

1 RICHARD K. UNO, Counsel III (SBN 98275)
2 Bureau of Real Estate
3 P. O. Box 137007
4 Sacramento, CA 95813-7007

5 Telephone: (916) 263-8670
6 (916) 263-3767 (Fax)
7 (916) 263-8679 (Direct)

FILED

JUN 29 2017
BUREAU OF REAL ESTATE
By B. Nicholas

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of
12 EUGENE BURGER MANAGEMENT
13 CORPORATION and
14 EUGENE JAMES BURGER,
15 Respondents.

No. H-3119 FR
ACCUSATION

16 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
17 State of California, for Accusation against Respondents EUGENE BURGER MANAGEMENT
18 CORPORATION (EBMC), and EUGENE JAMES BURGER (BURGER), sometimes
19 collectively referred to as Respondents, is informed and alleges as follows:

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21 The Complainant makes this Accusation against Respondents in her official
22 capacity.

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24 EBMC is presently licensed and/or has license rights under the Real Estate Law,
25 Part 1 of Division 4 of the California Business and Professions Code (Code), by the Bureau of
26 Real Estate (Bureau) as a corporate real estate broker.

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BURGER is presently licensed and/or has license rights by the Bureau as a real estate broker.

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At all times mentioned herein, BURGER was the designated broker-officer of EBMC. As the designated broker-officer, BURGER 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 EBMC for which a real estate license is required to ensure the compliance of the corporation with the Real Estate law and the Regulations.

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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 Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collected rents from real property, or improvements thereon, or from business opportunities.

FIRST CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 5, above, and incorporates the same, herein, by reference.

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Beginning on May 26, 2016, and continuing intermittently through March 28, 2017, an audit was conducted at EBMC's main office located at 6600 Hunter Drive, Rohnert Park and branch office located at 4825 Calloway Dr., St. 101, Bakersfield, California, and at the

1 Bureau's district office located at 1515 Clay Street, Oakland, California, where the auditor
2 examined records for the period of June 1, 2015, through May 31, 2016 (the audit period).

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4 While acting as a real estate broker as described in Paragraph 5, above, and
5 within the audit period, Respondents accepted or received funds in trust (trust funds) from or on
6 behalf of property owners, lessees and others in connection with property management
7 activities, and deposited or caused to be deposited those funds into bank accounts maintained by
8 Respondents, at City National Bank, 525 S. Flower Street, Los Angeles, California as described
9 below:

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TRUST ACCOUNT #1	
11 Account No.:	XXXXXX3046
12 Entitled:	Eugene Burger Management Corporation (Trust Account #Three)

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TRUST ACCOUNT #2	
15 Account No.:	XXXXXX1108
16 Entitled:	Eugene Burger Management Corporation (Bakersfield Commercial 17 Rental Trust)

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TRUST ACCOUNT #3	
20 Account No.:	XXXXXX6783
21 Entitled:	Eugene Burger Management Corporation (Trust Account #three)

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TRUST ACCOUNT #4	
24 Account No.:	XXXXXX3032
25 Entitled:	Eugene Burger Management Corporation (Trust Account #two)

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TRUST ACCOUNT #5	
Account No.:	XXXXXX3009
Entitled:	Brookside Padaro, LLC (Operating Account) c/o Eugene Burger Management Corp., TTEE

and thereafter from time-to-time made disbursement of said trust funds.

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In the course of the activities described in Paragraph 4, in connection with the collection and disbursement of trust funds, it was determined that:

(a) Respondents failed to designate Bank Account #2 and Bank Account #3 as trust accounts as required by Section 2832 of Chapter 6, Title 10, California Code of Regulations (Regulations);

(b) An accountability was performed on Trust Account #1, and as of May 31, 2016, a shortage of \$28,766.64 was revealed in violation of Section 10145 of the Code;

(c) An accountability was performed on Trust Account #2, and as of May 31, 2016, a shortage of \$1,612.00 was revealed in violation of Section 10145 of the Code;

(d) Respondents failed to obtain written permission from owners of trust funds in Trust Account #1 and Trust Account #2, to allow the balance to drop below accountability, in violation of Section 2832.1 of the Regulations;

(e) Respondents allowed an unlicensed and un-bonded individuals to be a signatory on Trust Account #1, Trust Account #2, Trust Account #3, Trust Account #4 and Trust Account #5, in violation of Section 2834 of the Regulations and

(f) Respondents failed to keep accurate control records for Trust Account #1 and Trust Account #2, in violation of Section 2831 of the Code.

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The acts and/or omissions described above constitute violations of Sections 2831 (control records), 2832.1 (written permission balance below accountability) and 2834 (trust fund signatories) of the Regulations and of Section 10145 (trust fund handling) of the Code and are

1 grounds for discipline under Section 10177(d) (willful disregard of real estate laws) and
2 10177(g) (negligence/incompetence licensee) of the Code.

3 SECOND CAUSE OF ACTION

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5 Complainant refers to Paragraphs 1 through 10, above, and incorporates the
6 same, herein, by reference.

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8 At all times herein above mentioned, BURGER was responsible as the
9 supervising designated broker/officer for EBMC, for the supervision and control of the activities
10 conducted on behalf of EBMC's business by its employees to ensure its compliance with the
11 Real Estate Law and Regulations. BURGER failed to exercise reasonable supervision and
12 control over the property management activities of EBMC. In particular, BURGER permitted,
13 ratified and/or caused the conduct described above to occur, and failed to take reasonable steps,
14 including but not limited to, the handling of trust funds, supervision of employees, and the
15 implementation of policies, rules, and systems to ensure the compliance of the business with the
16 Real Estate Law and the Regulations.

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18 The above acts and/or omissions of BURGER violate Section 2725 of the
19 Regulations and Section 10159.2 (responsibility/designated officer) of the Code and constitute
20 grounds for disciplinary action under the provisions of Sections 10177(d), 10177(g) and
21 10177(h) (broker supervision) of the Code.

22 Audit Costs

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24 The acts and/or omissions of Respondents, as alleged above, entitle the Bureau to
25 reimbursement of the costs of its audits pursuant to Section 10148(b) (audit costs for trust fund
26 handling violations) of the Code.

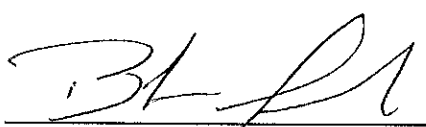
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1 Costs of Investigation and Enforcement

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3 Section 10106 of the Code provides, in pertinent part, that in any order issued in
4 resolution of a disciplinary proceeding before the Bureau, the commissioner may request the
5 administrative law judge to direct a licensee found to have committed a violation of this part to
6 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7 WHEREFORE, Complainant prays that a hearing be conducted on the
8 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
9 disciplinary action against all licenses and license rights of Respondents under the Real Estate
10 Law, and for such other and further relief as may be proper under other provisions of law.

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14 BRENDA SMITH
Supervising Special Investigator

15 Dated at Fresno, California,

16 this 22 day of June, 2017.