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DEPARTMENT OF REAL ESTATE

By *R. dew*

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 8 **BEFORE THE DEPARTMENT OF REAL ESTATE**
 9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of:)
 12 FRANKLIN CREDIT MANAGEMENT CORPORATION) No. H-6909 SAC
 13 and DONALD EDWARD WATSON,) ACCUSATION
 14 Respondents.)
 15 _____)

16 The Complainant, CHIKA SUNQUIST, in her official capacity as a Supervising
 17 Special Investigator of the State of California, Department of Real Estate ("Department"), brings
 18 this Accusation against FRANKLIN CREDIT MANAGEMENT CORPORATION ("FCMC") and
 19 DONALD EDWARD WATSON ("WATSON"), (collectively "Respondents"), and is informed and
 20 alleges as follows:

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22 FCMC is presently licensed by the Department and/or has license rights under the
 23 Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as
 24 a corporate real estate broker, License No. 01420424.

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26 FCMC is also licensed by the Department as a mortgage loan originator,
 27 Nationwide Mortgage Licensing System and Registry ("NMLS"), NMLS Id. No. 2102.

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2 WATSON is presently licensed by the Department and/or has license rights under
3 the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker, License No.
4 01022892.

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6 WATSON is also licensed by the Department as a mortgage loan originator, NMLS
7 Id. No. 237845.

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9 At all relevant times herein, WATSON was the designated broker officer for
10 FCMC.

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12 At all relevant times herein, Respondents engaged in the business of, acted in the
13 capacity of, advertised or assumed to act as real estate licensees within the State of California
14 within the meaning of Section 10131(d) of the Code including, for compensation or in expectation
15 of compensation, soliciting borrowers or lenders for or negotiating loans or collecting payments or
16 performing services for note owners in connection with loans secured directly or collaterally by
17 liens on real property or on a business opportunity.

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19 At all relevant times herein, Respondents engaged in the business of, acted in the
20 capacity of, advertised or assumed to act as real estate licensees within the State of California
21 within the meaning of Section 10131(e) of the Code including, for compensation or in expectation
22 of compensation, selling or offering to sell, buying or offering to buy, or exchanging or offering to
23 exchange a real property sales contract, or a promissory note secured directly or collaterally by a
24 lien on real property or on a business opportunity, and performing services for the holders thereof.

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26 Beginning on May 22, 2019, and continuing through September 27, 2019, an audit
27 was conducted into the real estate business activities of FCMC, located at 351 California St., 600,

1 San Francisco, CA 94104. The Department's auditor examined the business records of FCMC for
2 the period of November 1, 2017, through April 30, 2019, ("audit period").

3 **AUDIT VIOLATIONS**
4 (As to Both Respondents)

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5 Each and every allegation made above in Paragraphs 1 through 8, inclusive, is
6 incorporated by reference as if fully set forth herein.

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8 While engaging in the real estate activities described above in Paragraphs 6 and/or 7,
9 and within the audit period, Respondents accepted or received funds in trust ("trust funds") and
10 deposited or caused the trust funds to be deposited into the following trust account:

11 Trust Account #1

12 Bank Name: PNC Bank
13 P.O. Box 609, Pittsburgh, PA 15230-9738
14 Account Name: Franklin Credit Management Corporation
15 In Trust for Gen Depository
16 Account No.: Last 4 Digits: 1855
17 Signatories: Kimberly Shaw (Unlicensed)
18 Glenn Murphy (Unlicensed)
19 Description: Handling of trust funds receipts and disbursements related to
20 FCMC's loan servicing activities.

17 11

18 In the course of the real estate activities described above in Paragraphs 6 and/or 7,
19 and during the audit period, it was discovered as follows:

20 a. Trust Account #1, which was used to deposit trust funds collected in
21 connection with loan servicing activities, was not a recognized depository within the State of
22 California, in violation of Section 10145 of the Code;

23 b. Respondents commingled trust funds with broker funds, in violation of
24 Section 10145 of the Code and Section 2835, Title 10, California Code of Regulations
25 ("Regulations");

26 c. WATSON was not an authorized signatory on Trust Account #1, in violation
27 of Section 10145 of the Code and Section 2834 of the Code;

1 d. Respondents failed to maintain separate beneficiary records in Trust Account
2 #1, in violation of Section 10145 of the Code and Section 2831.1 of the Regulations;

