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FILED

DEC 20 2017

BUREAU OF REAL ESTATE

By 

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

No. H-40894 LA

12 PONDICO INC and
13 ROBERT DEVIO SABILLO,
14 individually and as designated officer
of Pondco Inc,

ACCUSATION

15 Respondents.

16 The Complainant, Maria Suarez, a Supervising Special Investigator of the State
17 of California, for cause of Accusation against PONDICO INC and ROBERT DEVIO SABILLO,
18 individually and as former designated officer of PONDICO INC alleges as follows:

19 1.

20 The Complainant, Maria Suarez, a Supervising Special Investigator of the State
21 of California, makes this Accusation in her official capacity.

22 2.

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

25
26 CalBRE Accusation – Pondco Inc and Robert Devio Sabillo
27

1 BRE LICENSE HISTORY

2 3.

3 ROBERT DEVIO SABILLO

4 A. Respondent ROBERT DEVIO SABILLO ("SABILLO") is presently licensed
5 and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real
6 estate broker ("REB"), California Bureau of Real Estate ("BRE" or "Bureau" or CalBRE)
7 license ID 01436922.

8 B. SABILLO was originally licensed by the Bureau as a real estate salesperson
9 ("RES") on or about June 5, 2004 and as a REB on or about September 12, 2007.

10 C. SABILLO's BRE mailing address of record is 1629 Georgetown Way,
11 Salinas, CA 93906. SABILLO's BRE main office address of record is 25 San Juan Grade Rd.,
12 Suite 150, Salinas, CA 93906.

13 D. According to BRE records to date, SABILLO has one (1) current DBA under
14 his BRE license for BNN Realty, active as of January 27, 2012.

15 E. According to BRE records to date, SABILLO has no branch offices.

16 F. According to BRE records to date, SABILLO is the designated officer ("D.O.")
17 of record for PONDCO INC until his officer expiration date of May 19, 2021.

18 G. According to BRE records to date, SABILLO employs three (3) RES under his
19 BRE license: Maria Dolores Lomeli (BRE license ID 01709554); Lorraine Lopez (BRE license
20 ID 01773938); and Patricia Cruz Riveron (BRE license ID 01772614).

21 G. SABILLO's BRE license will expire on January 19, 2020.

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4.

PONDCO INC

A. Respondent PONDCO INC ("PONDCO") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate corporation ("REC"), BRE license ID 01485770.

B. PONDCO was originally licensed by the Bureau on or about May 20, 2005.

C. PONDCO's mailing and main address of record are the same: 307 E. Ocean Ave., Lompoc, CA 93436.

D. According to BRE records to date, PONDCO has one (1) current DBA under its BRE license for Tower Property Managment,¹ active as of May 20, 2005.

E. According to BRE records to date, SABILLO has no branch offices.

F. According to BRE records to date, SABILLO is the designated officer ("D.O.") of record for PONDCO INC until his officer expiration date of May 19, 2021.

G. According to BRE records to date, PONDCO employs two (2) RES under its BRE license: Kerri Faulkner (BRE license ID 01801291) ("Faulkner) and Laura Gaboury Watson (BRE license ID 01445344) ("Watson").

G. PONDCO's BRE license will expire on May 19, 2021.

5.

Glenda Pond Shippen (not licensed by the BRE)

Glenda Pond Shippen ("Shippen") is not, and never has been, licensed by the BRE in any capacity.

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¹ According to the BRE's records, the spelling of this DBA is "Tower Property Managment," without the "e" between the "g" and the "m."

1 BRE AUDIT OF PONDCO INC

2 (LA 150156)

3 6.

4 On September 20, 2016, the BRE completed an audit examination of the books
5 and records of Respondent PONDCO pertaining to its property management activities described
6 in Paragraphs 7 and 9, below, which require a real estate license. The audit examination covered
7 a period of time beginning on January 1, 2015 and ending on May 31, 2016 ("audit examination
8 period" or "audit period"), and was performed between June 13, 2016 and June 15, 2016 ("field
9 work period"), during which the D.O. of PONDCO was SABILLO. The final report of
10 September 20, 2016 revealed violations of the Code and the Regulations as set forth in the
11 following paragraphs, and more fully discussed in Audit Report LA 150156.

12 7.

