

FILED

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DEPARTMENT OF REAL ESTATE

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

12 * * *

13 In the Matter of the Accusation of)
14 JKB FINANCIAL, INC.,)
15 JASON BARTLETT, ERIC MERCER,) H- 5774 SAC
16 and LESLIE SALONDAKA,) ACCUSATION
17 Respondents.)

18 For cause of Accusation against JKB FINANCIAL, INC. (hereinafter "JKBF")
19 and d.b.a. American Modification Services, JASON BARTLETT (hereinafter "BARTLETT"),
20 ERIC MERCER (hereinafter "MERCER"), and LESLIE SALONDAKA also known as Leslie
21 Check (hereinafter "SALONDAKA"), the Complainant, TRICIA D. SOMMERS, in her official
22 capacity as a Deputy Real Estate Commissioner of the State of California, is informed and
23 alleges as follows:

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25 At all times herein mentioned, JKBF was and now is licensed and/or has
26 license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions
27 Code) (hereinafter "the Code") as a corporate real estate broker.

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2 At all times relevant until September 13, 2009, BARTLETT was licensed and/or
3 had license rights under the Code as a real estate salesperson. At all times since September 13,
4 2009, and continuing until the present, BARTLETT was and is licensed and/or has license rights
5 under the Code as a real estate broker. In addition, at all times relevant herein BARTLETT was
6 and is the President and sole shareholder of JKBF and JKBF was and is the alter ego of
7 BARTLETT.

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9 At all times relevant herein, MERCER was and is licensed and/or has license
10 rights under the Code as a real estate broker. Before April 22, 2009, MERCER was Designated
11 Officer and the Chief Financial Officer for JKBF. On or about April 22, 2009, MERCER
12 resigned as the designated officer for JKBF.

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14 Between April 22, 2009, and September 3, 2009, JKBF did not have a broker of
15 record and therefore was prohibited from conducting license related activities until a new
16 designated officer was appointed to supervise the operations of JKBF.

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18 At all times relevant herein, SALONDAKA (REB #1748677) was licensed and/or
19 has license rights under the Code as a real estate broker. On or about May 31, 2010, a hearing on
20 Department Case Number H-5470 SAC was held. SALONDAKA, individually and as the
21 Designated Office/Broker of First American Realty and Finance, Inc, was named as a
22 Respondent therein. As a result, effective December 12, 2011, SALONDAKA's real estate
23 broker license was revoked with the right to apply for restricted real estate salesperson license
24 within 90 days of December 12, 2011, and other penalties. As of January 1, 2012,
25 SALONDAKA had not applied for the restricted salesperson license granted in DRE case
26 number H-5470 SAC and as a result thereof her broker license was revoked outright; however,
27 she continues to hold licensing rights to a restricted sales person license until March 2012, at

1 which time her right to apply for a restricted salesperson license will expire and she will no
2 longer hold any licensing rights to a real estate license in any form.

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5 On September 3, 2009, and continuing until October 20, 2009, SALONDAKA
6 (REB #1748677) was the Designated Officer and is the Chairman of the Board and CEO of
7 JKBF.

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9 From October 20, 2009, and continuing until the present, BARTLETT was and is
10 the Designated Officer for JKBF.

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12 At all times herein mentioned, JKBF engaged in the business of, acted in the
13 capacity of, advertised, or assumed to act as a real estate broker within the State of California
14 within the meaning of Section 10131 of the Code, including: the operation and conduct of a
15 mortgage loan brokerage with the public wherein, on behalf of others, for compensation or in
16 expectation of compensation, Respondent solicited lenders and borrowers for loans secured
17 directly or collaterally by liens on real property, and conducted loan modification services
18 wherein Respondent arranged, negotiated, processed, and consummated such loans.

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20 Whenever reference is made in an allegation in this Accusation to an act or
21 omission of JKBF, such allegation shall be deemed to mean that the Designated Officers, Broker
22 of Record, corporate officers, directors, and JKBF's employees, agents and/or real estate
23 licensees employed by or associated with JKBF while acting within the course and scope of their
24 authority and employment with JKBF and committed such act or omission in the furtherance of
25 the business or operations of JKBF and with the consent and/or ratification of JKBF.

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27 Between December 17, 2009, and December 22, 2009, on a sample basis, an audit
was conducted at JKBF's main office located 970 Reserve Drive, Suite 160, Roseville,

1 California, 95678 wherein the Department's auditor examined JKBF's books and records for the
2 period January 1, 2008, to November 30, 2009 (hereinafter "audit period").

3 FIRST CAUSE OF ACTION

4 Audit Violations

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6 Complainant incorporates by reference each and every allegation in Paragraphs 1
7 through 10, above, as if more fully set forth herein.

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9 In so acting as Designated Officer/Broker of JKBF, BARTLETT, SALONDAKA,
10 and/or MERCER accepted or received funds in trust (hereinafter "trust funds") from or on behalf
11 of borrowers, lenders, owners, tenants, and others in connection with negotiating loans secured
12 by real property, as alleged herein, and thereafter from time to time made disbursements of said
13 funds.

