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**FILED**

APR 04 2018

BUREAU OF REAL ESTATE

By *Angela Danner*

8 **BEFORE THE BUREAU OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 \* \* \*

11 In the Matter of the Accusation of )

No. H-40993 LA

12 **FIRST AVENUE REAL ESTATE**  
13 **GROUP, INC. and**

**ACCUSATION**

14 **PAUL RICHARD KOTAS, individually and as**  
15 **former designated officer of First Avenue Real**  
16 **Estate Group, Inc.,**

17  
18 **Respondents.**

19 The Complainant, Maria Suarez, a Supervising Special Investigator of the State of  
20 California, for cause of Accusation against FIRST AVENUE REAL ESTATE GROUP, INC. and  
21 PAUL RICHARD KOTAS, alleges as follows:

22 1.

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

25 ///

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.

**BRE LICENSE HISTORY**

3.

**FIRST AVENUE REAL ESTATE GROUP, INC.**

A. Respondent FIRST AVENUE REAL ESTATE GROUP, INC. ("FIRST AVENUE") 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 broker (corporation), California Bureau of Real Estate ("BRE" or "Bureau" or "CalBRE") license ID 01978145.

B. FIRST AVENUE was originally licensed by the BRE on or about April 9, 2015.

C. FIRST AVENUE's BRE mailing and main address of record are the same: 180 E. Main St., Suite 101, Tustin, CA 92780 ("Tustin address").

D. According to BRE records to date, FIRST AVENUE has no active DBAs and no branch offices under its BRE license

E. According to BRE records to date, FIRST AVENUE has four (4) real estate salespersons ("RES") under its BRE license: Adeeb Ahmad Azizi (CalBRE license ID 01963152) ("Azizi"); Juli Ann Flibbert (CalBRE license ID 01304552); Jeffrey Thomas Hanzich (CalBRE license ID 01917348); and Alec Carl Robbie (CalBRE license ID 01256476).

F. According to BRE licensing records, the designated officers ("D.O.") of record history for FIRST AVENUE is as follows:

1. from August 31, 2017 through and including the present: Sharon Suzanne Butler (CalBRE license ID 01018706) ("Butler") until her officer expiration date of April 8, 2019, and

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2. from April 9, 2015 to August 31, 2017: PAUL RICHARD KOTAS.

G. FIRST AVENUE's BRE license will expire on April 8, 2019.

4.

PAUL RICHARD KOTAS

A. Respondent PAUL RICHARD KOTAS ("KOTAS") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB, CalBRE license ID 00460262.

B. KOTAS was originally licensed by the BRE as a RES on or about August 20, 1973, and as a REB on or about March 19, 2007.

C. KOTAS' BRE mailing address of record is: 9764 W. Rockwood Dr., Peoria, AZ 85382. KOTAS' BRE main address of record is listed as: "1 None, Tustin, CA 92780."

E. According to BRE records to date, KOTAS has no active DBAs and no branch offices under his BRE license.

F. KOTAS was the D.O. of record for FIRST AVENUE until his officer cancellation date of August 31, 2017.

H. KOTAS' BRE license will expire on March 18, 2019.

APPLICABLE SECTIONS OF THE REAL ESTATE LAW

5.

Trust Fund Handling -

Code Section 10145 and Regulations 2831, 2831.1, 2831.2, and 2832.1

Pursuant to Code Section 10145:

(a)(1): "A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds

1 deposited by the broker in a trust account shall be maintained there until disbursed by the broker  
2 in accordance with instructions from the person entitled to the funds.

3 (2) Withdrawals may be made from a trust fund account of an individual broker  
4 only upon the signature of that broker, or in the case of a corporate broker, only upon the  
5 signature of an officer through whom the corporation is licensed pursuant to Section 10158 or  
6 10211, or one, or more, of the following persons if specifically authorized in writing by the  
7 individual broker or officer:

8 (A) A real estate salesperson licensed to the broker.

9 (B) Another broker acting pursuant to a written agreement with the  
10 individual broker that conforms to the requirements of this part and any regulations promulgated  
11 pursuant to this part.

12 (C) An unlicensed employee of the individual broker, if the broker has  
13 fidelity bond coverage equal to at least the maximum amount of the trust funds to which the  
14 unlicensed employee has access at any time. For purposes of this section, bonds providing  
15 coverage may be written with a deductible of up to 5 percent of the coverage amount. For bonds  
16 with a deductible, the employing broker shall have evidence of financial responsibility that is  
17 sufficient to protect members of the public against a loss subject to the deductible amount.

