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FILED

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BUREAU OF REAL ESTATE

By *John Aguila*

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9 BEFORE THE BUREAU OF REAL ESTATE
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation against)

CalBRE No. H-40555 LA

13 THE REAL ESTATE TRADING COMPANY and)
14 JOE DAMIAN MELENDEZ, individually and as)
15 designated officer of The Real Estate Trading)
Company,)

ACCUSATION

16 Respondents.)
17)
18)

19 The Complainant, Maria Suarez, a Supervising Special Investigator for the Bureau of
20 Real Estate ("Bureau") of the State of California, for cause of Accusation against THE REAL
21 ESTATE TRADING COMPANY and JOE DAMIAN MELENDEZ, individually and as
22 designated officer of The Real Estate Trading Company (collectively "Respondents"), alleges as
23 follows:
24

1. 1

2 The Complainant, Maria Suarez, acting in her official capacity as a Supervising Special
3 Investigator, makes this Accusation against Respondents.

2. 4

5 All references to the "Code" are to the California Business and Professions Code and all
6 references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

7 Licenses

3. 8

9 Respondents are presently licensed and/or have license rights under the Real Estate Law
10 (Part 1 of Division 4 of the Code).

4. 11

12 From October 1, 2012 through September 30, 2016, Respondent THE REAL ESTATE
13 TRADING COMPANY ("TRET") was licensed by the Bureau as a corporate real estate
14 broker, License ID 01916242. Respondent TRET's real estate license expired on September
15 30, 2016. Respondent has renewal rights pursuant to Code Section 10201. The Bureau retains
16 jurisdiction pursuant to Code Section 10103.

5. 17

18 From on or about April 27, 2012 through the present, Respondent JOE DAMIAN
19 MELENDEZ ("MELENDEZ") has been licensed by the Bureau as a real estate broker, License
20 ID 01505795. Respondent MELENDEZ was licensed as a real estate salesperson from
21 December 7, 2005 through April 26, 2012.

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1 6.

2 From October 1, 2012 through September 30, 2016, Respondent TRET
3 a real estate corporation, acting by and through Respondent MELENDEZ, as its designated
4 broker-officer. As the broker-officer designated by Respondent TRET pursuant to Section
5 10211 of the Code, MELENDEZ was responsible for the supervision and control of the activities
6 conducted on behalf of Respondent TRET, by its officers, agents, and employees, as necessary
7 to secure full compliance with Real Estate Law as set forth in Code Section 10159.2 and
8 Regulation 2725.

9 7.

10 On or about August 7, 2015, the Bureau received a complaint from H.M.¹ against
11 TRET. The complaint alleged that Respondents and Michael Jaimes failed to pay employees,
12 including H.M., for activities related to the sales of real property.

13 8.

14 From on or about October 11, 2011 through the present, Michael Jaimes ("Jaimes") has
15 been licensed by the Bureau as a restricted real estate broker, License ID 01111161). The
16 Bureau restricted Jaimes's broker license as a result of Bureau Case No. H-36542 LA. Jaimes is
17 currently the designated broker-officer of Mix Assets, Corp. (License ID 01967744).
18 MELENDEZ was formerly the designated broker-officer for Mix Assets Corp. until he cancelled
19 his designation on July 27, 2015.

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24 ¹ Initials are used in place of individuals' full names to protect their privacy. Documents containing individuals' full names will be provided during the discovery phase of this case to Respondents and/or their attorneys, after service of a timely and proper request for discovery on Complainant's counsel.

1 CAUSE OF ACCUSATION

2 Audit LA 150171

3 9.

4 On October 18, 2016, the Bureau completed an audit examination of the books and
5 records of Respondent TRET C's real estate activities which require a real estate license pursuant
6 to Code section 10131. The audit examination covered a period of time from January 1, 2015
7 through June 30, 2016. The audit examination revealed violations of the Code and the
8 Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report
9 LA 150171 and the exhibits and work papers attached to said audit report.

10 10.

11 According to MELENDEZ, TRET C had only one salesperson; TRET C did not engage in
12 any property management, broker escrow, or mortgage loan brokerage activities; TRET C
13 engaged in residential sales activities during the audit period; and TRET C did not maintain a
14 trust or bank account during the audit period.

15 Violations

16 11.

17 In the course of TRET C's activities during the audit examination period described above
18 in Paragraph 9, Respondent TRET C acted in violation of the Code and the Regulations as
19 follows:

20 11(a). Issue One. Regulation 2742. Certificate of Status, Qualification or Good
21 Standing

22 TRET C engaged in activities requiring a real estate license while its corporate rights,
23 powers, and privileges had been suspended by the Franchise Tax Board, in violation of
24 Regulation 2742(c).

11(b). Issue Two. Code Section 10140.6. Disclosure of License Status in Advertising-
First Point of Contact

During the audit period, in two residential listings of properties located at: 5728 Lanai Street, Long Beach, California, and 723 S. Forestdale Ave., West Covina, California, TRETC did not disclose the correct license ID number on the Residential Listing Agreement, in violation of Code section 10140.6.

12.

The violations noted above in Paragraphs 11(a) and 11(b), constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent TRETCA under the provisions of Code Sections 10177(d) and/or 10177(g).

13.

The violations of TRETC, as noted above in Paragraphs 11(a) and 11(b), constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent MELENDEZ under the provisions of Code Sections 10177(h) and/or 10177(g).

14.