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15 The aforesaid trust funds accepted or received by JKBF were deposited or caused
16 to be deposited by Respondent into one or more bank accounts (hereinafter "trust fund
17 accounts") maintained by Respondent for the handling of trust funds, including but not
18 necessarily limited to, the following accounts maintained by JKBF:

19 (a) Between October 8, 2008, and November 24, 2009, at the California Bank
20 & Trust, 1800 Arden Way, Sacramento, California, account number *****15781 titled "JKB
21 Finance Inc. dba American Modification Services" (hereinafter "Bank #1"); and

22 (b) Since November 6, 2009, at the Umpqua Bank, 9050 Fairway Drive #135,
23 Roseville, California, account number ****07973, titled "JKB Financial Trust Account"
24 (hereinafter "Trust # 1").

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26 For the audit period:

27 (a) JKBF failed to maintain control records and/or bank reconciliations for

1 Bank #1 and Trust #1. JKBF's "Separate Record for Each Beneficiary or Transaction for Client
2 Funds Placed in Trust Fund Bank Account" for each beneficiary was not accurate and therefore,
3 trust fund accountabilities and adjusted balances for Trust #1 and Bank #1 could not be
4 determined, all in violation of Section 10145(g) of the Code and Sections 2831, 2831.1, and
5 2831.2 of Chapter 6, Title 10, California Code of Regulations (hereinafter "Commissioner's
6 Regulations");

7 (b) JKBF failed to maintain records of all trust funds received and disbursed
8 (control records) for Trust #1 and Bank #1 in violation of Section 10145(g) of the Code and
9 Sections 2831 and 2831.1 of the Commissioner's Regulations;

10 (c) JKBF failed to perform the reconciliation of the sum of the separate
11 beneficiary records to the record of all trust funds received and disbursed at least monthly as
12 required for Trust #1 and Bank #1 in violation of Section 2831.2 of the Commissioner's
13 Regulations;

14 (d) In violation of Section 10145(g) of the Code and Section 2832 of the
15 Commissioner's Regulations, JKBF's "Separate Record for Each Beneficiary or Transaction for
16 Client's Funds Placed in Trust Fund Bank Account" (separate records) for Trust #1 and Bank #1
17 were not adequate. For example:

18

Borrower Name	Property Address	Advance Fee Received	Advance Fee Disbursed to JKB	Beneficiary Balance
19 Mark Matias	Evelyn Terrace CA 94085	\$2,910	\$1,910	\$0.00
20 Jove Gill	146 Chattanooga SF, CA	\$1,455	\$970	\$0.00
21 Norma & 22 Tiny Ford	Honker Ave CA 94585	\$4,166.66	\$1,950	\$0.00

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25 (e) In violation of Section 2830.1 of the Commissioner's Regulations, Bank
26 #1 was not designated as a trust account and was not under the name of the broker as trustee;

27 (f) In violation of Section 2832 of the Commissioner's Regulations, before

1 October 20, 2009, there was no Designated Officer as a signatory on Bank #3;

2 (g) In violation of Section 10131 and 10145(g) of the Code, MERCER
3 signed advance fee agreements on behalf of JKBF and JKBF collected advance fees from the
4 following borrowers between April 22, 2009, and September 3, 2009, when JKBF did not have
5 a designated officer:

Borrower Name	Property Address	Agreement Signed	Advance Fee Received	Advance Fee Collected
Linda & Jerry Gaylord	359 Westcliffe Cir Walnut Creek, CA	4/23/09	4/29/09	\$3,950
Alicia Tobin-Williams	3921 Fairway Dr. Cameron Park, CA	5/20/09	5/23/09	\$2,000
Chau Sun	1251 Louisiana St. Vallejo, CA	4/27/09	Check dated 6/18/09	\$200

12 (h) In violation of Section 10146 of the Code and Sections 2970 and 2972 of
13 the Commissioner's Regulations, JKBF collected advance fees from the following borrowers
14 when JKBF had not received a *No Objection Letter* from the Department:

Borrower Name	Property Address	Agreement Signed	Advance Fee Received	Advance Fee Collected
Lester Dayrit	5121 Bickford Cir Fairfield, CA	4/7/09	4/10/09	\$3,995
Jeffery & Juri Rizalian Reyna	278 Woodridge Dr. Vallejo, CA	1/20/09	1/20/09	\$4,800
Cynthia & Vicente Simon	1538 Allegro Ave. Concord, CA	4/21/09	4/23/09	\$3,995

21 The advance fee agreements for the above three transactions were signed by
22 MERCER.

23 (i) JKBF failed to provide borrowers with quarterly verified accountings as
24 required under Section 10146 of the Code and 2972 of the Commissioner's Regulations;

26 The facts alleged above violate Sections 10131 (Broker Defined), 10145 (Trust
27 Fund Handling) and/or 10146 (Advance Fee Handling) of the Code, and/or Sections 2972

1 (Advance Fee Accounting Content), 2970 (Advance Fee Materials), 2831 (Trust Fund Records),
2 2830.1 (Beneficiary Records), and/or 2831.2 (Trust Account Reconciliation) of the Regulations
3 which constitute grounds under Section 10177(d) (Violation of Real Estate Law Grounds for
4 Discipline) of the Code for the suspension or revocation of the licenses and license rights of
5 JKBF.

