

FILED

NOV 22 2011

DEPARTMENT OF REAL ESTATE

By D. Jones

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	NO. H-5470 SAC
FIRST AMERICAN REALTY AND FINANCE, INC.,)	
aka First Advantage Realty and Finance, Inc., and)	OAH NO. 2010101086
LESLIE LEE SALONDAKA)	
)	
Respondents.)	
)	

DECISION

The Proposed Decision dated August 31, 2011, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2)(C) of the Government Code, the following correction is made on page 11, item #14 of the FACTUAL FINDINGS to the Proposed Decision:

“On June 2, 2011, complainant received...”

This Decision shall become effective at 12 o'clock noon on DEC 12 2011

IT IS SO ORDERED 11/21/11

BARBARA J. BIGBY
Acting Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

NOV 04 2011

DEPARTMENT OF REAL ESTATE

By *D. Jover*

In the Matter of the Accusation Against:

FIRST AMERICAN REALTY AND
FINANCE, INC., and
LESLIE LEE SALONDAKA,

Case No. H-5470 SAC

OAH No. 2010101086

Respondents.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings (OAH), on May 31, 2011, in Sacramento, California.

Tricia D. Sommers, a Deputy Real Estate Commissioner, State of California (Complainant) was represented by Kenneth C. Espell, Counsel, Department of Real Estate (Department).

Maria S.-Sapiandante, Attorney at Law,¹ represented respondents First American Realty and Finance, Inc. (FARFI) and Leslie Lee Salondaka (respondent Salondaka).² Respondent Salondaka was present.

The record was left open for receipt of additional evidence relevant to the dissolution of FARFI.³ Complainant was granted leave to respond to respondents'

¹ Maria S. Sapiandante, Attorney at Law, 3041 Panama Avenue, Carmichael, California 95608.

² Leslie L. Salondaka is currently known as Leslie L. Cheek which is her birth name.

³ Respondents submitted a brief with the following attachments: California Secretary of State, official Certificate of Status of FARFI; a declaration of Leslie L. Cheek (aka Leslie L. Salondaka), regarding discovery; declaration of Sylvia L. Yrigollen, Senior Deputy Commissioner, Department of Real Estate with attached Advanced Fee Agreement of FARFI; and a Trust Bank Account Record of FARFI (Ms. Yrigollen's declaration and attachments were previously admitted in evidence as Exhibits 3 and 5b).

additional evidence. On June 27, 2011, the OAH received respondents' brief with attachments. This item was marked and admitted as Exhibit A. On July 29, 2011, the OAH received Complainant's reply to respondent's closing brief and opposition to additional argument. This item was marked and admitted as Exhibit 11. The record was closed on August 1, 2011.

SUMMARY

In December 2009, the Department concluded an audit of respondents' records to determine whether trust funds were handled and maintained in accordance with the Real Estate Law. The audit, which covered the period from January 2008 to November 2009, revealed problems with the manner in which FARFI's bank accounts were set up. An investigation revealed that respondents improperly collected advance fees, failed to maintain a record of trust fund receipts and disbursements, comingled trust and personal funds, and failed to perform monthly trust fund reconciliations and verifications as required by law. Additionally, FARFI failed to retain salesperson licenses for seven individuals as required by law.

The Department alleged in the accusation that respondents' violations constituted cause for disciplinary action. Respondents' violations warrant discipline of their licenses and licensing rights.

FACTUAL FINDINGS

1. Complainant made and filed this accusation in her official capacity on or about September 15, 2010. Leslie Lee Saldonka (respondent Salondaka) was at all relevant times, the designated broker-officer of FARFI. As such, she was responsible for supervision of the activities of officers, agents, real estate licensees, and employees of FARFI, a corporate real estate broker, for which a real estate license was required to ensure compliance with the Real Estate Law. (Bus. & Prof. Code, § 10159.2.)

2. The Department issued corporate real estate broker license number C/01761819 to FARFI on July 12, 2006. The license was active at all times relevant to this matter and expired on July 11, 2010.⁴ The primary business of FARFI was mortgage loan modifications. Respondent FARFI solicited borrowers, collected their financial information, and provided that information to lenders for loan modifications.

