in the business of, acted in
6 the capacity of, advertised or assumed to act as real estate licensees within the State of California
7 within the meaning of Section 10131(b) of the Code including the operation and conduct of a
8 property management business with the public, wherein, on behalf of others, for compensation or
9 in expectation of compensation, COAST ESTATE leased or rented or offered to lease or rent, and
10 solicited for prospective tenants of real property or improvements thereon, and collected rents from
11 real property or improvements thereon.

12 11

13 On or about December 17, 2018, the Department received a consumer complaint
14 from Danielle F. and Aaron F., who owned a property located at Torres Street 2 NW 10th, Carmel-
15 by-the-Sea, CA 93921. The complaint alleged that on or about June 12, 2016, they entered into a
16 Property Management Agreement with COAST ESTATE, supervised by POLETTI, and that
17 COAST ESTATE wrongfully withheld trust funds after the contract terminated.

18 12

19 Beginning on February 20, 2019, and continuing intermittently through September
20 18, 2019, an audit was conducted into the real estate business activities of COAST ESTATE,
21 located at 3771 Rio Rd. Suite 111, Carmel, CA 93923. The Department's auditor examined the
22 business records of COAST ESTATE for the period of June 1, 2016, through January 31, 2019.
23 ("audit period").

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FIRST CAUSE OF ACTION
(Unlicensed Activities as to All Respondents)

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Each and every allegation made above in Paragraphs 1 through 12, inclusive, is incorporated by reference as if fully set forth herein.

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Prior to February 4, 2019, COAST ESTATE had never been licensed by the Department.

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Respondents willfully caused, suffered, permitted, and/or disregarded the Real Estate Law by engaging in activities requiring a real estate license, under the name of COAST ESTATE, an entity unlicensed by the Department at the time. During this time, COAST ESTATE received \$269,788.73 in trust funds on behalf of owners, in expectation of compensation. Respondents engaged in the following transactions that were in violation of Real Estate Law:

PROPERTY	AGREEMENT TYPE	TENANCY DATE(S)	OWNER(S)
Carmel Seashore Casanova Sr. 2 SE 2nd Ave., Carmel, CA	Property Management Agreement (Owner) and Rental Agreement (Tenants)	05/21/18-06/30/18 02/01/19-03/30/19	Varun M. and Pradnya M.
Ms. Saals Sea Star 516 9th Street Pacific Grove, CA	Property Management Agreement (Owner) and Rental Agreement (Tenants)	07/01/17-08/18/17 06/12/18-07/29/18 10/26/18-11/26/18 12/01/18-11/30/19	Reagan B. and Dallas D.
Bijous Des Bois Santa Rita NE 2nd Street Carmel-by-the-Sea, CA 93921	Property Management Agreement (Owner) and Rental Agreement (Tenants)	01/30/19-03/03/19	Eileen S. and Leo S.
2889 Sloan Road, Pebble Beach, CA 93953	Property Management Agreement (Owner) and Rental Agreement (Tenant)	10/28/18-12/31/19	Larisa S.
Heart's Delight	Property Management Agreement (Owner)	03/04/18-06/01/18 09/27/18-11/05/18	Mike G.

