

1 LISSETE GARCIA, Counsel (SBN 211552)
Department of Real Estate
2 320 West 4th Street, Suite 350
Los Angeles, California 90013-1105
3 Telephone: (213) 576-6982
Direct: (213) 576-6914
4 Fax: (213) 576-6917
Attorney for Complainant

FILED

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DEPT. OF REAL ESTATE

By *John Aguirre*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation against

DRE No. H-41840 LA

12 FAITH ELIZABETH KOBY,

ACCUSATION

13 Respondent.

14
15 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the
16 Department of Real Estate¹ ("Department") of the State of California, for cause of Accusation
17 against FAITH ELIZABETH KOBY ("Respondent"), alleges as follows:

18 1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a
19 Supervising Special Investigator, makes this Accusation against Respondent.

20 2. All references to the "Code" are to the California Business and Professions Code,
21 all references to the "Real Estate Law" are to Part 1 of Division 4 of the Code, and all references

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23
24 ¹ Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

1 to "Regulations" are to the Regulations of the Real Estate Commissioner, Title 10, Chapter 6,
2 California Code of Regulations.

3 3. Respondent was licensed and/or has license rights under the Real Estate Law (Part
4 1 of Division 4 of the Code).

5 4. On February 19, 1982, the Department issued a real estate broker license to
6 Respondent, License ID 00429339. Unless renewed, Respondent's license shall expire on
7 February 4, 2021. Respondent has renewal rights. The Department retains jurisdiction pursuant
8 to Code section 10103.

9 Broker Activities

10 5. At all times mentioned herein, in the State of California, Respondent acted as a
11 real estate broker and conducted licensed activities within the meaning of Code section 10131(a)
12 (sells or offers to sell, buys or offers to buy, solicits prospective sellers or buyers of, solicits or
13 obtains listings of, or negotiates the purchase, sale, or exchange of real property or a business
14 opportunity).

15 6. Respondent is licensed to use the fictitious business name, "Koby Financial
16 Services."

17 7. Respondent is not licensed to do business as Koby Financial, Koby Real Estate,
18 Koby Ranch, or Koby Financial Escrow.

19 8. Sergio Torres, doing business as Torres Financial Services, ("Torres") is not
20 licensed in any capacity by the Department.

21 FIRST CAUSE OF ACCUSATION

22 Ramsey St. property

23 9. The Department received two separate complaints against Respondent concerning
24 a property located at 402 E. Ramsey Street, Banning, California ("Ramsey St. property"). One

1 complaint was made by the owner of the Ramsey St. property, M.O.¹ (“seller”). The second
2 complaint was made by prospective purchasers E.S. and M.S. (“prospective buyers”) who
3 submitted an offer to purchase the Ramsey St. property. The prospective buyers’ son-in-law,
4 A.L., submitted the complaint on the prospective buyers’ behalf.

5 10. On or about October 17, 2016, seller M.O., acting as representative for the O.
6 Family Trust #409, entered into a listing agreement to sell the Ramsey St. property with
7 Respondent, who was doing business as Koby Financial, an unlicensed fictitious business name.
8 The listing period was from October 17, 2016 to October 15, 2017. The listing price was
9 \$350,000.00. Respondent was to earn compensation of eight percent of the listing price.

10 11. On or about April 26, 2018, Respondent, while doing business as Koby Financial,
11 and the seller signed another listing agreement to sell the Ramsey St. property. The listing
12 period was from April 26, 2018 through April 25, 2019. The listing price was \$285,000. 00.
13 Respondent was to earn compensation of eight percent of the listing price.

14 12. On or about October 06, 2018, Respondent drafted an addendum to extend the
15 listing agreement with the seller from October 6, 2018 to October 5, 2019.

16 13. Respondent collected several payments from the seller for the preparation,
17 notarization, and recording of various trust and title documents for the Ramsey St. property.
18 Respondent referred the seller to Torres to assist the seller with preparing the trust documents in
19 order to sell the Ramsey St. property. The seller asserts that Torres incorrectly prepared the
20 documents and that the Respondent charged the seller an additional fee to correct the mistakes.
21 The seller paid approximately \$1,810.00 to Respondent and \$2,500.00 to Torres for the trust and
22 title documents for the Ramsey St. property.

23
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 Respondent(s) and/or their attorneys, after service of a timely and proper request for discovery on Complainant’s counsel.

1 14. In March of 2019, Respondent provided the seller with a Residential Purchase
2 Agreement (“purchase agreement”) from prospective buyers, M.S. and E.S. The purchase
3 agreement was dated March 13, 2019. The purchase agreement listed a purchase price of
4 \$160,000.00 with a \$5,000.00 deposit. The buyers made a cash offer. The Respondent used the
5 unlicensed fictitious business name “Koby Ranch” as the sellers brokerage firm, and the
6 unlicensed fictitious business name “Koby Real Estate” for the buyer’s brokerage firm on the
7 purchase agreement. Respondent acted as the dual agent for the seller and buyers in the
8 transaction.

9 15. The seller claimed that a counter offer was submitted but that Respondent failed
10 to provide the seller with a copy of the counter offer.