⁴ The lapsing of a license does not deprive the Department jurisdiction to proceed with any investigation of or action or disciplinary proceeding against the licensee, or render a decision suspending or revoking such license.

Respondents collected advance fees for their service. Respondents also conducted residential resale and institutional mortgage loan activities.

The main office address was 950 Reserve Drive, Suite 160, Roseville. The main office was closed as of July 11, 2010. Respondent Salondaka, a licensed real estate broker and the designated-officer, held 33.3 percent of FARFI shares and acted as president and chief executive officer (CEO).

3. The Department issued Leslie Lee Cheek (aka Leslie Lee Salondaka),⁵ her real estate broker license number B/01748677 on May 30, 2006. From July 12, 2006, to July 11, 2010, respondent Salondaka served as the designated broker-officer of FARFI. On September 15, 2010, the Department filed this Accusation (No. H-5470) for conduct set forth below. Her license is valid and expires on May 29, 2014.

Jurisdictional Issues

4. Complainant asserted that FARFI lacks standing to defend against an administrative accusation, as a matter of law. On January 3, 2011, the California Franchise Tax Board suspended FARFI's "powers, rights, and privileges" to act as a corporation in this state. At hearing, Complainant moved for a default judgment against respondents based on FARFI's suspended status. Complainant cited *Reed v. Norman* (1957) 48 Cal.2d 338, and *Palm Valley Homeowners Ass'n v. Design MTC* (2000) 85 Cal.App.4th 553, in support of the motion. The motion was denied for the following reasons.

Palm Valley, is inapplicable to the facts of this administrative proceeding. That case involved a law firm that acted in bad faith by pursuing civil litigation while its corporate client was suspended for failure to file a required information statement. (Corp. Code, §§ 1502 and 2205.) The firm deliberately concealed its knowledge of the suspension from both the court and opposing counsel and as such was subject to sanction.

In *Reed*, plaintiff, a stockholder of the corporation, filed a derivative action against the corporation and another stockholder for a wrong to the corporation, that wrong being the dissipation by defendant directors and officers of the corporate assets. Plaintiff appealed an adverse trial court ruling. The corporation moved to dismiss plaintiff's appeal on several grounds including that the corporation's right to engage in litigation was suspended for failure to pay the state franchise tax. Under the corporation law, the corporation may not prosecute or defend an action, nor appeal from an adverse judgment in an action while its corporate rights are suspended for failure to pay taxes. (Rev. & Tax. Code, § 23301.)

⁵ On or about January 12, 2011, Leslie Lee Salondaka filed a personal name change to Leslie Lee Cheek, her birth name.

The Court denied defendants' motion to dismiss on the basis of the corporation's suspended status. The Court found that in this "derivative action, the corporation is forced to be a party because any recovery goes through the corporate channel...The corporation is not attempting to exercise its rights as a corporation. It is being used as a necessary channel by the shareholders." (*Reed, supra*, 48 Cal.2d, at p. 343.) The Court further stated: "The technical argument made by appellants disregards realities and should not prevail. It has been recognized that the court may dispense with the presence of a defunct corporation in a derivative action, if the circumstances warrant such exercise of its equitable powers." The court found that the corporate books and records were in the hands of the allegedly mismanaging officers and in such a case, "[I]t is not equitable to permit section 23301 of the Revenue and Taxation Code to stand as a shield for protecting allegedly dishonest corporate officials." (*Ibid.*) The Court further noted that a suspended corporation "may be relieved therefrom upon making application therefore in writing to the Franchise Tax Board and upon payment of the tax and the interest and penalties for nonpayment of which the suspension or forfeiture occurred..." (*Id.* at p. 344.)

This accusation seeks to discipline FARFI, a corporation that is suspended but not dissolved, and respondent Salondaka, a licensed real estate broker. An individual, having obtained the license required to engage in a particular profession or vocation, has a "fundamental vested right" to continue in that activity. (*Hughes v. Bd. Of Architectural Examiners* (1998) 17 Cal.4th 763, 789.) "A licensee, having obtained such a fundamental vested right, is entitled to certain procedural protections..." (*Ibid.*)

Respondent FARFI is able to revive its corporate status upon payment of accrued taxes. Respondent Salondaka has the right to challenge the accusation. The law does not support denial of procedural due process to persons or entities seeking to defend their licenses in an administrative actions. As such, Complainant's motion for a default ruling was denied.

