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DEPARTMENT OF REAL ESTATE

By *fdw*

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9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of:)
13) No. H-3391 FR
14 CHERYL ANN SAVAGE,)
15) ACCUSATION
16 Respondent.)

17 The Complainant, BRENDA SMITH, in her official capacity as a Supervising
18 Special Investigator of the State of California, Department of Real Estate (“Department”) brings
19 this Accusation against CHERYL ANN SAVAGE, (“Respondent”), and is informed and alleges
20 as follows:

21 GENERAL ALLEGATIONS

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23 Respondent 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 real estate salesperson, License No. 00828416.

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27 From June 24, 2019 to December 25, 2019, Respondent was employed under the
real estate broker license of Michael D. Barwick, who at the time was doing business under the

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1 fictitious business name (“DBA”) of Pasadera Realty Group (“PRG”). At all relevant times;
2 PRG was listed as a DBA on Barwick’s real estate broker license.

3 3

4 Starting December 31, 2019, Respondent changed her employing broker from
5 PRG to Pasadera Realty Group Corporation (“PRGC”), License No. 02106506. PRGC was
6 incorporated with the California Secretary of State (“SOS”) in or around October 2019.
7 Respondent is listed as the Chief Executive Officer on the Information Statement as submitted
8 to the SOS. Barwick is not listed as an officer, director, nor as a managing member for PRGC.

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10 At all relevant times, PRGC was a separate entity than PRG.

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12 On or about July 20, 2019, while Respondent was under the employ of Barwick
13 and/or PRG, Respondent agreed to an Incentive Commission Program wherein Respondent and
14 Barwick were to split all commission proceeds “50/50 at closing.”

15 LICENSED ACTIVITY

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17 At all relevant times, Respondent engaged in the business of, acted in the
18 capacity of, advertised, or assumed to act as a real estate broker within the meaning of Section
19 10131(a) of the Code, in that Respondent performed licensed activities in the State of California
20 for or in expectation of compensation, including the operation and conduct of a real estate
21 brokerage that included the sale or offer of sale, purchase or offer of purchase, solicitation of
22 prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the
23 purchase, sale or exchange of real property or a business opportunity.

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FIRST CAUSE OF ACTION

**(Fraud and/or Dishonest Dealings and/or Negligence involving the property located at:
7020 Valley Greens Drive #16, Carmel Valley, CA)**

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Each and every allegation made in Paragraphs 1 through 6, inclusive, is incorporated by reference as if fully set forth herein.

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On or about July 3, 2019, Respondent entered into a Residential Listing Agreement (“RLA”) with Gerald and Cheri W. to sell the property located at 7020 Valley Greens Drive #16, Carmel Valley, CA (“Valley Greens Property”) for the amount of \$995,000.

9

On July 30, 2019, Rasha M. executed a Residential Purchase Agreement to purchase the Valley Greens Property for \$995,000. Gerald and Cheri W. accepted the offer the following day.

10

Michael D. Barwick and PRG were listed on the RLA as the seller’s broker. Respondent was listed as the seller’s agent and executed the RLA on behalf of the Barwick and PRG.

11

On July 31, 2019, escrow was opened by First American Title located in Hollister, CA. The Instructions for Disbursement of Commission read as follows: “...this form must be signed by the broker of record...” and “pay to me (broker of record) commission in the net amount of \$19,100.”

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On or about November 19, 2019, Respondent submitted to First American Title a document titled Instructions for Disbursement of Commission. Respondent signed the document and crossed out “broker” and hand-wrote “owner” below the signature line.

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On or about November 20, 2019, Respondent submitted to First American Title a Demand and Escrow Instructions wherein Respondent instructed First American Title to pay the \$19,100 commission from the sale of the Valley Greens Property as follows: "TO: Pasadera Realty Group - \$0; TO: Cheryl Savage - \$16,758; TO: Maria Barrelleza - \$450; and TO: Dennis Barwick - \$1,865." The Demand and Escrow Instructions was signed by Respondent.

