

Julie L. To (SBN 219482)
Department of Real Estate
320 West 4th Street, Suite. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6916 (direct)
-or- (213) 576-6982 (office)

FILED

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DEPT. OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

MICHAEL ROBERT FINK,

Respondent.

No. H-41865 LA

ACCUSATION

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, for cause of Accusation against MICHAEL ROBERT FINK, alleges as follows:

1.

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

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.

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DRE Accusation: Michael Robert Fink

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1 **APPLICABLE SECTIONS OF THE REAL ESTATE LAW**

2 **Retention of Records – Code Section 10148**

3 7.

4 Pursuant to Code Section 10148 *Retention of Records – Chargeable Audits –*
5 *Cost Recovery – Penalties for Unlawful Destruction of Records:*

6 “(a) A licensed real estate broker shall retain for three years copies of all
7 listings, deposit receipts, canceled checks, trust records, and other documents executed by him
8 or her or obtained by him or her in connection with any transactions for which a real estate
9 broker license is required. The retention period shall run from the date of the closing of the
10 transaction or from the date of the listing if the transaction is not consummated. After notice,
11 the books, accounts, and records shall be made available for examination, inspection, and
12 copying by the commissioner or his or her designated representative during regular business
13 hours; and shall, upon the appearance of sufficient cause, be subject to audit without further
14 notice, except that the audit shall not be harassing in nature. This subdivision shall not be
15 construed to require a licensed real estate broker to retain electronic messages of an ephemeral
16 nature, as described in subdivision (d) of Section 1624 of the Civil Code.

17 (b) The commissioner shall charge a real estate broker for the cost of any audit,
18 if the commissioner has found, in a final desist and refrain order issued under Section 10086 or
19 in a final decision following a disciplinary hearing held in accordance with Chapter 5
20 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code
21 that the broker has violated Section 10145 or a regulation or rule of the commissioner
22 interpreting Section 10145.

23 (c) If a broker fails to pay for the cost of an audit as described in subdivision (b)
24 within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the
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1 broker s license or deny renewal of the broker s license. The suspension or denial shall remain
2 in effect until the cost is paid or until the broker s right to renew a license has expired.

3 (d) The commissioner may maintain an action for the recovery of the cost of an
4 audit in any court of competent jurisdiction. In determining the cost incurred by the
5 commissioner for an audit, the commissioner may use the estimated average hourly cost for all
6 persons performing audits of real estate brokers.

7 (e) The Department may suspend or revoke the license of any real estate broker,
8 real estate salesperson, or corporation licensed as a real estate broker, if the real estate broker,
9 real estate salesperson, or any director, officer, employee, or agent of the corporation licensed
10 as a real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the
11 books, papers, writings, documents, or tangible objects that are required to be maintained by
12 this section or that have been sought in connection with an investigation, audit, or examination
13 of a real estate licensee by the commissioner.”

14
15 **Grounds for Revocation or Suspension – Code Section 10176**

16 8.

17 Pursuant to Code Section 10176 *Grounds for Revocation or Suspension*:

18 “The commissioner may, upon his or her own motion, and shall, upon the
19 verified complaint in writing of any person, investigate the actions of any person engaged in
20 the business or acting in the capacity of a real estate licensee within this state, and he or she
21 may temporarily suspend or permanently revoke a real estate licensee at any time where the
22 licensee, while a real estate licensee, in performing or attempting to perform any of the acts
23 within the scope of this chapter has been guilty of any of the following:

24 (a) Making any substantial misrepresentation...

- 1 (b) Making any false promise of a character likely to influence, persuade, or
2 induce...
- 3 (c) A continued and flagrant course of misrepresentation or making of false
4 promises through licensees.
- 5 (d) Acting for more than one party in a transaction without the knowledge
6 or consent of all parties thereto.
- 7 (e) Commingling with his or her own money or property the money or other
8 property of others which is received and held by him or her.
- 9 (f) Claiming, demanding, or receiving a fee, compensation, or commission
10 under any exclusive agreement authorizing a licensee to perform any
11 acts set forth in Section 10131 for compensation or commission where
12 the agreement does not contain a definite, specific date of final and
13 complete termination.
- 14 (g) The calming or taking by a licensee of any secret or undisclosed amount
15 of compensation, commission, or profit or the failure of a licensee to
16 reveal to the buyer or seller contracting with the licensee the full amount
17 of the licensee's compensation, commission, or profit under any
18 agreement authorizing the licensee to do any acts for which a license is
19 required under this chapter for compensation or commission prior to or
20 coincident with the signing of an agreement evidencing the meeting of
21 the minds of the contracting parties, regardless of the form of the
22 agreement, whether evidenced by documents in an escrow or by any
23 other or different procedure.
- 24 (h) The use by a licensee of any provision, which allows the licensee an
25 option to purchase, in an agreement with a buyer or seller that authorizes
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1 the licensee to sell, buy, or exchange real estate or a business
2 opportunity for compensation or commission, except when the licensee,
3 prior to or coincident with election to exercise the option to purchase,
4 reveals in writing to the buyer or seller the full amount of the licensee's
5 profit and obtains the written consent of the buyer or seller approving
6 the amount of the profit.