18 Evidence of financial responsibility shall include one or more of the following:

19 (i) Separate fidelity bond coverage adequate to cover the amount  
20 of the fidelity bond deductible.

21 (ii) A cash deposit held in a separate account, apart from other  
22 funds of the broker, the broker's employees, or the broker's  
23 principals, in a bank or recognized depository in this state adequate  
24 to cover the amount of the fidelity bond deductible and held

1 exclusively and solely for the purpose of paying the fidelity bond  
2 deductible amount.

3 (iii) Any other evidence of financial responsibility approved by the  
4 commissioner.

5 (3) An arrangement under which a person enumerated in subparagraph (A),(B),  
6 or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of a broker  
7 shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from  
8 responsibility or liability as provided by law in handling trust funds in the broker's custody.

9 . . .

10 (b) A real estate broker acting as a principal pursuant to Section 10131.1<sup>1</sup> shall  
11 place all funds received from others for the purchase of real property sales contracts or  
12 promissory notes secured directly or collaterally by liens on real property in a neutral escrow  
13 depository unless delivery of the contract or notes is made simultaneously with the receipt of the  
14 purchase funds.

15 . . .

16 (g) The broker shall maintain a separate record of the receipt and disposition of all  
17 funds described in subdivisions (a) and (b), including any interest earned on the funds..."

18 6.

19 Pursuant to Regulation 2831:

20 "(a) Every broker shall keep a record of all trust funds received, including  
21 uncashed checks held pursuant to instructions of his or her principal. This record, including  
22 records maintained under an automated data processing system, shall set forth in chronological  
23 sequence the following information in columnar form:

24  
25 <sup>1</sup>Code Section 10131.1 states, "(a) A real state broker within the meaning of this part is also a person who engages as  
26 a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property  
27 sales contracts or promissory notes secured directly or collaterally by liens on real property..."



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7.

Pursuant to Regulation 2831.1, "(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. The record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.

(2) Amount of deposit.

(3) Date of each related disbursement.

(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2."

8.

Pursuant to Regulation 2831.2, "The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a

1 month, except in those months when the bank account did not have any activities. A record of  
2 the reconciliation must be maintained, and it must identify the bank account name and number,  
3 the date of the reconciliation, the account number or name of the principals or beneficiaries or  
4 transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or  
5 transactions.”

6 9.

7 Pursuant to Regulation 2832.1, “The written consent of every principal who is an  
8 owner of the funds in the account shall be obtained by a real estate broker prior to each  
9 disbursement if such a disbursement will reduce the balance of the funds in the account to an  
10 amount less than the existing aggregate trust fund liability of the broker to all owners of the  
11 funds.”

12 **Responsibility of Corporate Officer in Charge – Code Section 10159.2 and Regulation 2725**

13 10.

14 Pursuant to Code Section 10159.2 (a), “The officer designed by a corporate broker  
15 license pursuant to Section 10211 shall be responsible for the supervision and control of the  
16 activities conducted on behalf of the corporation by its officers and employees as necessary to  
17 secure full compliance with the provisions of this division, including supervision of salespersons  
18 licensed to the corporation in the performance of acts for which a real estate license is  
19 required...”

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11.

Pursuant to Regulation 2725, "A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- a) Transactions requiring a real estate license.
- b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- c) Filing, storage and maintenance of such documents.
- d) The handling of trust funds.
- e) Advertising of any service for which a license is required.
- f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker."

**False or Fictitious Business Name – Code Section 10159.5 and Regulation 2731**

12.

Pursuant to Code Section 10159.5(a)(1), "Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement

1 filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of  
2 Division 7.”

3 13.

4 Pursuant to Regulation 2731(a), “A licensee shall not use a fictitious name in the  
5 conduct of any activity for which a license is required under the Real Estate Law unless the  
6 licensee is the holder of a license bearing the fictitious business name.”

7 **Further Grounds for Disciplinary Action – Code Section 10177**

8 14.

9 Pursuant to Code Section 10177, “The commissioner may suspend or revoke the  
10 license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the  
11 issuance of a license to an applicant, who has done any of the following:

12 ...

13 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing  
14 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and  
15 regulations of the commissioner for the administration and enforcement of the Real Estate Law  
16 and Chapter 1 (commencing with Section 11000) of Part 2.”

17 ...

18 (g) Demonstrated negligence or incompetence in performing an act for which he  
19 or she is required to hold a license.