1	Pacific Grove, CA 93950	and Rental Agreement (Tenant)		
2				
3	Nobody's Perfect Monte Verde Street 5 SE 12th Ave., Carmel, CA 93921	Property Management Agreement (Owner) and Rental Agreement (Tenants)	05/21/18-06/30/18 10/01/18-11/30/18 01/10/19-02/16/19	Matthew P. and Penelope P.
4				
5	3161 Sycamore Pl. Carmel, CA	Property Management Agreement (Owner) and Rental Agreement (Tenants)	04/01/18-03/31/19	Grant G. and Danyone G.
6				
7	Manya's House Monterey, CA 93940	Property Management Agreement (Owner) and Rental Agreement (Tenant)	05/04/18-06/30/18 06/30/18-07/31/18 01/01/19-02/06/19	Mary C.
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9				
10	Pebble Beach La Maison de la Mer Pebble Beach, CA 93953	Rental Agreement (Tenant)	06/28/18-08/31/18	Brodie K. (Tenant)
11				
12	Pebble Beach Tree House Monterey, CA 93953	Property Management Agreement (Owner) and Rental Agreement (Tenant)	07/01/18-08/20/18 09/30/18-11/10/18 01/15/19-03/15/19	Cindy G.
13				
14	Monterey Penthouse 663 Hawthorn Street Monterey, CA 93940	Property Management Agreement (Owner) and Rental Agreement (Tenant)	07/29/18-08/31/18 08/31/18-02/28/19	Cena Living Revocable Trust
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16				
17	813 Brentwood Pacific Grove, CA	Property Management Agreement (Owner) and Rental Agreement (Tenant)	08/29/18-03/30/19	Eichner Revocable Trust
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19	4220 Segunda Drive, Ste. A, Carmel, CA 93923	Property Management Agreement (Owner) and Rental Agreement (Tenant)	09/18/18-monthly	Judy W.
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21	4220 Segunda Drive, Ste. B, Carmel, CA 93923	Property Management Agreement (Owner) and Rental Agreement (Tenant)	09/18/18-monthly	Judy W.
22				
23	1203 Lawton Ave., Pacific Grove, CA	Property Management Agreement (Agent for Owner) and Rental Agreement (Tenant)	10/01/18-09/30/19	Larisa S. (Agent for Owners)
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25				
26	Carmel's "Pacific Serenade"	Property Management. Agreement (Owner) and Rental Agreement (Tenant)	10/18/18-01/22/19 01/28/19-02/28/19	Diane H. and Ralph H.
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1 2 3 4	Santa Rita 2NW 2nd Street, Carmel-by-the-Sea, CA 93921			
5 6 7 8	Casa Felice Santa Fe 5SE Ocean Ave., Carmel-by-the-Sea, CA 93921	Property Management Agreement (Owner) and Rental Agreement (Tenant)	11/17/18-01/01/19 01/01/19-02/28/19	Poletti Credit Shelter Trust

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The facts alleged in the FIRST CAUSE OF ACTION are grounds for the suspension or revocation of Respondents' licenses and license rights pursuant to Sections 10130, 10131, 10177(d), and 10177(g) of the Code.

SECOND CAUSE OF ACTION
(Audit Violations as to COAST ESTATE and POLETTI)

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Each and every allegation made above in Paragraphs 1 through 16, inclusive, is incorporated by reference as if fully set forth herein.

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While engaging in the real estate activities described above in Paragraph 10, and within the audit period, Respondents accepted or received funds in trust ("trust funds") and deposited or caused the trust funds to be deposited into the following accounts:

Bank Account #1

Bank Name: Wells Fargo Bank, N.A.
P.O. Box 6995, Portland, OR 97228-6995

Account Name: Coast Estate Real Estate Property Management, Inc.

Account No.: Last 4 Digits: 4170

Signatories: Mary Jane Caputo-Walters (real estate salesperson)
Joseph K. Sennish (Unlicensed)
Stephen J. Poletti (real estate broker)

Description: Handling of trust funds received and disbursed in the management of approximately thirty (30) properties. Deposits included reservations and deposits for vacation rentals, transfers from Caputo and transfers from Sennish. Disbursements included transfers from Account #2, payments of owner proceeds, management fees, payments for cleaning, payments for taxes, and transfers to Sennish.

Bank Account #2

1 Bank Name: Wells Fargo Bank, N.A.
2 P.O. Box 6995, Portland, OR R97228-6995
3 Bank Name: Coast Estate Real Estate Property Management, Inc.
4 Account No.: Last 4 Digits: 4188
5 Mary Jane Caputo-Walters (real estate salesperson)
6 Joseph K. Sennish (Unlicensed)
7 Stephen J. Poletti (real estate broker)
8 Description: Deposits included transfers from Account #1 to pay property
9 related expenses, transfers of management fees from Account
10 #1, and transfers from Sennish. Withdrawals included
11 payments to vendors, tax authorities, utilities, owners,
12 transfers to Caputo-Walters, transfers to Sennish, and vehicle
13 payments.

