

FILED

AUG 30 2021

DEPARTMENT OF REAL ESTATE

By *By New*

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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 DAVID MICHAEL BUSSACCO,)

13 Respondent.)
14)
15)

No. H-3390 FR

ACCUSATION

16 The Complainant, BRENDA SMITH, in her official capacity as a Supervising
17 Special Investigator of the State of California, Department of Real Estate ("Department") for
18 cause of Accusation against DAVID MICHAEL BUSSACCO ("Respondent") is informed and
19 alleges as follows:

20 **GENERAL ALLEGATIONS**

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22 Respondent is presently licensed by the Department and/or has license rights
23 under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
24 ("Code"), as a real estate salesperson, RES License No. 01206624.

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3 Respondent presently holds from the Department a mortgage loan originator
4 license endorsement, Nationwide Mortgage Licensing System and Registry ("NMLS"), NMLS
5 Id. No. 223573.

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7 At all relevant times, Respondent was working under the corporate real estate
8 broker license of T M H, Inc., CREB License No. 01333900.

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10 On or about May 14, 2020, the Department received a complaint from Douglas
11 P. alleging that Respondent fraudulently used Douglas P.'s business letterhead and forged
12 signature on a letter used in a 1031 Exchange transaction in which Respondent represented the
13 buyer as a loan officer.

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15 **FIRST CAUSE OF ACTION**
16 (Fraud and/or Dishonest Dealings and/or Negligence)

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18 Each and every allegation made in Paragraphs 1 through 4, inclusive, is
19 incorporated by this reference as if fully set forth herein.

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21 On or about January 16, 2020, buyers Jim B. and Paula B. executed a Residential
22 Purchase Agreement in the amount of \$449,000 for the property located at: 578 River Oaks Dr.,
23 Paso Robles, CA ("River Oaks Property").

24
25 Respondent represented Jim B. and Paula B. as a mortgage loan officer in the
26 purchase of the River Oaks Property.

27
28 On or about February 20, 2020, Respondent drafted and/or executed, and/or
29 caused to be drafted and/or executed, a letter for the purpose of facilitating a 1031 Exchange on

1 behalf of Jim B. and Paula B. on the River Oaks Property (“1031 Exchange Letter”). The 1031
2 Exchange Letter included the letterhead “**PIERCECPA, ACCOUNTANTS + ADVISORS**” and
3 appears to have been signed by Douglas P.

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5 On or about February 21, 2020, Respondent emailed the 1031 Exchange Letter to
6 Elizabeth G., the Escrow Officer at Placer Title, Inc. The letter was then forwarded to Ariel M.,
7 the Exchange Officer at Peak 1031 Exchange, Inc., and then to Steven R. the Director at Peak
8 1031 Exchange. The 1031 Exchange Letter was subsequently deemed “inadequate” for reasons
9 not related to the Respondent’s use of the letterhead.

10 10

11 On or about February 21, 2020, Ariel M. contacted Douglas P. about the 1031
12 Exchange Letter. That same day, Douglas P. informed Ariel M. that the letter was “fraudulent.”
13 Douglas P. further advised the exchange company and the title company that the letter was
14 fraudulent.

15 11

16 On or about April 28, 2020, Department Special Investigator Araceli Amezola
17 interviewed Respondent regarding the above allegations. During the interview, Respondent
18 admitted that he “offered a letter [on behalf of his clients] and signed it in Doug P.’s name.”

19 12

20 Complainant is informed, believes, and thereon alleges that Respondent, while
21 acting in his capacity as a mortgage loan originator, knowingly and intentionally used the
22 letterhead of **PIENCECPA** without the knowledge, permission, consent, and/or approval of
23 Douglas P., for the purpose of facilitating the 1031 Exchange transaction on behalf of Jim B.
24 and Paula B.

25 13

26 Complainant is informed, believes, and thereon alleges that Respondent, while
27 acting in his capacity as a mortgage loan originator, signed Douglas P.’s name on the 1031

1 Exchange Letter without the knowledge, permission, consent, and/or approval of Douglas P., for
2 the purpose of facilitating the 1031 Exchange transaction on behalf of Jim B. and Paula B.

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4 Complainant is informed, believes, and thereon alleges that Respondent, while
5 acting in his capacity as a mortgage loan originator, sent the 1031 Exchange Letter to Elizabeth
6 G. with the intent that Elizabeth G. rely on the letter in making a decision on the 1031 Exchange
7 transaction for the River Oaks Property.

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9 Complainant is informed, believes, and thereon alleges that Respondent, while
10 acting in his capacity as a mortgage loan originator, knew, or should have known, that Elizabeth
11 G. would forward the 1031 Exchange Letter to Peak 1031 Exchange, Inc., and that 1031
12 Exchange, Inc. would rely on the letter in making a decision on the 1031 Exchange transaction
13 for the River Oaks Property.

14 **SECOND CAUSE OF ACTION**
15 (Breach of Fiduciary Duties as to Respondents)

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17 Each and every allegation in Paragraphs 1 through 15, inclusive, is incorporated
18 by reference as if fully set forth herein.

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20 At all relevant times herein, while acting as a real estate agent and/or a mortgage
21 loan originator, Respondent owed Jim B. and Paula B. fiduciary duties, including: the duty of
22 honesty; the duty of reasonable care and skill; the duty of good faith and fair dealings; and the
23 duty of loyalty.

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25 Respondent breached his fiduciary duties by engaging in the acts and/or
26 omissions described above in the First Cause of Action.

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1 **GROUND FOR DISCIPLINE**

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3 Each and every allegation in Paragraphs 1 through 18, inclusive, is incorporated
4 by reference as if fully set forth herein.

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6 The acts and/or omissions of Respondent, as described above in the FIRST and
7 SECOND CAUSES OF ACTION, constitute grounds for revocation and/or discipline of
8 Respondent's real estate salesperson license and licensing rights, including Respondent's MLO
9 endorsement, pursuant to Sections 10176(a), 10176(i), 10176(m), 10177(d), 10177(g), and/or
10 10177(j) of the Code.

11 **COST RECOVERY**

12 21

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
15 the Administrative Law Judge to direct a licensee found to have committed a violation of this
16 part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
17 case.

18 WHEREFORE, Complainant prays that a hearing be conducted on the
19 allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all
20 licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the
21 Business and Professions Code), for the cost of investigation and enforcement of this matter as
22 permitted by law, and for such other and further relief as may be proper under other provisions
23 of law.

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25 _____
26 BRENDA SMITH
27 Supervising Special Investigator

26 Dated at Fresno, California,
27 this 26 day of August, 2021

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DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedures Act*, the Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative Procedures Act*. Failure to provide Discovery to the Department 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.