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FILED

DEC - 4 2015

BUREAU OF REAL ESTATE

By K. Contreras

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11
12 In the Matter of the Accusation of)
13 FRANK ZENG,)
14 Respondent.)
15)

H-11856 SF

FIRST AMENDED
ACCUSATION

16 The Complainant, ROBIN S. TANNER, in her official capacity as a Supervising
17 Special Investigator of the State of California, for Accusation against FRANK ZENG (herein
18 "Respondent"), is informed and alleges as follows:

19 1

20 Respondent first made application to the Bureau of Real Estate (herein the
21 "Bureau") for a real estate salesperson license on or about March 25, 2010.¹

22 2

23 Respondent is presently licensed and/or has license rights under the Real Estate
24 Law, Part I of Division 4 of the Business and Professions Code (herein the "Code"), such
25 license having been issued to Respondent by the Bureau on or about September 25, 2014.

26
27 ¹ Effective July 1, 2013, by mandate of reorganization within the Department of Consumer Affairs for the State of California, the "Department of Real Estate" is now recognized as the "Bureau of Real Estate."

1 FIRST CAUSE OF ACTION

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3 Respondent presented to the Bureau's Real Estate Salesperson Examination
4 Program for the purpose of taking the real estate salesperson examination approximately
5 fifteen (15) times between June 10, 2010, and April 23, 2014.

6 4

7 Immediately subsequent to the completion of each and every examination
8 described in Paragraph 3, above, and in its normal course and scope of business, the Bureau
9 analyzed and scored all test results. Respondent failed to obtain a passing score of at least 70%
10 or more correct answers on each of the fifteen (15) examinations. Respondent's requests for
11 licensure were therefore denied.

12 5

13 On or about April 23, 2014, Respondent presented to the Bureau's Electronic
14 Examination Program for the purpose of taking the real estate salesperson examination, such
15 examination having been administered at the District Office of the Bureau located at 1515 Clay
16 Street, Suite 702, Oakland, California 94612.

17 6

18 At the conclusion of the examination as described in Paragraph 5, above,
19 Bureau employees observed real estate-related statements written upon Respondent's palm.
20 Upon questioning, Respondent alleged that he was copying notes onto his hand during the
21 examination so as not to forget the information, should he be required to retest in the future.

22 7

23 The facts alleged at Paragraphs 5 through 6, above, constitute cause under
24 Sections 10177(a) (the attempt to procure a real estate license by fraud, misrepresentation, or
25 deceit), 10177(d) (willful disregard or violation of the Real Estate Law), and 10177(j) (engaging
26 in any other conduct that constitutes fraud or dishonest dealing) of the Code for the suspension or
27 revocation of all licenses and license rights under the Real Estate Law.

The facts alleged at Paragraphs 5 through 6, above, are grounds to bar Respondent from taking any license examination and/or from holding an active real estate license for a period of up to three years under Section 10153.01(b), in conjunction with Sections 10153.01(a)(4) (removing examination room materials), 10153.01(a)(5) (unauthorized reproduction of any portion of a licensing examination), 10153.01(a)(7) (use of any device, material, or document not expressly authorized), and 10153.01(a)(8) (failure to follow examination instructions) of the Code, in conjunction with Section 2763(a)(1) (reference to any written material), 2763(a)(2) (written computations), and 2763(a)(4) (copying questions and/or making notes of examination materials), of the Regulation of the Real Estate Commissioner (herein the "Regulations").

SECOND CAUSE OF ACTION

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

The Bureau filed a Statement of Issues on September 3, 2014, requesting that the above-entitled matter be set for hearing and, upon proof of the charges contained therein, that the Real Estate Commissioner refuse to authorize the issuance of, and deny the issuance of a real estate salesperson license to Respondent.

Counsel for Respondent filed a Notice of Defense on September 12, 2014. The matter was set for hearing before the Office of Administrative Hearings, to occur on December 3, 2014.

On or about November 24, 2014, counsel for the Bureau discovered that real estate salesperson license number 01880409 was mistakenly issued to Respondent effective September 25, 2014. The allegations contained in the underlying Statement of Issues, as

1 referenced at Paragraph 10, above, remained pending with a hearing on calendar. Counsel for
2 Respondent at no time advised the Bureau as to the licensure of Respondent.

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4 The facts alleged at Paragraph 12, above, constitute cause under Section 10177(a)
5 (actual procurement of a real estate license by fraud, misrepresentation, or deceit) of the Code for
6 suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

7 COST RECOVERY

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9 Section 10106 of the Code provides, in pertinent part, that in any order issued in
10 resolution of a disciplinary proceeding before the Bureau, the Real Estate Commissioner may
11 request the Administrative Law Judge to direct a licensee found to have committed a violation of
12 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
13 the case.

14 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
15 of this First Amended Accusation and that upon proof thereof, a decision be rendered imposing
16 disciplinary action against all licenses and license rights of Respondent under the Code, for the
17 cost of investigation and enforcement as permitted by law, and for such other and further relief as
18 may be proper under the provisions of law.

19 ROBIN S. TANNER
Supervising Special Investigator

20 By: 
21 _____

TRICIA PARKHURST
Supervising Special Investigator

22 Dated at Oakland, California,
23 this 14th day of December, 2015.

24 DISCOVERY DEMAND

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