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FILED

AUG 10 2018

DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

LG SERVICING, INC.,
and THOMAS ELLIOTT MECKENSTOCK,

Respondents.

No. H-6701 SAC

ACCUSATION

The Complainant, CHIKA SUNQUIST, acting in her official capacity as a Supervising Special Investigator of the State of California, for cause of Accusation against LG SERVICING, INC. (LGSI), and THOMAS ELLIOTT MECKENSTOCK (MECKENSTOCK), sometimes collectively referred to as Respondents, is informed and alleges as follows:

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Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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At all times herein mentioned, LGSI was and is licensed by the State of California Department of Real Estate (Department) as a real estate broker corporation.

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At all times herein mentioned, MECKENSTOCK was and is presently licensed by the Department as a restricted real estate broker, and as the designated broker officer of LGSI. As the designated broker officer, MECKENSTOCK was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of officers, agents, real estate licensees and employees of LGSI for which a real estate license is required to ensure the compliance of the corporation with the Real Estate Law and Regulations.

Whenever reference is made to allegation in this Accusation to an act or omission of LGSI, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with LGSI committed such acts or omissions while engaged in furtherance of the business or operation of LGSI, and while acting within the course and scope of their corporate authority and employment.

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Sections 10131 (d) and (e) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein Respondents solicited lenders and borrowers for loans secured directly or collaterally by liens on real property or a business opportunity, and wherein such loans were arranged, negotiated, process and consummated by Respondents on behalf of others and wherein promissory notes or interests therein were sold or purchased on behalf of another or others for compensation or in expectation of a compensation.

FIRST CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 5, inclusive, is incorporated by this reference as if fully set forth herein.

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2 On or about October 9, 2017, and continuing intermittently through October 16,
3 2017, an audit was conducted at LGSI's office located at 15700 Winchester Blvd, Los Gatos,
4 California, where the auditor examined records for the period of January 1, 2016, through
5 September 30, 2017 (the audit period).

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7 In the course of activities described in Paragraph 5, Respondents:

- 8 (a) Failed to submit to the Department in a timely manner the Trust Account
9 Review Report (TAR) for the fiscal year 2016 as required under Sections
10 10232.2 (a) and/or 10238 (o) of the Code;
- 11 (b) Failed to submit to the Department in a timely manner the Mortgage Loan
12 Business Activity Report (BAR) (RE 881) for the fiscal year 2016 as required
13 under Sections 10232.2 (c) and/or 10238 (p) of the Code;
- 14 (c) Failed to submit to the Department in a timely manner the Quarterly Trust
15 Account Report (Multi-Lender Transactions) (RE 852) for the second quarter of
16 2016, as required by Section 10238 (k)(3) of the Code;
- 17 (d) Failed to retain evidence in two (2) single investor loan transactions (Loan
18 Nos. 2046 and 2071) that Lender Purchaser Disclosure Statements were
19 delivered to investors before they became obligated to make the loan, as required
20 under Sections 10232.4 and 10238 (l) of the Code and in violation of Section
21 10148 of the Code;
- 22 (e) Failed to retain evidence in two (2) multi-lender loan transactions (Loan
23 Nos. 1815 and 1837) that Lender Purchaser Disclosure Statements were delivered
24 to investors before they became obligated to make the loan, as required under
25 Sections 10232.4 and 10238 (l) of the Code and in violation of Section 10148 of
26 the Code;

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1 (f) Failed to retain evidence in two (2) sales of existing notes (Loan Nos.
2 1799 and 1588A) that Lender Purchaser Disclosure Statements were delivered
3 to purchasers before the receipt by or on behalf of the broker of any funds from
4 the purchaser of a note, as required under Sections 10232.4 and 10238 (l) of the
5 Code and in violation of Section 10148 of the Code;

6 (g) Failed to record assignments of a deed of trust in the name of the
7 purchasers within ten (10) business days after funds were paid to LGSI or the
8 seller received any funds from the buyer (Loan Nos. 1799 and 1588A) as required
9 by Sections 10234 and 10238 (g) of the Code;

10 (h) Failed to obtain a statement from lenders/investors in two (2) multi-lender
11 loan transactions (Loan Nos. 1815 and 1837) regarding their investment not
12 exceeding 10% of their net income or adjusted gross income, as required by
13 Section 10238 (f) of the Code; and

14 (i) Failed to obtain from lenders in two (2) multi-lender loan transactions
15 (Loan Nos. 1815 and 1837) information relating to Investor Questionnaires to
16 determine investor suitability, as required by Section 10232.45 of the Code.

