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FILED

MAR 22 2013

DEPARTMENT OF REAL ESTATE
BY: C. _____

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-04476 SD
12 DANIEL J. SEKELY,) ACCUSATION
13 Respondent.)
14 _____)

15 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the
16 State of California, for cause of Accusation against DANIEL J. SEKELY ("Respondent"), is
17 informed and alleges as follows:

18 1.

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

21 2.

22 Respondent is presently licensed and/or has license rights under the Real Estate
23 Law (Part 1 of Division 4 of the California Business and Professions Code, "Code").

24 3.

25 From October 20, 2009, through the present, Respondent has been licensed by the
26 Department of Real Estate ("Department") as a real estate broker, License ID 01204821.
27 Respondent was formerly licensed to do business as Champion Real Estate, Champion Real
28 Estate Property, and Pacific Coast Credit Group.

1 4.

2 From August 9, 2004, through November 24, 2011, Anna Marie McMillin
3 ("McMillin") was licensed by the Department as a real estate salesperson, License ID 01444672.
4 The Department revoked McMillin's real estate salesperson license on November 24, 2011, in
5 Department Case No. H-37275 LA.

6 5.

7 From April 24, 2010, through July 31, 2011, McMillin was licensed under the
8 employment and supervision of Respondent. McMillin owns and directs Champion Real Estate
9 and Champion Real Estate Property Management. Respondent acted as the designated broker-
10 officer for these entities.

11 6.

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

14 FIRST CAUSE OF ACCUSATION

15 (Escrow-Trust Fund Violations/Conversion/Commingle/Dishonest Dealing)

16 7.

17 At all times material herein, Respondent engaged in the business of, acted in the
18 capacity of, advertised or assumed to act as a real estate broker in the State of California, within
19 the meaning of Code Section 10131, subdivision (a) including the operation and conduct of a
20 residential/commercial resale brokerage; subdivision (b) property management and pre-paid
21 rental listing services; and subdivision (d) mortgage loan brokerage.

22 8.

23 In addition, Respondent conducted broker-controlled escrows through an escrow
24 division, Champion Real Estate Escrow Division. Respondent and McMillin, while doing
25 business as Champion Escrow, performed escrows incidental to a real estate transaction where
26 Respondent, McMillin and Champion Real Estate were performing acts for which a real estate
27 license is required.

1 9.

2 In connection with the activities described in Paragraph 8, above, Respondent
3 accepted or received funds in trust (hereinafter "trust funds") from or on behalf of parties to
4 residential resale transactions handled by Respondent and thereafter made deposits and or
5 disbursements of such funds. From time to time herein mentioned, said trust funds were
6 deposited and/or maintained by Respondent and McMillin, in bank accounts, including but not
7 necessarily limited to, Account No. 493031XXXX, known as Champion Real Estate Escrow
8 Division-Escrow Trust Account (hereinafter "Trust Account No. 1"), at Bank of Hemet.

9 10.

10 On or about August 17, 2010, escrow closed for a property located in San Jacinto,
11 California. McMillin acted as the listing agent for Champion Real Estate. Approximately two
12 weeks later and after repeated requests from selling agent Lina Z. for a commission check,
13 Champion Real Estate Escrow Division issued check no. 1630 from Trust Account No. 1 to
14 Re/Max Premier Properties in the amount of \$2,875. Said check was deposited by Re/Max
15 Premier Properties on or about September 7, 2010. Said check was returned due to insufficient
16 funds. Re/Max Properties re-deposited the check on or about October 8, 2010, but the check was
17 again returned due to insufficient funds. Re/Max Premier Properties incurred additional returned
18 item service fees as a result of the check issued by Champion Real Estate Escrow Division with
19 non-sufficient funds.

20 11.

21 On or about October 19, 2010, Re/Max Properties issued a Demand for Payment
22 letter to McMillin and Champion Real Estate Escrow Division. McMillin failed to respond.
23 Re/Max Properties subsequently discovered that Trust Account No. 1 had been closed. Lina Z.
24 of Re/Max Properties was forced to file a small claims matter against Champion Real Estate
25 Escrow Division and McMillin. The small claims matter was set for trial on February 24, 2011.
26 Two unidentified males delivered four money orders totaling \$2,927 to Lina Z. on the morning
27 of the trial to settle the small claims matter.

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12.

