

FILED

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BUREAU OF REAL ESTATE

By Al Selorio

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7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-40502 LA
12)
13 PEAK REALTY, CO.; and)
14 RAFFI TAL, individually and)
as designated officer of Peak)
15 Realty, Co.,)
16 Respondents.)

A C C U S A T I O N

17 The Complainant, Dionne Faulk, a Supervising Special Investigator of the State
18 of California, acting in her official capacity, for cause of Accusation against PEAK REALTY,
19 CO. ("PRC") dba Peak Realty dba Peak Commercial dba I Short Sale dba Century 21 Peak and
20 RAFFI TAL ("TAL"), individually and as designated officer of Peak Realty, Co., is informed
21 and alleges as follows:

22 1.

23 The Complainant, Dionne Faulk, acting in her official capacity as Supervising
24 Special Investigator of the State of California, makes this Accusation.

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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 unless otherwise specified.

3.

a. PRC is presently licensed and/or issued by the Bureau of Real Estate as a real estate corporation (license no. 01897136), and has a Mortgage Loan Originator License Endorsement ("MLO") (NMLS no. 850717). PRC was originally licensed on or about April 13, 2011 and remains licensed to date. On or about April 2, 2012, PRC registered the following DBAs with the Bureau of Real Estate: Peak Realty, Peak Commercial, and I Short Sale. On or about July 17, 2015, PRC registered the DBA of Century 21 Peak with the Bureau of Real Estate.

b. TAL is presently licensed and/or issued by the Bureau of Real Estate as a real estate broker (license no. 01840066), and has a Mortgage Loan Originator License Endorsement ("MLO") (NMLS no. 447636). TAL was originally licensed as a real estate broker on November 30, 2010. Previously, he was licensed as a real estate salesperson from June 14, 2008 to November 29, 2010. TAL was the designated broker of I Short Sales, Inc. (license no. 01773693) from on or about February 17, 2012 to October 30, 2014. (I Short Sales, Inc.'s corporate broker license expired on or about October 30, 2014.)

4.

At all times mentioned, in the City and County of Los Angeles, PRC and TAL engaged in the business of a real estate broker conducting licensed activities within the meaning of Code section 10131(a). PRC and TAL engaged in selling or offering to sell, buying or offering to buy, soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, and/or negotiating the purchase, sale, or exchange of real property or a business opportunity.

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1 FIRST CAUSE OF ACCUSATION

2 (Trust Fund Audit)

3 5.

4 On or about January 26, 2016, the Bureau of Real Estate completed an audit
5 examination of the books and records of PRC to determine whether PRC handled and
6 accounted for trust funds and conducted its real estate activities in accordance with the Real
7 Estate Law and Regulations. The audit examination covered a period of time beginning on
8 January 1, 2014 and ending on September 30, 2015. The audit examination revealed violations
9 of the Code and the Regulations set forth in the following paragraphs, and more fully discussed
10 in Audit Report LA150048 and the exhibits and work papers attached to said audit report.

11 Trust Account

12 6.

13 At all times mentioned, in connection with the activities described in Paragraph
14 4, above, PRC and TAL accepted or received funds including funds in trust ("trust funds") from
15 or on behalf of actual or prospective parties, such as sellers and buyers of real property, and
16 thereafter made deposits and/or disbursements of such funds. From time to time herein
17 mentioned, during the audit period, said trust funds were deposited and/or maintained by PRC
18 and TAL in the trust account as follows:

19 "Peak Realty Co., A CA Corporation 'Custodial Trust'"

20 *****1973

21 City National Bank

15260 Ventura Blvd.

Sherman Oaks, CA 91403

(T/A #1)

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23 7.

24 In the course of activities described in Paragraphs 4 and 6, above, and during the
25 audit examination period in Paragraph 5, above, Respondents PRC and TAL acted in violation
26 of Code sections 10176(a) (making substantial misrepresentation), 10176(b) (making false
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1 promises), 10176(i) (fraud or dishonest dealing), and 10177(j) (fraud or dishonest dealing)
2 based on the following:

3 a. On or about February 6, 2013, Saris Realty, Inc. ("SRI") (license no.
4 01870511) dba Lawyers Realty Group ("LRG") by Derik Neil Lewis ("Lewis") (license no.
5 01439110) originally listed the property located at 5025 Gaviota Ave., Los Angeles, CA 91436
6 ("Gaviota Property") for sellers, Steven P. and Toni P., according to the Cancellation of Listing
7 dated on or about May 21, 2013.

8 b. PRC and TAL agreed to pay Lewis 25 percent of the listing commission
9 earned, according to the Referral Fee Agreement and Cancellation of Listing dated on or about
10 May 20, 2013.

11 c. PRC through TAL represented the sellers Steven P. and Toni P. in selling
12 the Gaviota Property from April 8, 2013 to December 31, 2013, according to the Residential
13 Listing Agreement dated on or about May 7, 2013.

14 d. PRC through salesperson Elkan Ninary (license no. 01838593)
15 represented the buyer, Eitan Z.

16 e. On or about April 19, 2013, PRC dba I Short Sale and TAL agreed to
17 assist sellers Steven P. and Toni P. in obtaining a loan modification for compensation of 1.25
18 percent of the sales price of the property, according to the Short Sale Services Agreement dated
19 on of about April 19, 2013.

