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BUREAU OF REAL ESTATE

By K. Contreras

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the First Amended Accusation of)
DON L. SKULTETY, and)
FIRST FINANCIAL & REALTY)
SERVICES, INC. a Corporation,)
Respondents.)

NO. H-6148 SAC

FIRST AMENDED
ACCUSATION

The Complainant, HEATHER NISHIMURA, a Deputy Real Estate Commissioner of the State of California, makes this First Amended Accusation in her official capacity against DON L. 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
2 act 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.
6 As said designated officer-broker, SKULTETY was at all times mentioned herein
7 responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of
8 the officers, agents, real estate licensees, and employees of FFRSI for which a license is
9 required.

10 4

11 At all times herein mentioned, Paula Gonzalez (herein "Gonzalez") was and
12 now is licensed by the BUREAU as a real estate salesperson in the employ of FFRSI between
13 March 5, 2009, and March 4, 2015.

14 5

15 At all times herein mentioned, Tracy Michele Helphingstine (herein
16 "Helphingstine") was and now is licensed by the BUREAU as a real estate salesperson and
17 was in the employ of FFRSI between February 3, 2010, and September 30, 2013.

18 6

19 Whenever reference is made in an allegation in this First Amended Accusation to
20 an act or omission of FFRSI, such allegation shall be deemed to mean that the officers, directors,
21 employees, agents and/or real estate licensees employed by or associated with FFRSI committed
22 such act or omission while engaged in the furtherance of the business or operations of such
23 corporate respondent and while acting within the course and scope of their authority and
24 employment.

25 7

26 At all times herein mentioned, Respondents engaged in the business of, acted in
27 the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others,

1 for compensation or in expectation of compensation within the State of California within the
2 meaning of Sections:

3 (a) 10131(a) of the Code, including the operation and conduct of a real
4 estate brokerage with the public wherein Respondents sold or offered to
5 sell, bought or offered to buy, solicited prospective sellers or purchasers
6 of, solicited or obtained listings of, or negotiated the purchase, sale or
7 exchange of real property or a business opportunity; and

8 (b) 10131(b) of the Code, including the operation and conduct of a
9 property management business with the public wherein, Respondents
10 leased or rented or offered to lease or rent, or placed for rent, or
11 solicited listings for places for rent, or solicited for prospective
12 tenants, or negotiated the sale, purchase or exchanges of leases on
13 real property or on a business opportunity, or collected rents from
14 real property, or improvements thereon, or from business
15 opportunities.

16 8

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

22 FIRST CAUSE OF ACTION (AUDIT)

23 9

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

25 10

26 Between about September 15, 2013, and September 27, 2013, an audit was
27 conducted by the BUREAU for the period from about January 1, 2012, through about

1 August 31, 2013, and the following findings were made in connection with Respondents'
2 licensed activities, described in Paragraphs 7 and 8, above, in that Respondents:

- 3 (a) failed to maintain a record of trust funds received not placed into broker's
4 trust account, in violation of Section 10145 of the Code and Section
5 2831(a)(6) of the Chapter 6, Title 10 of the California Code of Regulations
6 (herein "the Regulations");
- 7 (b) failed to obtain a property management agreement for a property located on
8 Knickers Court, Sacramento, CA, prior to leasing/renting the property, in
9 violation of Section 10176(j) of the Code;
- 10 (c) failed to maintain a definite place of business in the State of California
11 which served as their office for the transaction of business, in violation of
12 Section 10162 of the Code;
- 13 (d) willfully caused, suffered and permitted FFRSI to perform licensed
14 activities during the time FFRSI was not in good standing with the office
15 of the California Secretary of State, in violation of Section 2742(c) the
16 Regulations.

17 SECOND CAUSE OF ACTION (WINDSONG STREET – SHORT SALE)

18 11

19 The allegations of Paragraphs 1 through 10 are incorporated herein by reference.

20 12

21 On about June 1, 2012, SKULTETY caused a Residential Listing Agreement
22 (herein "Listing Agreement"), Sellers Advisory (herein "Advisory"), and a Disclosure Regarding
23 Real Estate Agency Relationship (herein "Agency Disclosure") to be drafted for SKULTETY's
24 residence, located on Windsong Street, Sacramento, CA (herein the "Property"), for a sale price
25 in the amount of about \$190,000.00, showing the Listing Broker as Gonzalez; in fact,
26 (1) Gonzalez was not a broker, but rather a salesperson employed by FFRSI, (2) Gonzalez had
27 no knowledge of said Listing Agreement, Advisory or Agency Disclosure, and (3) the signatures

1 on the Listing Agreement, Advisory and Agency Disclosure, were not Gonzalez's signature, all
2 in violation of Section 10177(j) of the Code.

3 13

4 On about September 7, 2012, SKULTETY received a Residential Purchase
5 Agreement and Joint Escrow Instructions (herein "Purchase Agreement") and Short Sale
6 Addendum from purchasers Daniel and Tamara S. (herein the "Purchasers"), as well as a second
7 Agency Disclosure; the Purchase Agreement was accepted and signed by SKULTETY on about
8 August 9, 2012. The Purchase Agreement showed the Listing Firm as FFRSI by Gonzalez and
9 the Selling Firm as Cap Rate Real Estate (herein "Cap Rate") by Helphingstine; in fact, (1)
10 Gonzalez was not the Listing Agent, described in Paragraph 12, above, (2) Helphingstine was not
11 the Selling Agent, (3) neither Gonzalez nor Helphingstine had any knowledge of the short sale
12 transaction, and (4) the signatures on the Purchase Agreement and Agency Disclosure were not
13 that of Gonzalez or Helphingstine, all in violation of Section 10177(j) of the Code.

