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FILED
MAR 28 2023
DEPT. OF REAL ESTATE
By 

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H-12614 SF
13)
14 EXCLUSIVE LIFESTYLES, INC.,) ACCUSATION
15 RANDALL NOEL KOSTICK, individually and as)
16 designated officer of Exclusive Lifestyles, Inc.,)
17 ALL CALIFORNIA BROKERAGE INC,)
18 BARBARA MAYBER LYNCH, individually and)
19 as designated officer of All California Brokerage)
20 Inc, and FRANK JOHN SERGI,)
21)
22 Respondents.)
23)

24 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
25 State of California, for cause of Accusation against EXCLUSIVE LIFESTYLES, INC.,
26 RANDALL NOEL KOSTICK, ALL CALIFORNIA BROKERAGE INC, BARBARA
27 MAYBER LYNCH, and FRANK JOHN SERGI (collectively "Respondents") alleges as
follows:

1.

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

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1 2.

2 All references to the "Code" are to the California Business and Professions Code
3 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

4 LICENSE HISTORY

5 3.

6 (EXCLUSIVE LIFESTYLES, INC.)

7 (a) Respondent EXCLUSIVE LIFESTYLES, INC. ("ELI") is presently licensed
8 and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California
9 Business and Professions Code, as a real estate corporation ("REC"), Department license ID
10 02109201.

11 (b) The Department originally issued ELI's corporate license on January 23,
12 2020. ELI's license is scheduled to expire on July 15, 2024, unless renewed.

13 (c) According to the Department's records to date, ELI has over 1800 broker
14 associates and salespersons associated with its license.

15 (d) According to the Department's records, on or about June 2, 2021, ELI
16 purchased REC Cal American Homes and Realty.

17 4.

18 (RANDALL NOEL KOSTICK)

19 (a) Respondent RANDALL NOEL KOSTICK ("KOSTICK") is presently
20 licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
21 California Business and Professions Code, as a real estate broker ("REB"), Department license
22 ID 00930174.

23 (b) The Department originally issued KOSTICK's REB license on or about
24 December 22, 1989.

25 (c) KOSTICK's license is scheduled to expire on December 21, 2025, unless
26 renewed.

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1 (d) According to the Department's records, KOSTICK has been the designated
2 officer of ELI since July 16, 2020 and is currently ELI's designated officer.

3 5.

4 (ALL CALIFORNIA BROKERAGE INC)

5 (a) Respondent ALL CALIFORNIA BROKERAGE INC. ("ACB") is presently
6 licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
7 California Business and Professions Code, as a REC, Department license ID 01291391.

8 (b) The Department originally issued ACB's corporate license on July 27, 2000.
9 ACB's license is scheduled to expire on July 31, 2024, unless renewed.

10 (c) According to the Department's records to date, ACB has over 4 broker
11 associates associated with its license.

12 6.

13 (BARBARA MAYBER LYNCH)

14 (a) Respondent BARBARA MAYBER LYNCH ("LYNCH") is presently
15 licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
16 California Business and Professions Code, as a REB, Department license ID 00987132.

17 (b) The Department originally issued LYNCH's REB license on or about
18 September 1, 1993.

19 (c) LYNCH's license is scheduled to expire on August 31, 2025, unless
20 renewed.

21 (d) According to the Department's records, LYNCH has been the designated
22 officer of ELI since August 1, 2020 and is currently ACB's designated officer.

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7.

(FRANK JOHN SERGI)

(a) Respondent FRANK JOHN SERGI (“SERGI”) is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code, as a real estate salesperson (“RES”), Department license ID 01232040.

(b) The Department originally issued SERGI’s RES license on or about December 18, 1997.

(c) SERGI’s license is scheduled to expire on October 19, 2023, unless renewed.

(d) According to the Department’s records, SERGI was affiliated with ACB from approximately June 27, 2003 to August 25, 2021. Thereafter, from approximately August 26, 2021 to October 3, 2022, SERGI was affiliated with ELI.

LICENSED ACTIVITIES

8.

At all times relevant herein Respondents were engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate corporation, within the meaning of Section 10131 (b) of the Code. Respondents’ activities included, but not limited to, the leasing or renting of real property and the collection of rents and security deposits for real property on behalf of others for compensation or in expectation of compensation.

