

Flag Facts

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FILED
MAR 14 2019
DEPT. OF REAL ESTATE
By *Sigrid M. ...*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-41322 LA
12 OREGON TRAIL CORPORATION)	ACCUSATION
13 and)	
14 CHRISTOPHER MARK, individually)	
15 and as designated officer of)	
16 Oregon Trail Corporation,)	
17)	
18 Respondents.)	

19 The Complainant, Chika Sunquist, a Supervising Special Investigator of the State
20 of California, for cause of Accusation against OREGON TRAIL CORPORATION and
21 CHRISTOPHER MARK, alleges as follows:

22 1.

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

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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.

DEPARTMENT OF REAL ESTATE LICENSE HISTORY

3.

CHRISTOPHER MARK

A. Respondent CHRISTOPHER MARK ("MARK") 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 ("REB"), California Department of Real Estate ("DRE" or "Department") license ID 01883652. MARK also holds a Nationwide Multistate Licensing System ("NMLS") Mortgage Loan Originator ("MLO") endorsement through the DRE, NMLS ID 325415.

B. MARK was originally licensed by the DRE as a REB on or about June 14, 2010.

C. MARK's DRE mailing and main address of record are the same: 4022 Katella Ave #104, Los Alamitos, CA 90720.

D. According to DRE records to date, MARK has one (1) active DBA for Far West Realty, active as of July 26, 2010, s and no branch offices under his license.

E. According to DRE records to date, MARK has nine (9) real estate salespersons ("RES") employed under his license.

F. MARK is the designated officer ("D.O.") of record for OREGON TRAIL CORPORATION until his officer expiration date of July 15, 2022.

G. MARK's DRE license will expire on June 13, 2022.

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1 4.

2 OREGON TRAIL CORPORATION

3 A. Respondent OREGON TRAIL CORPORATION ("OTC") is presently licensed
4 and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real
5 estate broker (corporation), California Department of Real Estate ("DRE" or "Department")
6 license ID 01292097. OTC also holds a Nationwide Multistate Licensing System ("NMLS")
7 Mortgage Loan Originator ("MLO") endorsement through the DRE, NMLS ID 329095,

8 B. OTC was originally licensed by the DRE on or about August 18, 2000.

9 C. OTC's DRE mailing and main address of record are the same as that of
10 Respondent MARK.

11 D. According to DRE records to date, OTC has no active DBAs and no branch
12 offices under its license.

13 E. According to DRE records to date, OTC has one (1) RES under its license.

14 F. According to DRE records to date, the D.O. of record for OTC is Respondent
15 MARK until his officer expiration date of July 15, 2022.

16 G. OTC's BRE license will expire on June 14, 2022.

17 APPLICABLE SECTIONS OF THE REAL ESTATE LAW

18 5.

19 Maximum Expenses, Charges and Interest

20 Code Section 10242

21 Pursuant to Code Section 10242 *Maximum Expenses, Charges and Interest*:

22 "The maximum amount of expenses, charges and interest to be paid by a borrower
23 with respect to any loan subject to this article shall be as follows:
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1 (a) The maximum amount of all costs and expenses referred to in subdivision (a)
2 of Section 10241¹, exclusive of actual title charges and recording fees, shall not exceed 5 percent
3 of the principal amount of the loan or three hundred ninety dollars (\$390), whichever is greater
4 but in no event to exceed seven hundred dollars (\$700), provided that in no event shall said
5 maximum amount exceed actual costs and expenses paid, incurred or reasonably earned.

6 (b) The maximum amount of the charges referred to in subdivision (b) of Section
7 10241² shall not exceed the following amounts:

8 (1) In the case of a loan secured directly or collaterally, in whole or in part
9 by a first trust deed, 5 percent of the principal amount of the loan where
10 the term of the loan is a period of less than three years and 10 percent
11 where the term is a period of three years or more.

12 (2) In the case of a loan secured directly or collaterally by a trust deed
13 other than a first trust deed, 5 percent of the principal amount of the loan
14 where the term of the loan is a period of less than two years, 10 percent
15 where the term is a period of two years but less than three years, and 15
16 percent where the term is a period of three years or more.

17 (3) With respect to a further advance on a note, the charges shall not
18 exceed the charges for an original loan in the same amount as the further
19 advance and made for a term equal to the remaining term of the note on
20 which the further advance is being made, including any extension thereof.