20 f. On or about January 16, 2014, the sellers, Steven P. and Toni P., and the
21 buyer, Eitan Z., signed a Residential Purchase Agreement and Joint Escrow Instructions, which
22 incorporated Addendum No. 1 and Purchase Agreement Addendum No. 1. Addendum No. 1
23 provided, in part, that the buyer would pay "Derrick Luis [sic] Law Office \$5,062 for
24 outstanding legal services" related to the Gaviota Property and a \$25,375.00 "negotiation fee"
25 to I Short Sale, which is a DBA for PRC. Purchase Agreement Addendum No. 1. provided, in
26 part, the sellers, Steven P. and Toni P., would remain in possession of the Gaviota Property for
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1 12 months after the close of escrow for \$3,800.00 per month and a security deposit of
2 \$5,000.00. PRC and TAL failed to disclose the existence of Addendum No. 1 and Purchase
3 Agreement Addendum No. 1, as well as the terms therein, to the lender, Wells Fargo Bank.

4 g. According to the Wells Fargo Bank's Lender's Terms and Conditional
5 Approval Consideration" dated on or about January 28, 2014, PRC and TAL certified, in part,
6 "There are no agreements or understandings between the Seller and Buyer that the Seller will
7 remain in the property as a tenant . . .," and, "Any contributions to the sale from any parties
8 involved, including contributions paid outside of closing, have been disclosed on the HUD-1
9 Settlement Statement." PRC and TAL submitted this document to Wells Fargo Bank.

10 h. On or about January 31, 2014, the lender, Wells Fargo Bank approved
11 the short sale in reliance on PRC and TAL's omission regarding Addendum No. 1 and Purchase
12 Agreement Addendum No. 1, described above, as well as the terms therein.

13 i. On or about January 31, 2014, the lender, Wells Fargo Bank, approved a
14 Settlement Statement (HUD 1) stating a total of \$40,500.00 would be paid to PRC for
15 commission (\$23,625.00 for commission as the selling agent plus \$16,875.00 for commission
16 as the listing agent) and the borrower, Eitan Z., would be paid \$25,681.32 due to an alleged
17 overpayment by the borrower. This Settlement Statement (HUD 1) failed to include an entry
18 for fees paid for short sale negotiation, and misrepresented that that \$5,062.00 to be paid to
19 "Derrick Luis [*sic*] Law Firm" was for "[l]egal services/fees" instead of as a part of the listing
20 commission.

21 j. On or about January 31, 2014, escrow closed on the short sale of the
22 Gaviota Property from Steven P. and Toni P. to the buyer, Eitan Z. for a purchase price of
23 \$675,000, according to the Settlement Statement (HUD 1) dated on or about January 31, 2014.
24 PRC represented the sellers Steven P. and Toni P. in negotiating this listing and sale. The
25 escrow was performed by Escrow of the West (DBA 963-2166).

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1 k. On or about January 31, 2014, the \$25,375.00 "negotiation fee" was paid
2 to PRC dba I Short Sale.

3 l. On or about January 31, 2015, the \$5,062.00 fee for "legal services" was
4 paid to "Derrick Luis [sic] Law Office." This fee was paid to Lewis, the broker who originally
5 listed the Gaviota property on February 6, 2013, as a part of the listing commission.

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7 SECOND CAUSE OF ACCUSATION

8 (Supervision and Compliance)

9 8.

10 The overall conduct of Respondent TAL constitutes a failure on Respondent
11 TAL's part, as officer designated by a corporate broker licensee, to exercise the reasonable
12 supervision and control over the licensed activities of PRC as required by Code section 10159.2
13 and Regulation section 2725, and to keep PRC in compliance with the Real Estate Law,
14 requiring a real estate license, and is cause for discipline of the real estate license and real estate
15 license rights of Respondent TAL pursuant to the Code sections 10177(d) (willful disregard or
16 violation of Real Estate Law) and 10177(h) (failure to exercise reasonable supervision).

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18 THIRD CAUSE OF ACCUSATION

19 (Negligence)

20 9.

21 The overall conduct of Respondents PRC and TAL constitute negligence and is
22 cause for discipline of the real estate license and license rights of PRC and TAL pursuant to the
23 provisions of Code section 10177(g).

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1 FOURTH CAUSE OF ACCUSATION

2 (Fiduciary Duty)

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4 The overall conduct of Respondents PRC and TAL constitutes a breach of
5 fiduciary duty with respect to their real estate consumers and clientele, including property
6 owners and tenants. This conduct and violation are cause for the suspension or revocation of
7 the real estate license and license rights of Respondents PRC and TAL pursuant to Code
8 Section 10177(g).

9
10 (COSTS)

11 11.

12 Code section 10106 provides, in pertinent part, that in any order issued in
13 resolution of a disciplinary proceeding before the Bureau of Real Estate, the Commissioner may
14 request the administrative law judge to direct a licensee found to have committed a violation of
15 this part to pay a sum not to exceed the reasonable costs of investigation and enforcement of the
16 case.

17 12.

18 Code section 10148(b) provides, in pertinent part, that the Commissioner shall
19 charge a real estate broker for the cost of any audit, if the Commissioner has found in a final
20 decision following a disciplinary hearing that the broker has violated Code section 10145 or a
21 regulation or rule of the Commissioner interpreting said section.

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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 PEAK REALTY CO. and RAFFI
4 TAL under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions
5 Code), for the cost of investigation and enforcement pursuant to Code section 10106 and as
6 permitted by law, and for such other and further relief as may be proper under other applicable
7 provisions of law, including costs of audit pursuant to Code section 10148(b).

8 Dated at Los Angeles, California: December 28, 2016.

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12 Dionne Faulk
13 Deputy Real Estate Commissioner
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24 cc: Peak Realty, Co.
25 Raffi Tal
26 Dionne Faulk
27 Sacto
 Enforcement
 Audits – Anna Hartoonian