

FILED

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BUREAU OF REAL ESTATE

By 

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8 **BEFORE THE BUREAU¹ OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of)	No. H- 39823 LA
)	
12 SOLEDAD FIERRO, doing business as)	<u>ACCUSATION</u>
13 Lifestyle Escrow "a non-independent)	
14 broker-escrow",)	
)	
Respondent,)	

15 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
16 of California acting in her official capacity, for cause of Accusation against SOLEDAD FIERRO
17 doing business as Lifestyle Escrow "a non-independent broker-escrow", is informed and alleges
18 as follows:
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20 1.

21 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
22 of California, makes this Accusation in her official capacity.
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24
25
26 ¹ Effective July 1, 2013, the California Department of Real Estate became the Department of Consumer Affairs,
Bureau of Real Estate ("Bureau"). References in this Accusation are to the successor entity.

2.

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 Status

3.

A. At all times mentioned, SOLEDAD FIERRO ("FIERRO"), was licensed or had license rights issued by the Bureau of Real Estate (Bureau) as a real estate broker. FIERRO was originally licensed as a real estate broker on April 19, 2010, and previously as a real estate salesperson.

B. Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondent", such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with FIERRO committed such act or omission while engaged in the furtherance of the business or operations of Respondent and while acting within the course and scope of their authority and employment including Liana Peshkepia Cadena, non-licensee escrow officer.

Brokerage

4.

In the City of Downey, County of Los Angeles, Respondent FIERRO acted as a real estate broker wherein she conducted broker-controlled escrows through her escrow division Lifestyle Escrow "a non-independent broker-escrow", under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for

1 which a real estate license is required.

2 FIRST CAUSE OF ACCUSATION
3 (Audit of Broker-Controlled Escrows)

4 5.

5 On February 21, 2014 the Bureau completed an audit examination of the books
6 and records of FIERRO, pertaining to the broker controlled activities of her brokerage described
7 in Paragraph 4, which require a real estate license.
8

9 The audit examination covered a period of time beginning on April 13, 2012 and
10 ending on to November 30, 2013. The audit examination revealed violations of the Code and the
11 Title 10, Chapter 6, California Code of Regulations ("Regulations") set forth in the following
12 paragraphs and more fully set forth in Audit Report LA 130117, and the exhibits and work
13 papers attached thereto.
14

15 Trust Account

16 6.

17 In connection with the activities described in Paragraph 4, above, FIERRO
18 accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf
19 of actual or prospective parties to escrow transactions handled by FIERRO including buyers and
20 sellers. FIERRO maintained the following trust account for her brokerage:
21

22
23 1. TA 1

24 Account Name: Soledad Fierro DBA Lifestyle Escrow TR Funds
25 Client Trust Account (Client Trust)

26 Account No.: *****1009
27

1 Bank Name: Bank of the West

2 Bank Address: P.O. Box 2830
3 Omaha, NE 68103-2830

4 (TA 1 is FIERRO's trust account used for escrows during the audit period)

5 Violations of the Real Estate Law

6 7.

7 In the course of activities described in Paragraphs 4 and 6, above, and during the
8 audit examination period described in Paragraph 5, Respondent FIERRO acted in violation of the
9 Code and the Regulations in which she:

10 (a) Permitted, allowed or caused the disbursement of trust funds from TA 1,
11 where the disbursement of funds reduced the total of aggregate funds in TA 1, FIERRO's escrow
12 account into which trust funds were deposited, to an amount which, on November 30, 2013, was
13 \$4,770.11, less than the existing aggregate trust fund liability to every principal who was an
14 owner of said funds, without first obtaining the prior written consent of the owners of said funds,
15 in violation of Code Section 10145 and Regulations 2832.1, 2950(g) and 2951;

16 (b) Failed to maintain an adequate, accurate and complete control record in the
17 form of a columnar record in chronological order of trust funds received but not deposited into
18 TA 1, received in chronological order, in violation of Code Section 10145 and Regulations 2831,
19 2950(d) and 2951;

20 (c) Failed to maintain an adequate, accurate and complete separate record for each
21 beneficiary or transaction, thereby failing to account for all trust funds received, deposited and
22 disbursed by TA 1, in violation of Code Section 10145 and Regulations 2831.1, 2950(d) and
23 2951;

1 (d) Failed to perform a monthly reconciliation of the balance of all separate
 2 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all
 3 trust funds received and disbursed by TA 1, in violation of Code Section 10145 and Regulations
 4 2831.2, 2950(d) and 2951;

5 (e) Charged principals of Lifestyle Escrow referral fees for handling escrow
 6 transactions during the audit period. Referral Fee Agreements were maintained with agents of
 7 eight (8) escrows. None of the referral fees disbursed in any of the eight escrows were
 8 authorized by the transaction principals nor were the identity of the persons to who said fees were
 9 disbursed, disclosed, as set forth in the table below:
 10

11 Table: Unauthorized/Undisclosed Escrow Referral Fees

Escrow No.	Check Issued Date	Referral Fee Paid To	Referral Fee Amount	Fierro had Referral Fee Agreement with
2013-1239	09/03/2013	Fierro	\$120.00	Basulto (dual agent)
2012-1080	11/14/2012	Fierro	\$500.00	Chavez (loan originator)
2012-1095	10/16/2012	Fierro	\$150.00	Rodriguez (loan agent)
2012-1136	06/12/2013	Fierro	\$250.00	Gonzalez (loan originator)
2013-1232	08/02/2013	Held by Cadena	\$500.00	Chavez (listing agent)
2013-1278	11/14/2013	Fierro	\$500.00	* Murrieta (seller)
2013-1170	11/12/2013	Fierro	\$500.00	Casitas RE (dual agent)
2013-1272	10/28/2013	Fierro	\$200.00	No Agreement

24 * Based on a review of the escrow transaction file, the buyer, Leal, had paid a referral fee of
 25 \$500.00 to Fierro. However, Fierro had only maintained a referral fee agreement for such fee
 26 with the seller, Murrieta.