(AUDIT LA210086)

9.

On or about June 28, 2022, the Department completed an audit examination of the books and records of ELI pertaining to the property management activities described in Paragraph 8 above. The audit examination covered the period of time from August 26, 2021 through December 31, 2021 (“audit period”). The primary purpose of the examination was to determine whether Respondents conducted real estate activities complied with the Real Estate Law.

1 Violations of the Real Estate Law

2 (As to EXCLUSIVE LIFESTYLES, INC., RANDALL NOEL KOSTICK, and
3 FRANK JOHN SERGI)

4 11.

5 The audit examination revealed violations of the Code and the Regulations, as
6 set forth in the following paragraphs, and more fully discussed in Audit Report No. LA210086,
7 and the exhibits and work papers attached to the audit report:

8 (a) **Trust Fund Records to be Maintained (Code section 10145 and**
9 **Regulations sections 2831)**. Respondents failed to maintain complete and accurate columnar
10 record for all trust funds received and disbursed (control record) for BA 1 and BA 2, which
11 were used for Respondents' property management activities during the audit period in violation
12 of Code section 10145 and Regulations sections 2831.

13 (b) **Trust Fund Handling/Account Designation (Code section 10145 and**
14 **Regulations section 2832)**. Based on an examination of BA 1 and BA 2's records, BA 1 and 2
15 were not set up in the name of ELI or a dba as trustee. But, BA 1 and BA 2 were instead set up
16 in the name of the beneficiary. BA 1 and BA 2 were used to collect trust funds in connection
17 with ELI property management activity.

18 (c) **Trust Account Withdrawal (Code section 10145 and Regulations section**
19 **2834)**. According to BA 1 and BA 2's records, KOSTICK was not a signatory to BA 1 and BA
20 2. BA 1 and BA 2's bank signature cards contained the signatories SERGI, Naoko S., and
21 Makiko K. (non-employee of ELI, non-licensee), who was allowed to sign and make
22 withdrawals from BA 1 and BA 2.

23 (d) **Responsibility of Corporate Office in Charge/Broker Supervision (Code**
24 **sections 10159.2 and 10177(h) and Regulations section 2725)**. Based on the violations in
25 Paragraphs 11 (a)-(c) above, Respondent KOSTICK failed to exercise adequate supervision and
26 control over ELI's property management activities in violation of Code section 10159.2.
27 Respondent KOSTICK failed to provide established policies, rules, procedures, and systems to

1 review, oversee, inspect, and manage transactions requiring a real estate license and the
2 handling of trust funds in violation of Regulations section 2725.

3 (AUDIT LA210087)

4 12.

5 On or about June 28, 2022, the Department completed an audit examination of
6 the books and records of ACB pertaining to the property management activities described in
7 Paragraph 8 above. The audit examination covered the period of time from January 1, 2020
8 through August 25, 2021 (“second audit period”). The primary purpose of the examination was
9 to determine whether Respondents conducted real estate activities complied with the Real
10 Estate Law. The audit examination revealed violations of the Code and the Regulations as set
11 forth in the following paragraphs, and more fully discussed in Audit No. LA210087, and the
12 exhibits and work papers attached to said audit report.

13 13.

14 At all times mentioned herein, and in connection with the property management
15 activities described in Paragraph 8, above, Respondents accepted or received funds, including
16 trust funds from or on behalf of actual or prospective parties to transactions handled by
17 Respondents and thereafter made deposits and/or disbursements of such funds.

18 According to the documents provided, Respondents maintained two (2) bank
19 accounts for handling of the receipts and disbursements of funds during the second audit period
20 in connection with the property management activities. The bank accounts are BA 1 and BA 2
21 as mentioned above in Paragraph 10.

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1 Violations of the Real Estate Law

2 (As to ALL CALIFORNIA BROKERAGE INC, BARBARA MAYBER LYNCH, and FRANK
3 JOHN SERGI)

4 14.

