

FILED

APR 23 2021

DEPT. OF REAL ESTATE

By _____

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9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H-41938-LA
13 IVY HSIANG JU KUNG,) ACCUSATION
14 Respondent.)

15 The Complainant, Maria Suarez, a Supervising Special Investigator for the
16 Department of Real Estate ("Department" or "DRE") of the State of California, for cause of
17 Accusation against IVY HSIANG JU KUNG ("KUNG" or "Respondent"), alleges as follows:

- 18 1. The Complainant, Maria Suarez, acting in her official capacity as a Supervising
19 Special Investigator, makes this Accusation against Respondent.
20 2. All references to the "Code" are to the California Business and Professions Code
21 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

22 LICENSE HISTORY

23 3. Respondent KUNG has been licensed by the Department as a real estate broker
24 ("REB"), License ID 01874798, from on or about December 20, 2011 through the present, with
25 KUNG's license scheduled to expire on December 19, 2023 unless renewed. KUNG was
26 previously licensed as a real estate salesperson ("RES"), from on or about March 8, 2010 through
27 December 19, 2011. From on or about December 20, 2011 to October 2, 2019, KUNG maintained
28 the fictitious business name, "Fanster Consulting Services."

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Bank Account #3 ("GA2")

Bank: JPMorgan Chase Bank
Account Name: Fanster Consulting Services
Account #: XXXXXXXX3882
Signatories: KUNG (REB)
Rick Shengyun Fan (Unlicensed)
Signatures required: One (1) signature
Purpose: GA2 was maintained for handling the receipts and disbursements of trust funds in connection with KUNG's general business activities.

Bank Account #4 ("GA3")

Bank: JPMorgan Chase Bank
Account Name: eCentury Mortgage & Realty Inc.
Account #: XXXXXXXX1258
Signatories: KUNG (REB)
Rick Shengyun Fan (Unlicensed)
Signatures required: One (1) signature
Purpose: GA3 was maintained for handling the receipts and disbursements of trust funds in connection with KUNG's general business activities.

Bank Account #5 ("GA4")

Bank: JPMorgan Chase Bank
Account Name: Rick S. Fan OR Ivy Hsiang-Ju Kung
Account #: XXXXXXXX5513
Signatories: KUNG (REB)
Rick Shengyun Fan (Unlicensed)
Signatures required: One (1) signature
Purpose: GA4 was maintained for handling the receipts and disbursements of trust funds in connection with KUNG's personal activities.

Bank Account #6 ("GA5")

Bank: JPMorgan Chase Bank
Account Name: Hsiang-Ju Kung
Account #: XXXXXXXX6426
Signatories: KUNG (REB)
Signatures required: One (1) signature
Purpose: GA5 was maintained for handling the receipts and disbursements of trust funds in connection with KUNG's personal activities. Hsiang-Ju Kung is Ivy Hsiang-Ju Kung.

1 **Bank Account #7 ("GA6")**

2 Bank: JPMorgan Chase Bank
3 Account Name: Rick S. Fan
4 Account #: XXXXXXXXX0146
5 Signatories: Rick Shengyun Fan (Unlicensed)
6 Signatures required: One (1) signature
7 Purpose: GA6 was maintained for handling the receipts and disbursements of
 trust funds in connection with KUNG's personal activities. Kung
 stated she is also a signor on GA6.

8 **Audit Violations in Audit No. LA190105**

9 12. The audit examination revealed violations of the Code and the Regulations, as set
10 forth in the following paragraphs, and as more fully discussed in Audit No. LA190105 and the
11 exhibits and work papers attached to the audit report:

12 **Issue One (1). Code section 10145 and Regulation 2832.1: Trust Fund Handling for Multiple**
13 **Beneficiaries**

14 13. As of November 29, 2019, BA1 had a shortage of \$64,428.63. The shortage was
15 caused by negative property balances totaling \$58,943.36 and an unidentified shortage totaling
16 \$5,485.27 due to inadequate recordkeeping. Also, as of November 29, 2019, the adjusted bank
17 balance for BA1 included KUNG's commingled fees/commission totaling \$12,279.58, and the
18 allowed amount of KUNG's fees/commission totaling \$5,307.90.

