

1 ANNETTE E. FERRANTE, Counsel (SBN 258842)
2 Department of Real Estate
3 P. O. Box 187007
Sacramento, CA 95818-7007

4 Fax: (916) 227-9458
5 Telephone: (916) 227-0789
-or- (916) 227-0788 (Direct)

FILED

JAN - 9 2012

DEPARTMENT OF REAL ESTATE
By H. Mat

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

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-5760 SAC
ED FAVINGER,)
13) ACCUSATION
14 Respondent.)
15)

16 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy Real
17 Estate Commissioner of the State of California, for cause of Accusation against ED FAVINGER,
18 also known as "Earl Dewey Favinger, III", and "Earl D. Favinger, III", (hereinafter "Respondent"),
19 is informed and alleges as follows:

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

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25 At all times herein mentioned, Respondent conducted business under his own name,
26 and the following fictitious business names registered with the Department: "A Superior
27 Properties", "Franklin Investment Properties", "Franklin Real Estate Group", "Haven Properties",

1 "Morse Plaza Apartments", "Realty World Franklin Real Estate Group", "Superior Properties", and
2 "Whispering Oaks".

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

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10 At all times relevant herein, Respondent engaged in the business of, acted in the
11 capacity of, advertised, or assumed to act as a real estate broker within the State of California on
12 behalf of others, for compensation or in expectation of compensation within the meaning of
13 Section 10131(a) of the Code, including the operation and conduct of a real estate brokerage that
14 included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers
15 and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or
16 exchange of real property or a business opportunity; and Section 10131(b) of the Code, including
17 the leasing or renting or offer to lease or rent, or placing for rent, or solicitation of listings of
18 places for rent, or solicitation of prospective tenants, or negotiation of the sale, purchase or
19 exchanges of leases on real property, or on a business opportunity, or collection of rents from real
20 property, or improvements thereon, or from business opportunities.

21 FIRST CAUSE OF ACTION

22 Audit Period July 1, 2009 through August 31, 2010

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24 Each and every allegation in Paragraphs 1 through 4, inclusive, above, is
25 incorporated by this reference as if fully set forth herein.

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Beginning on or about November 15, 2010, and continuing intermittently until December 16, 2010, an audit was conducted at Respondent's main office location at 1024 Iron Point Road, Suite 1009, Folsom, California, wherein the Auditor examined Respondent's records for the period of July 1, 2009 through August 31, 2010 (hereinafter "the audit period").

While acting as a real estate broker as described in Paragraph 4, above, and within the audit period, Respondent accepted or received funds in trust (hereinafter "trust funds") from or on behalf of owners, tenants and others in connection with the rental or lease of residential property, and from or on behalf of sellers, buyers, and others in connection with the sale of residential property, for or in expectation of compensation, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

The trust funds accepted or received by Respondent as described in Paragraph 7, above, were deposited or caused to be deposited by Respondent into a bank account which was maintained by Respondent for the handling of trust funds, and thereafter from time-to-time Respondent made disbursements of said trust funds, identified as follows:

BANK ACCOUNT # 1	
Bank Name and Location:	Wells Fargo Bank, N.A., P.O. Box 6995, Portland, Oregon 97228-6995
Account No.:	Last 4 Digits: 2092
Entitled:	"Ed Favinger"
Signatories:	Ed Favinger (REB)
Withdrawal Requirements:	One signature.

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In the course of the activities described in Paragraph 4, above, and within the audit period, Respondent:

- (a) caused, suffered, or permitted the balance of funds in Bank Account #1 to be reduced to an amount which, as of July 31, 2010, was approximately \$28,071.72 less than the aggregate liability of Bank Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations (hereafter "the Regulations");
- (b) failed to reconcile the total of separate beneficiary records with a control record on at least a monthly basis for Bank Account #1, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;
- (c) failed to designate Bank Account #1 as a trust fund account in the name of Respondent or in the name of Respondent's designated fictitious names, as trustee, as required by Section 2832 of the Regulations and Section 10145 of the Code;
- (d) On or about July 12, 2009, Respondent misrepresented to the owner of the property identified as 4251 Fell Street, Sacramento, California (hereinafter "the Property") that an earnest money deposit consisting of funds in the amount of \$5,000 was obtained from buyers THI and CHY NGUYEN (hereinafter "Buyers") and was being held by Respondent when Buyers made the offer on the Property. The true facts were that Respondent had received no funds from Buyers when Buyers made the offer on the Property. Such representation is in violation of Sections 10176(a), (b), and (i) and Sections 10177(g) and (j) of the Code;

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(e) disbursed management fees prior to Respondent earning the fees in the following transactions, which individually and collectively constitute acts of fraud or dishonesty, pursuant to Section 10176(i) of the Code, perpetrated against the property owners with which Respondent maintained property management agreements:

Month Fee Earned	Check No.	Check Amount	Check Date	Cleared Date	Control Record Post Date
June 2010	21948	\$1,015	5/27/10	5/27/10	6/1/10
June 2010	21949	\$730	5/27/10	5/27/10	6/1/10
June 2010	21950	\$1,005	5/27/10	5/27/10	6/1/10
July 2010	22062	\$1,015	7/1/10	6/30/10	7/1/10
July 2010	22063	\$800	7/1/10	6/30/10	7/1/10
July 2010	22064	\$990	7/1/10	6/30/10	7/1/10
July 2010	22065	\$1,285	7/1/10	6/30/10	7/1/10
August 2010	22164	\$1,025	7/28/10	7/28/10	8/1/10
August 2010	22165	\$815	7/28/10	7/28/10	8/1/10
August 2010	22166	\$905	7/28/10	7/28/10	8/1/10
August 2010	22167	\$1,395	7/28/10	7/28/10	8/1/10

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The acts and/or omissions of Respondent as alleged in Paragraph 9, above, constitute grounds for discipline of all licenses and license rights of Respondent pursuant to Sections 10177(d) and/or Section 10177(g) of the Code, and Sections 10176(a), (b), and (i) and Section 10177(j) of the Code.

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The acts and/or omissions of Respondent as alleged in Paragraph 9, above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148 (Reimbursement for Cost of Audit for Trust Fund Handling Violation) of the Code.

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1 SECOND CAUSE OF ACTION

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

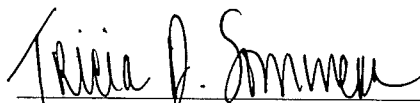
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6 At all times mentioned herein, Respondent was required to exercise reasonable
7 supervision and control over the activities of his employees, agents, licensees and others acting on
8 his behalf pursuant to Section 10177(h) of the Code and Section 2725 of the Regulations.

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10 Respondent failed to exercise reasonable supervision over the acts and/or omissions
11 of his employees, agents, licensees and others acting on his behalf in such a manner as to allow the
12 acts and/or omissions as described in Paragraph 9, above, to occur, which constitutes cause for the
13 suspension or revocation of the licenses and license rights of Respondent under Sections 10177(d)
14 (Willful Disregard/Violation of Real Estate Law) and/or 10177(g) (Negligence/Incompetence in
15 Performing Act Requiring License) of the Code, and Section 10177(h) (Failure to Exercise
16 Reasonable Supervision) of the Code.

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

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24 TRICIA D. SOMMERS
25 Deputy Real Estate Commissioner

26 Dated at Sacramento, California,
27 this 30th day of December, 2017.