5 The audit examination revealed violations of the Code and the Regulations, as
6 set forth in the following paragraphs, and more fully discussed in Audit Report No. LA210087,
7 and the exhibits and work papers attached to the audit report:

8 (a) **Trust Fund Records to be Maintained(Code section 10145 and**
9 **Regulations sections 2831)**. Respondents failed to maintain complete and accurate columnar
10 record for all trust funds received and disbursed (control record) for BA 1 and BA 2, which
11 were used for Respondents' property management activities during the second audit period in
12 violation of Code section 10145 and Regulations sections 2831.

13 (b) **Trust Fund Handling/Account Designation (Code section 10145 and**
14 **Regulations section 2832)**. Based on an examination of BA 1 and BA 2's records, BA 1 and 2
15 were not set up in the name of ACB or a dba as trustee. But, BA 1 and BA 2 were instead set up
16 in the name of the beneficiary. BA 1 and BA 2 were used to collect trust funds in connection
17 with ACB property management activity.

18 (c) **Trust Account Withdrawal (Code section 10145 and Regulations section**
19 **2834)**. According to BA 1 and BA 2's records, LYNCH was not a signatory to BA 1 and BA 2.
20 BA 1 and BA 2's bank signature cards contained the signatories SERGI, Naoko S., and Makiko
21 K. (non-employee of ELI, non-licensee), who was allowed to sign and make withdrawals from
22 BA 1 and BA 2.

23 (d) **Responsibility of Corporate Office in Charge/Broker Supervision (Code**
24 **sections 10159.2 and 10177(h) and Regulations section 2725)**. Based on the violations in
25 Paragraphs 14 (a)-(c) above, Respondent LYNCH failed to exercise adequate supervision and
26 control over ACB's property management activities in violation of Code section 10159.2.
27 Respondent LYNCH failed to provide established policies, rules, procedures, and systems to

ACCUSATION

1 review, oversee, inspect, and manage transactions requiring a real estate license and the
2 handling of trust funds in violation of Regulations section 2725.

3 (AUDIT LA210148)

4 15.

5 On or about August 19, 2022, the Department completed an audit examination
6 of the books and records of ELI pertaining to the broker escrow activities described in
7 Paragraph 8 above. The audit examination covered the period of time from June 2, 2021
8 through May 31, 2022 (“third audit period”). The primary purpose of the examination was to
9 determine whether Respondents conducted real estate activities complied with the Real Estate
10 Law. The audit examination revealed violations of the Code and the Regulations as set forth in
11 the following paragraphs, and more fully discussed in Audit No. LA210148, and the exhibits
12 and work papers attached to said audit report.

13 16.

14 At all times mentioned herein, and in connection with the broker escrow
15 activities described in Paragraph 8, above, Respondents accepted or received funds, including
16 trust funds from or on behalf of actual or prospective parties to transactions handled by
17 Respondents and thereafter made deposits and/or disbursements of such funds. According to the
18 documents provided, Respondents maintained one (1) bank account for handling of the receipts
19 and disbursements of funds during the second audit period in connection with the broker
20 escrow activities. The bank account is TA 1 as follows:

21 Trust Account 1 (“TA 1”)

22 Bank: Citizens Business Bank
23 Account Name: Cal American Homes Realty DBA Cal American Escrow – A non-
24 independent broker escrow
25 Account Number: xxxxxxxx7214
26 Signatories: Naoko S. and Frank Sergi
27 Signatures Required: One

1 Purpose: TA 1 was maintained to handle trust funds in the broker escrow
2 activities.

3 Violations of the Real Estate Law

4 (As to EXCLUSIVE LIFESTYLES, INC. and RANDALL NOEL KOSTICK)

5 17.

6 The audit examination revealed violations of the Code and the Regulations, as
7 set forth in the following paragraphs, and more fully discussed in Audit Report No. LA210148,
8 and the exhibits and work papers attached to the audit report:

9 (a) **Trust Fund Handling For Multiple Beneficiaries/When Broker Handles**
10 **Escrow (Code section 10145 and Regulations section 2832.1, 2950(g) and 2951)**. Based on
11 an examination of TA 1's records, there was a minimum trust fund shortage of \$45.00 as of
12 May 31, 2022 violation of Code section 10145 and Regulations section 2832.1, 2950(g), and
13 2951. There is no evidence that Respondents ELI and KOSTICK were given written consent
14 from the owners of the trust funds to allow said Respondents to reduce the balance of the funds
15 in TA 1 to an amount less than the aggregate trust fund liabilities of said Respondents to all
16 owners of the trust funds.