11 16. Respondent provided the prospective buyers with a copy of a different purchase
12 agreement for the Ramsey St. property. The second purchase agreement is dated March 22,
13 2019. Respondent used the unlicensed fictitious business name, “Koby Real Estate” for the
14 seller’s and buyer’s brokerage firms on the second purchase agreement. The purchase price was
15 \$170,000.00 with a \$5,000.00 deposit.

16 17. The prospective buyers assert that they gave approximately \$33,000.00 in total
17 deposit payments to the Respondent to be held in escrow for the purchase of the Ramsey St.
18 property. The payments were made in cash and through checks.

19 18. On March 13, 2019, the buyers gave Respondent a deposit of \$5,000.00 in the
20 form of check no. 5122, made payable to Koby Real Estate for the purchase of the Ramsey St.
21 property.

22 19. On March 22 2019, Respondent provided receipt no. 005304 to the buyers for
23 receipt of a \$2,000.00 deposit toward the purchase of the Ramsey St. property.
24

1 20. On March 30, 2019, Respondent provided receipt no. 005308 to the buyers for
2 receipt of a \$3,000.00 deposit toward the purchase of the Ramsey St. property.

3 21. On April 17, 2019, Respondent provided receipt no. 005311 to the buyers for
4 receipt of a \$9,000.00 deposit toward the purchase of the Ramsey St. property.

5 22. On April 17, 2019, Respondent provided receipt no. 005312 to the buyers for
6 receipt of a \$10,000.00 deposit toward the purchase of the Ramsey St. property.

7 23. In addition to acting as dual agent for the seller and buyers, Respondent
8 conducted a broker-controlled escrow for the Ramsey St. transaction. Respondent provided the
9 buyers with Supplemental Sale Escrow Instructions (“escrow instructions”) dated April 29, 2019.
10 Respondent used the unlicensed fictitious business name “Koby Financial Escrow” to act as the
11 escrow agent for the transaction. The total consideration noted on the escrow instructions was
12 \$170,000.00. The escrow instructions noted that the buyers had deposited \$24,000.00 into
13 escrow for the purchase of the Ramsey St. property.

14 24. Respondent is not licensed by the California Department of Financial Protection
15 and Innovation (formerly known as the Department of Business Oversight). Respondent
16 presumably acted under the exemption set forth in California Financial Code section 17006(a)(4)
17 for real estate brokers performing escrows incidental to a real estate transaction where the broker
18 was a party and where the broker was performing acts for which a real estate license is required.

19 25. On approximately August 22, 2019, the transaction was cancelled. Respondent
20 informed the buyers that they would receive a written cancellation of the purchase agreement but
21 the buyers did not receive any such cancellation. Respondent failed to provide a written
22 cancellation of contract to the seller and to the prospective buyers of the Ramsey St. property.

23 26. On or about October 04, 2019, the Respondent sent a letter to the buyers stating
24 that they would receive a refund of the deposit payments.

1 27. On or about November 01, 2019, Respondent paid a check no. 1237 for \$2,000.00
2 to the prospective buyers.

3 28. On or about January 02, 2020, Respondent paid a check no. 1402 for \$3,000.00 to
4 the prospective buyers.

5 29. Respondent has only returned \$5,000.00 to the prospective buyers of the
6 \$33,000.00 that the buyers claim was given to Respondent to hold in escrow for the purchase of
7 the Ramsey St. property. The checks and receipts show that Respondent collected a minimum of
8 \$29,000.00 as deposits from the prospective buyers and has only returned \$5,000.00 of the
9 deposit funds to the prospective buyers.

10 Causes for Discipline

11 Unlicensed Fictitious Business Names

12 30. Respondent’s use of unlicensed fictitious business names to engage in activities
13 requiring a real estate license, as described above in Paragraphs 6, 7, 10, 11, 14, 16, and 23,
14 constitutes cause for the suspension or revocation of the real estate license and license rights of
15 Respondent under the provisions of Code section 10177, subdivisions (d) and/or (g), for
16 violation of Code section 10159.5 and Regulation 2731.

17 Dishonest Dealing/Negligence

18 31. Respondent’s conduct, acts, and/or omissions, as described above in Paragraphs 5
19 through 29 constitutes cause for the suspension or revocation of the real estate license and
20 license rights of Respondent under the provisions of Code section 10176, subdivision (i), or
21 Code section 10177, subdivision (j).

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1 Investigation/Enforcement Costs

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

7 SECOND CAUSE OF ACCUSATION

8 Audit SD190032

9 33. There is hereby incorporated in this Second, separate, Cause of Accusation, all of
10 the allegations contained in Paragraphs 1 through 32 above, with the same force and effect as if
11 herein fully set forth.

12 34. The Department attempted to complete an audit examination of the books and
13 records of Respondent's broker escrow activities.

14 35. The audit covered the period of time from January 1, 2019 through February 29,
15 2020 ("audit period").

16 36. The Department made repeated requests for records and attempts to schedule an
17 audit examination with Respondent, who failed to provide any of the records requested for the
18 audit examination. No determination could be made if Respondent maintained any trust account
19 for real estate activities during the audit period.