20 (h) As a broker licensee, failed to exercise reasonable supervision over the  
21 activities of his or her salespersons, or, as the officer designated by a corporate broker licensee,  
22 failed to exercise reasonable supervision and control of the activities of the corporation for which  
23 a real estate license is required...”

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1 BRE AUDIT OF FIRST AVENUE REAL ESTATE GROUP, INC.

2 (LA 160059)

3 15.

4 On March 17, 2017, the BRE completed an audit examination of the books and  
5 records of Respondent FIRST AVENUE pertaining to its property management activities  
6 described in Paragraphs 16 through 18, below, which require a real estate license. The audit  
7 examination covered a period of time beginning on April 9, 2015 and ending on November 30,  
8 2016 ("audit examination period" or "audit period"), and was performed between December 14,  
9 2016 and February 10, 2017 ("field work period"), during which the D.O. of FIRST AVENUE  
10 was KOTAS. The final report of March 17, 2017 revealed violations of the Code and the  
11 Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report  
12 LA 160059.

13 16.

14 FIRST AVENUE's Business Activities & Corporate Structure

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

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17.

FIRST AVENUE

At the time of the audit examination, Azizi was FIRST AVENUE's President, Chief Operating Officer, and Chief Financial Officer.

18.

FIRST AVENUE's Property Management Activities

According to D.O. KOTAS, as of the audit examination, FIRST AVENUE managed: two (2) apartment complexes with fifty-one (51) units, 143 one- to four-family residences with 170 units, for 114 property owners. FIRST AVENUE collects rents, pays expenses, and solicits/screens tenants for compensation, and charges monthly management fees ranging from five percent (5%) to six percent (6%) based on gross collections. According to KOTAS and FIRST AVENUE bookkeeper [non-licensee] Joanna Terrazas ("Terrazas"), FIRST AVENUE handled approximately \$3,120,000.00 in trust funds for the last twelve (12) months.

19.

FIRST AVENUE's Other Real Estate Sales Activities

According to Azizi, FIRST AVENUE also engaged in license activities within the meaning of Code Section 10131(a), wherein it engaged in real estate sales activities, and sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity ("real estate sales"), and closed approximately ten (10) listing transactions totaling approximately \$3,500,000.00. However, the BRE audit examination (Audit LA 160059) was limited to FIRST AVENUE's property management activity.

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1 20.

2 Bank Account

3 According to D.O. KOTAS and Terrazas, FIRST AVENUE maintained one (1)  
4 trust account for the handling and disbursement of trust funds in connection with its property  
5 management activities during the audit period:

6 Trust Account #1 ("TA #1")

7 \* Account Name: "FIRST AVENUE REAL ESTATE GROUP INC."

8 \* Bank: Sunwest Bank, 2050 Main Street, Suite 300, Irvine, CA 92614

9 \* Account No. #####3299

10 \* Signatories: KOTAS, Azizi

11 FIRST AVENUE opened TA #1 as a depository for rents and security deposits  
12 collected from tenants related to properties owned by multiple owners. Disbursements from BA  
13 1 were payments for expenses related to the properties managed, owner remittances, and to  
14 FIRST AVENUE for management fees. A bank reconciliation was prepared as of November 30,  
15 2016, and the adjusted bank balance was compared to the total balance of the separate  
16 beneficiary records ("accountability").

17 **AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW**

18 21.

19 In the course of activities as described in Paragraphs 16 through 18, above, and  
20 during the audit examination period described in Paragraph 15, Respondent FIRST AVENUE  
21 acted in violation of the Code and the Regulations, as described below:

22 22.

23 **Trust Fund Handling for Multiple Beneficiaries**

24 **(Code Section 10145 and Regulation 2832.1)**

25 Based on the records provided and the aforementioned prepared bank  
26 reconciliation as of November 30, 2017 for TA #1, the auditor found that:

27 A. As of November 30, 2016, TA #1 had a shortage of <\$6,963.03> caused by:

1	1) Negative beneficiary/property balances	\$ <5,194.21>
2	2) Unidentified shortage	<u>\$ &lt;1,768.82&gt;</u>
3	<i>Total trust fund shortage in TA #1 as of 11/30/16</i>	\$ <6,963.03>

4 There was no evidence provided that the trust fund owners had given FIRST  
5 AVENUE their written consent to reduce the balance of trust funds in TA #1 to an amount less  
6 than the aggregate trust fund liabilities, in violation of Code Section 10145 and Regulation  
7 2832.1.<sup>2</sup>

8 23.