1 According to the Final Settlement Statements (HUD-1) which were provided to
2 the principals of the escrow transactions by Respondent, said referral fees were not disclosed
3 separately, but were included in the total escrow fees paid to Lifestyle Escrow. Fierro failed to
4 include or disclose the name of the person to whom the disbursement is made on the escrow
5 closing statement, in violation of Code Sections 10145, 10176(g), 10176(i) and/or 10177(j) and
6 Regulations 2950(d), 2950(g), 2950(i) and 2951;

7
8 (f) Failed to disclose in writing to all parties of FIERRO's financial interest and
9 ownership of Lifestyles Escrow's in-house, broker-controlled escrow, and for third party
10 escrows, in violation of Code Section 10145 and Regulation 2950(h); and

11 (g) Used the fictitious names of "Lifestyle Escrow" and "Lifestyle Escrow
12 Division" by which to conduct licensed activities without first obtaining from the Bureau a
13 license bearing said fictitious business names, in violation of Code Section 10159.5 and
14 Regulation 2731.
15

16 Disciplinary Statures and Regulations

17 8.

18 The conduct of Respondent FIERRO, as alleged and described in Paragraph 7,
19 above, violated the Code and the Regulations as set forth below:
20

21 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
22 7(a)	Code Section 10145 and Regulations 2832.1, 2950(g) and 2951
23	(\$4,770.11 trust fund shortage; restored)
24 7(b)	Code Section 10145 and Regulations 2831, 2950(d) and 2951
25	(inadequate, inaccurate, incomplete control record)
26 7(c)	Code Section 10145 and Regulations 2831.1, 2950(d) and 2951
27	

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(inadequate, inaccurate, incomplete separate record)

- 1
- 2 7(d) Code Section 10145 and Regulations 2831.2, 2950(d) and 2951
(control and separate records not reconciled)
- 3
- 4 7(e) Code Sections 10145, 10176(g), 10176(i) and/or 10177(j) and Regulations
2950(g), 2950(i) and 2951 (undisclosed compensation, fraud/dishonest
5 dealing)
- 6 7(f) Code Section 10145 and Regulation 2950(h)
(financial interest in escrow undisclosed)
- 7
- 8 7(g) Code Section 10159.5 and Regulation 2731
(unlicensed fictitious business names)
- 9

10 The foregoing violations constitute cause for discipline of the real estate license and license
11 rights of Respondent FIERRO under the provisions of Code Sections 10176(g),
12 10176(i)/10177(j), 10177(d) and 10177(g).

13

14 SECOND CAUSE OF ACCUSATION
(Negligence)

15 9.

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17 The overall conduct of Respondent FIERRO constitutes negligence or
18 incompetence. This conduct and violation is cause for discipline of the real estate license and
19 license rights of Respondent pursuant to Code Section 10177(g).

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21 THIRD CAUSE OF ACCUSATION
(Breach of Fiduciary Duty)

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24 The conduct, acts and omissions of Respondent FIERRO constitutes a breach of
25 fiduciary duty of good faith, trust, confidence and candor, within the scope of her licensed
26 relationship, owed to the clientele of her real estate brokerage and in-house broker-controlled

1 escrows. This conduct and violation is cause for discipline of the real estate license and license
2 rights of Respondent FIERRO pursuant to Code Sections 10176(i) and/or 10177(j) for fraud and
3 dishonest dealing, and 10177(g) for negligence.

4 11.

5 Code Section 10106 provides in pertinent part that in any order issued in
6 resolution of a disciplinary proceeding before the Bureau of Real Estate, the Real Estate
7 Commissioner may request the administrative law judge to direct a licensee found to have
8 committed a violation of this part to pay a sum not to exceed the reasonable costs of the
9 investigation and enforcement of the case.
10

11 12.

12 Code Section 10148(b) provides in pertinent part the Real Estate Commissioner
13 shall charge a real estate broker for the cost of any audit, if the Real Estate Commissioner has
14 found in a final decision following a disciplinary hearing that the broker has violated Code
15 section 10145 or a regulation or rule of the Real Estate Commissioner interpreting said section.
16


17 13.

18 Government Code Section 11519(d) of the California Administrative Procedure
19 Act provides, in pertinent part, that a decision rendered against a licensee may include an order of
20 restitution.
21

22
23 [This section intentionally left blank]
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27

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against the license and license rights of Respondent SOLEDAD FIERRO under the Real
4 Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and
5 further relief as may be proper under other applicable provisions of law including, but not limited
6 to (1) costs of investigation and enforcement, (2) costs of audit, and (3) restitution as pursuant to
7 applicable provisions of the California Administrative Procedure Act including Government
8 Code Section 11519(d).

9 Dated at Los Angeles, California

10
11 this 22 April 2015. 
12 Deputy Real Estate Commissioner
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14
15
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17
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19

20 cc: Soledad Fierro
21 Maria Suarez
22 Audits – Dorcas Cheng
23 Audits – Jennifer Lin
24 Sacto