5. At hearing, respondent Salondaka challenged the Department's jurisdiction to discipline her license on grounds that she fell within the provisions of Business and Professions Code section 10177, subdivision (p). That section states:

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commission may not deny the issuance of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation.

Respondent Salondaka does not fit within the parameters of this section. She at all relevant times acted in the capacity of designated broker-officer of FARFI, and not as an individual. Also, she is not completely disassociated from any affiliation with or ownership in FARFI. She is in the process of paying FARFI's accrued taxes and is responsible for the corporation until it is finally dissolved, which is her stated intent. As such, the Commissioner may take action to discipline her license.

6. *Discovery.* Respondent's closing brief included a Declaration of respondent Salondaka, in which she challenged the Department's jurisdiction for failure to provide her with copies of Government Code sections 11507.5, 11507.6, and 11507.7. As such, she stated that she did not know that witnesses would be present to testify against her or that she could call her own witnesses. Further, had she known, she would have retained counsel earlier in the litigation process. Respondent's claim is without merit.

The Department attempted to serve respondents FARFI and Salondaka with the Accusation and Statement to Respondent, including two blank Notice of Defense forms and applicable provisions of the Government Code related to discovery. Service of these documents was made on September 15, 2010, by first class and certified mail at the FARFI corporate address and respondent Salondaka's personal address on file.⁶ These items were returned as "unable to forward."

Constructive notice is implied in that the Department received respondent's Notice of Defense on September 27, 2010, which she signed on September 20, 2010, and requested an administrative hearing. She provided the same personal mailing address as that on file (3307 Parks Lane, Carmichael, California 95608). On November 23, 2010, the Department served respondents FARFI and Salondaka with Notice of Hearing on Accusation. The Notice of Hearing was served by first class mail at the addresses on file.

It is noted that the Notice of Defense that respondent signed and returned states the following: "I, a respondent in this proceeding, acknowledge a receipt of a copy of the Accusation, Statement to Respondent, and Discovery Provisions (Administrative Procedure Act)." Further, the Notice of Defense provides a space for respondent to provide "The mailing address to which all further pleadings, notices and orders are to be sent." (form RE 503 (Rev. 6/09). It is respondent's responsibility to update the Department when either the corporate or broker addresses on file change. (Cal. Code Regs, tit. 10, § 2715.) Finally, respondents' objection is not timely in that it was not made at hearing. Any defect, is therefore, waived.

⁶ FARFI's corporate address at the time of service was listed as 950 Reserve Drive, Suite 160, Roseville, California 95678. Respondent Salondaka's mailing address at the time of service was listed as 3307 Parks Lane, Carmichael, California 95608.

Corporate Bank Accounts

7. Respondents maintained two bank accounts, into which advance fees and earnest money deposits were placed. It is alleged that these two accounts were also used for FARFI's regular business activities. The audit covered both of FARFI's bank accounts: Account No. 901-4143391 (Bank #1) and No. 3342719212 (Bank #2). The funds in this account were maintained at Wells Fargo Bank, 1172 Galleria Boulevard, Roseville.

Audit Findings

8. On December 9 and 14, 2009, the Department concluded an audit (SC - 09-0034) of respondents' bank accounts and financial records for the two-year period of January 1, 2008, to October 11, 2009 (2009 Audit).

9. Penny Xue is employed by the Department as a supervising auditor. She holds a Bachelor of Arts degree in accounting. She has worked for the Department for almost five years and has performed approximately 150 audits. Ms. Xue performed the audit of respondent's accounts and records. During the course of her audit, Ms. Xue conducted a field review, compiled working papers, wrote an Audit Report Transmittal (Audit Report), and discussed audit findings with the broker.

