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FILED

MAY 09 2024

DEPARTMENT OF REAL ESTATE  
By B. N. Chavira

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of )

FRANK COOK REALTY INC.; )

and )

FREDERICK JAMES BONETTI III, )  
individually and as designated officer of Frank )  
Cook Realty Inc., )

Respondents. )

No. H-7341 SAC

ACCUSATION

The Complainant, HEATHER NISHIMURA, a Supervising Special Investigator of the State of California, for cause of Accusation against FRANK COOK REALTY INC., and FREDERICK JAMES BONETTI III (collectively referred to as "Respondents"), is informed and alleges as follows:

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The Complainant, HEATHER NISHIMURA, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

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PRELIMINARY ALLEGATIONS

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Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (“Code”).

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At all times mentioned, Respondent FRANK COOK REALTY INC. (FCRI) was and is licensed by the Department as a real estate broker, License ID 00618471. FCRI was licensed by the Department as a real estate corporation on or about February 3, 1978. Unless renewed, FRCI’s corporate broker license will expire April 16, 2027.

At all times mentioned, FREDERICK JAMES BONETTI III (BONETTI) was licensed by the Department as the designated broker officer of FCRI. As said designated officer-broker, BONETTI was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of FCRI for which a license is required.

At all times mentioned, Frank L. Cook (Cook), real estate broker License ID 00479391, was licensed as an additional officer of FCRI.

At all times mentioned, BONETTI is the 100 percent shareholder and President of FCRI.

4

At all times mentioned, Respondent BONETTI was and is licensed by the Department individually as a real estate broker, License ID 00999899. BONETTI was licensed as a real estate salesperson on August 23, 1988, and as a broker on November 16, 1994. Unless renewed, BONETTI ’s broker license will expire January 22, 2027.

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Whenever reference is made in an allegation in this Accusation to an act or omission of FCRI, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with FCRI committed

1 such acts or omissions while engaged in furtherance of the business or operation of FCRI and  
2 while acting within the course and scope of their corporate authority and employment.

3 PRIOR DISCIPLINARY ACTION

4 H-2853 SAC

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6 On or about March 8, 1993, the Department filed an Accusation, Hearing No. H-  
7 2853 SAC, against the real estate licenses of FCRI, Cook, and Michael Francis Heede.

8 On or around November 17, 1993, the Department entered into a Stipulation and  
9 Agreement (Stipulation) with Respondents, which became effective December 7, 1993. The  
10 Determination of Issues found FCRI violated Section 10177(h) of the Code. Pursuant to the  
11 Stipulation, FCRI's real estate license was suspended for a period of fifteen (15) days stayed  
12 upon terms and conditions.

13 H-7123 SAC

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15 On or about April 19, 2022, the Department filed an Accusation, Hearing No. H-  
16 7123 SAC, against the real estate licenses of FCRI and Cook. The Accusation was made  
17 pursuant to audit SC20-0091 which covered the period of December 1, 2019, through December  
18 31, 2020. The audit revealed a shortage of \$14,959.60 as of December 31, 2020.

19 On or around November 18, 2022, the Department entered into a Stipulation with  
20 FCRI and Cook, which became effective December 9, 2022. The Determination of Issues found  
21 FCRI violated Section 10177(d) of the Code in conjunction with Section 10145 of the Code and  
22 Section 2832.1 of the Regulations. Pursuant to the Stipulation, FCRI real estate license was  
23 suspended for a period of thirty (30) days stayed upon terms and conditions.

24 AUDIT SC23-0001

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26 On or about September 29, 2023, the Department completed its audit (SC23-  
27 0001) of the books and records of FCRI property management activities described in Paragraph

1 9. The auditor herein examined the records for the period of January 1, 2023, through June 30,  
2 2023.

