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FILED

APR 11 2014

BUREAU OF REAL ESTATE

By Norma Sims

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

10 * * *

11 In the Matter of the Accusation of) No. H-04617 SD
12 WINCHESTER FUNDING GROUP, INC.) ACCUSATION
13 and SEAN GUILLAUME O'SULLIVAN,)
individually and as designated officer for)
14 Winchester Funding Group, Inc.,)
Respondents.)
15

16 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State
17 of California, for cause of Accusation against WINCHESTER FUNDING GROUP, INC. and
18 SEAN GUILLAUME O'SULLIVAN, individually and as designated officer for Winchester
19 Funding Group, Inc. (collectively "Respondents"), is informed and alleges as follows:

20 1.

21 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State
22 of California, makes this Accusation in her official capacity.

23 2.

24 Respondents are presently licensed and/or have license rights under the Real Estate Law
25 (Part 1 of Division 4 of the California Business and Professions Code).
26

1 3.

2 From September 05, 2006 through the present, Respondent WINCHESTER FUNDING
3 GROUP, INC. ("WFGI") has been licensed by the Bureau of Real Estate ("Bureau") as a real
4 estate corporation, License ID 01773744. WFGI has a mortgage loan originator ("MLO")
5 license endorsement no. 339851.

6 4.

7 From December 13, 1990 through the present, Respondent SEAN GUILLAUME
8 O'SULLIVAN ("O'SULLIVAN") has been licensed by the Bureau as areal estate broker,
9 License ID 01098511. O'SULLIVAN has a MLO license endorsement no. 336556.
10

11 5.

12 From September 05, 2006, through the present, Respondent WFGI has been authorized to
13 act by and through Respondent O'SULLIVAN as its broker designated pursuant to Code Section
14 10159.2 to be responsible for ensuring compliance with the Real Estate Law. O'SULLIVAN is
15 the chief executive officer, director and sole shareholder of WFGI.
16

17 6.

18 All references to the "Code" are to the California Business and Professions Code and all
19 references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.
20

21 7.

22 On September 16, 2013, the Bureau completed an audit examination of the books and
23 records of Respondent WFGI pertaining to WFGI's property management activities which
24 require a real estate license pursuant to Code Section 10131(b). The audit examination covered a
25 period of time beginning on January 1, 2012, to March 31, 2013. The audit examination
26 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and

1 more fully discussed in Audit Report SD 120034 and the exhibits and work papers attached to
2 said audit report.

3 8.

4 In connection with the activities described in Paragraph 7, above, Respondent
5 WFGI accepted or received funds in trust ("trust funds") in connection with the property
6 management activities handled by WFGI on behalf of others. Respondent WFGI claimed to
7 have maintained five (5) trust accounts for handling of the receipts and disbursements of trust
8 funds as follows:
9

10 Trust Account 1 (T/A1)

11 Bank Name: Chase Bank

12 Account Name: Winchester Funding Group Inc DBA Oceanside Sales & Rentals Client Trust Account

13 Account # XXXXX4641

14 Signatory: O'SULLIVAN

15 Trust Account 2 (T/A2)

16 Bank Name: Bank of America

17 Account Name: Winchester Funding Group Inc DBA Oceanside Sales & Rentals Client Trust Account

18 Account # XXXXX1043

19 Signatory: O'SULLIVAN

20 Trust Account 3 (T/A3)

21 Bank Name: Chase Bank

22 Account Name: Winchester Funding Group Inc DBA Oceanside Sales & Rentals Client Trust Account

23 Account # XXXXX5408

24 Signatory: O'SULLIVAN

25 Trust Account 4 (T/A4)

26 Bank Name: Wells Fargo Bank

Account Name: Oceanside Sales & Rentals

Account # XXXXX2417

Signatory: O'SULLIVAN

Trust Account 5 (T/A5)

Bank Name: Chase Bank

Account Name: Winchester Funding Group Inc DBA Oceanside Sales & Rentals Client Trust Account

