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FILED

JUN 30 2014

BUREAU OF REAL ESTATE

By choime

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	
DON L. SKULTETY, and	)	NO. H-06148 SAC
FIRST FINANCIAL & REALTY	)	
SERVICES, INC. a Corporation,	)	<u>ACCUSATION</u>
	)	
Respondents.	)	

The Complainant, TRICIA PARKHURST, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity against DON J. SKULTETY (herein "SKULTETY") and FIRST FINANCIAL & REALTY SERVICES, INC. (herein "FFRSI") dba Caprate Real Estate (herein "Caprate") (collectively "Respondents"), and is informed and alleges as follows:

1

At all times herein mentioned, 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").

2

At all times herein mentioned, FFRSI was and now is licensed by the State of California Bureau of Real Estate (herein "the BUREAU") as a corporate real estate broker by and

1 through SKULTETY as designated officer-broker of FFRSI to qualify said corporation and to act
2 for said corporation as a real estate broker.

3 3

4 At all times herein mentioned, SKULTETY was and now is licensed by the
5 BUREAU as a real estate broker, individually and as designated officer-broker of FFRSI. As
6 said designated officer-broker, SKULTETY was at all times mentioned herein responsible
7 pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers,
8 agents, real estate licensees, and employees of FFRSI for which a license is required.

9 4

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

16 5

17 At all times herein mentioned Respondents engaged in the business of, acted in
18 the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others,
19 for compensation or in expectation of compensation within the State of California within the
20 meaning of Sections:

- 21 (a) 10131(a) of the Code, including the operation and conduct of a real estate
22 brokerage with the public wherein Respondents sold or offered to sell,
23 bought or offered to buy, solicited prospective sellers or purchasers of,
24 solicited or obtained listings of, or negotiated the purchase, sale or exchange
25 of real property or a business opportunity; and
26 (b) 10131(b) of the Code, including the operation and conduct of a property
27 management business with the public wherein, Respondents leased or

1 rented or offered to lease or rent, or placed for rent, or solicited listings
2 for places for rent, or solicited for prospective tenants, or negotiated the
3 sale, purchase or exchanges of leases on real property or on a business
4 opportunity, or collected rents from real property, or improvements
5 thereon, or from business opportunities.

6 6

7 In so acting as real estate brokers as described in Paragraph 5, above,
8 Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of
9 buyers, sellers, tenants, owners, and others in connection with real estate sales, leasing, renting,
10 and collection of rents on real property or improvements thereon, and thereafter from time to
11 time made disbursements of said funds; Respondents did not maintain a trust account.

12 FIRST CAUSE OF ACTION (AUDIT)

13 7

14 The allegations of Paragraphs 1 through 6 are incorporated herein by reference.

15 8

16 Between about September 15, 2013 and September 27, 2013, an audit was
17 conducted by the BUREAU for the period from about January 1, 2012 through about August 31,
18 2013, and the following findings were made in connection with Respondents' licensed activities,
19 described in Paragraphs 5 and 6, above, in that Respondents:

- 20 (a) failed to maintain a record of trust funds received not placed into
21 broker's trust account, in violation of Section 10145 of the Code and
22 Section 2831(a)(6);
23 (b) failed to obtain a property management agreement for a property
24 located on Knickers Court, Sacramento, CA, prior to leasing/renting
25 the property, in violation of Section 10176(j) of the Code;
26 (c) failed to maintain a definite place of business in the State of
27 California which served as his office for the transaction of business,

1 in violation of Section 10162 (definite place of business) of the
2 Code;

3 (d) willfully caused, suffered and permitted FFRSI to perform licensed
4 activities during the time FFRSI was not in good standing with the
5 office of the Secretary of State, in violation of Section 2742(c) the
6 Regulations.

7 SECOND CAUSE OF ACTION (SHORT SALE TRANSACTION)

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9 The allegations of Paragraphs 1 through 8 are incorporated herein by reference.

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11 On about June 1, 2012, SKULTETY caused a Residential Listing Agreement
12 ("Listing Agreement"), Sellers Advisory (herein "Advisory"), and a Disclosure Regarding Real
13 Estate Agency Relationship (herein "Agency Disclosure") to be drafted for SKULTETY's
14 residence located on Windsong Street, Sacramento, CA (herein the "Property"), for a sale price
15 in the amount of about \$190,000.00, showing the Listing Broker as Paula G. (herein "Paula"); in
16 fact: 1) Paula was not a broker, but rather a salesperson employed by FFRSI, 2) Paula had no
17 knowledge of said Listing Agreement, Advisory or Agency Disclosure, and 3) the signatures on
18 the Listing Agreement, Advisory and Agency Disclosure, were not Paula's signature, all in
19 violation of Section 10177(j) (fraud or dishonest dealing as a principal) of the Code.

20 11

21 On about September 7, 2012, SKULTETY received a Residential Purchase
22 Agreement and Joint Escrow Instructions (herein "Purchase Agreement") and Short Sale
23 Addendum from purchasers Daniel and Tamara S. (herein the "Purchasers"), as well as a second
24 Agency Disclosure; the Purchase Agreement was accepted and signed by SKULTETY on about
25 August 9, 2012. The Purchase Agreement showed the Listing Firm as FFRSI "by Paula" and the
26 Selling Firm as Cap Rate Real Estate (herein "Cap Rate") "by Tracy H." (herein "Tracy"); in
27 fact: 1) Paula was not the Listing Agent described in Paragraph 10, above, 2) Tracy was not the

1 Selling Agent, 3) neither Paula nor Tracy had any knowledge of the short sale transaction, and
2 4) the signatures on the Purchase Agreement and Agency Disclosure were not that of Paula
3 and/or Tracy, all in violation of Section 10177(j) of the Code.