10. Ms. Xue reviewed a sample of respondents' records during the designated audit period. This is an accepted accounting practice. The records she reviewed included bank statements, signature cards, trust bank account records for all trust funds deposited and withdrawn as of November 30, 2009, loan modification documents, residential resale documents, and real estate salesperson files. The Audit Report detailed Ms. Xue's findings which she testified to at hearing. The Accusation is based on the following relevant findings:

a. *Trust Fund Account Designation.* At the time of the audit, neither Bank #1 nor Bank #2 were designated as trust accounts and were not under the name of the broker as trustee. On February 21, 2007, respondent Salondaka opened two corporate accounts at Wells Fargo: Bank #1 (checking account no. 901-4143391) and Bank #2 (savings account no. 334-2719212). Both accounts were opened with an initial deposit of \$100 under the business name, "First Advantage Realty & Finance." Respondent Salondaka told Ms. Xue that Bank #2 was intended for use as a trust account.

Respondent Salondaka testified that at the time she opened the account, she told the associate that she needed a general operating account and a trust fund account. The branch manager for Wells Fargo in Roseville informed her that regardless of the type of account, the printed bank statements "do not notate that it is a trust." She recalled working with an associate who was "new" and had only been

there for three months. Following the audit, on December 23, 2009, respondent caused Bank #2 to be designated as a trust account and provided an updated signature card to Ms. Xue.

A real estate broker who accepts funds in connection with a transaction including advance fees from any other person or principal, shall deposit any such amounts when collected in a trust account with a bank or other recognized depository. (Bus. & Prof. Code, §§ 10145, 10146.) "Such funds are trust funds and not the funds of the agent. Amounts may be withdrawn therefrom for the benefit of the agent only when actually expended for the benefit of the principal or five days after the verified accounts mentioned hereinafter have been mailed to the principal." (Bus. & Prof. Code, § 10146.)

b. *Trust Fund Handling.* Respondent did not deposit earnest money and advance fees collected into an account used specifically for trust funds. Instead, trust funds were deposited into both Bank #1 and Bank #2. These accounts were also used for FARFI's business transactions. The transaction history for Bank #1 included withdrawals for personal and business expenses including restaurant dining, groceries, and hardware purchases. Such mixed use of trust accounts is not permitted under the real estate law. (Bus. & Prof. Code, §§ 10146, 10176, subd. (e).)

c. *Trust Fund Reconciliation and Balances.* Respondent collected advance fees up front from borrowers and an earnest money deposit payable to FARFI from a buyer. Respondent did not maintain a record of trust funds received and disbursed in a control record, nor perform adequate reconciliations. The records maintained by respondent did not include the date funds were collected, disbursed, the disposition of the funds, and the balance after each transaction.

Respondent provided to Ms. Xue a trust fund record that she maintained for the period of October 2008 through April 2009. She used a form entitled "Trust Bank Account Record For All Trust Funds Deposited and Withdrawn" that she obtained from the California Association of Realtors (C.A.R.). The form has columns to record the following information: Date, Deposit, Withdrawal, Amount, and Balance. Respondent stated that she used the form for a limited number of transactions for family and friends. She stated that she had never dealt with trust funds and "tried her best" at "correlating or tracking" along with her bank statements. She stated that in the past she had always used escrow or title companies to hold funds, but escrow companies do not handle this type of transaction.

According to Ms. Xue, the form does not meet the Department's requirements for a trust fund record. To begin with, under "DATE" there is no day recorded, just the month and year (i.e. Oct 08, Jan 09, Feb 09, April 09). Under the "Withdrawal (Paid To)" column, the information recorded by respondent is incomplete. Under "Balance" respondent failed to carry a balance after each transaction. Finally, the

form carries a disclaimer as to the "legal validity or adequacy of any provision in any specific transaction."

Ms. Xue stated that correct forms are available on the Department's public website. Also, any form will do as long as it meets the Department's criteria for compliance with the real estate law. As a licensed real estate broker who has passed the broker examination, respondent is expected to know the law. According to Ms. Xue, at no time did respondent present an acceptable account reconciliation record for either Bank #1 or Bank #2.

Respondent testified that she handled 11 loan modifications during the audit period and by using the form from the C.A.R., was attempting to comply with the Department's regulations. It is noted that all 11 modifications are represented on the form provided by respondent. However, the required information is incomplete or missing.

A broker must keep a record of all trust funds received, including uncashed checks held pursuant to instructions of the principal. The records must set forth in chronological sequence all of the following data: Date received, from whom trust funds were received, amount, deposit date, check number and date of related disbursement, identity of other depository and date funds were forwarded (if applicable), and daily balance. (Cal. Code Regs., tit. 10, § 2831, subd. (a).)

