

FILED

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BUREAU OF REAL ESTATE

By choime

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	
HIRAM EARL KEMP,)	
ROBERT ALLEN FEATHERSTONE,)	NO. H-02891 FR
SHIRLEY LEE SULLIVAN-HABLE, and)	
KEMP-HABLE, INC., a Corporation,)	<u>ACCUSATION</u>
)	
Respondents.)	

The Complainant, BRENDA SMITH, a Deputy Real Estate Commissioner of the State of California, Bureau of Real Estate (herein the "Bureau") makes this Accusation in her official capacity against HIRAM EARL KEMP (herein "KEMP"), ROBERT ALLEN FEATHERSTONE (herein "FEATHERSTONE"), SHIRLEY LEE SULLIVAN-HABLE (herein "SULLIVAN-HABLE"), and KEMP-HABLE, INC. (herein "KHI") (herein collectively "Respondents"), is informed and alleges as follows:

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At all times herein mentioned, Respondents were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

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At all times herein mentioned KEMP was and now is licensed by the Bureau as a real estate salesperson.

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2 At all times herein mentioned FEATHERSTONE was and now is licensed by the
3 Bureau as a real estate salesperson.

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5 At all times herein mentioned, KHI was and now is licensed by the Bureau as a
6 corporate real estate broker by and through SULLIVAN-HABLE as designated officer-broker of
7 KHI to qualify said corporation and to act for said corporation as a real estate broker.

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9 At all times herein mentioned, SULLIVAN-HABLE was licensed by the Bureau
10 as a real estate broker, individually and as designated officer-broker of KHI. As said designated
11 officer-broker, SULLIVAN-HABLE was at all times mentioned herein responsible pursuant to
12 Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate
13 licensees, and employees of KHI for which a license is required.

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15 Whenever reference is made in an allegation in this Accusation to an act or
16 omission of KHI, such allegation shall be deemed to mean that the officers, directors, employees,
17 agents and/or real estate licensees employed by or associated with KHI committed such act or
18 omission while engaged in the furtherance of the business or operations of such corporate
19 respondent and while acting within the course and scope of their authority and employment.

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21 At all times herein mentioned, Respondents SULLIVAN-HABLE, KEMP-
22 HABLE, and FEATHERSTONE engaged in the business of, acted in the capacity of, advertised,
23 or assumed to act as real estate licensees for others for compensation or in the expectation of
24 compensation within the State of California within the meaning of Section 10131(a) of the Code,
25 which included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective
26 sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale
27 or exchange of real property or a business opportunity.

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On about December 15, 2011, KEMP entered into a listing agreement with KHI, for the sale of KEMP's own real property located on Teresa Street, Modesto, CA (herein "the Property") for a purchase price of about \$89,900.00.

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On about December 15, 2011, KEMP, SULLIVAN-HABLE, and KEMP-HABLE caused the Property to be entered into the Multiple Listing Service wherein the Property was described as "Cute, updated home, New Roof w/3 year Roof Certification and Clear Pest [Report] ..." when in fact, the Property did not have a clear pest report, rather the Property suffered dry rot in various places throughout, a violation of Sections 10176(a) (substantial misrepresentation) and (i) (fraud or dishonest dealing), 10177(j) (fraud or dishonest dealing of licensee not acting under license) and/or (g) (negligence or incompetence) of the Code, which is grounds for the suspension or revocation of said Respondents' licenses under Sections 10176(a), (i), 10177(j) and/or (g) of the Code.

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On about January 26, 2012, KEMP and Paul K. (herein "Buyer"), represented by FEATHERSTONE, entered into a California Residential Purchase Agreement and Joint Escrow Instructions (herein "the Contract") for the purchase of the Property in the amount of about \$86,900.00; escrow closed on about February 24, 2012.

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- On about January 26, 2012, pursuant to the Contract, KEMP agreed to:
- a) "DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS" within seven (7) days of acceptance of the Contract, Paragraph 9(A) of the Contract; and
 - b) "Deliver to Buyer all Reports disclosures and information for which Seller is responsible..." Paragraph 14(A) of the Contract.

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2 Between about January 26, 2012 and February 24, 2012, the date escrow closed,
3 KEMP failed to disclose to Buyer the dry rot damage, as required by Paragraph 9(A) of the
4 Contract and failed to deliver to Buyer the "Wood Destroying Pest and Organisms Report"
5 (herein "Pest Report") dated September 16, 2011, which KEMP received on about September 20,
6 2011, as required by Paragraph 14(A) of the Contract, in violation of Section 10177(j) of the
7 Code, which is grounds for the suspension or revocation of KEMP's license under Section
8 10177(j) of the Code.

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10 On about February 1, 2012, KEMP provided Buyer with a Seller Property
11 Questionnaire (herein "Questionnaire"), wherein KEMP failed to disclose neither the dry rot
12 damage, as required by Section V(A)(10) of the Questionnaire, nor the existence of the
13 September 16, 2011, Pest Report, as required by Section V(M)(1) of the Questionnaire, in
14 violation of Section 10177(j) of the Code, which is grounds for the suspension or revocation of
15 KEMP's license under Section 10177(j) of the Code.

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17 At all times mentioned herein, FEATHERSTONE, failed to advise Buyer to
18 obtain a property inspection report, contrary to two (2) California Association of Realtor's
19 Advisory's, as follows:

- 20 a) "Buyer's Inspection Advisory" (Paragraphs D. and E.); and
21 b) "Buyer and Seller Advisory" (BUYER RIGHTS AND DUTIES ...
22 (Paragraph 1. INSPECTIONS).

23 FEATHERSTONE delivered both Advisory's to Buyer on January 26, 2012.
24 Both Advisory's state in bold capital letters "YOU ARE STRONGLY ADVISED TO
25 INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE
26 PROPERTY. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF
27 BROKERS," in fact, FEATHERSTONE advised the Buyer NOT to obtain a property inspection

1 report, a violation of Section 10177(g) of the Code, and is grounds for the suspension or
2 revocation of FEATHERSTONE's license under Section 10177(g) of the Code.

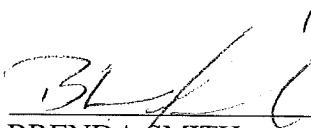
3 COST RECOVERY

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5 Investigation and Enforcement Costs

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

10 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
11 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
12 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of
13 Division 4 of the Business and Professions Code), for the cost of the investigation and
14 enforcement as permitted by law, and for such other and further relief as may be proper under
15 other applicable provisions of law.

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19 _____
20 BRENDA SMITH
21 Deputy Real Estate Commissioner

22 Dated at Fresno, California,
23 this 16 day of June, 2014.
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