4 12

5 On about March 22, 2013, escrow closed and FFRSI and Cap Rate received and
6 cashed checks from Fidelity National Title Company (herein "First Fidelity") for Commissions
7 Due in connection with the aforementioned short sale, described in Paragraph 11, in the amounts
8 of about \$5,801.51 and \$5,801.52, respectively; in fact, neither FFRSI nor Cap Rate represented
9 any party to the transaction, in violation of Section 10177(j) of the Code.

10 13

11 On about March 27, 2013, SKULTETY received and cashed a check from First
12 Fidelity for Relocation Assistance in connection with the aforementioned short sale described in
13 Paragraph 11, above, in the amount of about \$3,000.00; in fact, the short sale was unlawful, in
14 violation of Section 10177(j) of the Code.

15 THIRD CAUSE OF ACTION (RECORD RETENTION)

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17 The allegations of Paragraphs 1 through 13 are incorporated herein by reference.

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19 On about December 12, 2013, the BUREAU subpoenaed complete transaction
20 records from Respondents, from the period of about January 1, 2011 through about December 12,
21 2013; however Respondents failed to provide the records and/or the complete records in
22 connection with the following properties, in violation of Section 10148 of the Code:

23 Respondents failed to provide records for:

24 Giselle Lane, Stockton, CA;
25 Keoncrest Circle, Sacramento, CA;
26 Knickers Court, Sacramento, CA;
27 Innovator Drive, Sacramento, CA;
Bordeaux Avenue, Stockton, CA;

1 Respondents failed to provide records for: (Continued)

2 Porterfield Court, Stockton, CA;
3 Tree Frog, Placerville, CA;
4 Highway 50, Placerville, CA;
5 N. 9th, Williams, CA;
6 Harvest Way, Sacramento, CA;
7 Art Parkway, Sacramento, CA;
8 Markingdon, San Jose, CA;
9 Alta Loma Court, Rio Linda, CA;
10 Hillhurst Drive, Fair Oaks, CA; and
11 39th Street, Sacramento, CA.

12 Respondents failed provide complete records for:

13 Serenata Way, Sacramento, CA;
14 Houston Avenue, Stockton, CA;
15 Silverleaf Way, Sacramento, CA;
16 Torino Drive, Stockton, CA;
17 Venetian Drive, Stockton, CA;
18 Billy Wright Road, Los Banos, CA;
19 Pleasant, Stockton, CA;
20 Colt Drive, Stockton, CA; and
21 Windsong Street, Sacramento, CA.

22 FOURTH CAUSE OF ACTION (OFFICE ABANDONMENT)

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24 The allegations of Paragraphs 1 through 15 are incorporated herein by reference.

25 17

26 Respondent FFRSI abandoned its main office location on Windsong Street in
27 about January 2012, and failed to notify the Real Estate Commissioner by the next business day
of its new address, in violation of Section 2715 of the Regulations.

18

19 The facts alleged above are grounds for the suspension or revocation of the
20 licenses and license rights of Respondents under the following provisions of the Code and/or the
21 Regulations:

- 1 (a) as to Paragraph 8(a) SKULTETY and FFRSI under Section 10145 of
2 the Code and Section 2831(a)(6) of the Regulations in conjunction
3 with Section 10177(d) of the Code;
4 (b) as to Paragraph 8(b) SKULTETY and FFRSI under Section 10176(j)
5 of the Code;
6 (c) as to Paragraph 8(c) SKULTETY and FFRSI under Section 10162 of
7 the Code in conjunction with Section 10177(d) of the Code;
8 (d) as to Paragraph 8(d) SKULTETY and FFRSI under Section 2742(c)
9 of the Regulations in conjunction with Section 10177(d) of the Code;
10 (e) as to Paragraph 10-11 SKULTETY under Section 10177(j) of the
11 Code;
12 (f) as to Paragraph 12 SKULTETY and FFRSI under Section 10177(j)
13 of the Code;
14 (g) as to Paragraph 13 SKULTETY under Sections 10177(j);
15 (h) as to Paragraph 15 SKULTETY and FFRSI under Section 10148 of
16 the Code in conjunction with Section 10177(d) of the Code; and
17 (i) as to Paragraph 17 SKULTETY and FFRSI under Section 2715 of
18 the Regulations in conjunction with Section 10177(d) of the Code.

19 COST RECOVERY

20 19

21 Audit Costs

22 The acts and/or omissions of Respondents as alleged above entitle the BUREAU
23 to reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

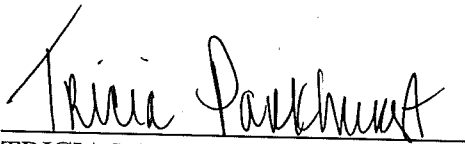
24 20

25 Investigation and Enforcement Costs

26 Section 10106 of the Code provides, in pertinent part, that in any order issued in
27 resolution of a disciplinary proceeding before the BUREAU, the Real Estate Commissioner may

1 request the Administrative Law Judge to direct a licensee found to have committed a violation of
2 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
3 the case.

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

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13 TRICIA PARKHURST
14 Deputy Real Estate Commissioner

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16 Dated at Sacramento, California

17 this 7th day of June, 2014.