3 e. Respondents failed to remit funds owed to investors within twenty-five days
4 of receipt of funds from borrowers, in violation of Section 10231.1 of the Code;

5 f. Respondents failed to file the Threshold Notification Report (RE853) with
6 the Department within thirty (30) days after Respondents satisfied the loan servicing threshold
7 criteria in May 2018, in violation of Section 10232(e) of the Code;

8 g. Respondents failed to file the quarterly Trust Fund Status Report (RE855)
9 and the Trust Fund Bank Account Reconciliation (RE856) with the Department within thirty (30)
10 days after Respondents' first three fiscal quarters, in violation of Section 10232.25(a) of the Code;

11 h. Respondents failed to file the Annual Trust Account Review Report with the
12 Department within ninety (90) days after the end of the fiscal year, in violation of Section
13 10232.2(a) of the Code and Sections 2846.5 and 2846.7 of the Regulations; and

14 i. Respondents failed to file the Annual Business Activity Report with the
15 Department within ninety (90) days of the end of the fiscal year, in violation of Section 10232.2(c)
16 of the Code.

17 **GROUNDS FOR DISCIPLINE**
18 (As to both Respondents)

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20 The acts and/or omissions of Respondents, as alleged above in Paragraph 11,
21 constitute grounds for the suspension or revocation of all licenses and license rights of Respondents
22 pursuant to the following provisions of the Code and Regulations:

23 a. As to Paragraph 11(a), under Sections 10145, 10166.051, 10177(d), and/or
24 10177(g) of the Code, in conjunction with Sections 2945.1 and 2945.4 of the Regulations;

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- 1 b. As to Paragraph 11(b), under Sections 10145, 10166.051, 10176(e),
- 2 10177(d), and/or 10177(g) of the Code, in conjunction Sections 2835, 2945.1, and 2945.4 of the
- 3 Regulations;
- 4 c. As to Paragraph 11(c), under Sections 10145, 10166.051, 10177(d), and/or
- 5 10177(g) of the Code, in conjunction with Section 2834 of the Regulations, in conjunction with
- 6 Sections 2945.1 and 2945.4 of the Regulations;
- 7 d. As to Paragraph 11(d), under Sections 10145, 10166.051, 10177(d), and/or
- 8 10177(g) of the Code, in conjunction with Sections 2831.1, 2945.1, and 2945.4 of the Regulations;
- 9 e. As to Paragraph 11(e), under Sections 10231.1, 10166.051, 10177(d), and/or
- 10 10177(g) of the Code, in conjunction with Sections 2945.1 and 2945.4 of the Regulations;
- 11 f. As to Paragraph 11(f), under Sections 10166.051, 10232(e), 10177(d), and/or
- 12 10177(g) of the Code, in conjunction with Section 2950(h) of the Regulations;
- 13 g. As to Paragraph 11(g), under Sections 10166.051, 10232.25(a), 10177(d),
- 14 and/or 10177(g) of the Code, in conjunction with Section 2846.8 of the Regulations;
- 15 h. As to Paragraph 11(h), under Sections 10166.051, 10166.07, 10232.2(a),
- 16 10177(d), and/or 10177(g) of the Code, in conjunction with Sections 2846.5 and 2846.7 of the
- 17 Regulations; and
- 18 i. As to Paragraph 11(i), under Sections 10166.051, 10166.07, 10232.2(c),
- 19 10177(d), and/or 10177(g) of the Code.

FAILURE TO SUPERVISE
(As to WATSON)

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Each and every allegation made above in Paragraphs 1 through 12, inclusive, is incorporated by this reference as if fully set forth herein.

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As the designated broker officer for FCMC, WATSON was required to exercise reasonable supervision and control over the activities of FCMC and/or its employees.

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WATSON failed to exercise reasonable supervision over the acts and/or omissions of FCMC and/or its employees in such a manner as to allow the acts and/or omissions described above in Paragraphs 11 and 12 to occur, which constitutes additional cause for the suspension or revocation of the license(s) and license rights of WATSON under Sections 10159.2, 10177(d), 10177(g), and/or 10177(h) of the Code, in conjunction with Section 2725 of the Regulations.

COST RECOVERY

The acts and/or omissions of Respondents as alleged above in Count One and Count Two, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund handling violation) 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 imposing disciplinary action against all licenses and license rights of Respondents under the Code, for the cost of investigation and enforcement as permitted by law, for the cost of the audit, 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 28th day of February, 2020.

1 DISCOVERY DEMAND

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

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