

FILED

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DEPT. OF REAL ESTATE

By-

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

DRE No. H-05839 SD

In the Matter of the Accusation against:

ACCUSATION

FERNANDO COTA,

Respondent.

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the Department of Real Estate ("Department") of the State of California, for cause of Accusation against FERNANDO COTA ("Respondent"), alleges as follows:

1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a Supervising Special Investigator, makes this Accusation against Respondent.

2. Unless otherwise noted, all references to the "Code" are to the California Business and Professions Code, all references to the "Real Estate Law" are to Part 1 of Division 4 of the Code, and all references to "Regulations" are to the Regulations of the Real Estate Commissioner, Title 10, Chapter 6, California Code of Regulations.

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3. Respondent is presently licensed and/or has license rights under the Real Estate
 (part 1 of Division 4 of the Code).

4. On April 24, 1996, the Department issued a real estate salesperson license to Respondent, License ID 01208320. Unless renewed, Respondent's license is scheduled to expire on May 21, 2028. Respondent has renewal rights pursuant to Code section 10201. The Department retains jurisdiction pursuant to Code section 10103.

5. During all times relevant herein, Respondent was a salesperson affiliated with West Edge, Inc. (License ID 01481919). The Independent Contractor Agreement between Respondent as salesperson, and West Edge, Inc. as broker specifically prohibited Respondent from performing any management activities by Respondent.

6. The Department received a complaint from M.M.¹ against Respondent regarding property located at 715 Paso De Luz #208, Chula Vista, California 91911 ("subject property").

7. On or about November 20, 2022, an Exclusive Listing Agreement to sell the property was entered into between the seller ("B.C.T."), West Edge, Inc. as broker for er, and Respondent as the salesperson and agent.

8. On or about November 20, 2022, Respondent listed the subject property for sale. The offers were made for the purchase of the subject property. There is an ongoing dispute between M.M. and B.C.T. as to who is the legal owner of the subject property.

9. M.M. alleged, in their complaint to the Department, that Respondent and West Edge, Inc. dba Coldwell Bank West, listed the subject property for rent, rented the subject property to tenants, and collected rents from tenants for the subject property without M.M.'s authority. M.M. has demanded the trust funds including rent payments for the subject property from Respondent and West Edge, Inc.

1 Initials are used in place of individuals' full names to protect their privacy. Documents containing individuals' full names will be provided during the discovery phase of this case to Respondent(s) and/or their attorneys, after service of a timely and proper request for discovery on Complainant's counsel.

1 10. The Department investigated the complaint and discovered the facts described
2 below.

3 11. During the previous three-year period, Respondent solicited, offered to perform,
4 and performed property management activities for the subject property including, but not
5 limited to, leasing or renting or offering to lease or to rent or soliciting prospective tenants for
6 the subject property and collecting rents from real property or improvements thereon.

7 12. Respondent's affiliated broker at the time asserts that they were not aware of or
8 supervised Respondent's property management activities for the subject property.

9 13. On or about December 14, 2022, the Respondent listed the subject property for
10 rent for \$2,700.00.

11 14. The Department requested that Respondent provide a copy of the property
12 management agreement for the subject property. Respondent failed to provide any property
13 management agreement.

14 15. Respondent provided the Department with a Residential Lease for the subject
15 property for the period from January 1, 2023, through January 30, 2024, between lessor, B.C.T.,
16 and tenant, C.R. The monthly rent was \$2,700.00 and the security deposit was \$3,375.00.

17 16. Respondent collected trust funds (including a security deposit and rent
18 payments) from tenant C.R. for the subject property through Respondent's personal bank
19 account. Respondent accepted or collected trust funds on behalf of the lessor of the subject
20 property and failed to deliver the funds to Respondent's affiliated broker or deposit the trust
21 funds in the broker's trust fund account, in violation of Code section 10145, subdivision (c).

22 17. Respondent remitted the rent payments to B.C.T. minus ten percent (10%) of the
23 rent collected, which was charged, collected, and withheld by Respondent as compensation for
24 his property management activities, in violation of Code section 10137.

25 18. On or about December 13, 2023, the Respondent listed the subject property for
26 rent for \$2,800.00.

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1 19. Respondent provided the Department with a Residential Lease for the subject
2 property, dated January 16, 2024, between lessor, B.C.T., and tenant, A.M. The monthly rent
3 was \$2,800.00 and the security deposit was \$2,800.00.

4 20. Respondent did not provide documentation showing the security deposit or rent
5 payments from tenant A.M. for the subject property.

6 21. Respondent's property management activities included, but are not limited to,
7 soliciting for a tenant and negotiating the lease of the subject property and collecting rents from
8 the subject property, which fall within the purview of Code section 10131, subdivision (b).

9 22. Respondent charged and collected compensation directly from B.C.T. for
10 Respondent's property management activities for the subject property, in violation of Code
11 section 10137.

12 Causes of Accusation

13 Unlicensed Activity and Negligence

14 23. Respondent engaged in property management activities, as described above,
15 without a real estate broker license and accepted compensation for said activities from a person
16 other than the broker under whom Respondent was licensed at the time, in violation of Code
17 sections 10130 and 10137. The conduct, acts and/or omissions of Respondent constitute cause to
18 suspend or revoke the real estate license and license rights of Respondent pursuant to Code
19 section 10177, subdivisions (d) and/or (g), for violation of Code sections 10130 and 10137.

20 Trust Fund Handling

21 24. As described above in Paragraphs 11 through 22, Respondent accepted or
22 collected trust funds on behalf of property owner of the subject property and failed to deliver the
23 funds to Respondent's affiliated broker or deposit the trust funds in the broker's trust fund
24 account, in violation of Code section 10145, subdivision (c). The conduct, acts and/or omissions
25 of Respondent constitute cause to suspend or revoke the real estate license and license rights of
26 Respondent pursuant to Code section 10177, subdivisions (d) and/or (g), for violation of Code
27 section 10145, subdivision (c).

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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 of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law.

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