

FILED

JUN 04 2018

BUREAU OF REAL ESTATE

By *Al Deloio*

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H41066 LA
)	
DONALD JOHN SUTCLIFFE;)	
FATHOM REALTY GROUP, INC.;)	
WILLIAM A. THOMAN, individually and)	<u>ACCUSATION</u>
as designated officer of TLQ Realty, Inc.; and)	
TLQ REALTY, INC.,)	
)	
Respondents.)	

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, acting in her official capacity, for cause of Accusation against DONALD JOHN SUTCLIFFE ("SUTCLIFFE"), FATHOM REALTY GROUP, INC. ("FRGI"), WILLIAM A. THOMAN aka Billy Thoman dba Trilogy La Quinta Realty ("THOMAN"), individually and as designated officer of TLQ Realty, Inc., and TLQ REALTY, INC. ("TRI"), (collectively "Respondents"), is informed and alleges as follows:

1.

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

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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, unless otherwise specified.

3.

A. DONALD JOHN SUTCLIFFE: Respondent SUTCLIFFE is presently licensed and/or has license rights issued by the Bureau of Real Estate as a real estate salesperson (license no. 01885652). SUTCLIFFE was originally issued a real estate salesperson license on or about October 20, 2010. From on or about June 12, 2013 through the present, SUTCLIFFE's sponsoring broker has been FRGI.

B. FATHOM REALTY GROUP, INC.: Respondent FRGI is presently licensed and/or has license rights issued by the Bureau of Real Estate as a corporate real estate broker (license no. 01901202). FRGI was originally issued a corporate real estate broker license on or about June 25, 2011.

C. WILLIAM A. THOMAN: Respondent THOMAN is presently licensed and/or has license rights issued by the Bureau of Real Estate as a real estate broker (license no. 01299750). THOMAN was originally issued a real estate broker license on or about September 22, 2006. Previously, from on or about November 29, 2000 to September 21, 2006, THOMAN had a real estate salesperson license. THOMAN was and is TRI's designated officer at any and all times that TRI was licensed with the Bureau of Real Estate.

D. TLQ REALTY, INC.: Respondent TRI is presently licensed and/or has license rights issued by the Bureau of Real Estate as a real estate corporate broker (license no. 01525599). TRI was and is licensed as a corporate real estate broker from on or about February 16, 2010 to February 15, 2014 and on or about May 2, 2014 through the present.

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Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents," such allegation shall be deemed to mean that the officers, directors, employees, agents, and real estate licensees employed by or associated with Respondents committed such act or omission while engaged in the furtherance of the business or operations of Respondents and while acting within the course and scope of their corporate authority and employment, including, but not limited to, SUTCLIFFE, FRGI, THOMAN, and/or TRI.

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15 5.

At all times mentioned, in Riverside County, SUTCLIFFE, FRGI, THOMAN, and TRI, engaged in the business of real estate brokers conducting licensed activities within the meaning of Code section 10131(a). SUTCLIFFE, FRGI, THOMAN, and TRI engaged in selling or offering to sell, buying or offering to buy, soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, or negotiating the purchase, sale or exchange of real property or a business opportunity.

16 FIRST CAUSE: FRAUD/DISHONEST DEALING (SUTCLIFFE)

17 SECOND CAUSE: FAILURE TO SUPERVISE (FRGI)

18 THIRD CAUSE: NEGLIGENCE (THOMAN AND TRI)

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27 6.

From at least July 2015 through September 2015, Respondent FRGI through Respondent SUTCLIFFE represented SUTCLIFFE in the selling of the SUTCLIFFE's house at 51417 El Dorado Dr., La Quinta, CA 92253 ("Property"). Respondent SUTCLIFFE acted as both a licensee and principal/owner.

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1 7.

2 From at least July 2015 through September 2015, Respondent TRI through
3 Respondent THOMAN represented the potential buyers, Stephen and Sherry S. ("Buyers").

4 8.

5 On or about July 3, 2014, the Respondent SUTCLIFFE and Buyers entered into
6 a Residential Purchase Agreement and Joint Escrow Instructions and Addendum No. 1.

7 Addendum No. 1 provided:

8 1. The following furnishings to be included in the purchase price of the
9 home per the conversation on 7/2/15: Great Room, Dining [*sic*] Room
10 (excluding hutch), Kitchen, Patio (excluding large table and chairs),
11 hallways, office, powder room, family room (excluding entertainment
12 center), all electronics (excluding master bedroom pop-up televisions) &
13 Golf Cart. A detailed Inventory is to be provided by Seller and presented
14 to Buyer for approval within 48 hours of executing this agreement. These
15 funds are to be deposited into Brokers Trust Fund account 48 hours prior
16 to the Close of escrow. The funds will be issued to Seller once the
17 confirmation of recording is received.