19 14. The negative property balances were caused by disbursements related to properties
20 when there were insufficient funds to do so. A primary portion of the shortage was caused by a
21 negative property balance at 96 Archipelago (\$33,817.78) and at 6542 Gladiola (\$15,137.68).

22 15. The owner of 96 Archipelago transferred \$30,000 into GA4, and the owner of 6542
23 Gladiola transferred \$26,000 into GA4, and KUNG used these trust funds to pay for her personal
24 and financial obligations from GA4 without the written consent of the owners/beneficiaries of the
25 trust funds.

26 16. On or about March 25, 2020, KUNG deposited \$64,428.63 into BA1, transferring
27 this amount from GA4, to cure the total trust fund shortage.

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1 17. There was no evidence in the files examined that the owners of the trust funds gave
2 their written consent to allow KUNG to reduce the balance of the trust funds in BA1 to an amount
3 less than the aggregate trust fund liabilities to all owners of the funds.

4 18. KUNG's failure to obtain the written consent of the owners of the trust funds to
5 reduce the balance of the funds in BA1 to an amount less than the existing aggregate trust fund
6 liability was in violation of Code section 10145 and Regulation 2832.1.

7 **Issue Two (2). Code section 10145 and Regulations 2831: Trust Fund Records to be**
8 **Maintained**

9 19. Based on records examined, KUNG failed to maintain complete and accurate
10 records of all trust funds received and disbursed (control record) for BA1 in connection with
11 KUNG's property management activity. The control record was not in chronological sequence by
12 date and thus it did not have an accurate daily balance. In addition, in some instances, the control
13 record did not contain information regarding who the trust funds were received from.

14 20. KUNG's failure to maintain a complete and accurate control record of trust funds
15 for BA1 in connection with KUNG's property management activity was in violation of Code
16 section 10145 and Regulation 2831.

17 **Issue Three (3). Code section 10145 and Regulation 2831.1: Separate Record for Each**
18 **Beneficiary or Transaction**

19 21. Based on records examined, the separate records maintained for BA1, which were
20 used for handling the receipts and disbursements of trust funds in connection with KUNG's
21 property management activity, were inaccurate and incomplete. Some receipts were recorded on
22 the separate records of BA1 but were not deposited into BA1. In addition, some disbursements
23 were recorded on the separate records of BA1 but were not disbursed from BA1. Furthermore,
24 KUNG recorded her management fees on the separate records of BA1 but such fees were not
25 disbursed from BA1 during the audit period until November 1, 2019.

26 22. KUNG's failure to maintain an accurate separate record for BA1 in connection with
27 property management activity was in violation of Code section 10145 and Regulation 2831.1.

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1 **Issue Four (4). Code section 10145 and Regulation 2831.2: Trust Account Reconciliation**

2 23. KUNG did not maintain the monthly reconciliation of all the separate records with
3 the control record of all trust funds received and disbursed for BA1 in connection with the
4 property management activity during the audit period in violation of Code section 10145 and
5 Regulation 2831.2.

6 **Issue Five (5). Code section 10145 and Regulation 2832: Trust Fund Handling / Trust**
7 **Account Designation**

8 24. Based on an examination of the bank signature card maintained at JPMorgan Chase
9 Bank for BA1, BA1, used to handle property management trust funds, was not designated as a
10 trust account and was not set up in KUNG's name as trustee. BA was first set up in the name of
11 "Fanster Property Management, LLC" and subsequently as "Fanster Property Management, Inc."

12 25. KUNG's failure to designate BA1 as a trust account in KUNG's name as trustee
13 was in violation of Code section 10145 and Regulation 2832.

14 **Issue Six (6). Code section 10145 and Regulation 2834: Trust Account Withdrawals**

15 26. Based on an examination of the bank signature card maintained at JPMorgan Chase
16 Bank for BA1, KUNG allowed Rick Shengyun Fan, who was an unlicensed employee, to be a
17 signer on BA1 without fidelity bond or insurance coverage, in violation of Code section 10145
18 and Regulation 2834.

19 **Issue Seven (7). Code sections 10145 and 10176(e), and Regulation 2835(b): Commingling /**
20 **Broker's Funds Held Longer Than Twenty-Five (25) Days / Handling of Trust Funds**

21 27. As of November 29, 2019, KUNG had kept \$12,279.58 of commingled
22 fees/commissions in BA1 for over twenty-five (25) days after their deposit in violation of Code
23 sections 10145 and 10176(e), and Regulation 2835(b).