In the course of activities described in Paragraphs 8 and 11, above, Respondent acted in violation of the Code and the Regulations in that:

- (a) Champion Real Estate Escrow Division issued to Re/Max Premier Properties a commission check from Trust Account No. 1 with insufficient funds, in violation of Code Section 10145.
- (b) Respondent, McMillin and Champion Real Estate Escrow Division commingled and converted trust funds belonging to Lina Z. of Re/Max Properties from Trust Account #1 for their own personal use, in violation of Code Section 10145.
- (c) Respondent, McMillin and Champion Real Estate Escrow Division engaged in dishonest dealing by failing to inform Re/Max Properties that Trust Account #1 had been closed, failing to explain why they had issued check no. 1630 with insufficient funds, failing to explain why they converted trust funds belonging to Re/Max Properties, and failing to refund said trust funds to Lina Z. of Re/Max Properties until February 24, 2011.

13.

The conduct, acts and/or omissions of Respondent as described in Paragraph 12, above, are in violation of Code Section 10145 and constitute cause for the suspension or revocation of all real estate license and license rights of Respondent under the provisions of Code Sections 10176(e), 10177(d) and 10177(j).

14.

The conduct, acts and/or omissions of Respondent, in allowing McMillin and Champion Real Estate Escrow Division to violate the Real Estate Law, as set forth above, constitutes a failure by Respondent to exercise the supervision and control over the activities of his salesperson and corporations for which he is acting as the designated officer, as required by Code Section 10159.2 and Regulation 2725, and is cause to suspend or revoke the real estate

1 license and license rights of Respondent under Code Sections 10177(h), 10177(d) and/or
2 10177(g).

3 SECOND CAUSE OF ACCUSATION

4 (Property Management-Conversion/Commingling/Dishonest Dealing)

5 15.

6 There is hereby incorporated in this Second, separate and distinct Cause of
7 Accusation, all of the allegations contained in Paragraphs 1 through 14, with the same force and
8 effect as if herein fully set forth.

9 16.

10 On or about April 24, 2009, Susan W. entered into a property management
11 agreement with Champion Real Estate. McMillin acted as the agent for Champion Real Estate.
12 McMillin induced Susan W. to rent her property located in Hemet, California, to prospective
13 tenants that McMillin claimed she knew personally. In July, 2010, the tenants began to make
14 only partial monthly rental payments. By April, 2011, the tenants owed several months of rent
15 payments. McMillin failed to respond to Susan W.'s inquiries regarding the status of the rental
16 property. McMillin failed to collect the rents from the rental property for Susan W. McMillin
17 made a misrepresentation to Susan W. that McMillin had filed an eviction lawsuit against the
18 tenants. Susan W. learned from a neighbor that the tenants moved out of her rental property in
19 August, 2011. McMillin failed to inform Susan W. that the tenants had vacated the property.
20 McMillin refused to provide Susan W. with any copies of the rental property management
21 contract or documents concerning Champion Real Estate's management of Susan W.'s rental
22 property.

23 17.

24 On or about January 1, 2011, Bill and Marion J. entered into a property
25 management agreement with Champion Real Estate to manage property located in Hemet,
26 California. McMillin acted as the agent for Champion Real Estate. Champion Real Estate
27 collected a security deposit and maintenance reserve from the tenants renting Bill and Marion
28 J.'s rental property. Those funds were to be kept in a trust account maintained by Champion

1 Real Estate. The property management agreement also stated that any late fees were to be
2 divided equally between the owners, Bill and Marion J., and the broker, Champion Real Estate.
3 Bill and Marion J. cancelled their rental property management agreement with Champion Real
4 Estate in August, 2011. Bill and Marion J. requested that Champion Real Estate return the
5 security deposit fees, maintenance reserve, and 50 percent of the late fees which totaled
6 \$1,262.10. On September 6, 2011, McMillin sent a letter stating that Champion Real Estate was
7 closing its business and would contact property owners after "reviewing our account records"
8 over the next 30 days. Champion Real Estate never returned the trust funds belonging to Bill and
9 Marion J. Respondent, Champion Real Estate, and McMillian failed to provide an accounting to
10 Bill and Marion J. of their trust funds. Respondent, Champion Real Estate, and McMillian
11 commingled and converted trust funds belonging to Bill and Marion J.

12 18.

13 The conduct, acts and/or omissions of Respondent, Champion Real Estate and
14 McMillin as described in Paragraphs 16 and 17, above, are in violation of Code Section 10145
15 and constitute cause for the suspension or revocation of all real estate license and license rights
16 of Respondent under the provisions of Code Sections 10176(a), 10176(e), 10177(d) and 10177(j).

17 19.