13 PONDCO's Business Activities

14 At all times mentioned in Santa Barbara County, California, Respondent
15 PONDCO acted as a real estate broker, and ordered, caused, authorized or participated in
16 licensed activities within the meaning of Code Section 10131(b), wherein PONDCO engaged in
17 property management activities, and leased or rented or offered to lease or rent, or placed for
18 rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated the
19 sale, purchase or exchanges of leases on real property, or on a business opportunity, or collected
20 rent from real property, or improvements thereon, or from business opportunities ("property
21 management"). Additionally, PONDCO also engaged in real estate sales activities within the
22 meaning of Code Section 10131(a) ("real estate sales").

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1 8.

2 PONDCO's Corporate Structure

3 According to SABILLO, PONDCO's corporate structure from January 1, 2015 to
4 the audit date, is as follows:

5 A. Non-BRE licensee Shippen is the one hundred percent (100%) shareholder and
6 President and Chief Executive Officer ("CEO") of PONDCO;

7 B. REB SABILLO is the Secretary of PONDCO; and

8 C. RES Faulkner is the Chief Financial Officer ("CFO") of PONDCO.

9 9.

10 PONDCO's Property Management Activities

11 According to SABILLO and the PONDCO documents that were provided,
12 PONDCO managed approximately one hundred and twenty (120) one-to-four family residences
13 with one hundred and twenty-six (126) units; eighteen (18) apartment complexes with one
14 hundred and sixteen (116) units; and one (1) commercial complex with two (2) units for one
15 hundred and none (109) property owners and, received about \$3.95 million in rental receipts
16 annually, receiving a management fee of between five percent (5%) to ten percent (10%) of
17 monthly collected rents. PONDCO's property management activities were the subject of the
18 BRE's audit examination in Audit LA 150156.

19 10.

20 Bank Accounts

21 According to SABILLO/PONDCO and to the books and records provided,
22 PONDCO maintained one (1) bank account for the receipts and disbursements of trust funds in
23 connection with its property management activities during the audit examination period. This
24 bank account was sampled for the BRE audit:

1 Bank Account 1 ("B/A 1")

2 * Account Name: PONDCO INC DBA Tower Property Management

3 * Bank: Union Bank, Chula Vista, CA

4 * Account No. #####4949

5 * Signatories: Laura G. Watson and Kerri Faulkner

6 * Signatures Required: two (2)

7 * Date Opened: September 13, 1999

8 PONDCO maintained B/A 1 for multiple beneficiaries for handling the receipts
9 and disbursements of trust funds received in connection with its property management activities.

10 Audit Findings: Violations of the Real Estate Law

11 11.

12 In the course of activities as described in Paragraphs 7 and 9, above, and during
13 the audit examination period described in Paragraph 6, Respondent PONDCO acted in violation
14 of the Code and the Regulations, as described below:

15 12.

16 Trust Fund Handling for Multiple Beneficiaries (Code Section 10145 and
17 Regulation 2832.1)

18 A. Based on the records provided, B/A 1 had a shortage of <\$12,652.78> as of
19 May 31, 2016 caused by:

20 1) Analysis Deficit/Unreimbursed Bank Charges –

21 a. "Tower Unknown Funds Corporate Property" (unreconciled; this
22 amount includes <\$2,134.82> in bank service charges incurred by B/A
23 1 that were not reimbursed by PONDCO) <\$12,602.78 >

24 2) Unidentified Cause Property – <\$ 50.00>

25 Total B/A 1 shortage as of 5/31/16 : <\$ 12,652.78>

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1 B. According to PONDCO's bookkeeper, RES Watson, PONDCO never
2 reimbursed B/A 1 for the \$2,134.82 bank charges.

3 C. There was no evidence provided by PONDCO that the trust fund owners had
4 given their written consent to allow PONDCO to reduce the balance of trust funds in B/A 1 to an
5 amount less than the aggregate trust fund liabilities of PONDCO, in violation of **Code Section**
6 **10145 and Regulation 2832.1.**

7 13.

8 **Trust Fund Handling – Trust Fund Records to be Maintained**
9 **(Code Section 10145 and Regulation 2831)**

10 A. PONDCO did not maintain an accurate control record for B/A 1. The control
11 record maintained for B/A 1 and provided at audit did not reflect an accurate running daily
12 balance during the audit period, in violation of **Code Section 10145 and Regulation 2831.**

13 14.