9 **Trust Fund Handling – Trust Fund Record To Be Maintained**  
10 **(Code Section 10145 and Regulation 2831)**

11 During the audit period, FIRST AVENUE failed to maintain an accurate and  
12 complete record of all trust funds received and disbursed (“control record”) for TA #1. On  
13 September 12, 2016, there were electronic (ACH) payments to property owners that were debited  
14 on the bank statement; however, there were no records on the control record, in violation of  
15 Code Section 10145 and Regulation 2831. Examples of FIRST AVENUE’s failure to maintain  
16 control records include:

<u>Date</u>	<u>Property</u>	<u>Property Owner</u>	<u>ACH Payment</u> <small>(per bank statement)</small>	<u>Control Record</u>
9/12/16	##### Parkview Ln.	D. A.	\$1,019.90	none
9/12/16	### Imperial Hwy.	G.C.	\$1,146.50	none
9/12/16	#### Quida Dr.	U.P.	\$1,302.00	none

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23 ///

25 <sup>2</sup> FIRST AVENUE cured the <\$6,963.03> shortage with a total deposit in the amount 46,963.03 into TA #1 from its  
26 general account (Wells Fargo Bank account #####5935) on or about March 1, 2017.

1 24.

2 **Trust Fund Handling – Separate Record For Each Beneficiary or Transaction**

3 **(Code Section 10145 and Regulation 2831.1)**

4 During the audit period, FIRST AVENUE failed to maintain accurate and  
5 complete separate records. On September 12, 2016, there were electronic (ACH) payments to  
6 property owners that were debited on the bank statement; however, there were no records made  
7 on the separate record, in violation of **Code Section 10145 and Regulation 2831.1**. Examples  
8 of FIRST AVENUE’s failure to maintain separate records include the examples cited in  
9 Paragraph 24, above.

10 25.

11 **Trust Fund Handling – Trust Account Reconciliation**

12 **(Code Section 10145 and Regulation 2831.2)**

13 During the audit period, FIRST AVENUE failed to perform and maintain a  
14 monthly reconciliation comparing the balance of all the separate beneficiary or transaction  
15 records (separate records) to the balance of the record of all trust funds received and disbursed  
16 (control record) for TA #1, in violation of **Code Section 10145 and Regulation 2831.2**.

17 26.

18 **Use of False or Fictitious Business Names**

19 **(Code Section 10159.5 and Regulation 2731)**

20 During the audit period, FIRST AVENUE used the unlicensed fictitious business  
21 names (“DBAs”) “First Avenue Real Estate Group,” “Diversified Real Property Management,”  
22 “First Avenue Realty,” and “Diversified Real Property Management and Business Services Inc”  
23 without first obtaining a license from the Bureau bearing such fictitious business names, in  
24 violation of **Code Section 10159.5 and Regulation 2731**.

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27.

**Responsibility of Corporate Officer in Charge/Broker Supervision (Code Sections 10159.2 and 10177(h) and Regulation 2725)**

The acts and/or omissions of KOTAS, as the D.O. of FIRST AMERICAN during the audit period, demonstrate a failure to adequately supervise the real estate activities of FIRST AVENUE and its salespersons and its employees to ensure compliance with the Real Estate Law and Regulations. The acts and/or failures to act constitute grounds for the suspension or revocation of the license and license rights of Respondent KOTAS under the provisions of Code Sections 10159.2 and 10177(h) and Regulation 2725.

**Additional Violations of the Real Estate Law**

28.

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

**COSTS**

**Investigation and Enforcement Costs**

29.

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

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1 Audit Costs


2 30.

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

7 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
8 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
9 action against the licenses and license rights of Respondents FIRST AVENUE REAL ESTATE  
10 GROUP INC. and PAUL RICHARD KOTAS under the Real Estate Law (Part 1 of vision 4 of  
11 the Business and Professions Code), for the cost of investigation and enforcement as permitted  
12 by law, and for such other and further relief as may be proper under other provisions of law, and  
13 for costs of audit.

14 Dated at Los Angeles, California

15 this 3rd day of April, 2018.

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17   
18 Maria Suarez  
19 Supervising Special Investigator

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21  
22 cc: FIRST AVENUE REAL ESTATE GROUP INC.  
23 PAUL RICHARD KOTAS  
24 Enforcement – M. Suarez  
25 Audits – C. Picayo  
26 Sacto.