- 7 (i) Any other conduct, whether of the same or of a different character than
8 specified in this section, which constitutes fraud or dishonest dealing.
- 9 (j) Obtaining the signature of a prospective buyer to an agreement which
10 provides that the prospective buyer shall either transact the purchasing,
11 leasing, renting, or exchanging of a business opportunity property
12 through the broker obtaining the signature, or pay a compensation to the
13 broker if the property is purchased, leased, rented, or exchanged without
14 the broker first having obtained the written authorization of the owner of
15 the property concerned to offer the property for sale, lease, exchange, or
16 rent.
- 17 (k) Failing to disburse funds in accordance with a commitment to make a
18 mortgage loan that is accepted by the applicant when the real estate
19 broker represents to the applicant that the broker is either of the
20 following:
- 21 (1) The lender.
 - 22 (2) Authorized to issue the commitment on behalf of the
23 lender or lenders in the mortgage loan transaction.
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1 (l) Intentionally delaying the closing of a mortgage loan for the sole
2 purpose of increasing interest, costs, fees, or charges payable by the
3 borrower.

4 (m) Violating any section, division, or article of law which provides that a
5 violation of that section, division, or article of law by a licensed person
6 is a violation of that person's licensing law, if it occurs within the scope
7 of that person's duties as a licensee."

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

9 9.

10 Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action*:

11 "The commissioner may suspend or revoke the license of a real estate licensee,
12 delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an
13 applicant, who has done any of the following, or may suspend or revoke the license of a
14 corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to
15 a corporation, if an officer, director, or person owning or controlling 10 percent or more of the
16 corporation's stock has done any of the following:

17 (a) Procured, or attempted to procure, a real estate license or license
18 renewal, for themselves or a salesperson, by fraud, misrepresentation, or
19 deceit, or by making a material misstatement of fact in an application for
20 a real estate license, license renewal, or reinstatement.

21 (b) (1) Entered a plea of guilty or no contest to, or been found guilty of,
22 or been convicted of, a felony, or a crime substantially related to the
23 qualifications, functions, or duties of a real estate licensee, and the time
24 for appeal has elapsed or the judgment of conviction has been affirmed
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1 on appeal, irrespective of an order granting probation following that
2 conviction, suspending the imposition of sentence, or of a subsequent
3 order under Section 1203.4 of the Penal Code allowing that licensee to
4 withdraw that licensee's plea of guilty and to enter a plea of not guilty,
5 or dismissing the accusation or information.

6 (2) Notwithstanding paragraph (1), and with the recognition that
7 sentencing may not occur for months or years following the entry of a
8 guilty plea, the commissioner may suspend the license of a real estate
9 licensee upon the entry by the licensee of a guilty plea to any of the
10 crimes described in paragraph (1). If the guilty plea is withdrawn, the
11 suspension shall be rescinded and the license reinstated to its status prior
12 to the suspension. The department shall notify a person whose license is
13 subject to suspension pursuant to this paragraph of that person's right to
14 have the issue of the suspension heard in accordance with Section
15 10100.

16 (c) Knowingly authorized, directed, connived at, or aided in the
17 publication, advertisement, distribution, or circulation of a material false
18 statement or representation concerning their designation or certification
19 of special education, credential, trade organization membership, or
20 business, or concerning a business opportunity or a land or subdivision,
21 as defined in Chapter 1 (commencing with Section 11000) of Part 2,
22 offered for sale.

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

4 (e) Willfully used the term "realtor" or a trade name or insignia of
5 membership in a real estate organization of which the licensee is not a
6 member.

7
8 (f) Acted or conducted themselves in a manner that would have warranted
9 the denial of their application for a real estate license, or either had a
10 license denied or had a license issued by another agency of this state,
11 another state, or the federal government revoked, surrendered, or
12 suspended for acts that, if done by a real estate licensee, would be
13 grounds for the suspension or revocation of a California real estate
14 license, if the action of denial, revocation, surrender, or suspension by
15 the other agency or entity was taken only after giving the licensee or
16 applicant fair notice of the charges, an opportunity for a hearing, and
17 other due process protections comparable to the Administrative
18 Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter
19 4 (commencing with Section 11370), and Chapter 5 (commencing with
20 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
21 Code), and only upon an express finding of a violation of law by the
22 agency or entity.