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18 The acts and/or omissions described above constitute violations of Sections
19 10148, 10232.2 (a), 10232.2 (c), 10232.4, 10232.45, 10234, 10238 (f), 10238 (g), 10238 (k)(3),
20 10238 (l), 10238 (o), and 10238 (p) of the Code and are grounds for discipline under Sections
21 10177(d) (Willful Disregard of Real Estate Laws) and/or 10177(g) (Negligence/Incompetence
22 Licensee) of the Code.

23 SECOND CAUSE OF ACTION

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25 Each and every allegation in Paragraphs 1 through 9, inclusive, is incorporated by
26 this reference as if fully set forth herein.

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On or about March 31, 2018, the Mortgage Loan Business Activity Report (BAR) (RE 881) for the fiscal year 2017 was due. Respondents have not submitted the report to the Department.

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The act and/or omission described above constitutes a violation of Sections 10232.2 (c) and/or 10238 (p) of the Code, and is grounds for discipline under Sections 10177(d) and/or 10177(g) of the Code.

THIRD CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 12, inclusive, is incorporated by this reference as if fully set forth herein.

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Respondent MECKENSTOCK failed to exercise reasonable supervision and control over the licensed activities of LGSI in such a manner as to allow the acts and events described above to occur.

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The acts and/or omissions of MECKENSTOCK as described in Paragraph 14, constitutes failure on the part of MECKENSTOCK, as designated broker-officer for LGSI, to exercise reasonable supervision and control over the licensed activities of LGSI as required by Section 10159.2 of the Code and Section 2725 of the Regulations.

16

The above acts and/or omissions of MECKENSTOCK violate Section 2725 (Broker Supervision) of the Regulations and Section 10159.2 (Responsibility/Designated Officer) of the Code and constitute grounds for disciplinary action under the provisions of Sections 10177(d), 10177(g) and/or 10177(h) (Broker Supervision) of the Code.

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1 PRIOR ADMINISTRATIVE ACTION

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3 Effective March 9, 1993, in Case No. H-6773 SF, before the Department of Real
4 Estate of the State of California, the Real Estate Commissioner revoked the license and licensing
5 rights of MECKENSTOCK, but granted the right to a restricted broker license for the following
6 violations: Sections 490 (Conviction of Crime) and 10177 (b) (Further Grounds for Disciplinary
7 Action- Conviction of Crime) of the Code.

8 COST RECOVERY

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10 Audit Costs

11 The acts and/or omissions of Respondents, as alleged above, entitle the
12 Department to reimbursement of the costs of its audits pursuant to Section 10148(b) (Audit Costs
13 for Trust Fund Handling Violations) of the Code.

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15 Costs of Investigation and Enforcement

16 Section 10106 of the Code provides, in pertinent part, that in any order issued in
17 resolution of a disciplinary proceeding before the Department, the Commissioner may request
18 the Administrative Law Judge to direct a licensee found to have committed a violation of this
19 part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
20 case.

21 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
22 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
23 action against all licenses and license rights of Respondent under the Code, for the reasonable


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1 cost of investigation and agency attorney's fees in this matter, and for such other and further
2 relief as may be proper under other provisions of law.

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6 CHIKA SUNQUIST
7 Supervising Special Investigator

8 Dated at Sacramento, California,
9 this 9th day of August, 2018.

10 DISCOVERY DEMAND

11 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the
12 Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set
13 forth in the *Administrative Procedure Act*. Failure to provide Discovery to the Department of
14 Real Estate may result in the exclusion of witnesses and documents at the hearing or other
15 sanctions that the Office of Administrative Hearings deems appropriate.