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DEPARTMENT OF REAL ESTATE
BY: 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H- 04458 SD
12)
13 JEFFREY GILBERT BETTGER,) ACCUSATION
14 doing business as Bettger Properties,)
15 and Bettger Properties Inc.,)
16 Respondent,)
17)

18 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the
19 State of California acting in her official capacity, for cause of Accusation against JEFFREY
20 GILBERT BETTGER, doing business as Bettger Properties and Bettger Properties Inc., is
21 informed and alleges as follows:

22 1.

23 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the
24 State of California, makes this Accusation in her official capacity.

25 2.

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

1 BETTGER manages one hundred-twenty-three (23) properties for one-hundred
2 fifteen (115) owners and collected about \$2,250,000.00 between September 1, 2011 and August
3 31, 2012 annually in trust funds for his property management activity.

4 FIRST CAUSE OF ACCUSATION
5 (Audit Examination)

6 5.

7 On November 15, 2012 the Department completed an audit examination of the
8 books and records of BETTGER, pertaining to the residential resale and property management
9 activities of his brokerage described in Paragraph 3, that require a real estate license. The audit
10 examination covered a period of time beginning on September 1, 2009 and ending on August 31,
11 2012. The audit examination revealed violations of the Code and the Regulations as set forth
12 below, and more fully discussed in Audit Report SD 120002 and the exhibits and work papers
13 attached.
14

15 Bank Account

16 6.

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18 At all times mentioned, in connection with the activities described in Paragraph 4,
19 above, BETTGER accepted or received funds including funds in trust (hereinafter "trust funds")
20 from or on behalf of actual or prospective parties to transactions handled by BETTGER .
21 including property owners and tenants. BETTGER maintained the following bank account for his
22 property management brokerage:
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1. T/A

Account Name: Bettger Properties Inc.

Account No.: *****66856

Bank Name: Bank of America

Bank Address: 2295 Otay Lakes Road
Chula Vista., CA 91915

(Property Management Trust Account used for collected rents and security deposits from tenants).

Violations of the Real Estate Law

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the audit examination period described in Paragraph 5, Respondent BETTGER, acted in violation of the Code and the Regulations in that BETTGER:

(a) Permitted, allowed or caused the disbursement of trust funds from T/A where the disbursement of funds reduced the total of aggregate funds in T/A, BETTGER's property management trust account, to an amount which, on August 31, 2012, was \$61,665.07, less than the existing aggregate trust fund liability to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145 and Regulation 2832.1;

(b) On May 19, 2010, paid a commission of \$4,500 to salesperson Nancy Bettger from Respondent's trust account, TA, in violation of Code Sections 10145 and 10177(j). On October 11, 2012, Respondent deposited \$4,500 into TA from Respondent's general account to cover and cure the unauthorized disbursement;

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1 (c) Failed to perform a monthly reconciliation of the balance of all separate
2 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all
3 trust funds received and disbursed by T/A, in violation of Code Section 10145 and Regulation
4 2831.2;

5 (d) T/A was not in the name of the broker as trustee at a bank or other financial
6 institution, nor designated as a trust account, in violation of Code Section 10145 and Regulation
7 2832(a);

8 (e) Permitted Griselda Diaz, Respondent's wife, to be an authorized signatory on
9 the trust account, T/A 1 in violation of Code Section 10145 and Regulation 2834. No written
10 authorization for Griselda Diaz existed;

11 (f) Used the fictitious names "Bettger Properties", "Bettger Properties Inc." and
12 "Rent CV" to conduct licensed activities, without holding a license bearing the fictitious business
13 names, in violation of Code Section 10159.5 and Regulation 2731; and

14 (g) Failed to retain all records of Respondent's activity during the audit period
15 requiring a real estate broker license, in violation of Code Section 10148.

16 Disciplinary Statures and Regulations

17 8.

18 The conduct of Respondent BETTGER, as alleged and described in Paragraph 7,
19 above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
24 7(a)	Code Section 10145 and Regulations 2832.1
25 7(b)	Code Sections 10145(a) and 10177(j)
26 7(c)	Code Section 10145 and Regulation 2831.2

- 1 7(d) Code Section 10145 and Regulation 2832(a)
- 2 7(e) Code Section 10145 and Regulation 2834
- 3 7(f) Code Section 10159.5 and Regulation 2731
- 4 7(g) Code Section 10148

5
6 The foregoing violations constitute cause for discipline of the real estate license and license rights
7 of Respondent BETTGER, under the provisions of Code Sections 10177(d), 10177(g) and/or
8 10177(j).

9 SECOND CAUSE OF ACCUSATION
(Negligence)

10 9.

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12 The overall conduct of Respondent BETTGER constitutes negligence or
13 incompetence. This conduct and violation are cause for discipline of the real estate license and
14 license rights of Respondent pursuant to Code Section 10177(g).

15 THIRD CAUSE OF ACCUSATION
(Breach of Fiduciary Duty)

16
17 10.

18 The conduct, acts and omissions of Respondent BETTGER constitutes a breach of
19 fiduciary duty of good faith, trust, confidence and candor, within the scope of their contractual
20 relationship, owed to Respondent BETTGER's real estate consumers and property management
21 clientele. This conduct and violation are cause for discipline of the real estate license and license
22 rights of Respondent BETTGER pursuant to Code Section 10177(g).

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FOURTH CAUSE OF ACCUSATION
(Supervision)

11.

The overall conduct of Respondent BETTGER, constitutes a failure on his part to exercise reasonable supervision and control over the licensed activities his brokerage, in violation of Code Section 10177(h) and Regulation 2725. Respondent BETTGER failed to keep his brokerage in compliance with the Real Estate Law, and is cause for discipline of the real estate license and license rights of Respondent BETTGER, pursuant to the provisions of Code Sections 10177(d), 10177(g) and/or 10177(h).

12.

Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, 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.

13.

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

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