The broker must keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited in the broker's trust bank account and interest, if any, earned on the funds on deposit. The record must set forth in chronological sequence all of the following: Date of deposit, amount of deposit, date of each related disbursement, check number of each disbursement, amount of each disbursement, interest earned and credited to account (if applicable), and balance after posting transactions on any date. (Cal. Code Regs., tit. 10, § 2831.1, subd. (a).)

At least once a month, the balance of all separate beneficiary or transaction records must be reconciled with the record of all trust funds received and disbursed. A record of the reconciliation must be maintained and include following: Identity of the bank account name and number, date of the reconciliation, account number or name of the principals/beneficiaries/transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries, or transactions. (Cal. Code Regs., tit. 10, § 2831.2.)

d. *Comingling Trust Funds.* Bank #1 and Bank #2 were used for FARFI's business activities as well as for trust funds. Trust funds included advance fees from borrowers and an earnest money deposit from a buyer. Disbursements were made for the business expenses of FARFI and to the title company for the earnest money collected. From November 1, 2008, to November 30, 2009, FARFI closed eight sales

transactions totaling \$1,795,000. From January 1, 2008, to October 11, 2009, FARFI collected \$9,000 in advance fees.

Respondent testified that she never intended to commingle funds. She no longer handles trust funds and has no open trust accounts as of August 2010 when she began the corporate dissolution process.

It is a violation of the real estate law for a licensee to commingle with her own money or property, the money or other property of others which is received and held by her. (Bus. & Prof. Code, § 10176, subd. (e).)

e. *Verified Quarterly Report to Borrower.* Respondent did not send quarterly accounting reports to borrowers.

When any real estate broker contracts for or collects an advance fee from a principal, the money shall be deposited in a trust account. Each principal shall be furnished a verified copy of such accountings at the end of each calendar quarter and when the contract has been completely performed by the licensee. (Bus. & Prof. Code, § 10146; Cal. Code Regs., tit. 10, § 2972.)

f. *Advance Fee Agreement / No Objection Letter.* Respondent obtained advance fee agreements from two borrowers and subsequently collected advance fees from each. However, respondent failed to obtain a "no objection" letter from the Department prior to using FARFI advance fee agreement forms. Specifically, respondent entered into two advance fee agreements and collected \$4,000 in advance fees in October 2008. She submitted her advance fee agreement form to the Department in December 2009 and obtained her "no objection" letter for FARFI's advance fee agreement forms in January 2009.

In or about January 2009, the Department issued a memorandum with a template and guidelines for advance fee agreements. However, according to Ms. Xue, prior to January 2009, there was a requirement that brokers have their advance fee agreement on file with the Department. Respondent testified that after receiving the Department's letter of compliance, she had to educate herself on advance fee agreements. As soon as she received the notice, she did comply with the Department's regulations.

A broker who proposes to collect an advance fee "shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting, and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use." (Cal. Code Regs., tit. 10, § 2970.) Should the Commissioner determine that the form would "tend to mislead," the commissioner may within 10 calendar days, order that it not be used, disseminated or published. (Bus. & Prof. Code, § 10085.)

g. *Retention of Salesperson Licenses.* Respondent failed to retain the salesperson licenses for seven salespersons associated with FARFI. Respondent was able to provide to Ms. Xue the independent salesperson license agreements. According to Ms. Xue, the independent contract agreement does not comply with the requirement that the broker have the salesperson licenses in her possession. Respondent was not able to provide Ms. Xue with copies of the seven salesperson licenses.

Respondent testified that one month prior to the audit, respondent moved her office from Fair Oaks to Roseville. At the time of the audit, some of the salespersons had already moved their licenses from the wall. Some of the licenses were not brought to the new office. She gave the agents deadlines to bring in their licenses but some did not comply. She warned them that she would have to remove them as employees if they did not return their licenses by a date certain.

The license certificate of a real estate salesperson licensee shall be retained at the main business office of the real estate broker to whom the salesperson is licensed. (Cal. Code Regs., tit. 10, § 2753.)

