

FILED

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DEPARTMENT OF REAL ESTATE
BY: Rosalie Adams

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 JAMES FRANKLIN LIBERTO, dba)
13 Fundamental Financial Services,)
14 Respondent.)

No. H-37539 LA

A C C U S A T I O N

15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against JAMES FRANKLIN LIBERTO, dba Fundamental Financial
18 Services, alleges as follows:

19 1.

20 The Complainant, Robin Trujillo, acting in her official
21 capacity as a Deputy Real Estate Commissioner of the State of
22 California, makes this Accusation against JAMES FRANKLIN LIBERTO,
23 dba Fundamental Financial Services.
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All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

LICENSE HISTORY

3.

A. JAMES FRANKLIN LIBERTO ("LIBERTO") is presently licensed and/or has license rights with the Department of Real Estate ("Department") as real estate broker. LIBERTO was first licensed by the Department as a broker on or about November 22, 1985.

BROKERAGE

4.

At all times mentioned, in the City of Shadow Hills, County of Los Angeles, LIBERTO acted as a real estate broker conducting licensed activities within the meaning of Code Section 10131(d): negotiating loans or performing services for borrowers in connection with loans secured by liens on real property.

AUDIT

5.

On February 28, 2011, the Department completed audit examinations of the books and records of LIBERTO pertaining to the activities described in Paragraph 4 which require a real estate license. The audit examinations covered a period of time from December 1, 2007 to November 30, 2010. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and as more fully

1 discussed in Audit Report LA 100110 and the exhibits and
2 workpapers attached to said audit report.

3 VIOLATIONS OF THE REAL ESTATE LAW

4 6.

5 In the course of activities described in Paragraph 4
6 above and during the examination period described in Paragraph 5,
7 Respondent LIBERTO acted in violation of the Code and the
8 Regulations in that:

9 (a) As of November 30, 2010, LIBERTO's trust account
10 had a shortage of \$374,064.13, due to \$375,000 in conversion of
11 trust funds and an unidentified overage of \$935.87, in violation
12 of Code Sections 10145(a) and 10176(i).

13 (b) LIBERTO failed to maintain a columnar record of
14 receipts and disbursements of trust funds collected in connection
15 with his mortgage loan/servicing activities, in violation of Code
16 Section 10145 and Regulation 2831.

17 (c) LIBERTO did not maintain a separate record for each
18 beneficiary of trust funds received from borrowers in mortgage
19 loan activities, in violation of Code Section 10145 and
20 Regulation 2831.1.

21 (d) LIBERTO did not maintain a monthly trust account
22 reconciliation of all the separate records with the control
23 records of all trust funds received and disbursed for the trust
24 funds received, in violation of Code Section 10145 and Regulation
25 2831.2.

1 (e) LIBERTO accepted \$375,000 in loan funds and failed
2 to deposit the loan funds as specified in a specific contract or
3 promissory note, in violation of Code Sections 10145 and 10231.

4 (f) LIBERTO failed to provide a lender disclosure
5 statement provided to the proposed lender when the loan funds
6 were accepted, in violation of Code Section 10232.4.

7 (g) LIBERTO failed to retain all relevant accounting
8 records, in violation of Code Section 10148.

9 7.

10 The conduct of Respondent LIBERTO, described in
11 Paragraph 6, above, violated the Code and the Regulations as set
12 forth below:

13	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
14		
15	6(a)	Code Sections 10145(a) and 10176(i)
16	6(b)	Code Section 10145 and Regulation
17		2831
18	6(c)	Code Section 10145 and Regulation
19		2831.1
20	6(d)	Code Section 10145 and Regulation
21		2831.2
22	6(e)	Code Sections 10145 and 10231
23	6(f)	Code Section 10232.4
24	6(g)	Code Section 10148

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1 8.

2 Said conduct, acts, and/or omissions are cause for the
3 suspension or revocation of the real estate license and license
4 rights of LIBERTO under the provisions of Code Sections 10176(i),
5 10177(d) and/or 10177(g).

6 WHEREFORE, Complainant prays that a hearing be
7 conducted on the allegations of this Accusation and that upon
8 proof thereof, a decision be rendered imposing disciplinary
9 action against the license and license rights of Respondent JAMES
10 FRANKLIN LIBERTO, dba Fundamental Financial Services, under the
11 Real Estate Law (Part 1 of Division 4 of the Business and
12 Professions Code) and for such other and further relief as may be
13 proper under other applicable provisions of law.

14 Dated at Los Angeles, California

15
16 this 6 day of September, 2011

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18 _____
19 Robin Trujillo
20 Deputy Real Estate Commissioner
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25 cc: JAMES FRANKLIN LIBERTO
26 Robin Trujillo
27 Sacto
Audits