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23 ¹ Pursuant to Code Section 10241(a): "The estimated maximum costs and expenses of making the loan, which are to
24 be paid by the borrower, including but not limited to, the following: (1) Appraisal fees. (2) Escrow fees. (3) Title
charges. (4) Notary fees. (5) Recording fees. (6) Credit investigation fees. If a real estate licensee performs or is to
perform any of the services for which costs and expenses are disclosed pursuant to the this subdivision, the licensee
shall be entitled to those costs and expenses in addition to the charges specified in subdivision (b)."

25 ² Pursuant to Code Section 10241(b): "The total of the brokerage or commissions contracted for, or to be received
26 by, the real estate broker for services performed as an agent in negotiating, procuring, or arranging the loan or the
total of loan origination fees, points, bonuses, and other charges in lieu of interest to be received by the broker if he
or she elects to act as a lender rather than agent in the transaction.

1 (c) No interest may be charged with respect to any period prior to the date that the
2 proceeds of the loan are made available to the borrower or are deposited in escrow.

3 6.

4 **Trust Funds Status Report – Contents**

5 **Code Section 10232.25 and Regulation 2846.8**

6 Pursuant to Code Section 10232.25 *Trust Funds Status Report – Contents:*

7 “(a) A real estate broker who meets the criteria of subdivision (a) of Section
8 10232³ shall, within 30 days after the end of each of the first three fiscal quarters of the broker’s
9 fiscal year, or within any additional time as the Real Estate Commissioner may allow for good
10 cause, file with the commissioner a trust funds status report as of the last day of the fiscal quarter
11 which shall include the following:

- 12 (1) A representation that the form and content of the trust account records
13 of the broker are in compliance with the regulations of the commissioner.
14 (2) A representation that the broker’s trust fund bank account is
15 maintained in compliance with the regulations of the commissioner.
16 (3) A statement of the broker’s aggregate accountability for trust funds.
17 (4) A report of trust funds in the broker’s custody consisting of the trust
18 account bank statements as of the bank’s accounting date immediately
19 preceding the end of the fiscal quarter and a schedule of withdrawals and
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22 ³ Pursuant to Code Section 10232(a): “Except as otherwise expressly provided, Sections 10232.2, 10232.25, 10233,
23 and 10236.6 are applicable to every real estate broker who intends or reasonably expects in a successive 12 months
24 to do any of the following: (1) Negotiate a combination of 10 or more of the following transactions pursuant to
25 subdivision (d) or (e) of Section 10131 or Section 10131.1 in an aggregate amount of more than one million dollars
26 (\$1,000,000): (A) Loans secured directly or collaterally by liens on real property or on business opportunities as
agent for another or others. (B) Sales or exchanges of real property sales contracts or promissory notes secured
directly or collaterally by liens on real property or on business opportunities as agent for another or others. (C) Sales
or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real
property as the owner of those notes or contracts.”

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deposits adjusting the account to its true balance as of the end of the fiscal quarter.

(5) A statement explaining any difference in amount between the broker's total accountability under paragraph (3) above and the adjusted trust account bank balance under paragraph (4) above.

(b) Each report made pursuant to subdivision (a) shall include the following:

(1) The name, address, and position or capacity of the person who prepared the report.

(2) A declaration under penalty of perjury by the broker that the information and representations in the report are true, complete, and correct to the best of the broker's knowledge and belief. The declaration in a report submitted on behalf of a corporate broker shall be signed by a broker-officer through whom the corporation is licensed as a real estate broker and by the chief executive officer of the corporation if he or she is not the signing broker-officer.