In the residential sales transactions noted above in Paragraph 11(b), Respondent MELENDEZ violated Code section 10159.5 and Regulation 2731 by using the unlicensed fictitious business names, "Real Estate Trading Company, LLC" and "Real Estate Trading Co.", which constitutes cause for the suspension or revocation of the real estate licenses and license rights of Respondent MELENDEZ under the provisions of Code Sections 10177(d), 10177(h), and/or 10177(g).

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Dealing with the Data

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1 (d) "Mortgage loan originator," "unique identifier," and "Nationwide
2 Mortgage Licensing System and Registry" have the meanings set forth in Section
10166.01.

3 (e) This section shall remain in effect only until January 1, 2018, and as of
4 that date is repealed, unless a later enacted statute, that is enacted before January
1, 2018, deletes or extends that date."

5 17.

6 Code section 10159.5 provides:

7 "(a) (1) Every person applying for a license under this chapter who desires
8 to have the license issued under a fictitious business name shall file with his or
9 her application a certified copy of his or her fictitious business name statement
filed with the county clerk pursuant to Chapter 5 (commencing with Section
17900) of Part 3 of Division 7.

10 (2) A responsible broker may, by contract, permit a salesperson to do all
of the following:

11 (A) File an application on behalf of a responsible broker with a county
clerk to obtain a fictitious business name.

12 (B) Deliver to the bureau an application, signed by the responsible broker,
requesting the bureau's approval to use a county approved fictitious business
name that shall be identified with the responsible broker's license number.

13 (C) Pay for any fees associated with filing an application with a county or
the bureau to obtain or use a fictitious business name.

14 (D) Maintain ownership of a fictitious business name, as defined in
15 paragraph (2) of subdivision (a) of Section 10159.7, that may be used subject to
the control of the responsible broker.

16 (b) (1) A salesperson using a fictitious business name authorized by
17 subdivision (a), shall use that name only as permitted by his or her responsible
broker.

18 (2) This section does not change a real estate broker's duties under this
division to supervise a salesperson.

19 (c) A person applying to a county for a fictitious business name pursuant
20 to subdivision (a) may file his or her application in the county or counties where
the fictitious business name will be used.

21 (d) Advertising and solicitation materials, including business cards, print
22 or electronic media and "for sale" signage, using a fictitious business name
obtained in accordance with paragraph (2) of subdivision (a) shall include the
23 responsible broker's identity, as defined in paragraph (1) of subdivision (a) of
Section 10159.7, in a manner equally as prominent as the fictitious business
24 name.

1 (e) Notwithstanding subdivision (b) of Section 10140.6, advertising and
2 solicitation materials, including print or electronic media and "for sale" signage,
3 containing a fictitious business name obtained in accordance with paragraph (2)
of subdivision (a) shall include the name and license number of the salesperson
who is using the fictitious business name.

4 (f) Notwithstanding Section 10185, a violation of this section is not a
5 misdemeanor."

6 18.

7 Regulation 2731, Use of False or Fictitious Name, provides:

8 "(a) A licensee shall not use a fictitious name in the conduct of any
9 activity for which a license is required under the Real Estate Law unless the
licensee is the holder of a license bearing the fictitious name.

10 (b) The Bureau shall issue a license required under the Real Estate Law
11 only in the legal name of the licensee or in the fictitious business name of a broker
who presents evidence of having complied with the provisions of Sections 17910
12 and 17917 of the Code.

13 (c) The commissioner may refuse to issue a license bearing a fictitious
name to a broker if the fictitious name:

14 (1) Is misleading or would constitute false advertising.

15 (2) Implies a partnership or corporation when a partnership or corporation
does not exist in fact.

16 (3) Includes the name of a real estate salesperson.

17 (4) Constitutes a violation of the provisions of Sections 17910, 17910.5,
18 17913 or 17917 of the Code.

19 (5) Is the name formerly used by a licensee whose license has since been
20 revoked.

21 (d) A license may not be issued or renewed with a fictitious business name
22 containing the term "escrow", or any name which implies that escrow services are
provided, unless the fictitious business name includes the term, "a non-
23 independent broker escrow" following the name. Licensees who have been or are
issued a license with a fictitious business name with the term "escrow", or any
24 term which implies that escrow services are provided, must include the term "a
non-independent broker escrow" in any advertising, signs, or electronic
promotional material.

(e) Where a licensee is a natural person, the use of a nickname in place of
his or her legal given name (first name) shall not constitute a fictitious name for
purposes of this section, provided that where the nickname is used, the licensee
also uses as a surname (last name) his or her surname as it appears on his or her

1 real estate license, and includes his or her Bureau-issued license identification
2 number as required by Section 10140.6 of the Code.”

3 Audit Costs

4 19.

5 Code Section 10148(b) provides, in pertinent part, that the Commissioner shall charge a
6 real estate broker for the cost of any audit, if the Commissioner has found in a final decision
7 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation
8 or rule of the Commissioner interpreting said section.

9 Investigation/Enforcement Costs

10 20.

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

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
2 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
3 against all licenses and/or license rights of Respondents under the Real Estate Law (Part 1 of
4 Division 4 of the Business and Professions Code), for the costs of the audit, investigation, and
5 enforcement as permitted by law, and for such other and further relief as may be proper under
6 other provisions of law.

7 Dated at Los Angeles, California this 7th day of February, 2017.

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9 
10 MARIA SUAREZ
11 Supervising Special Investigator
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19 cc: The Real Estate Trading Company
20 Joe Damian Melendez
21 Maria Suarez
22 Sacto
23 Audits/Chambers Tse
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