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1 **Issue Eight (8). Code sections 10145 and 10176(e), and Regulation 2832: Commingling /**
2 **Trust Funds Deposited into Broker's General Business and Personal Bank Accounts /**
3 **Handling of Trust Funds**

4 28. KUNG commingled trust funds with her general business funds and with her
5 personal funds by depositing trust funds collected into GA2, GA3, and GA4, in violation of Code
6 sections 10145 and 10176(e), and Regulation 2832.

7 **Issue Nine (9). Code sections 10145 and 10176(i), and Regulation 2832: Conversion of Trust**
8 **Funds / Unauthorized Disbursements / Handling of Trust Funds**

9 29. KUNG converted trust funds from GA4, her personal bank account. KUNG
10 deposited trust funds into GA4 and used these trust funds to pay for her personal and financial
11 obligations from GA4 without the written consent of the owners/beneficiaries of the trust funds.
12 As of November 29, 2019, a total of \$56,000 in trust funds had been deposited into GA4. The
13 bank balance of GA4 as of November 29, 2019 was reduced to an amount that was less than the
14 total amount of trust funds deposited into GA4. The ending bank balance of GA4 as of November
15 29, 2019 was \$7,804.23.

16 30. KUNG's conversion of trust funds to pay for her personal and financial obligations
17 without the written consent of the owners/beneficiaries of the trust funds was in violation of Code
18 sections 10145 and 10176(i), and Regulation 2832.

19 **Issue Ten (10). Code section 10159.5 and Regulation 2731: Use of False or Fictitious Name**

20 31. KUNG used the unlicensed fictitious business name "Fanster Consulting Services"
21 in connection with KUNG's property management activity during the period from October 3,
22 2019 to November 30, 2019, without first obtaining a license from the Department bearing the
23 fictitious business name. KUNG also used unlicensed fictitious business names "Fanster Property
24 Management, LLC," "Fanster Property Management, Inc.," and "eCentury Mortgage & Realty,
25 Inc." in connection with KUNG's property management activity during the audit period when
26 KUNG was not the holder of a license bearing these fictitious business names.

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1 32. KUNG's aforementioned use of unlicensed fictitious business names in connection
2 with KUNG's property management activity without first obtaining a license for such names from
3 the Department was in violation of Code section 10159.5 and Regulation 2731.

4 **Issue Eleven (11). Code section 10177(h) and Regulation 2725: Broker Supervision**

5 33. Complainant realleges and incorporates by reference all of the allegations contained
6 in paragraphs 1 through 32 above, with the same force and effect as though fully set forth herein.

7 34. Based on the above findings in Issues One (1) through Ten (10) above, as the
8 responsible broker, KUNG did not exercise adequate supervision and control over her property
9 management activity conducted by her employees to ensure compliance with the Real Estate Law.
10 KUNG failed to establish policies, rules, procedures, and systems to review, oversee, inspect, and
11 manage transactions requiring a real estate license and the handling of trust funds.

12 35. KUNG's acts and/or omissions were in violation of Code section 10177(h) and
13 Regulation 2725.

14 **CAUSE OF ACCUSATION**

15 **AUDIT VIOLATIONS IN AUDIT NO. LA190105**

16 36. The Complainant realleges and incorporates by reference all of the allegations
17 contained in paragraphs 1 through 35 above, with the same force and effect as though fully set
18 forth herein.

19 37. KUNG's conduct as described above in paragraphs 12 through 35 above violated
20 the Code and the Regulations as set forth below:

<u>Issue No.</u>	<u>Paragraphs</u>	<u>Violations</u>
1	13-18	Code section 10145; Regulation 2832.1
2	19-20	Code section 10145; Regulation 2831
3	21-22	Code section 10145; Regulation 2831.1
4	23	Code section 10145; Regulation 2831.2
5	24-25	Code section 10145; Regulation 2832
6	26	Code section 10145; Regulation 2834
7	27	Code sections 10145 and 10176(e); Regulation 2835(b)
8	28	Code sections 10145 and 10176(e); Regulation 2832
9	29-30	Code sections 10145 and 10176(i); Regulation 2832
10	31-32	Code section 10159.5; Regulation 2731
11	33-35	Code section 10177(h); Regulation 2725

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