18 9.

19 On or about July 3, 2015, Buyers, Respondent FRI through Respondent
20 SUTCLIFFE, and Respondent TRI through Respondent THOMAN entered into a Commission
21 Agreement wherein Buyers agreed to pay \$5,000 in commissions to Respondent FRI and
22 \$35,670 in commissions to Respondent TRI.

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On or about July 14, 2015, the Respondent SUTCLIFFE and Buyers signed Addendum No. 1.1, which provided:

This addendum is intended to clarify how the outside of escrow furnishings purchase proceeds are to be paid from TLQ Realty Trust funds (these funds of \$190,670 to be deposited by buyers 48 hours before COE) and paid to the seller as outlined in the \$1,189,000 Residential Purchase Agreement[.]

1. The following furnishing to be included in the purchase price of the home per the conversation of 7/2/15. Great Room, Dining Room (excluding hutch), Kitchen, Patio (excluding large table and chairs), hallways, office, powder room, family room (excluding entertainment center) and all electronics (excluding master bedroom pop-up TV's) & Club Car Golf Cart. A detailed photo inventory was provided on 7/10/15. The funds amount of \$190,670 to be deposited in TLQ Realty Broker Trust fund 48 hours prior to close of escrow.

The full amount of these funds to be released to seller upon confirmation of recording of title transfer to the buyers with the exception of \$5000 held back by the buyers broker until the seller has moved out and a final property condition verification is mutual[ly] agreed [upon].

11.

Pursuant to Addendum No. 1.1, on or about August 5, 2015, Buyers wire transferred \$190,670 in trust funds to Respondent TRI's broker trust fund account.

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12.

On or about August 7, 2015, under the direction and duress from Respondent SUTCLIFFE, Respondent THOMAN prematurely disbursed \$185,670 of Buyers' trust funds to Respondent SUTCLIFFE without authorization.

13.

On or about August 10, 2015, Buyers first discovered that the Internal Revenue Service ("IRS") recorded a Notice of Federal Tax Lien ("IRS Tax Lien") for \$1,037,074.78 with the Riverside County Recorder's Office on July 31, 2015.

14.

Soon after Buyers discovered the IRS Tax Lien, Buyers and Respondent FRG through Respondent SUTCLIFFE agreed to extend the close of escrow to September 3, 2015.

15.

On or about September 4, 2015 and September 11, 2015, after escrow failed to close by September 3, 2015, Respondent THOMAN on behalf of Buyers issued a demand letters to Respondent SUTCLIFFE to return the \$185,670 that was prematurely wired to him on or about August 7, 2015.

16.

To date, Respondent SUTCLIFFE has failed to return the \$185,670 to the Buyers.

17.

Respondent SUTCLIFFE's conduct, as alleged above, is cause for discipline of the real estate license and real estate license rights of Respondent SUTCLIFFE pursuant to Code sections 10176(i) and 10177(j).

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1 18.

2 Based on the above facts, FRGI did not exercise reasonable control and
3 supervision over the activities conducted by its employees and/or licensees, including
4 SUTCLIFFE, as necessary to secure full compliance with real estate laws, which constitutes a
5 breach of fiduciary duty with respect to its real estate consumers and clientele, including
6 property owners and tenants, in violation of Code section 10177(h) and Regulations section
7 2725.

8 19.

9 Based on the above, Respondent THOMAN's and Respondent TRI's conduct, as
10 alleged above, is cause for discipline of the real estate license and real estate license rights of
11 Respondent THOMAN and Respondent TRI pursuant to Code section 10177(g).

12
13 FOURTH CAUSE: TRUST FUND AUDIT (TRI AND THOMAN)

14 20.

15 On or about May 25, 2017, the Bureau of Real Estate completed an audit
16 examination of the books and records of TRI to determine whether TRI handled and accounted
17 for trust funds and conducted its real estate activities in accordance with the Real Estate Law
18 and Regulations. The audit examination covered a period of time beginning on January 1, 2015
19 and ended on November 30, 2016. The audit examination revealed violations of the Code and
20 the Regulations set forth in the following paragraphs, and more fully discussed in Audit Report
21 LA160066 and the exhibits and work papers attached to said audit report.

22
23 Bank Account/Trust Account

24 21.