Account # XXXXX7780

Signatory: O'SULLIVAN

In the course of activities described in Paragraph 7, above, Respondent WFGI acted in violation of the Code and the Regulations in that:

(a) Trust Fund Handling for Multiple Beneficiaries. As of March 31, 2013, there were shortages in trust accounts TA1, TA2, and TA3, and TA4. WFGI provided no evidence that the owners of the trust funds in accounts TA1, TA2, and TA3, and TA4 had given written consent to allow WFGI to reduce the balance of the funds in each trust account to an amount less than the existing, aggregate trust fund liabilities for TA1, TA2, and TA3, and TA4.

1) As of March 31, 2013, there was a shortage of \$16,437.03 in trust account TA1, in violation of Code Section 10145 and Regulation 2832.1. The shortage was caused by negative property balances totaling \$9,548.49 in the property owners' account, an unauthorized withdrawal of \$6,091.08, a deposit of \$752 posted in book on April 11, 2012, but not in the bank account, and broker's negative balance of \$45.46.

2) As of March 31, 2013, there was a shortage of \$33,698.98 in trust account TA2, in violation of Code Section 10145 and Regulation 2832.1. The shortage was caused by negative property balances totaling \$8,588, a bank error of \$2,004.48, two withdrawals totaling \$1,012.16 which were not posted in TA2's books, deposits totaling \$18,794.81 posted in books but not in bank account, and broker's negative balance of \$3,299.53.

3) As of March 31, 2013, there was a shortage of \$2,859.71 in trust account TA3, in violation of Code Section 10145 and Regulation 2832.1. The shortage was caused by negative property balance of \$75.00 and broker's negative

1 balance of \$2,784.71.

2 4) As of March 31, 2013, there was a shortage of \$6,979.06 in trust account
3 TA4, in violation of Code Section 10145 and Regulation 2832.1. The shortage
4 was caused by negative property balances totaling \$1,788.53 and broker's
5 negative balance of \$5,190.53.

6 (b) Trust Fund Records to be Maintained. The date in which trust funds were deposited
7 was, at times, not posted accurately in the control record for each trust account and deposit
8 reference numbers were not included in the control record for each trust account, in violation of
9 Code Section 10145 and Regulation 2831.

10 (c) Separate Record for Each Beneficiary. Deposit reference numbers were not included
11 in the separate records for each beneficiary, in violation of Code Section 10145 and Regulation
12 2831.1.

13 (d) Trust Account Reconciliation. The total of the separate records was not reconciled
14 with the control record on a monthly basis, based on printouts of the reports. WFGI's monthly
15 reconciliation reports included the Bank Balance Summary by Owner report as of a specific date,
16 which, at times, did not match the balance of the separate record, in violation of Code Section
17 10145 and Regulation 2831.2.

18 (e) Trust Fund Handling. WFGI collected trust funds in rent receipts, security deposits,
19 and owner deposits and failed to place the funds in the trust accounts within three (3) business
20 days of receipt, in violation of Code section 10145 and Regulation 2832.

21 (f) Commingling. During the audit period, WFGI kept (at all times) more than \$200 of
22 its own funds in TA5. As of March 31, 2013, at least \$2,200.36 in broker's fees earned in
23 February, 2013, was not disbursed from TA4 within 25 days, in violation of Code section
24
25
26

1 10176(e) and Regulation 2835(a).

2 (g) Trust Fund Handling/Unauthorized Disbursements/Conversion. WFGI violated Code
3 sections 10145, 10176(i), or 10177(j) as follows:

- 4 1) On February 25, 2013, an unauthorized withdrawal of \$6,091.08 from TA1
5 was transferred to WFGI's general account. A deposit was made on April 17,
6 2013, to replace the funds. In addition there were at least three other
7 unauthorized withdrawals (\$7,278.74 on February 5, 2013 with a deposit on
8 March 28, 2013 to replace funds; \$860.47 and \$4,174.43 on November 5,
9 2012, with a deposit on January 7, 2013, to replace the funds).
- 10 2) As of March 31, 2013, WFGI converted/disbursed trust funds for its own
11 benefit without authorization from the beneficiaries which caused negative
12 broker balances in TA1 of <\$45.46>, TA2 <\$3,299.53>, TA3 <\$2,784.71>,
13 and TA4 <\$5,190.53>, totaling <\$11,320.23>.