(c) If a broker fails to file a report required under subdivision (a) within the time permitted, the commissioner may cause an examination and report to be made and may charge the broker one and one-half times the cost of making the examination and report. In determining the hourly cost incurred by the commissioner for conducting an examination and preparing the report, the commissioner may use the estimated average hourly cost for all department audit staff performing audits of real estate brokers. If a broker fails to pay the above amount within 60 days of the mailing of a notice of billing, the commissioner may suspend the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the above amount is paid or the broker's right to renew a license has expired. The commissioner may maintain an action for the recovery of the above amount in any court of competent jurisdiction

1 (d) A broker who meets the criteria of Section 10232, but who, in carrying on the
2 activities described in subdivisions (d) and (e) of Section 10131⁴, did not during a fiscal quarter,
3 accept for the benefit of a person to whom the broker is trustee, any payment or remittance in a
4 form convertible to cash by the broker, need not comply with the provisions of subdivision (a).
5 In lieu thereof, the broker shall submit to the commissioner within 30 days after the end of the
6 fiscal quarter or within any additional time as the commissioner may allow for good cause, a
7 statement under penalty of perjury on a form provided by the department attesting to the fact that
8 the broker did no receive any trust funds in cash or convertible to cash during the fiscal quarter.

9 (e) Any real estate broker who engages in any of the activities specified in
10 subdivision (d) or (e) or Section 10131, but who is not required by this section to file trust funds
11 status reports with the commissioner and who is not exempt therefrom under subdivision (d),
12 shall complete trust funds status reports in accordance with either (1) the requirements of
13 subdivisions (a) and (b) applicable to trust funds status reports filed with the commissioner, or
14 (2) the requirements established by the lender or note owner, if the lender or note owner does all
15 of the following: (i) requires monthly reconciliations of trust account balances; (ii) requires
16 annual, CPA-audited financial statements; and (iii) maintains a contractual right to audit the trust
17 accounts held by the broker on behalf of the lender or note owner.

18 The broker shall retain all trust funds status reports prepared under this
19 subdivision on file at the broker's offices, where they shall be subject to inspection by
20 representatives of the commissioner upon 24 hours' notice.

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23 ⁴ Pursuant to Code Section 10131: "A real estate broker within the meaning of this part is a person who, for a
24 compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to
25 do one or more of the following acts for another or others:...(d)Solicits borrowers or lenders for or negotiates loans
26 or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured
27 directly or collaterally by liens on real property or on a business opportunity. (e) Sells or offers to sell, buys or offers
to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or
collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof."

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Pursuant to Regulation 2846.8 *Quarterly Trust Fund Status Report*: “(a) The Commissioner shall publish and make available to interested persons as an official form of the Bureau, an approved format and content for the Trust Fund Status Report described in Section 10232.25 of the Code. (b) The publication of a form pursuant to subdivision (a) is for the purpose of aiding real estate licensees in complying with Section 10232.25 of the code. The form prescribed by the Commissioner shall not constitute the only format or content that will satisfy the requirements of Section 10232.25.”

8.

Further Grounds for Disciplinary Action – Code Section 10177

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

...

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

...

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

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Grounds for Denial, Suspension or Revocation – Code Section 10166.051

In addition to any penalties authorized by regulations adopted pursuant to Section 10166.15, the commissioner may do one or more of the following, after appropriate notice and opportunity for hearing:

(a) Deny, suspend, revoke, restrict, or decline to renew a mortgage loan originator license endorsement for a violation of this article, or any rules or regulations adopted hereunder...”

DRE AUDIT LA160167: OREGON TRAIL CORPORATION
(MORTGAGE LOAN ORIGINATION ACTIVITIES)

On October 16, 2017, the DRE completed its audit examinations of the books and records of Respondent OTC pertaining to its mortgage loan origination activities (LA160167) described in Paragraphs 12A. and 12B., below, which require a real estate license. The audit examination covered a period of time beginning on August 1, 2015 and ending on July 31, 2017 (“audit examination period” or “audit period”), and was performed during the period August 11, 2017 through August 15, 2017 (“audit field work period”). The final report of October 16, 2017 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in the Audit Report for LA160167.

Business Activities

A. At all times mentioned in Orange County, California, Respondent OTC acted as a REB, and engaged in mortgage loan activities, originating loans for borrowers and funding the loans with its own funds. According to MARK, who was D.O. of OTC at the time of the audit examination, OTC did not receive trust funds from outside investors. According to

1 MARK's written statement dated August 14, 2017, the source of funds is his father Eric Mark,
2 Jr.'s living trust line of credit with Banc of California for a total of \$750,000; Eric Mark, Jr. is
3 the 100% owner of OTC. Additionally, OTC obtained a federal loan award in the amount of
4 \$310,000.