14

Barwick did not receive the broker demand letter and did not authorize Respondent to submit a broker demand letter on his behalf.

15

On December 23, 2019, First American Title paid Respondent \$16,785 and Barwick \$1,865 pursuant to the commission breakdown provided by Respondent on the Demand and Escrow Instructions.

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On December 28, 2019, Barwick terminated Respondent's employment.

SECOND CAUSE OF ACTION
**(Fraud and/or Dishonest Dealings and/or Negligence involving the property located at:
2595 Pinto Lane, Paso Robles, CA)**

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

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On or about November 18, 2019, Respondent entered into a Residential Purchase Agreement ("RPA") with Adam S. for the purchase of the property located at 2595 Pinto Lane, Paso Robles, CA ("Pinto Lane Property") for the amount of \$329,000.

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On or about November 20, 2019, the seller Cindy W. accepted the offer.

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2 Barwick and PRG were listed on the RPA as the broker representing Adam S.
3 Respondent was listed as the salesperson agent and executed the RPA on behalf of the broker.

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5 On or about November 21, 2019, escrow was opened through First American
6 Title located in Paso Robles, CA. The Instructions for Disbursement of Commission read as
7 follows: "...upon close of escrow, you are instructed to pay commission from funds received
8 and/or held by you on my behalf as follows...PRG a licensed real estate broker, the sum of
9 \$10,183.50...This is an irrevocable commission order and cannot be amended or revoked,
10 insofar as it relates to payment of commission, without prior written consent of the broker(s)
11 named herein..."

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13 On or about January 9, 2020, Adam S. executed an Addendum No. 2, which was
14 incorporated and made part of the RPA. Addendum No. 2 adds the following term to the RPA:
15 "Buyer and Seller agree buyers broker of record will be Richard Kostkas with Pasadera Realty
16 Group Corporation thus removing Dennis Michael Barwick 01482899 as the buyers broker."

17 23

18 On or about January 15, 2020, Barwick received an email from the seller's agent
19 providing him with a copy of Addendum No. 2. In the email the seller's agent further states that
20 the addendum was sent to them to sign as soon as possible. "The purpose was explained as
21 replacing a broker that had left. It was not explained as having any intention of moving the
22 buyer's representation to a different brokerage, which cannot be done without you (Barwick)
23 releasing it...The company name appears to be the same, which was very deceiving."

24 24

25 On or about January 10, 2020, Respondent emailed First American Title the Real
26 Estate Broker Demand for the Pinto Lane Property transaction. The email further reads: "Have
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1 dishonest dealing in licensed capacity), 10177(d) (willful disregard of real estate laws), 10177(g)
2 (negligence), and 10177(j) (fraud or dishonest dealings) of the Code.

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4 The acts and/or omissions of Respondent, as alleged in the SECOND CAUSE OF
5 ACTION, constitute grounds for the suspension or revocation of the license and license rights of
6 Respondent pursuant to Sections 10130 (acting without a broker license), 10176(a) (making a
7 substantial misrepresentation), 10176(i) (conduct that constitutes fraud or dishonest dealing in
8 licensed capacity), 10177(d) (willful disregard of real estate laws), 10177(g) (negligence), and
9 10177(j) (fraud or dishonest dealings) of the Code.

10 MATTERS IN AGGRAVATION AS TO MARR

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12 Effective October 28, 2013, Respondent voluntarily surrendered her real estate
13 broker license following a Department investigation, Hearing No. H-2836 FR. The investigation
14 was prompted by Respondent's criminal conviction for tax evasion related to Respondent's
15 falsification of information on her 2004 tax return.

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17 On or about July 5, 2018, Respondent petitioned the Department for
18 reinstatement of her real estate license. The reinstatement was granted by the Department on
19 January 24, 2019.

20 COST RECOVERY

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

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