14 (h) Disclosure of License Identification Number on Solicitation Materials. WFGI's
15 website "winchesterrealestate.net" did not disclose its license identification number or MLO
16 number and O'SULLIVAN's business card did not disclose his MLO number, in violation of
17 Code section 10140.6 and Regulation 2773.

18
19 Disciplinary Statutes

20
21 10.

22 The conduct of Respondent WFGI described in Paragraph 9, above, violated the Code
23 and the Regulations as set forth below:

| 24 PARAGRAPH | PROVISIONS VIOLATED |
|--------------|--|
| 25 9(a) | Code Section 10145 and Regulation 2832.1 |
| 26 9(b) | Code Section 10145 and Regulation 2831 |

| 1 | PARAGRAPH | PROVISIONS VIOLATED |
|---|-----------|--|
| 2 | 9(c) | Code Section 10145 and Regulation 2831.1 |
| 3 | 9(d) | Code Section 10145 and Regulation 2831.2 |
| 4 | 9(e) | Code Section 10145 and Regulation 2832 |
| 5 | 9(f) | Code Section 10176(e) and Regulation 2835(a) |
| 6 | 9(g) | Code Sections 10145, 10176(i), or 10177(j) |
| 7 | 9(h) | Code Section 10140.6 and Regulation 2773 |

11.

8 The conduct of Respondent O’SULLIVAN as described in Paragraph 9(h), above, is in
9 violation of Code section 10140.6 and Regulation 2773, and constitutes cause for the suspension
10 or revocation of the real estate license and license rights of Respondent O’SULLIVAN, as
11 aforesaid, under the provisions of Code Sections 10177(d) for violation of the Real Estate Law
12 and/or 10177(g) for negligence.

12.

14 The foregoing violations noted above in paragraph 10 constitutes cause for the
15 suspension or revocation of the real estate license and license rights of Respondent WFGI under
16 the provisions of Code Sections 10177(d) for violation of the Real Estate Law and/or 10177(g)
17 for negligence.

Failure to Supervise

13.

21 The overall conduct of Respondent O’SULLIVAN constitutes a failure on Respondent
22 O’SULLIVAN’s part, as officer designated by a corporate broker licensee, to exercise the
23 reasonable supervision and control over the licensed activities of WFGI and its agents and
24 employees to stay in compliance with the Real Estate Law as required by Code Section 10159.2
25 and Regulation 2725 and is cause for the suspension or revocation of the real estate license and
26

1 license rights of Respondent O'SULLIVAN pursuant to the provisions of Code Sections
2 10177(h), 10177(d), and/or 10177(g).

3 14.

4 Code Section 10106 provides, in pertinent part, that in any order issued in
5 resolution of a disciplinary proceeding before the Bureau of Real Estate, the Commissioner may
6 request the administrative law judge to direct a licensee found to have committed a violation of
7 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
8 the case.

9
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 all licenses and/or license rights of Respondents WINCHESTER FUNDING
13 GROUP, INC. and SEAN GUILLAUME O'SULLIVAN, individually and as designated officer
14 for Winchester Funding Group, Inc., under the Real Estate Law (Part 1 of Division 4 of the
15 Business and Professions Code), for the cost of investigation and enforcement as permitted by
16 law, and for such other and further relief as may be proper under other provisions of law.

17 Dated at San Diego, California

18 this 9th day of April, 2014.

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21 
22 VERÓNICA KILPATRICK
23 Deputy Real Estate Commissioner

24 cc: Winchester Funding Group, Inc.
25 Sean Guillaume O'Sullivan
26 Veronica Kilpatrick
Sacto.