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FILED

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DEPARTMENT OF REAL ESTATE
By B. N. Chuino

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:

BERNICE REBA JACOBS,

Respondent.

No. H-3373 FR

FIRST AMENDED
ACCUSATION

The Complainant, HEATHER NISHIMURA, acting in her official capacity as a
Supervising Special Investigator of the State of California, for cause of First Amended
Accusation against BERNICE REBA JACOBS ("Respondent"), is informed and alleges as
follows:

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Respondent is presently licensed and/or has license rights under the Real Estate
Law (Part 1 of Division 4 of the Business and Professions Code) ("Code") as a real estate broker.

2

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 Section 10131(a) of the Code, including the operation and conduct of a
real estate resale brokerage with the public, wherein, on behalf of others, for compensation or in

1 expectation of compensation, Respondent sold and offered to sell, bought and offered to buy,
2 solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated
3 the purchase and resale of real property.

4 3

5 On or about December 22, 2018, Respondent entered into a Residential Listing
6 Agreement ("RLA") with Laquita L. ("Seller"), as the administrator of the estate of Seller's
7 deceased father, for the sale of a home located a 1905 Lincoln Street, Seaside, CA 93955
8 ("Subject Property"). The term of the RLA began on December 22, 2018, and extended through
9 March 22, 2019. Pursuant to the RLA, Respondent was to receive a set commission of 5% upon
10 producing to Seller a ready, willing and able buyer for the Subject Property.

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12 Within approximately one week of entering into the listing agreement with Seller,
13 Respondent learned that the Subject Property was in default and a trustee's sale was schedule for
14 January 24, 2019. Seller informed Respondent that neither Seller nor the estate had the funds to
15 reinstate the loan.

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17 In or about January 2019, Respondent agreed to serve as the real estate broker for
18 Susan H. ("Buyer") who was interested in purchasing the Subject Property. In agreeing to serve
19 as the real estate broker for both Buyer and Seller, Respondent was acting as a dual agent in the
20 transaction and thus owned a fiduciary duty to both Buyer and Seller.

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22 In or about January 2019, Respondent referred Buyer to a lender who, according
23 to Respondent, claimed that Buyer qualified for a "no documentation mortgage" but that Buyer
24 would need three to four months to demonstrate Buyer had the ability to make mortgage
25 payments.

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On or about January 3, 2019, Respondent presented to Seller a Residential Purchase Agreement and Joint Escrow Instructions ("Written Contract") from Buyer to purchase the Subject Property for \$582,000. The Written Contract stated that Buyer would pay \$42,248.20 to reinstate the mortgage, pay an additional \$20,000 cash to Seller, and assume the existing mortgage on the Subject Property. Title and escrow was opened with Fidelity National Title.

Also on January 3, 2019, Respondent completed a document on behalf of Buyer called an Assumed Financing Addendum ("Financing Addendum") stating that, as a contingency to the agreement, Buyer will assume the financing of the existing mortgage on the Subject Property. Respondent did not mark a box on the Financing Addendum stating "the assumed loan contingency shall remain in effect until the assumption is approved." Respondent also failed to include on the Financing Addendum and/or the Written Contract a deadline for which Buyer was to obtain financing regarding the Subject Property.

Also on January 3, 2019, Respondent prepared Addendum One on behalf of Buyer and Seller stating, among other terms that:

- Seller's probate attorney is to provide a grant deed upon receipt of \$20,000 cash payable to Seller. Seller's probate attorney will also prepare an Estoppel Affidavit should the grant deed be recorded without title insurance;
- Buyer to pay Buyer's and Seller's title and escrow fees should Buyer proceed with Fidelity Escrow;
- Buyer will pay real estate commission of 5% of the purchase price to [Respondent] in payments should Buyer need payments to complete the purchase. [Respondent] will record a note and deed of trust for the amount that [Buyer] is short to close escrow.
- Close of escrow to be within two business days of payment of reinstatement quote to Buyer and payment of \$20,000 to Seller.