14 14

15 On about March 22, 2013, escrow closed and FFRSI and Cap Rate received and
16 cashed checks from Fidelity National Title Company (herein "First Fidelity") for Commissions
17 Due in connection with the aforementioned short sale, described in Paragraph 13, in the amounts
18 of about \$5,801.51 and \$5,801.52, respectively; in fact, neither FFRSI nor Cap Rate represented
19 any party in the transaction, in violation of Section 10177(j) of the Code.

20 15

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

25 THIRD CAUSE OF ACTION (COLT DRIVE – SHORT SALE)

26 16

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

17

On about June 9, 2012, FFRSI, through SKULTETY, as the selling firm entered into a Residential Income Property Purchase Agreement (Purchase Agreement) with buyers Eric T. and Esther O. (herein Eric and Esther) for a duplex located on Colt Dr. (herein "Duplex"), for a total purchase price of about \$104,500.00, said contract showed the Listing Firm as FFRSI, through agent Gonzalez.

18

On about July 1, 2012, SKULTETY caused a Statewide Buyer and Seller Advisory (herein "Advisory") and an Agent Visual Inspection and Disclosure (herein "Disclosure") ostensibly signed by Helphingstine, for FFRSI, Agent (Broker obtaining the Offer), in connection with the sale of the Duplex, described in Paragraph 17, above, without Helphingstine's knowledge or permission, in violation of Section 10176(a) and (i) and/or 10177(g) and/or 10177(j) of the Code.

19

On about July 23, 2012, SKULTETY caused a Lead-Based Paint and Lead-Based Paint Hazards Disclosure and Acknowledgement and Addendum (herein "Addendum") and a Real Estate Transfer Disclosure Statement (herein "TDS"), in connection with the sale of the Duplex, described in Paragraph 17, above, ostensibly signed by Helphingstine, for FFRSI, Agent (Broker obtaining the Offer), without Helphingstine's knowledge or permission, in violation of Section 10176(a) and (i) and/or 10177(g) and/or 10177(j) of the Code.

FOURTH CAUSE OF ACTION (RECORD RETENTION)

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The allegations of Paragraphs 1 through 19 are incorporated herein by reference.

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On about December 12, 2013, the BUREAU subpoenaed complete transaction records from Respondents, from the period of about January 1, 2011, through about

1 December 12, 2013; however Respondents failed to provide the records and/or the complete
2 records in connection with the following properties, in violation of Section 10148 of the Code:

3 Respondents failed to provide records for:

4 Giselle Lane, Stockton, CA;
5 Keoncrest Circle, Sacramento, CA;
6 Knickers Court, Sacramento, CA;
7 Innovator Drive, Sacramento, CA;
8 Bordeaux Avenue, Stockton, CA;
9 Porterfield Court, Stockton, CA;
10 Tree Frog, Placerville, CA;
11 Highway 50, Placerville, CA;
12 N. 9th, Williams, CA;
13 Harvest Way, Sacramento, CA;
14 Art Parkway, Sacramento, CA;
15 Markingdon, San Jose, CA;
16 Alta Loma Court, Rio Linda, CA;
17 Hillhurst Drive, Fair Oaks, CA; and
18 39th Street, Sacramento, CA.

19 Respondents failed provide complete records for:

20 Serenata Way, Sacramento, CA;
21 Houston Avenue, Stockton, CA;
22 Silverleaf Way, Sacramento, CA;
23 Torino Drive, Stockton, CA;
24 Venetian Drive, Stockton, CA;
25 Billy Wright Road, Los Banos, CA;
26 Pleasant, Stockton, CA;
27 Colt Drive, Stockton, CA; and
Windsong Street, Sacramento, CA.

28 FIFTH CAUSE OF ACTION (OFFICE ABANDONMENT)

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30 The allegations of Paragraphs 1 through 21 are incorporated herein by reference.

31 23

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

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

- (a) as to Paragraph 10(a), SKULTETY and FFRSI under Section 10145 of the Code and Section 2831(a)(6) of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph 10(b), SKULTETY and FFRSI under Section 10176(j) of the Code;
- (c) as to Paragraph 10(c), SKULTETY and FFRSI under Section 10162 of the Code in conjunction with Section 10177(d) of the Code;
- (d) as to Paragraph 10(d), SKULTETY and FFRSI under Section 2742(c) of the Regulations in conjunction with Section 10177(d) of the Code;
- (e) as to Paragraphs 12-13, SKULTETY under Section 10177(j) of the Code;
- (f) as to Paragraph 14, FFRSI under Section 10177(j) of the Code;
- (g) as to Paragraph 15, SKULTETY under Section 10177(j) of the Code;
- (h) as to Paragraphs 18 and 19, SKULTETY under Sections 10176(a) and (i) and/or 10177(g) and/or 10177(j) of the Code;
- (i) as to Paragraph 21, SKULTETY under Section 10148 of the Code in conjunction with Section 10177(d) of the Code; and
- (j) as to Paragraph 23, SKULTETY and FFRSI under Section 2715 of the Regulations in conjunction with Section 10177(d) of the Code.

COST RECOVERY

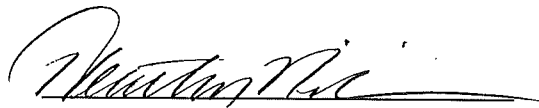
Audit Costs

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

Investigation and Enforcement Costs

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the BUREAU, 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 the investigation and enforcement of the case.

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



HEATHER NISHIMURA

Deputy Real Estate Commissioner

Dated at Sacramento, California

this 18th day of May, 2015.