Mitigation

11. Respondent received her Bachelor of Arts degree from the University of California, Davis. Since April 2011, she has worked for Corinthian College as their admissions manager. Respondent received her real estate broker license in 2006. It is current and according to her license certification, is set to expire on May 29, 2014. She has not performed loan modification since 2009, as it was not a lucrative activity for her. She helped some families who were "desperate" and could not pay the fees. She also cited the complex nature of compliance as a reason for avoiding such transactions in the future. She sought advice from the C.A.R. because they were accessible. She experienced long wait times when she tried to reach the Department by telephone.

12. Respondent has only been subject to one audit. Prior to the audit, the Department received complaints involving a salesperson in respondent's office. The employee, Ryan Jorgensen, was apparently associated with two brokers, unbeknownst to respondent. The complaints triggered an audit; however, this accusation is not based on the substance of any customer complaints. Evidence as to the substance of those complaints was not presented at hearing.

13. Respondent decided to dissolve FARFI in 2010. In August 2010, respondent filed her request for a Certificate of Dissolution with the California Secretary of State. At that time, she notified the Department of her intent to dissolve FARFI and she ceased doing business under the corporation. Respondent allowed the FARFI corporate real estate license to expire as of July 11, 2010. Respondent stated

that she made several attempts to inform the Department of her efforts to dissolve FARFI.

14. On June 2, 2011, respondent received a Certificate of Status from the Secretary of State's Office. The certificate states that as of January 3, 2011, the California Franchise Tax Board suspended the "powers, rights, and privileges" of FARFI. The suspension is based on FARFI's outstanding tax balance with the Franchise Tax Board. At the time of hearing, FARFI's corporate status was still "suspended."

LEGAL CONCLUSIONS

Applicable Laws

1. Business and Professions Code section 10145, subdivision (a)(1) provides that "[a] real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds."

2. Business and Professions Code section 10177 authorizes the Commissioner to suspend or revoke the license of a real estate licensee or corporation if an officer, director, or person owning or controlling ten percent or more of the corporation's stock has done any of the following:

(d) Willfully disregarded or violated the Real Estate Law

[¶]...[¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

[¶]...[¶]

Cause for Discipline

3. Clear and convincing evidence to a reasonable certainty established cause for disciplinary action against respondents under Business and Professions Code sections 10177, subdivisions (d), (g), and (h), 10145, and 10146; and California Code of Regulations, title 10, sections 2753, 2831, 2831.2, 2831.2, 2970, 2972, by reason of the matters set forth in Factual Findings 1-14.

Respondent Salondaka, as the designated broker-officer of FARFI, was aware of her duty to oversee trust fund accounts and salespersons. She failed to account for trust funds in the manner prescribed by law and failed to ensure that salesperson license certificates were maintained by the office.

Mitigation

4. Respondent Salondaka was cooperative and forthright with Ms. Xue. She provided records on C.A.R. forms which she completed in an effort to comply with the law. Unfortunately, she did not provide the detail necessary to reconcile trust accounts on a monthly basis. Also, she attempted to establish a trust fund account at Wells Fargo. However, she did not maintain the integrity of funds deposited and disbursed from Bank #2. She did obtain a corrected account designation and signature card after meeting with Ms. Xue. Ms. Salondaka has taken steps to dissolve the corporation and has closed all related accounts. There is no evidence that any client of FARFI suffered financial losses in connection with respondents' omissions.

Respondent Salondaka's testimony was credible and sincere. However, in spite of holding a real estate broker license, she was did not fully understand her duties under the real estate law. Having considered these several factors, it would not be contrary to the public interest to issue respondent a real estate salesperson license at this time. The matters set forth in the Factual Findings and Legal Conclusions as a whole were considered in making the following order.

ORDER

All licenses and licensing rights of respondent FARFI under the Real Estate Law are REVOKED.

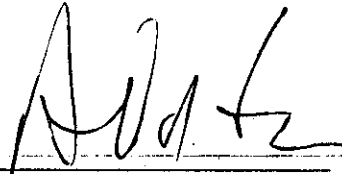
All licenses and licensing rights of respondent Salondaka under the Real Estate Law are revoked; provided, however, a real estate salesperson license shall be issued to respondent Salondaka pursuant to Section 10156.5 of the Business and Professions Code if respondent Salondaka makes application thereof and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent Salondaka shall be subject to all of the provisions of Section 10156.7 of the Business

and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to respondent Salondaka may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent Salondaka's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent Salondaka may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent have violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent Salondaka shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.
4. Respondent Salondaka shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent Salondaka shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that she has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent Salondaka fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent

Salondaka presents such evidence. The Commissioner shall afford respondent Salondaka the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: August 31, 2011

A handwritten signature in black ink, appearing to read 'Dian M. Vorters', written over a horizontal line.

DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

1 KENNETH C. ESPELL, Counsel (SBN 178757)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
5 -or- (916) 227-0868 (Direct)

FILED

SEP 15 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

8
9 BEFORE THE
10 DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of)
14) H-5470 SAC
15 FIRST AMERICAN REALTY and FINANCE, INC.,)
16 f.k.a., First Advantage Realty and Finance, Inc., and) ACCUSATION
17 LESLIE LEE SALONDAKA)
18)
19 Respondents.)

20 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy
21 Real Estate Commissioner of the State of California, for cause of Accusation against FIRST
22 AMERICAN REALTY and FINANCE, INC., ("FARFI") formerly known as First Advantage
23 Realty and Finance, Inc. and LESLIE LEE SALONDAKA ("SALONDAKA") is informed and
24 alleges as follows:

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26 At all times herein mentioned, Respondents FARFI and SALONDAKA (herein
27 "Respondents") were and now are licensed and/or have license rights under the Real Estate Law
(Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

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At all times herein mentioned herein FARFI was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a corporate real estate broker by and through SALONDAKA as its designated officer-broker.

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At all times relevant herein, SALONDAKA was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of FARFI. As the designated officer-broker, SALONDAKA was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of FARFI for which a license is required.

4

Whenever reference is made in an allegation in this Accusation to an act or omission of FARFI, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with FARFI committed such act or omission while engaged in the furtherance of the business or operations of FARFI and while acting within the course and scope of their authority and employment.

5

At all times herein mentioned, FARFI engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, FARFI solicited borrowers or lenders for or negotiated loans, loan modifications or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity and for residential property resale.

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FIRST CAUSE OF ACTION
Audit Violations

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Each and every allegation in Paragraphs 1 through 5, inclusive, above, is incorporated by this reference as if fully set forth herein.

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On or about December 9, 2009 and December 14, 2009, an audit was conducted at FARFI's main office located at 950 Reserve Drive, Suite 160, Roseville, California, wherein the auditor examined records for the period January 1, 2008 to November 30, 2009 (the "audit period").

8

In so acting as real estate brokers, Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of lenders, investors, borrowers and others in connection with the mortgage loan brokerage activities described in Paragraph 5, above, and thereafter from time to time made disbursements of said trust funds.

9

The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts (herein "trust fund accounts") maintained by Respondents for the handling of trust funds at the Wells Fargo Bank, 1172 Galleria Blvd., Roseville, California, including, but not necessarily limited to, the following accounts:

- (a) First American Realty & Finance, Inc. and Leslie L. Salondaka, Account Number 901-4143391 (hereinafter "Bank #1)
- (b) First American Realty & Finance, Inc. and Leslie L. Salondaka, Account Number 3342719212 (hereinafter "Bank #2). On or about December 23, 2009, after completion of the audit, FARFI changed the title of this account to a trust account.

In the course of the activities described in Paragraph 5, above, for the audit period, FARFI:

(a) Failed to designate Bank #1 and Bank #2 as trust accounts and were not under the name of the designated broker as trustee in violation of Section 10145 and 10146 of the Code and Section 2832 of the Commissioner's Regulations.¹

(b) Collected advanced fees up front from borrowers, including but not limited to the borrowers listed in the table below, and a \$2,500 earnest money deposit from Katherine Grill dated September 7, 2008 and made payable to FARFI. FARFI failed to deposit the earnest money deposit and the advance fees into a trust account in violation of Section 10146 of the Code.