1 Respondent did not require Seller's probate attorney to provide any written contract or promise
2 that she would, in-fact, provide a grant deed and/or prepare the Estoppel Affidavit.

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4 Complainant is informed, and believes, and hereon alleges that the Seller, Buyer,
5 Respondent and Seller's probate attorney all were under the belief that it would take Buyer not
6 more than three to four months to increase Buyer's credit to allow her to assume the existing loan
7 on the Subject Property. Regardless, Respondent did not require Buyer to provide any written
8 promise in the Written Contract, Financial Addendum, or any Addendum that she would qualify
9 to obtain a loan regarding the Subject Property by *any* particular time period.

10 11

11 On or about January 9, 2019, Respondent delivered \$20,000 in cash to Seller's
12 probate attorney pursuant to the Written Contract and paid \$52,493.20 to the mortgage company
13 to have the loan reinstated. Buyer ended up paying more for reinstatement of the loan than
14 previously anticipated because the lenders prior reinstatement quote did not include attorney's
15 fees, taxes and/or penalties, and Addendum One did not specify the amount Buyer was required
16 to pay for reinstatement.

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18 On January 12, 2019, Respondent received a Personal Representative Deed
19 instead of a Grant Deed from Seller's probate attorney. On January 14, 2019, Respondent
20 recorded the personal Representative Deed and Buyer moved into the Subject Property.

21 13

22 On or about January 30, 2019, a representative of Fidelity National Title informed
23 Respondent that they were unable to issue a title policy and settlement paperwork because
24 Respondent delivered the \$20,000 in cash to Seller's probate attorney and the funds did not pass
25 through escrow.

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In or about February 2019, Respondent opened escrow with Orange Coast Title in an attempt to have them provide title and escrow services for the subject transaction. Respondent also asked Seller's probate attorney to transfer the \$20,000 in cash to Orange Coast Title so that they could distribute the money to Seller.

On or about June 7, 2019, Buyer learned that she was unable to obtain financing regarding the subject property because Buyer's credit score was too low.

In or about June 2019, Seller requested that Respondent provide Buyer with a Notice to Perform requiring Buyer to assume the mortgage or Buyer would be considered in breach of contract. Instead of providing Buyer with a Notice to Perform, Respondent prepared Addendum Two.

On July 16, 2019, Respondent prepared Addendum Two on behalf of Buyer and Seller stating the following:

1. Funds due to [Seller] in the amount of \$20,000, held by Orange Coast Title Company, to be released to [Seller] immediately upon signatures of [Seller] and [B]uyer on Addendum 2, prior to [B]uyer completing refinance of property, which is currently in progress.
2. Buyer and Seller shall conclude probate, when [B]uyer's refinance is completed.

Respondent received the following commission payments from Buyer:

Form of Payment	Date Payment made	Amount
Check No. 1108	1/9/19	\$10,000
UnionBank Deposit	1/11/19	\$3,900
1109	2/15/19	\$7,000
1110	3/15/19	\$6,000
	Total	\$26,900

On August 11, 2021, Buyer finally obtained financing regarding the Subject Property. Seller was precluded from closing the estate of her deceased father until on or about August 12, 2021, due to the existing loan remaining an obligation of the estate of Seller's deceased father.

The acts and/or omissions of Respondent, as alleged above in Paragraphs 7 through 19, are grounds for the revocation or suspension of Respondent's real estate license and license rights under Sections 10177(d) (willfully violated the real estate law) and 10177(g) (negligence/incompetence) 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 of Real Estate ("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 First Amended Accusation and that upon proof thereof, a decision be rendered revoking all license and license rights of Respondent under the Real Estate Law, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law.


HEATHER NISHIMURA
Supervising Special Investigator

Dated at Sacramento, California,
this 1st day of June, 2022.

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