3 9

4 At all times mentioned, Respondents engaged in the business of, acted in the  
5 capacity of, advertised, or assumed to act as a real estate broker within the State of California  
6 within the meaning of Sections 10131(b) of the Code, including the operation and conduct of a  
7 property management business with the public wherein, on behalf of others, for compensation or  
8 in expectation of compensation, Respondents leased or rented and offered to lease or rent, and  
9 solicited for prospective tenants of real property or improvements thereon, and collected rents  
10 from real property or improvements thereon.

11 As of the audit examination, Respondents managed approximately 124 one-to-  
12 four-unit family residences with 180 units, and six apartment complexes with 38 units for 106  
13 owners. Respondents collected approximately \$3.2 million in trust funds annually.

14 Respondents' property management services include, but not limited to, collecting  
15 rents, paying expenses, and screening tenants. For such property management services,  
16 Respondents charged a management fee of 3 to 6 percent of collected rents, and/or a flat fee of  
17 \$80 to \$120 per month.

18 10

19 While acting as a real estate broker as described in Paragraph 9, Respondents  
20 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in  
21 connection with the leasing, renting, and collection of rents on real property or improvements  
22 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust  
23 funds.

24 The trust funds accepted or received by Respondents were deposited or caused to  
25 be deposited by Respondents into accounts which were maintained by Respondents for the  
26 handling of trust funds, and thereafter from time-to-time Respondents made disbursements of  
27 said trust funds, identified as follows:

TRUST ACCOUNT # 1	
Bank Name and Location:	Bank of America Sacramento, CA
Account No.:	XXXXXXXXXX3957
Account Name:	Frank Cook Realty Inc. Owners Trust Account
Signatories:	BONETTI Cook Britany Naucke
Purpose:	Trust Account #1 was used for the handling of trust funds from property management activities.

TRUST ACCOUNT # 2	
Bank Name and Location:	Bank of America Sacramento, CA
Account No.:	XXXXXXXXXX3960
Account Name:	Frank Cook Realty Inc. Tenants Security Deposit Trust Account
Signatories:	BONETTI Cook Britany Naucke
Purpose:	Trust Account #2 was used to hold security deposits.

TRUST ACCOUNT # 3	
Bank Name and Location:	Bank of America Sacramento, CA
Account No.:	XXXXXXXXXX3973
Account Name:	Frank Cook Realty Inc. Broker Trust Account
Signatories:	BONETTI Cook Britany Naucke
Purpose:	Trust Account #3 was used for management of 9 properties owned by 3 owners: Cook, BONETTI, and David and Kathy Hays.

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In the course of the property management activities described in Paragraph 9, and during the audit examination period described in Paragraph 8, Respondents violated the Code and Title 10, Chapter 6, California Code of Regulations (Regulations) described below:

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Trust Account Accountability and Balances

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(Trust Account #1)

Based on the records provided during the audit, a bank reconciliation for Trust Account #1 was prepared for as of June 30, 2023. The adjusted bank balance of Trust Account #1 as of June 30, 2023, was compared to the beneficiaries' accountability for Trust Account #1 as of June 30, 2023.

Adjusted Bank Balance	\$284,673.03
Accountability	<u>\$291,106.35</u>
Trust Fund Shortage	<u>(\$6,433.32)</u>

A shortage of \$6,433.32 was found in Trust Account #1 as of June 30, 2023, which was caused by a negative balance of \$50 in one owner account and unidentified causes of \$6,383.32.

Respondents provided no evidence that the owners of the trust funds had given their written consent to allow Respondents to reduce the balance of the funds in Trust Account #1 to an amount less than the existing aggregate trust fund liabilities, in violation of Section 10145 of the Code and Section 2832.1 the Regulations.

13

(Trust Account #2)

Based on the records provided during the audit, a bank reconciliation for Trust Account #2 was prepared for as of June 30, 2023. The adjusted bank balance of Trust Account #2 as of June 30, 2023, was compared to the beneficiaries' accountability for Trust Account #2 as of June 30, 2023.