23 (g) Demonstrated negligence or incompetence in performing an act for
24 which the officer, director, or person is required to hold a license.

1 (h) As a broker licensee, failed to exercise reasonable supervision over
2 the activities of that licensee's salespersons, or, as the officer designated
3 by a corporate broker licensee, failed to exercise reasonable supervision
4 and control of the activities of the corporation for which a real estate
5 license is required.

6 (i) Used their employment by a governmental agency in a capacity
7 giving access to records, other than public records, in a manner that
8 violates the confidential nature of the records.

9 (j) Engaged in any other conduct, whether of the same or of a different
10 character than specified in this section, that constitutes fraud or
11 dishonest dealing.

12 (k) Violated any of the terms, conditions, restrictions, and limitations
13 contained in an order granting a restricted license.

14 (l) (1) Solicited or induced the sale, lease, or listing for sale or lease of
15 residential property on the grounds, wholly or in part, of loss of value,
16 increase in crime, or decline of the quality of the schools due to the
17 present or prospective entry into the neighborhood of a person or
18 persons having a characteristic listed in subdivision (a) or (d) of Section
19 12955 of the Government Code, as those characteristics are defined in
20 Sections 12926 and 12926.1 of, subdivision (m) and paragraph (1) of
21 subdivision (p) of Section 12955 of, and Section 12955.2 of, the
22 Government Code.

23 (2) Notwithstanding paragraph (1), with respect to familial status,
24 paragraph (1) shall not be construed to apply to housing for older
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1 persons, as defined in Section 12955.9 of the Government Code. With
2 respect to familial status, nothing in paragraph (1) shall be construed to
3 affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil
4 Code, relating to housing for senior citizens. Subdivision (d) of Section
5 51 and Section 4760 of the Civil Code and subdivisions (n), (o), and (p)
6 of Section 12955 of the Government Code shall apply to paragraph (1).

7 (m) Violated the Franchise Investment Law (Division 5 (commencing
8 with Section 31000) of Title 4 of the Corporations Code) or regulations
9 of the Commissioner of Business Oversight pertaining thereto.

10 (n) Violated the Corporate Securities Law of 1968 (Division 1
11 (commencing with Section 25000) of Title 4 of the Corporations Code)
12 or the regulations of the Commissioner of Business Oversight pertaining
13 thereto.

14 (o) Failed to disclose to the buyer of real property, in a transaction in
15 which the licensee is an agent for the buyer, the nature and extent of a
16 licensee's direct or indirect ownership interest in that real property. The
17 direct or indirect ownership interest in the property by a person related
18 to the licensee by blood or marriage, by an entity in which the licensee
19 has an ownership interest, or by any other person with whom the
20 licensee has a special relationship shall be disclosed to the buyer.

21 (p) Violated Article 6 (commencing with Section 10237).

22 (q) Violated or failed to comply with Chapter 2 (commencing with
23 Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code,
24 relating to mortgages.
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1 If a real estate broker that is a corporation has not done any of the foregoing acts, either
2 directly or through its employees, agents, officers, directors, or persons owning or controlling
3 10 percent or more of the corporation's stock, the commissioner may not deny the issuance or
4 delay the renewal of a real estate license to, or suspend or revoke the real estate license of, the
5 corporation, provided that any offending officer, director, or stockholder, who has done any of
6 the foregoing acts individually and not on behalf of the corporation, has been completely
7 disassociated from any affiliation or ownership in the corporation. A decision by the
8 commissioner to delay the renewal of a real estate license shall toll the expiration of that
9 license until the results of any pending disciplinary actions against that licensee are final, or
10 until the licensee voluntarily surrenders the licensee's license, whichever is earlier."

11 **CAUSE FOR DISCIPLINE**

12 **DRE AUDIT LA190009: MICHAEL ROBERT FINK**

13 **(FOLLOW-UP AUDIT PURSUANT TO ACCUSATION H-40020 LA)**

14 10.

15 Included in the November 1, 2016 Stipulation and Agreement in DRE Case No.
16 H-40020 LA is the allowance for a subsequent audit to be performed pursuant to Business and
17 Professions Code Section 10148 to determine if the violations cited in DRE Case No. H-40020
18 LA (DRE Audit LA140143 findings), as described above in Paragraph 4, have been corrected
19 ("follow-up audit" or "follow-up audit examination"). On January 31, 2020, the DRE
20 completed its follow-up audit examination of the books and records of Respondent FINK
21 pertaining to his licensed real estate activities. The follow-up audit examination covered a
22 period of time beginning on January 1, 2018 and ending on June 30, 2019 ("follow-up audit
23 examination period"). The field work on the audit examination period records was performed
24 intermittently between August 26, 2019 and January 31, 2020 ("field work period").