25 At all times mentioned, in connection with the activities described in Paragraph
26 5, above, TRI accepted or received funds including funds in trust ("trust funds") from or on
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1 behalf of actual or prospective parties, such as owners of real property,
2 management services, and thereafter made deposits and/or disbursements of such funds. From
3 time to time herein mentioned, during the audit period, said trust funds were deposited and/or
4 maintained by TRI in the bank account as follows:

5 *****7550

6 First Bank

7 46-100 Washington St.

8 La Quinta, CA 92253

(TA 1)

22.

9 In the course of activities described in Paragraphs 5 and 21, above, and during
10 the audit examination period in Paragraph 20, above, Respondents TRI and THOMAN acted in
11 violation of the Code and the Regulations as set forth below:

12 (a) Permitted real estate salesperson Stacy Michelle Thoman (license no.
13 01153744), wife of THOMAN, to be an authorized signer who can make withdrawals on TA 1
14 when she was licensed with a sponsoring broker that was not TRI or THOMAN, in violation of
15 Code section 10145 and Regulation 2834.

16 (b) Disbursed \$185,670.00 of Buyers' trust funds to Respondent
17 SUTCLIFFE without Buyers' written authorization, in violation of Code section 10145(a) and
18 Regulations section 2832. This transaction is more fully described in Paragraphs 6 through 18,
19 above.

20 (c) Failed to maintain accurate and complete separate records for each
21 beneficiary or property for all trust funds received and disbursed for TA 1, in violation of Code
22 section 10145 and Regulations section 2831.1. These inaccurate separate records include, but
23 are not limited to, (i) 51417 El Dorado Dr.'s ending balance on September 20, 2015, (ii) 51358
24 Mystic Time's ending balance on October 7, 2015, and (iii) 61000 Livingstone Dr.'s ending
25 balance on November 28, 2015.

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1 (d) Failed to perform and maintain an accurate monthly reconciliation
2 comparing the balance of all separate beneficiary or transaction records (separate records) to the
3 balance of the record of all trust funds received and disbursed (control record) for TA 1, in
4 violation of Code section 10145 and Regulations section 2831.2.

5 (e) THOMAN failed to exercise reasonable control and supervision over the
6 activities conducted on behalf of TRI as necessary to secure full compliance with the Real
7 Estate Laws, including, but not limited to establishing policies, rules, procedures, and systems
8 to review, oversee, and inspect the handling of trust funds, in violation of Code sections
9 10159.2 and 10177(h) and Regulations section 2725.

10 23.

11 The conduct of Respondents SRESI, MATILLA, and BRODERICK described in
12 Paragraph 8, above, violated the Code and the Regulations as set forth below:

13 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
14 22(a)	Code section 10145 and Regulation 2834
15 22(b)	Code section 10145(a) and Regulations section 2832
16 22(c)	Code section 10145 and Regulations section 2831.1
17 22(d)	Code section 10145 and Regulations section 2831.2
18 22(e)	Code sections 10159.2 and 10177(h) and Regulations section 2725

19 The foregoing violations constitute cause for discipline of the real estate license and license
20 rights of TRI and THOMAN under the provisions of Code sections 10177(d), 10177(g), and
21 10177(h).

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1 COSTS

2 24.

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

7 25.

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

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

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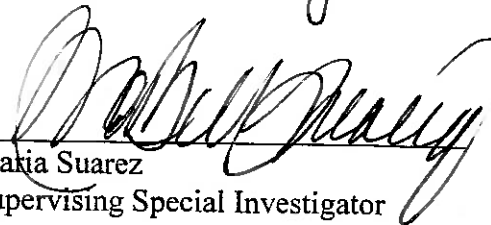
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1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
3 disciplinary action against the license and license rights of Respondents DONALD JOHN
4 SUTCLIFFE, FATHOM REALTY GROUP, INC., WILLIAM A. THOMAN, individually and
5 as designated officer of TLQ Realty, Inc., and TLQ REALTY, INC., and, for the cost of
6 investigation and enforcement pursuant to Code section 10106 and as permitted by law, and for
7 such other and further relief as may be proper under other applicable provisions of law,
8 including, but not limited to, costs of audit pursuant to Code section 10148(b).

9 Dated at Los Angeles, California: 24 May, 2018.

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11 
12 Makia Suarez
13 Supervising Special Investigator

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20 cc: Donald John Sutcliffe
21 Fathom Realty Group
22 William A. Thoman
23 TLQ Realty, Inc.
24 Maria Suarez
25 Sacto
26 Enforcement
27 Audits – Isabel Beltran