

1 JASON D. LAZARK, Counsel (SBN 263714)
2 Department of Real Estate
3 P. O. Box 137007
4 Sacramento, CA 95813-7007

5 Telephone: (916) 263-8670
6 (916) 576-7843 (Direct)

FILED

JAN 10 2019

DEPARTMENT OF REAL ESTATE
By [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:) NO. H- 6744 SAC
12 HEATH FALCONER PATERSON,) ACCUSATION
13 Respondent.)
14)

15 The Complainant, CHIKA SUNQUIST, acting in her official capacity as a
16 Supervising Special Investigator of the State of California, for cause of Accusation against
17 HEATH FALCONER PATERSON ("Respondent") is informed and alleges as follows:

18 1.

19 Respondent is presently licensed and/or has license rights under the Real Estate
20 Law, Part 1 of Division 4 of the Business and Professions Code ("Code").

21 2.

22 At all times herein mentioned, Respondent was and is licensed by the Department
23 of Real Estate ("Department") individually as a real estate broker. From October 20, 2016, to the
24 present date, Respondent has operated under the fictitious business name "Real Estate
25 Financing."

26 ///

27 ///

1 3.

2 Louis Camille Mowat ("Mowat") was licensed by the Department individually as
3 a real estate broker. In December 2003, in Case No. H-8349 SF, the Department revoked
4 Mowat's plenary broker license and granted her a restricted broker license. In October 2007, in
5 Case No. H-9818 SF, the Department suspended Mowat's restricted broker license for 120 days,
6 but stayed the imposition of the 120-day suspension for two years. On December 25, 2015,
7 Mowat's restricted broker license expired. At all times relevant to this Accusation, Mowat
8 operated under the fictitious business name "Real Estate Financing."

9 4.

10 At all times herein mentioned, Respondent engaged in the business of, acted in the
11 capacity of, advertised, or assumed to act as a real estate licensee, in the State of California, on
12 behalf of others, for compensation or in expectation of compensation, within the meaning of
13 Section 10131(d) of the Code, including the operation and conduct of real estate business with
14 the public wherein Respondent collects payments or performs services for borrowers or lenders
15 or note owners in connection with loans secured directly or collaterally by liens on real property
16 or on business opportunities.

17
18 COUNT ONE
19 AUDIT VIOLATIONS

20 5.

21 Each and every allegation contained above in Paragraphs 1 through 4, inclusive, is
22 incorporated by this reference as if fully set forth herein.

23 6.

24 On November 7, 2017, and continuing intermittently until December 7, 2017, the
25 Department conducted an audit of the books and records related to the real estate activities of
26 Respondent at Respondent's main office located at 19 Bates Blvd., Orinda, California. The
27 auditor examined Respondent's records for the period of January 1, 2016, to September 30,
2017 ("the audit period").

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

7.

While doing business within the first audit period, Respondent accepted or received funds in trust ("trust funds") from or on behalf of holders of notes secured by real property in connection with the servicing of loans, and thereafter from time-to-time Respondent made disbursements of said trust funds.

8.

The trust funds accepted or received by Respondent, as described above in Paragraph 7, were deposited or caused to be deposited by Respondent into a bank account which was maintained by Respondent for the handling of trust funds, identified as follows:

BANK ACCOUNT #1	
Bank Name and Location:	Wells Fargo Bank P.O. Box 6995 Portland OR 87228-6995
Account No.:	XXXXXX6162
Entitled:	Lois Mowat Real Estate Financing Trust
Signatories:	Heath Falconer Paterson (REB) Lois Camille Mowar (Expired REB)
No. of Signatures Required:	One

9.

In the course of the activities described above in Paragraph 4, in connection with the collection and disbursement of trust funds, Respondent:

(a) failed to properly designate Bank Account #1 as a trust account in the name of Respondent or his fictitious business name, as trustee, in violation of Section 10145 of the Code and Section 2832, Title 10, California Code of Regulations ("the Regulations");

(b) failed to maintain an accurate written control record of all trust funds received and disbursed in Bank Account #1 containing all information required by Section 2831 of the Regulations;

(c) failed to maintain separate records for each beneficiary or property of trust funds accepted or received for Bank Account #1, in violation of Section 10145(g) of the Code and Section 2831.1 of the Regulations;

