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FILED

SEP 10 2024

DEPT. OF REAL ESTATE

By—

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-05828 SD
)	
JAMES RICHARD LACKEY,)	<u>ACCUSATION</u>
)	
Respondent(s).)	
_____)	

The Complainant, Ruth Corral, a Supervising Special Investigator of the State of California, for cause of Accusation against JAMES RICHARD LACKEY ("Respondent") alleges as follows:

1.

The Complainant, Ruth Corral, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

2.

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

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ACCUSATION

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1 (commencing with Section 10150). (2) Obtaining and maintaining a real estate license
2 endorsement pursuant to this article identifying that individual as a licensed mortgage loan
3 originator.”

4 Code Section 10166.05

5 10.

6 Code Section 10166.05 provides, in pertinent part, that “Notwithstanding any
7 other provision of law, the commissioner shall not issue a license endorsement to act as a
8 mortgage loan originator to an applicant unless the commissioner makes all of the following
9 findings:

10 . . .
11 (c) The applicant has demonstrated such financial responsibility, character, and
12 general fitness as to command the confidence of the community and warrant a determination
13 that the mortgage loan originator will operate honestly, fairly, and efficiently within the
14 purposes of the article.”

15 Code Section 10166.051

16 11.

17 Code Section 10166.051 provides, in pertinent part, that “In addition to any
18 penalties authorized by regulations adopted pursuant to Section 10166.15, the commissioner
19 may do one or more of the following, after appropriate notice and opportunity for hearing:

20 (a) Deny, suspend, revoke, restrict, or decline to renew a mortgage loan originator license
21 endorsement for a violation of this article, or any rules or regulations adopted hereunder.”

22 Code Section 10232.3

23 12.

24 Code Section 10232.3 provides, in pertinent part, that “(a) Any transaction that
25 involves the sale of or offer to sell a note secured directly by an interest in one or more parcels
26 of real property or the sale of an undivided interest in a note secured directly by one or more
27 parcels of real property shall adhere to all of the following:

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the note or interest sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market value of unimproved real property, except in the case of a single-family zoned lot or parcel as defined in paragraph (1), which shall not exceed 65 percent of the current fair market value of that lot or parcel, plus the amount insured as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies upon for his or her determination, which shall be retained as a part of the broker's record of the transaction. Either a copy of the statement or the information contained therein shall be included in the disclosures required pursuant to Section 10232.5.

(3) A copy of the appraisal or the broker's evaluation, for each parcel of real property securing the note or interest, shall be delivered to the purchaser. The broker shall advise the purchaser of his or her right to receive a copy. For purposes of this paragraph, "appraisal" means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question. A broker shall not purport to make an appraisal unless he or she is qualified on the basis of special training, preparation, or experience.

(b) The note or interest shall not be sold, unless the purchaser meets one or both of the qualifications of income or net worth set forth below and signs a statement, which shall be retained by the broker for four years, conforming to the following:

“Transaction Identifier:

1 Name of Purchaser:

Date:

2 Check either one of the following, if true:

3 () My investment in the transaction does not exceed 10% of my net worth,
4 exclusive of home, furnishings, and automobiles.

5 () My investment in the transaction does not exceed 10% of my adjusted
6 gross income for federal income tax purposes for my last tax year or,
7 in the alternative, as estimated for the current year.

8
9 Signature”

10
11 Code Section 10232.4

12 13.

13 Code Section 10232.4 provides, in pertinent part, that “(a) In making a
14 solicitation to a particular person and in negotiating with that person to make a loan secured by
15 real property or to purchase a real property sales contract or a note secured by a deed of trust, a
16 real estate broker shall deliver to the person solicited the applicable completed statement
17 described in Section 10232.5 as early as practicable before that person becomes obligated to
18 make the loan or purchase and, except as provided in subdivision (c), before the receipt by or
19 on behalf of the broker of any funds from that person. The statement shall be signed by the
20 prospective lender or purchaser and by the real estate broker, or by a real estate salesperson
21 licensed to the broker, on the broker’s behalf. When so executed, an exact copy shall be given
22 to the prospective lender or purchaser, and the broker shall retain a true copy of the executed
23 statement for a period of three years. . .”

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1 Code Section 10232.5

2 14.

3 Code Section 10232.5 provides, in pertinent part, that “(a) If the real estate
4 broker is performing acts described in subdivision (d) of Section 10131 in negotiating a loan to
5 be secured by a lien on real property or on a business opportunity, the statement required to be
6 given to the prospective lender shall include, but shall not necessarily be limited to, the
7 following information:

8 . . .

9 (4) Identity, occupation, employment, income, and credit data about the
10 prospective borrower or borrowers as represented to the broker by the prospective borrower or
11 borrowers. . .”

12 Code Section 10236.7

13 15.

14 Code Section 10236.7 provides, in pertinent part, that “(a) A real estate broker,
15 when engaging in acts for which a license is required, who arranges a transaction pursuant to
16 Article 6 (commencing with Section 10237) or one or more provisions of the Corporate
17 Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the
18 Corporations Code), shall clearly indicate in the real estate broker’s transaction file the
19 provision or provisions of this code or the Corporate Securities Law of 1968 pertaining to
20 qualification or exemption from qualification under which the transaction is being conducted.
21 The real estate broker shall retain this information for the period specified in subdivision (a) of
22 Section 10148.”