17 (b) **Trust Fund Handling/ Trust Account Withdrawals/When Broker**
18 **Handles Escrow (Code section 10145 and Regulations section 2834 and 2951)**. According
19 to TA 1's records, KOSTICK was not a signatory to TA 1 and BA 2. TA 1's bank signature
20 cards contained the signatories Jessie Rodriguez and James Warren Diller (employee of ELI,
21 licensees), who were allowed to sign and make withdrawals from TA 1.

22 (c) **Use of False or Unlicensed Fictitious Name (Code section 10159.5 and**
23 **Regulations section 2731)**. During the third audit period, Respondent ELI used the unlicensed
24 fictitious business name of "Cal American Homes and Realty" in connection with its broker
25 escrow activities. During that time, the name "Cal American Homes and Realty" does not
26 show up in the Department's records as licensed fictitious business name registered to
27 Respondent in violation of Code section 10159.5 and Regulations section 2731.

1 (d) Responsibility of Corporate Office in Charge/Broker Supervision (Code
2 sections 10159.2 and 10177(h) and Regulations section 2725). Based on the violations in
3 Paragraphs 17 (a)-(c) above, Respondent KOSTICK failed to exercise adequate supervision and
4 control over ELI's broker escrow activities in violation of Code section 10159.2. Respondent
5 KOSTICK failed to provide established policies, rules, procedures, and systems to review,
6 oversee, inspect, and manage transactions requiring a real estate license and the handling of
7 trust funds in violation of Regulations section 2725.

8 Additional Violations of the Real Estate Law

9 18.

10 The overall conduct of Respondents violates the Real Estate Law and constitutes
11 cause for the suspension or revocation of their real estate license and license rights under the
12 provisions of **Code Section 10177(g)** for negligence and **Code Section 10177(d)** for willful
13 disregard of the Real Estate Law.

14 19.

15 Each of the foregoing violations in Paragraphs 11 (a)-(c) above constitute cause
16 for the suspension or revocation of the real estate license and/or license rights of Respondents
17 ELI, KOSTICK, and SERGI under the provisions of Code sections 10177(d), 10177(g), and
18 10177(h) (as to KOSTICK).

19 20.

20 Each of the foregoing violations in Paragraphs 14 (a)-(c) above constitute cause
21 for the suspension or revocation of the real estate license and/or license rights of Respondents
22 ACB, LYNCH, and SERGI under the provisions of Code sections 10177(d), 10177(g), and
23 10177(h) (as to LYNCH).

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1 21.

2 Each of the foregoing violations in Paragraphs 11 (a)-(c) above constitute cause
3 for the suspension or revocation of the real estate license and/or license rights of Respondents
4 ELI and KOSTICK, under the provisions of Code sections 10177(d), 10177(g), and 10177(h)
5 (as to KOSTICK).

6 COSTS

7 (AUDIT COSTS)

8 22.

9 Section 10148(b) of the Code, provides, in pertinent part, that the Real Estate
10 Commissioner shall charge a real estate broker for the costs of any audit if the Commissioner
11 has found in a final decision, following a disciplinary hearing, that the broker has violated
12 Section 10145 of the Code or a regulation or rule of the Commissioner interpreting said Code
13 section.

14 (INVESTIGATION AND ENFORCEMENT COSTS)

15 23.

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 part
19 to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

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PRAYER

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) of Respondent EXCLUSIVE LIFESTYLES, INC., RANDALL NOEL KOSTICK, ALL CALIFORNIA BROKERAGE INC, BARBARA MAYBER LYNCH, and FRANK JOHN SERGI, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under applicable provisions of law.

Dated at Sacramento, California this 27 day of March, 2023.

Veronica Kilpatrick
Veronica Kilpatrick
Supervising Special Investigator

cc: EXCLUSIVE LIFESTYLES, INC.
RANDALL NOEL KOSTICK
ALL CALIFORNIA BROKERAGE INC
BARBARA MAYBER LYNCH
FRANK JOHN SERGI
Sacto.
Audits – Shirley Tan