1 (d) failed to reconcile at least once a month, the balance of all separate
2 beneficiary or transaction records with the balance of the control records for Bank Account #1, in
3 violation of Section 10145 of the Code and Section 2831.2 of the Regulations;

4 (e) allowed expired licensee Mowat to serve as authorized signor on Bank
5 Account #1 without providing for fidelity bond coverage, in violation of Section 10145 of the
6 Code and Section 2834 of the Regulations;

7 (f) caused, suffered or permitted funds of others which were received and held by
8 Respondent in Bank Account #1 to be commingled with Respondent's own money, in violation
9 of Section 10176(e) of the Code and Section 2835 of the Regulations;

10 (g) failed to obtain signed statements of investor qualification for each investor
11 acknowledging that the investor satisfies either the income or net worth qualifications for multi-
12 lender loans in which they are part owners, in violation of Section 10238(f) of the Code;

13 (h) failed to maintain servicing agreements with any of the investors with whom
14 Respondent provided loan servicing services, in violation of Section 10238(k);

15 (i) failed to provide Lender/Purchaser Disclosure Statements to the lenders for
16 the following multi-lender funded loans:

17

Loan Close Date	Loan Number	Borrower
2/16/17	17-0211-18	Hing Pang T.
3/23/17	17-0317-18	Hidden Glen, LLC
5/12/17	17-0510-18	GTAP Homes, Inc.
3/1/17	17-0221-18	Vannessa Q.

18
19
20

21 Respondent's failure to provide said Lender/Purchaser Disclosure Statements is a
22 violation of Sections 10232.4 and 10238(l) of the Code and Section 2846 of the Regulations; and

23 (j) failed to notify the Department of Respondent's multi-lender status within
24 thirty (30) day of Respondent's first multi-lender transaction, in violation of Section 10238(a) of
25 the Code.

26 ///

27 ///

10.

The acts and/or omissions of Respondent, as alleged above in Paragraph 9, constitute grounds for the suspension or revocation of all licenses and license rights of Respondent pursuant to the following provisions of the Code and Regulations:

As to Paragraph 9(a), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

As to Paragraph 9(b), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10145 of the Code and Section 2831 of the Regulations;

As to Paragraph 9(c), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

As to Paragraph 9(d), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

As to Paragraph 9(e), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10145 of the Code and Section 2834 of the Regulations;

As to Paragraph 9(f), under Section 10176(e) of the Code and Section 2835 of the Regulations;

As to Paragraph 9(g), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10238(f) of the Code;

As to Paragraph 9(h), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10238(k) of the Code;

As to Paragraph 9(i), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Sections 10232.4 and 10238(l) of the Code and Section 2846 of the Regulations; and

As to Paragraph 9(j), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10238(a) of the Code.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

COUNT TWO
ALTERING RECORDS

11.

Each and every allegation contained above in Paragraphs 1 through 10, inclusive, is incorporated by this reference as if fully set forth herein.

12.

Respondent altered and/or falsified the bank statements regarding Bank Account #1 by removing the name "Lois C Mowat" that appeared above the name "Real Estate Financing Trust" on said bank statements. Respondent then submitted the altered and/or falsified bank statements to the Department during the course of the audit in an attempt to conceal actual or perceived violations of the real estate law.

13.

The acts and/or omissions of Respondent, as set forth above in Paragraphs 11 and 12, were substantially fraudulent, misleading, dishonest, and deceitful, and were known by Respondent to be substantially fraudulent, misleading, dishonest, and deceitful during the events and circumstances set forth above in Paragraph 12.

14.

The acts and/or omissions of Respondent, as alleged above in Paragraphs 11 through 13, are grounds for the revocation or suspension of Respondent's real estate licenses or license rights under Sections 10148(e), 10177(d), and/or 10177(j) of the Code.

20
21
22
23
24
25
26
27

COST RECOVERY

15.

The acts and/or omissions of Respondent, as alleged above, entitle the Department to reimbursement of the costs of its audits pursuant to Section 10148(b) of the Code.


///

///

///

Section 10106 of the Code 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 the investigation and enforcement of the case.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and 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.


CHIKA SUNQUIST
Supervising Special Investigator

Dated at Sacramento, California,
this 10th day of January, 2019.

DISCOVERY DEMAND

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