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Adjusted Bank Balance	\$291,321.90
Accountability	<u>\$295,144.00</u>
Trust Fund Shortage	<u>(\$3,822.10)</u>

A shortage of \$3,822.10 was found in Trust Account #2 as of June 30, 2023, which was caused by unidentified causes.

Respondents provided no evidence that the owners of the trust funds had given their written consent to allow Respondents to reduce the balance of the funds in Trust Account #2 to an amount less than the existing aggregate trust fund liabilities, in violation of Section 10145 of the Code and Section 2832.1 of the Regulations.

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(Trust Account #3)

Based on the records provided during the audit, a bank reconciliation for Trust Account #3 was prepared for as of June 30, 2023. The adjusted bank balance of Trust Account #3 as of June 30, 2023, was compared to the beneficiaries' accountability for Trust Account #3 as of June 30, 2023.

Adjusted Bank Balance	\$26,852.96
Accountability	<u>\$28,408.59</u>
Trust Fund Shortage	<u>(\$1,555.63)</u>

A shortage of \$1,555.63 was found in Trust Account #3 as of June 30, 2023, which was caused by unidentified causes.

Respondents provided no evidence that the owners of the trust funds had given their written consent to allow Respondents to reduce the balance of the funds in Trust Account #3 to an amount less than the existing aggregate trust fund liabilities, in violation of Section 10145 of the Code and Section 2832.1 of the Regulations.

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1 Branch Office

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3 Respondents operated a real estate brokerage business at 4536 Freeport Blvd.,  
4 Sacramento, California, a branch office and location which requires a real estate license, without  
5 first procuring a real estate license for that branch office location in violation of Section 10163  
6 of the Code and Section 2715 of the Regulations

7 FAILURE TO SUPERVISE

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9 Respondent BONETTI failed to exercise reasonable supervision over the acts of  
10 FCRI in such a manner as to allow the acts and events described above to occur. BONETTI  
11 permitted, ratified, and/or caused the conduct described above, to occur, and failed to take  
12 reasonable steps, including but not limited to the handling of trust funds, supervision of  
13 employees, and the implementation of policies, rules, procedures, and systems to ensure the  
14 compliance of the corporation with the Real Estate Law and the Regulations.

15 17

16 The acts and/or omissions of BONETTI as described in Paragraph 16, constitutes  
17 failure on the part of BONETTI, as designated broker-officer for FCRI, to exercise reasonable  
18 supervision and control over the licensed activities of FCRI as required by Section 10159.2 of  
19 the Code and Section 2725 of the Regulations.

20 GROUND FOR DISCIPLINE

21 18

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

25 As to Paragraphs 12 through 14, under Sections 10177(d) and/or 10177(g) of the  
26 Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations.

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1 As to Paragraph 15, under Sections 10177(d) and/or 10177(g) of the Code in  
2 conjunction with Section 10163 of the Code and Section 2715 of the Regulations.

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4 The acts and/or omissions of BONETTI as alleged in Paragraphs 16 and 17  
5 constitute grounds for the suspension or revocation of all licenses and license rights of  
6 BONETTI under Sections 10177(g) and/or 10177(h) of the Code, and Section 10159.2 of the  
7 Code in conjunction with Section 10177(d) of the Code.

8 COST RECOVERY

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

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13 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
14 resolution of a disciplinary proceeding before the Department, the Commissioner may request  
15 the Administrative Law Judge to direct a licensee found to have committed a violation of this  
16 part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
17 case.

18 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
19 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
20 action against all licenses and license rights of Respondents under the Code, for the cost of

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1 investigation and enforcement as permitted by law, for the costs of the audit, and for such other  
2 and further relief as may be proper under the provisions of law.

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5 HEATHER NISHIMURA  
6 Supervising Special Investigator  
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8 Dated at Sacramento, California,  
9 this 8<sup>th</sup> day of May, 2024  
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12 DISCOVERY DEMAND

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