Borrower Name	Date of Agreement Signed	Date of Advance Fee Deposited	Full Amount of Advance Fee Collected	Deposited into:	Date of Loan Mod Service Completed
Shawna S Sanford.	10/19/08	10/24/08	\$2,000	Bank #1	06/20/09
Eric Hernandez	10/1/08	10/27/08	\$2,000	Bank #1	11/01/09
Russell Massey	01/26/09	02/02/09	\$2,500	Bank #1	10/29/09
Sharlett M Murphy	02/02/09	02/09/09	\$2,500	Bank #2	05/26/09

(c) FARFI failed to maintain a record of trust funds received and disbursed (control record) and trust funds reconciliation. The records maintained by FARFI did not include the date the trust funds were collected or disbursed, the date of disposition and the balance after each transaction; all in violation of Sections 2831, 2831.2 and 2831.1 of the Commissioner's Regulations.

¹ California Code of Regulations, Title 10, Chapter 6 ("the Commissioner's Regulations")

1 (d) In addition to depositing trust funds into Bank #1 and Bank #2, FARFI
2 used these accounts for the deposit of normal business operation receipts and to make payment of
3 business operations expenses and thus comingled business funds with trust funds in violation of
4 Section 10176(e) of the Code.

5 (e) Failed to send verified quarterly accountings of trust funds held by FARFI
6 to borrowers in violation of Section 10146 of the Code and Section 2972 of the Commissioner's
7 Regulations.

8 (f) FARFI collected an advance fee from those borrowers listed in the chart
9 below before obtaining a *no-objection* letter from the Department in violation of Section 10085
10 of the Code and Section 2970 of the Commissioner's Regulations.

Borrower Name	Date of Agreement Signed	Date of Advance Fee Deposited	Full Amount of Advance Fee Collected	Date of the completion of LM Service
Shawna Sanford	10/19/08	10/24/08	\$2,000	6/20/09
Eric Hernandez	10/1/08	10/27/08	\$2,000	11/1/09

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16 (g) FARFI failed to retain the salesperson licenses for the following seven (7)
17 salespersons in violation of Section 2753 of the Commissioner's Regulations.

Name of Licensee	License Number
Ryan A. Jorgensen	01451090
Amy L. Langkamp	01760459
Gustavo Maguire	01806024
Lindsay A. Slowik	01797168
Sean Sterner	01811739
Mathew V. Synhorst	01752132
Arturo V. Velez	01866757

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The acts and/or omissions of FARFI as alleged above violated Sections 2753, 2831, 2831.1, 2831.2, 2832, 2970, and 2972 of the Commissioner's Regulations and Sections 10146 and 10176(e) of the Code which are grounds for discipline under Sections 10176 and 10177(d) of the Code. In addition, the Department is entitled to reimbursement of the costs of its audit pursuant to Section 10148 of the Code.

SECOND CAUSE OF ACTION
Failure to Supervise

Each and every allegation in Paragraphs 1 through 11, inclusive, above, is incorporated by this reference as if fully set forth herein.

Respondent SOLONDAKA was required to exercise reasonable supervision and control over the activities of Respondent FARFI. Respondent SOLONDAKA failed to exercise reasonable supervision over the acts of FARFI in such a manner as to allow the acts and omissions as described in Paragraph 10, above to occur, all in violation of Section 10159.2 of the Code, which constitute cause for suspension or revocation of all licenses and license rights of Respondent SALONDAKA under Sections 10177(d) and 10177(h) of the Code.

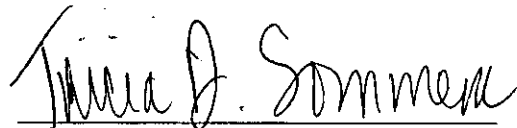
THIRD CAUSE OF ACTION
Negligence and/or Incompetence

Each and every allegation in Paragraphs 1 through 13 inclusive, above are incorporated by this reference as if fully set forth herein.

The acts and omissions of SOLONDAKA described in Paragraph 10, above, constitute negligence or incompetence in performing acts requiring a real estate license, and

1 therefore is cause under Section 10177(g) of the Code for suspension or revocation of all
2 licenses and license rights of SOLONDAKA.

3 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
4 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary
5 action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of
6 Division 4 of the Business and Professions Code) and for such other and further relief as may be
7 proper under other applicable provisions of law.

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10 TRICIA D. SOMMERS
11 Deputy Real Estate Commissioner

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14 Dated at Sacramento, California
15 this 19th day of August, 2010.