6 SECOND CAUSE OF ACTION
7 Failure to Register D.B.A.

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9 Complainant incorporates by reference each and every allegation in Paragraphs 1
10 through 15, above, as if more fully set forth herein.

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12 On or about December 12, 2008, JKBF was issued a corporate real estate license.
13 Beginning on or after December 12, 2008, and continuing through January 4, 2009, JKBF under
14 the fictitious business name *American Modification Services* conducted activities for which a real
15 estate license was required. At no time prior to January 5, 2009, was *American Modification*
16 *Services* registered with the Department as a fictitious business name of JKBF in violation of
17 Section 10159.5 (Proof of Fictitious Name filing with County Clerk) and Section 2731 (Use of
18 False or Fictitious Name) of the Commissioner's Regulations and which constitute grounds for
19 discipline under Section 10177(d) of the Code.

20 THIRD CAUSE OF ACTION
21 Unlicensed Activity

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23 Complainant incorporates by reference each and every allegation in Paragraphs 1
24 through 17, above, as if more fully set forth herein.

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26 Between April 22, 2009, and September 3, 2009, JKBF did not register with the
27 Department a designated officer/broker of record and therefore was not permitted to conduct
activities for which a real estate license and broker of record were required. Despite this

1 prohibition, JKBF by and through its corporate president BARTLETT, then a real estate
 2 salesperson, and/or its Chief Financial Officer MERCER, but not registered with the Department
 3 as the Designated Officer/Broker and/or its Chairman and CEO SALONDAKA, then an
 4 individual broker, but not registered with the Department as the Designated Officer/Broker, all in
 5 violation of Sections 10130 (License Required) and 10131 (Broker Defined) of the Code.

6 However, JKBF represented at least the below listed clients in transactions for which a valid real
 7 estate license was required:

Borrower Name	Property Address	Agreement Signed	Advance Fee Received	Advance Fee Collected
Cynthia & Vicente Simon	1538 Allegro Ave. Concord, CA	4/21/09	4/23/09	\$3,995
Linda & Jerry Gaylord	359 Westcliffe Cir Walnut Creek, CA	4/23/09	4/29/09	\$3,950
Chau Sun	1251 Louisiana St. Vallejo, CA	4/27/09	Check date 6/18/09	\$200
Alicia Tobin-Williams	3921 Fairway Dr. Cameron Park, CA	5/20/09	5/23/09	\$2,000

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16 The violations of which constitute grounds against JKBF and its corporate
 17 President and real estate broker BARTLETT, its Chief Financial Officer and real estate broker
 18 MERCER and its Chairman and CEO and real estate broker SALONDAKA for discipline under
 19 Section 10177(d) of the Code.

20 FOURTH CAUSE OF ACTION

21 Failure to Supervise

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23 Complainant incorporates by reference each and every allegation in Paragraphs 1
 24 through 20, above, as if more fully set forth herein.

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26 Before April 22, 2009, MERCER was the Broker of Record. Between April 22,
 27 2009, and September 3, 2009, JKBF did not have a broker of record. On September 3, 2009, and

1 continuing until October 20, 2009, SALONDAKA was the designated officer for JKBF and from
2 October 20, 2009, and continuing through the present, BARTLETT was and currently is the
3 Broker of Record for JKBF. MERCER, SALONDAKA, and BARTLETT jointly and severally
4 failed to exercise reasonable supervision over the operations of JKBF. MERCER,
5 SALONDAKA, and BARTLETT committed, ratified, or otherwise permitted or approved of the
6 acts and omissions as described above to occur, all in violation of Section 10159.2 (Corporate
7 Officer Responsibilities) of the Code and which constitutes cause for suspension or revocation of
8 all licenses and license rights of JKBF, MERCER, SALONDAKA, and BARTLETT under
9 Sections 10177(d) and 10177(h) (Reasonable Supervision of Corporate Broker Required) of the
10 Code.

11 FIFTH CAUSE OF ACTION
12 Negligence and/or Incompetence

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14 Complainant incorporates by reference each and every allegation in Paragraphs 1
15 through 20, above, as if more fully set forth herein.

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17 The acts and omissions of Respondents JKBF, MERCER, SALONDAKA, and
18 BARTLETT described above, jointly and severally, constitute negligence or incompetence in
19 performing acts requiring a real estate license, and are cause for suspension or revocation of all
20 licenses and license rights of Respondents JKBF, MERCER, SALONDAKA, and BARTLETT
21 under Section 10177(d) of the Code.

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

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10 TRICIA D. SOMMERS
11 Deputy Real Estate Commissioner

11 Dated at Sacramento, California

12 this 11 day of January, 2011
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14 DISCOVERY DEMAND:

15 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedures Act*, the Department of
16 Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the
17 *Administrative Procedures Act*. Failure to provide Discovery to the Department of Real Estate
18 may result in the exclusion of witnesses and documents at the hearing or other sanctions that the
19 Office of Administrative Hearings deems appropriate.
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