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DEPARTMENT OF REAL ESTATE
By J. Taggart

8
9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of)
13 TNT WESTERN HOMES, INC.) No. H-3487 FR
14 and TERESA MARY JACOBS,) ACCUSATION
15 Respondents.)

16 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
17 State of California, for Accusation against Respondents TNT WESTERN HOMES, INC. (TNT)
18 and TERESA MARY JACOBS (JACOBS), sometimes collectively referred to as Respondents,
19 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 TNT 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 Department
26 of Real Estate (Department) as a corporate real estate broker.

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2 JACOBS is presently licensed and/or has license rights under the Code as a real
3 estate broker.

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5 At all times mentioned herein, JACOBS was the designated broker-officer of
6 TNT. As the designated broker-officer, JACOBS was responsible, pursuant to Section 10159.2
7 of the Code, for the supervision of the activities of officers, agents, real estate licensees and
8 employees of TNT for which a real estate license is required to ensure the compliance of the
9 corporation with the Real Estate law and the Regulations.

10 5

11 At all times herein mentioned, Respondents engaged in the business of, acted in
12 the capacity of, advertised, or assumed to act as real estate brokers within the State of California
13 within the meaning of Section 10131(b) of the Code, including the operation and conduct of a
14 property management business with the public wherein, on behalf of others, for compensation or
15 in expectation of compensation. Respondents leased or rented or offered to lease or rent, or
16 places for rent, or solicited listings of places for rent or solicited for prospective tenants, or
17 negotiated the sale, purchase or exchange of leases on real property, or on a business
18 opportunity, or collected rents from tenants.

19 FIRST CAUSE OF ACTION

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21 Beginning on August 31, 2022, an audit was conducted at the Department's
22 district office located at 2550 Mariposa Mall, Fresno, California, where the auditor examined
23 records for the period of July 1, 2020, through December 31, 2021 (the audit period).

24 7

25 While acting as a real estate broker as described in Paragraph 5, above, and
26 within the audit period, TNT accepted or received funds in trust (trust funds) from or on behalf
27 of property owners, lessees and others in connection with property management activities,

1 deposited or caused to be deposited those funds into bank accounts maintained by TNT, at
2 Mission Bank, 1450 N. Norma Street, Ridgecrest, CA 93555, as described below:

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TRUST ACCOUNT #1	
4 Account No.:	XXXX1752
5 Entitled:	TNT Western Homes, Inc. Property Management Trust Account

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TRUST ACCOUNT #2	
8 Account No.:	XXXX4224
9 Entitled:	TNT Western Homes, Inc. Property Management Security Deposit Trust Account

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TRUST ACCOUNT #3	
12 Account No.:	XXXX0380
13 Entitled:	TNT Western Homes, Inc. Owner Funds Trust

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TRUST ACCOUNT #4	
16 Account No.:	XXXX0455
17 Entitled:	TNT Western Homes, Inc. Owner Held Security Trust

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TRUST ACCOUNT #5	
20 Account No.:	XXXX0463
21 Entitled:	TNT Western Homes, Inc. Owner Held Security Trust

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23 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 5, in connection with the collection and disbursement of trust funds, it was determined that:

- (a) during an accountability performed on Trust Account #1, and as of November 30, 2021, a shortage of \$28,805.74 was revealed, in violation of Section 10145 Code;
- (b) during an accountability performed on Trust Account #2, and as of November 30, 2021, a shortage of \$2,944.70 was revealed, in violation of Section 10145 of the Code;
- (c) during an accountability performed on Trust Account #3, and as of November 30, 2021, a shortage of \$2,639.72 was revealed, in violation of Section 10145 of the Code;
- (d) TNT failed to obtain written permission from owners of trust funds in Trust Account #1, Trust Account #2 and Trust Account #3 to allow the balance to drop below accountability, in violation of Section 2832.1 of the Regulations;
- (e) TNT failed to maintain separate beneficiary records for Trust Account #2, and Trust Account #3 as required by Section 2831.1 of the Regulations;
- (f) TNT failed to perform monthly reconciliations of the separate beneficiary records and control records for Trust Account #2 and Trust Account #3, as required by Section 2831.2 of the Regulations; and
- (g) TNT failed to disclose a broker-owned maintenance company, Repairs Unlimited, in violation of Section 10176(g) of the Code.

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The acts and/or omissions described above constitute violations of Sections 2831.1 (separate beneficiary records), 2831.2 (monthly reconciliations), and 2832.1 (written permission balance below accountability) of the Regulations and of Sections 10145 (trust fund handling) and 10176(g) (secret compensation) of the Code and are grounds for discipline under Sections 10176(g), 10177(d) (willful disregard of real estate laws), and 10177(g) (negligence/incompetence licensee) of the Code.

SECOND CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 9, above, and incorporates them herein by reference.

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

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The above acts and/or omissions of JACOBS violate Section 2725 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 10177(h) (broker supervision) of the Code.

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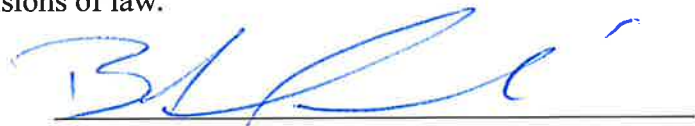
Audit Costs

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

Costs of Investigation and Enforcement

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

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 license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.



BRENDA SMSITH
Supervising Special Investigator

Dated at Fresno, California,
this 8 day of March, 2023.

DISCOVERY DEMAND

The Department of Real Estate hereby requests discovery pursuant to Section 11507.6 of the California Government Code. Failure to provide discovery to the Department may result in the exclusion of witnesses and/or documents at the hearing, and other sanctions as the Administrative Law Judge deems appropriate.