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15 In the course of the real estate activities described above in Paragraph 10, and during
16 the audit period, the following was discovered:

- 17 a. As of January 31, 2019, there was a combined trust fund shortage of
18 \$327,140.87 in Bank Account #1 and Bank Account #2. The shortage was caused by a negative
19 balance, amounting to \$94,558.49, in twenty-five (25) bank transactions, and the remaining
20 \$232,582.58 was unidentified. Respondents failed to obtain prior written consent from the owners
21 of the trust funds in Bank Account #1 and Bank Account #2 so as to allow the balance of the funds
22 to drop below the accountability of the account, in violation of Section 10145 of the Code and
23 Section 2832.1 of Chapter 6, Title 10, California Code of Regulations ("Regulations");
- 24 b. Respondents commingled trust funds with broker funds, in violation of
25 Section 10145 of the Code and Section 2835 of the Regulations;
- 26 c. Respondents conducted real estate activities under the unlicensed
27 corporation Coast Estate Real Estate Property Management, Inc., in violation of Sections 10130 and
10131 of the Code;
- 28 d. Respondents failed to place trust funds entrusted to Respondents into a trust
29 account in the name of the broker as trustee, in violation of Section 10145 of the Code and Section
30 2832 of the Regulations;

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1 e. Respondents failed to maintain complete and accurate control records for all
2 trust funds received and/or disbursed in Bank Account #1 and Bank Account #2, in violation of
3 Section 10145 of the Code and Section 2831 of the Regulations;

4 f. Respondents failed to maintain accurate and complete separate beneficiary
5 records of trust funds accepted and/or received in Bank Account #1 and Bank Account #2, in
6 violation of Section 10145(g) of the Code and Section 2831.1 of the Regulations;

7 g. Respondents failed to reconcile at least once per month the balance of all
8 separate beneficiary records to the balance of the control records for Bank Account #1 and Bank
9 Account #2, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations; and

10 h. Respondents permitted Joseph K. Sennish, an unlicensed individual, to serve
11 as a signatory on Bank Account #1 and Bank Account #2, in violation of Section 10145 of the Code
12 and Section 2834 of the Regulations.

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14 The acts and/or omissions of COAST ESTATE and POLETTI as alleged in the
15 SECOND CAUSE OF ACTION constitute grounds for the suspension or revocation of all licenses
16 and license rights of COAST ESTATE and POLETTI pursuant to the following provisions:

17 As to Paragraph 19(a), under Sections 10145, 10177(d) and/or 10177(g) of the
18 Code, in conjunction with Section 2832.1 of the Regulations;

19 As to Paragraph 19(b), under Sections 10145, 10176(e), 10177(d), 10177(g), and/or
20 10177(j) of the Code, in conjunction with Section 2835 of the Regulations;

21 As to Paragraph 19(c), under Sections 10130, 10131, 10177(d) and/or 10177(g) of
22 the Code;

23 As to Paragraph 19(d), under Sections 10145, 10177(d), and/or 10177(g) of the
24 Code, in conjunction with Section 2832 of the Regulations;

25 As to Paragraph 19(e), under Sections 10145, 10177(d) and 10177(g) of the Code,
26 in conjunction with Section 2831 of the Regulations;

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1 As to Paragraph 19(f), under Sections 10145, 10177(d) and 10177(g) of the Code, in
2 conjunction with Section 2831.1 of the Regulations;

3 As to Paragraph 19(g), under Sections 10145, 10177(d) and 10177(g) of the Code,
4 in conjunction with Section 2831.2 of the Regulations; and

5 As to Paragraph 19(h), under Sections 10145, 10177(d) and 10177(g) of the Code,
6 in conjunction with Section 2834 of the Regulations..

7 **COST RECOVERY**

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9 The acts and/or omissions of Respondents as alleged above in the FIRST and
10 SECOND CAUSES OF ACTION, entitle the Department to reimbursement of the costs of its audit
11 pursuant to Section 10148(b) (audit costs for trust fund handling violation) of the Code.

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

17 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of
18 this First Amended Accusation and that upon proof thereof, a decision be rendered imposing
19 disciplinary action against all licenses and license rights of Respondents under the Code, for the
20 cost of investigation and enforcement as permitted by law, for the cost of the audit, and for such
21 other and further relief as may be proper under other provisions of law.

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23 
24 BREND A SMITH
25 Supervising Special Investigator

26 Dated at Fresno, California,

27 this 28 day of August, 2020.

1 DISCOVERY DEMAND

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