23 Code Section 10238

24 16.

25 Code Section 10238 provides, in pertinent part, that “(f)(1) The notes or interests
26 shall not be sold to more than 10 persons, each of whom meets one or both of the qualifications
27 of income or net worth set forth below and signs a statement, which shall be retained by the

1 broker for four years, conforming to the following:

2 Transaction Identifier:

3
4 Name of Purchaser: Date:

5 Check either one of the following, if true:

6 My investment in the transaction does not exceed 10% of
7 my net worth, exclusive of home, furnishings, and
8
9 () automobiles.

10 My investment in the transaction does not exceed 10% of
11 my adjusted gross income for federal income tax
12 purposes for my last tax year or, in the alternative, as
13
14 () estimated for the current year.

15 Signature
16

17 (2) The number of offerees shall not be considered for the purposes of this section.

18 (3) Spouses and their dependents, and an individual and his or her dependents, shall be counted
19 as one person.

20 (4) A retirement plan, trust, business trust, corporation, or other entity that is wholly owned by
21 an individual and the individual's spouse or the individual's dependents, or any combination
22 thereof, shall not be counted separately from the individual, but the investments of these
23 entities shall be aggregated with those of the individual for the purposes of the statement
24 required by paragraph (1). If the investments of any entities are required to be aggregated under
25 this subdivision, the adjusted gross income or net worth of these entities may also be
26 aggregated with the net worth, income, or both, of the individual.

27 (5) The "institutional investors" enumerated in subdivision (i) of Section 25102 or subdivision

1 (c) of Section 25104 of the Corporations Code, or in a rule adopted pursuant thereto, shall not
2 be counted.

3 (6) A partnership, limited liability company, corporation, or other organization that was not
4 specifically formed for the purpose of purchasing the security offered in reliance upon this
5 exemption from securities qualification is counted as one person.”

6 Further Grounds for Disciplinary Action – Code Section 10177

7 17.

8 Pursuant to Code Section 10177, “The commissioner may suspend or revoke the
9 license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny
10 the issuance of a license to an applicant, who has done any of the following:

11 . . .

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

14 Health and Safety Code Section 35830

15 18.

16 Health and Safety Code Section 35830 provides, in pertinent part, that “financial
17 institutions shall notify all applicants at the time of written application for financial assistance
18 of the prohibitions enumerated in Chapter 3 (commencing with Section 35810) and of the right
19 of review provided by Section 35820. Such notice shall include the address of the secretary, or
20 the secretary’s designee, and where complaints may be filed and questions may be asked. Such
21 notice shall be in at least 10-point type and shall also be posted in a conspicuous place for
22 public inspection.”

23 VIOLATIONS OF THE REAL ESTATE LAW – CAUSES FOR DISCIPLINE

24 19.

25 In the course of the activities described above in Paragraph 4, and based on the
26 facts discovered by the Department in Paragraphs 5 through 8, above, Respondent acted in
27 violation of the Code and Regulations, as described below.

20.

From May 28, 2019 through May 29, 2024, Respondent's MLO endorsement was approved-inactive. However, Respondent originated loans during this period of time in violation of **Code Section 10166.02**.

(Summerhill Drive Loan)

20.

During the period from June 13, 2022 through June 28, 2022, Respondent failed to complete the gross income section for the borrowers of the Summerhill Property Loan LPDS in violation of **Code Section 10232.4**.

21.

During the period from June 13, 2022 through June 28, 2022, Respondent failed to provide the lender with a Qualification Statement for the Summerhill Property Loan in violation of **Code Section 10232.3(b)**.

22.

During the period from June 13, 2022 through June 28, 2022, Respondent failed to provide the lender with an assessment of value for the Summerhill Property Loan in violation of **Code Section 10232.3(a)(2) and (3)**.

(Country Grove Lane Loan)

23.

During the period from December 18, 2023 through December 21, 2023, Respondent failed to obtain a Qualification Statement for the Country Grove Lane Property in violation of **Code Section 10238(f)(1)**.

24.

During the period from December 18, 2023 through December 21, 2023, Respondent failed to provide the Department of Real Estate's contact information in the Fair Lending Notice for the Country Grove Lane Property in violation of **Health and Safety Code Section 35830**.

25.

During the period from December 18, 2023 through December 21, 2023, Respondent failed to disclose his exemptions to the securities laws to the lenders/investors for the Country Grove Lane Property in violation of **Code Section 10236.7**.

Additional Violations of the Real Estate Law

26.

The overall conduct of Respondent violates the Real Estate Law and constitutes cause for the suspension or revocation of his real estate license and license rights under the provisions of Code Section 10177(g) for negligence, Code Section 10177(d) for willful disregard of the Real Estate Law, and Code Sections 10166.05(c) and 10166.051(a) for failure to demonstrate financial responsibility and general fitness.

COSTS

27.

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

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PRAYER

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) of Respondent JAMES RICHARD LACKEY, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under applicable provisions of law.

Dated at Sacramento, California this 5th day of September, 2024.


Ruth Corral
Supervising Special Investigator

cc: JAMES RICHARD LACKEY
Ruth Corral
Sacto.