20 37. The audit examination was based on a review of the Department's licensing
21 records, documents received with the complaints made against Respondent, and subpoenaed
22 bank records for Respondent's bank account, which were obtained by the Department from Bank
23 of America.

24 38. The audit examination revealed violations of the Code and the Regulations as set

1 forth in the following paragraphs, and more fully discussed in Audit Report SD 190032 and the
2 exhibits and work papers attached to said audit report.

3 39. According to the subpoenaed bank records, Respondent maintained the following
4 bank account for during the audit period.

5 40. Bank Account #1 (BA1)

6 Bank: Bank of America

7 Account Name: Faith E Koby Sole Prop DBA Koby Financial Services

8 Account #: xxxxx1374

9 Signatories: Respondent

10 # of signatures required: One

11 Description: BA1 was Respondent's general/personal account which was opened
12 on April 3, 2015. The bank balance on the February 29, 2020 statement was \$2,732.49.

13 Audit Violations

14 41. In the course of Respondent's real estate activities during the audit period,
15 Respondent acted in violation of the Code and the Regulations as follows:

16 Code section 10145(a) and Regulation 2950. Handling of Trust Funds/When Broker Handles

17 Escrow

18 42. Based on the Residential Purchase Agreement and Joint Escrow Instruction
19 ("purchase agreement") dated March 22, 2019, the prospective buyers made an offer to purchase
20 the Ramsey St. property for \$170,000.00 with a \$5,000 deposit. The purchase agreement was
21 not signed or initialed by the prospective buyers. Based on the checks and receipts examined,
22 Respondent collected a minimum total deposits of \$29,000.00 from the prospective buyers for
23 the purchase of the Ramsey St. property. Respondent handled the escrow for the transaction.
24 Respondent failed to disburse the trust funds to the prospective buyers after the transaction was

1 cancelled. Based on the foregoing, Respondent failed to properly handle trust funds for the
2 broker handled escrow transaction, in violation of Code section 10145, subdivision (a), and
3 Regulation 2950.

4 Code sections 10145, 10176(e), and Regulations 2832 and 2951. Handling of Trust
5 Funds/Commingling/When Broker Handles Escrow

6 43. On or about April 16, 2019, Respondent collected a \$9,000.00 deposit in the form
7 of check no. 5231 from the prospective buyers for the Ramsey St. property. The check was
8 made payable to Respondent. Based on the subpoenaed records for Respondent's bank account,
9 the \$9,000 check was deposited into BA1, Respondent's general account on April 22, 2019. The
10 trust funds were commingled with Respondent's general funds in BA1, and funds were disbursed
11 from said account for Respondent's personal/general expenses, in violation of Code section
12 10145 Code section 10176, subdivision (e), and Regulations 2832 and 2951.

13 Code section 10145 and Regulations 2832 and 2951. Trust Account Designation/Trust Fund
14 Handling/When Broker Handles Escrow

15 44. Respondent used BA1 to deposit trust funds in connection with Respondent's
16 broker escrow activities for the Ramsey St. transaction. BA1 was not designated as a trust
17 account or in the name of Respondent or Respondent's licensed fictitious business name, as
18 trustee, in violation of Code section 10145, Regulation 2832, and Regulation 2951.

19 Code section 10159.5, and Regulation 2731. Use of Unlicensed False of Fictitious Name/Trust
20 Fund Handling/When Broker Handles Escrow

21 45. Based on an examination of the Supplemental Sale Escrow Instructions dated
22 April 29, 2019, and Buyer Escrow Information Sheet submitted to the Department by the seller
23 and prospective buyers, Respondent used the unlicensed fictitious business name, "Koby
24 Financial Escrow" for the broker handled escrow of the Ramsey St. property without first

1 obtaining a license from the Department, in violation of Code section 10159.5, and Regulation
2 2731.

3 Regulation 2950 (h). When Broker Handles Escrow-Financial Interest

4 46. Based on an examination of the Supplemental Sale Escrow Instructions dated
5 April 29, 2019, and escrow documents submitted to the Department by the seller and prospective
6 buyers, Respondent failed to advise all parties in writing that Respondent had an interest as a
7 stockholder, officer, partner or owner of the agency handling escrow, in violation of Regulation
8 2950, subdivision (h).

9 Code section 10148 and Regulation 2950, subdivision (d). Retention of Records/When Broker
10 Handles Escrow

11 47. The Department requested that Respondent provide records related to
12 Respondent's real estate activities for the Department's audit examination. Respondent failed to
13 maintain or provide any records related to Respondent's broker escrow activities during the audit
14 period, in violation of Code section 10148 and Regulation 2950, subdivision (d).

15 48. The conduct of Respondent as described above in Paragraphs 42 through 47,
16 violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
18 42	Code section 10145(a) and Regulation 2950
19 43	Code sections 10145, 10176(e), Regulation 2832, and 20 Regulation 2951
21 44	Code sections 10145 and Regulations 2832 and 2951
22 45	Code section 10159.5 and Regulation 2731
23 46	Regulation 2950(h)
24 47	Code section 10148 and Regulation 2950(d)