5 B. According to MARK, who was D.O. of OTC at the time of the audit
6 examination, in the twelve (12) months of the period ending July 31, 2017, OTC negotiated and
7 funded about twenty-eight (28) loans for approximately \$2,899,000.

8 C. The audit was limited to OTC's mortgage loan activity.

9 12.

10 No Trust Account for Mortgage Loan Activities

11 According to MARK, OTC did not maintain a trust account for its mortgage loan
12 activity.

13 AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW

14 13.

15 In the course of activities as described in Paragraphs 11A. and 11B., above, and
16 during the audit examination period described in Paragraph 10, Respondent OTC violated the
17 Code and the Regulations, as described below:

18 14.

19 Maximum Expenses, Charges and Commissions

20 (Code Section 10242)

21 A. In the loan files examined within the audit examination period, OTC
22 negotiated one (1) second trust deed "Article 7" loan, Loan Number 17014 for the loan amount
23 of \$20,000, closed on May 8, 2017 for a term of 36 months. In Loan 17014, a commission of
24 \$3,050.00 was charged to the borrower, an amount \$50.00 greater than the maximum allowable
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1 commission of \$3,000 (or, 15% of the principal amount of the loan, \$20,000) for a senior lien
2 with a term equal or less than three years, in violation of **Code Section 10242**.

3 B. In the loan files examined within the audit examination period, OTC negotiated
4 one (1) first trust deed "Article 7" loan, Loan Number 16027 for the loan amount \$17,850, closed
5 on December 16, 2016 for a term of 36 months. In Loan 16027, \$805.00 was charged to the
6 borrower towards all costs and expenses for obtaining the loan, not including actual charges for
7 title insurance and recording fees. This costs and expenses charge of \$805.00 was greater than
8 the maximum allowable expenses limit of \$700.00, in violation of **Code Section 10242**.

9 15.

10 **Quarterly Trust Fund Status Reports**

11 **Code Section 10232.25 and Regulation 2846.8**

12 A. OTC failed to timely file with the then-CalBRE the Quarter Threshold Report
13 ("QTR") for the quarter ending September 30, 2016, in violation of **Code Section 10232.25 and**
14 **Regulation 2846.8**. The QTR for the quarter ending September 30, 2016 was due by October
15 31, 2016; D.O. MARK submitted the Trust Fund Non-Accountability Report (DRE Form RE
16 854) on August 1, 2017.

17 B. In addition, according to declaration of Mortgage Loan Activities Supervising
18 Investigator and custodian of records for the then-CalBRE Chika Sunquist, OTC failed to timely
19 submit the following reports as required by the Code:

20 (1) the Trust Account Review Report ("TARR") for OTC's fiscal year
21 ending December 31, 2016 (this report was due by January 31, 2017; D.O.
22 MARK submitted this report on June 22, 2017);

23 (2) the Business Activity Report ("BAR") for OTC's fiscal year ending
24 December 31, 2016 (this report was due by March 31, 2017; D.O. MARK
25 submitted this report on June 12, 2017); and
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(3) the first quarter trust fund status report for the quarter ending March 31, 2017 (this report was due by April 30, 2017; the then-CalBRE received this report on June 22, 2017).

16.

Additional Violations of the Real Estate Law

The overall conduct of Respondents OREGON TRAIL CORPORATION and MARK is violative of the Real Estate Law and constitutes cause for the suspension or revocation of both 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.

17.

The overall conduct of Respondents OREGON TRAIL CORPORATION and MARK is violative of the Real Estate Law and constitutes cause for the suspension or revocation of both of their MLO endorsements and endorsement rights under the provisions of **Code Section 10166.051** for their violations of the Real Estate Law.

COSTS

Investigation and Enforcement Costs

18.

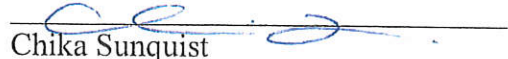
Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to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

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1 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 OREGON TRAIL CORPORATION
4 and CHRISTOPHER MARK 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 6th day of March, 2019.

11 
12 Chika Sunquist
13 Supervising Special Investigator

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19 cc: OREGON TRAIL CORPORATION
20 CHRISTOPHER MARK
21 Enforcement – S. Boyd., C. Sunquist
22 Audits – I. Beltran, D. Cheng, J. Lin
23 Sacto.