14 **Trust Fund Handling – Separate Record For Each Beneficiary or**
15 **Transaction (Code Section 10145 and Regulation 2831.1)**

16 A. PONDCO did not maintain an accurate separate record (Owner Statement) of
17 the receipt and disposition of all trust funds deposited into B/A 1 during the audit period, in
18 violation of **Code Section 10145 and Regulation 2831.1.**

19 B. PONDCO used two software packages during the audit examination period,
20 "Yardi" and, beginning in April 2016, "AppFolio." Not all the separate records prepared under
21 "Yardi" software for the period beginning January 2015 and ending March 2016 were made
22 available for the BRE audit; according to PONDCO bookkeeper RES Watson, PONDCO was
23 unable to print the old separate records.

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15.

Trust Fund Handling – Trust Account Reconciliation (Code Section 10145 and Regulation 2831.2)

During the audit period, PONDCO did not maintain an accurate monthly reconciliation comparing the balance of all the separate records or transaction records to the balance of the record of all trust funds received and disbursed (control record) for B/A 1 in connection with its property management activity, in violation of **Code Section 10145 and Regulation 2831.2**.

16.

Trust Fund Handling – Trust Account Designation (Code Section 10145 and Regulation 2832)

According to the books and records examined (including the bank signature card of June 9, 2016), B/A 1, the account PONDCO used to hold trust funds in its property management activities, was not designated as a trust account in the name of PONDCO or its DBA as trustee, in violation of **Code Section 10145 and Regulation 2832**.

17.

Trust Fund Handling – Trust Account Withdrawals (Code Section 10145 and Regulation 2834)

A. PONDCO D.O. REB SABILLO was not a signatory of B/A 1, an account into which trust funds were deposited and disbursed related to PONDCO's property management activity, in violation of **Code Section 10145 and Regulation 2834**.

B. Based on the June 9, 2016 signature card for B/A 1, SABILLO was added as a signatory before the conclusion of the audit field work period.

18.

Responsibility of Corporate Officer in Charge/Broker Supervision – D.O. SABILLO (Code Sections 10159.2 and 10177(h) and Regulation 2725)

The acts and/or omissions of D.O. REB SABILLO as described in Paragraphs 1 through 17 above, demonstrate a failure to adequately supervise the real estate activities of PONDCO, its salespersons, and its employees to ensure compliance with the Real Estate Law and Regulations. PONDCO/SABILLO failed to maintain a complete and accurate control record, separate records, and failed to maintain trust account reconciliations for PONDCO's property management activity. PONDCO/SABILLO was not an authorized signer on B/A 1 until a date subsequent to the audit examination period (prior to the close of the audit field work period). PONDCO/SABILLO reduced the balance of trust funds in B/A 1 as of May 31, 2016 to an amount less than the aggregate trust fund liabilities of PONDCO to all the owners of the funds without their written consent. These acts and/or failures to act constitute grounds for the suspension or revocation of the license and license rights of Respondent SABILLO under the provisions of **Code Sections 10159.2 and 10177(h) and Regulation 2725.**

Additional Violations of the Real Estate Law

19.

The overall conduct of Respondents PONDCO and SABILLO is violative of the Real Estate Law and constitutes cause for the suspension or revocation of the real estate licenses and license rights of PONDCO and SABILLO under the provisions of **Code Section 10177(g)** for negligence and **Code Section 10177(d)** for willful disregard of the Real Estate Law.

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1 COSTS

2 Investigation and Enforcement Costs

3 20.

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

9 Audit Costs

10 21.

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

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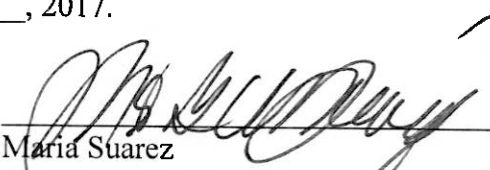
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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against the licenses and license rights of Respondents PONDCO INC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

8 Dated at Los Angeles, California

9 this 19th day of December, 2017.

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11 
12 Maria Suarez

13 Supervising Special Investigator
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22 cc: PONDCO INC
23 ROBERT DEVIO SABILLO
24 M. Suarez
25 Sacto.
26 Audits – G. Keraoru
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CalBRE Accusation – Pondco Inc and Robert Devio Sabillo