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27 DRE Accusation: Michael Robert Fink

11.

As no books and records were provided by Respondent for the audit examination after repeated attempts by the DRE Auditor to obtain such information, the audit was limited to the verification of the Department's licensing records, the examination of which was performed at the DRE's Los Angeles District Office ("LADO"). The final report dated January 31, 2020 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 190009.

Unavailable Books and Records for Follow-Up Audit LA 190009

12.

Between July 2019 and October 2019, the DRE Auditor was unsuccessful in obtaining Respondent's books and records in order to perform the follow-up audit examination. Additionally, Respondent himself was unavailable for the follow-up audit examination. As such, the DRE Auditor was unable to determine whether Respondent has, since the November 1, 2016 Stipulation and Agreement, complied with: Code Section 10145 and Regulations 2831, 2831.1 and 2835; Code Section 10159.5 and Regulation 2731; and Code Section 10162 and Regulation 2715.

13.

On July 31, 2019, the DRE Auditor telephoned Respondent at his business cell phone/telephone number and was able to communicate with Respondent to set an audit appointment at Respondent's Banyan Street office for 9:00 A.M. on September 9, 2019.

14.

On August 1, 2019, a DRE Audit appointment letter was mailed via certified and regular mail to Respondent's main office address of record at the Banyan Street office location that advised Respondent of an audit appointment scheduled for September 9, 2019 at 9:00 A.M. at the Banyan Street office, and requested that Respondent produce for the audit

1 examination the books and records pursuant to Code Section 10148. Although the certified
2 mail envelope was returned by the post office marked as "Unclaimed/Unable to Forward," the
3 regular mail envelope was not returned. The DRE Audit appointment letter was also e-mailed
4 to Respondent at mrfink1@aol.com, to which Respondent replied and confirmed his receipt of
5 said letter.

6 15.

7 On September 9, 2019, at the designated hour of 9:00 A.M., the DRE Auditor
8 arrived to the Banyan Street location, pursuant to the July 31, 2019 telephone communication
9 with Respondent and to the August 1, 2019 DRE letter and e-mail of said letter. Respondent
10 was not available for the audit examination at the scheduled date and time. The DRE Auditor
11 unsuccessfully telephoned Respondent at his business cell phone/telephone number and e-
12 mailed Respondent. In response to the DRE Auditor's e-mail, Respondent replied and cited a
13 "family medical issue" as the reason for his absence, and sought to reschedule the
14 appointment. Respondent and the DRE Auditor set a new audit appointment via e-mail for
15 September 17, 2019 at 10:00 A.M. at the DRE's LADO.

16 16.

17 On September 17, 2019, at the designated hour of 10:00 A.M., Respondent did
18 not appear at the DRE's LADO. The DRE Auditor was unsuccessful when he telephoned
19 Respondent at his business cell phone/telephone number.

20 Subpoena Duces Tecum for Books and Records for Follow-Up Audit LA 190009

21 17.

22 On October 16, 2019, a *Subpoena Duces Tecum* dated October 10, 2019 was
23 served on Respondent at 7:30 A.M. to produce the books and records for examination related
24 to his real estate activity on October 25, 2019 at 10:00 A.M. at the DRE's LADO.

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27 DRE Accusation: Michael Robert Fink

18.

On October 25, 2019, at the designated hour of 10:00 A.M., Respondent did not appear at the DRE's LADO.

Retention of Records

(Code Section 10148)

19.

With respect to the *subpoena duces tecum* described above in Paragraph 17, none of the books, records, and documents related to the real estate activity conducted by Respondent were made available for examination for the audit period January 1, 2018 to June 30, 2019, in violation of **Code Section 10148**.

Additional Violations of the Real Estate Law

20.

The overall conduct of Respondent is violation of the Real Estate Law and constitutes cause for the suspension or revocation of the real estate licenses and license rights of MICHAEL ROBERT FINK under the provisions of **Code Sections 10177(g)** for negligence and **10177(d)** for willful disregard of the Real Estate Law.

COSTS

Investigation & Enforcement Costs

21.

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
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 Respondent MICHAEL ROBERT
4 FINK under the Real Estate Law (Part 1 of vision 4 of the Business and Professions Code), for
5 the cost of investigation and enforcement as permitted by law, and for such other and further
6 relief as may be proper under other provisions of law, and for costs of audit.

7 Dated at Los Angeles, California

8 this 30th day of December, 2020.

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12 Maria Suarez
13 Deputy Real Estate Commissioner
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17 cc: Michael Robert Fink
18 Maria Suarez
19 Sacto.
20 Audits – J. Lin
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