18 The conduct, acts and/or omissions of Respondent, in allowing McMillin and
19 Champion Real Estate to violate the Real Estate Law, as set forth above, constitutes a failure by
20 Respondent to exercise the supervision and control over the activities of his salesperson and
21 corporation for which he is acting as the designated officer, as required by Code Section 10159.2
22 and Regulation 2725, and is cause to suspend or revoke the real estate license and license rights
23 of Respondent under Code Sections 10177(h), 10177(d) and/or 10177(g).

24 THIRD CAUSE OF ACCUSATION

25 (Prepaid Rental Listing Service-Dishonest Dealing)

26 20.

27 There is hereby incorporated in this Third, separate Cause of Accusation, all of
28 the allegations contained in Paragraphs 1 through 19, above, with the same force and effect as if

1 herein fully set forth.

2 21.

3 At all times material herein, Respondent, while doing business as Pacific Coast
4 Credit Group, LLC, engaged in the business of, acted in the capacity of, advertised or assumed to
5 act as a prepaid rental listing service ("PRLS") within the meaning of Code Section 10167, et seq.

6 22.

7 On or about March 16, 2011, prospective tenant, Acela A., entered into a PRLS
8 agreement with Pacific Coast Credit Group, LLC. Pacific Coast Credit Group, LLC failed to
9 include the required right to refund language specified in Code Section 10167.10(c). Acela A.
10 paid a \$185 fee to Pacific Coast Credit Group, LLC for a listing of residential real properties for
11 tenancy. Acela A. discovered that the rental properties on the listing provided by Pacific Coast
12 Credit Group, LLC did not exist or were not as described or advertised by Pacific Coast Credit
13 Group, LLC, in violation of Code Section 10167.11. Acela A. made a timely request for a
14 refund of the rental listing fee. Pacific Coast Credit Group, LLC failed to refund any portion of
15 the rental fee as required under Code Section 10167.10(a).

16 23.

17 On or about July 26, 2011, prospective tenant, Cathlina C., entered into a PRLS
18 agreement with Pacific Coast Credit Group, LLC. Pacific Coast Credit Group, LLC failed to
19 include the required right to refund language specified in Code Section 10167.10(c). Cathlina C.
20 paid a \$185 fee to Pacific Coast Credit Group, LLC for a listing of residential real properties for
21 tenancy. Within three days, Cathlina C. obtained a rental other than through the services of
22 Pacific Coast Credit Group, LLC. Cathlina C. made a timely request for a refund of the rental
23 listing fee. Pacific Coast Credit Group, LLC failed to refund \$135 of the rental fee as required
24 under Code Section 10167.10(b).

25 24.

26 On or about September 2, 2011, prospective tenant, Myra N., entered into a PRLS
27 agreement with Pacific Coast Credit Group, LLC. Pacific Coast Credit Group, LLC failed to
28 include the required right to refund language specified in Code Section 10167.10(c). Myra N.

1 paid a \$185 fee to Pacific Coast Credit Group, LLC for a listing of residential real properties for
2 tenancy. Arlene Garcia, an agent of Pacific Coast Credit Group, LLC, informed Myra N. that
3 she had to wait 90 days prior to asking for a refund if she was unable to use Pacific Coast Credit
4 Group, LLC's service or find a rental property through Pacific Coast Credit Group, LLC. Myra
5 N. made a timely request for a refund of the rental listing fee. Pacific Coast Credit Group, LLC
6 failed to refund any portion of the rental fee paid by Myra N. which is required under Code
7 Section 10167.10.

8 25.

9 The conduct, acts, and/or omissions of Respondent as described in Paragraphs 21
10 through 24, above, in using an unauthorized fictitious business name to conduct activities
11 requiring a PRLS license or broker license, is in violation of Code Sections 10167.2, 10159.5
12 and Regulation 2731 and constitutes cause for the suspension or revocation of Respondent's real
13 estate license and/or license rights under the provisions of Code Sections 10167.12(a)(1),
14 10177(d), and/or 10177(g).

15 26.

16 The conduct, acts, and/or omissions of Respondent as described in Paragraphs 21
17 through 24 above, in using a PRLS contract that was not submitted to the Department for prior
18 approval and failing to include the required language regarding a prospective tenant's "Right to
19 Refund," is in violation of Code Sections 10167.9(c) and 10167.10(c), and constitutes cause for
20 the suspension or revocation of Respondent's real estate license and/or license rights under the
21 provisions of Code Sections 10167.12(a)(1).

22 27.

23 The conduct, acts and/or omissions of Respondent as described in Paragraph 22,
24 above, in refusing to refund a fee paid by a prospective tenant after failing to supply a listing
25 with at least three available rental properties that meet the prospective tenants specifications, is
26 in violation of Code Sections 10167.10 and 10167.11, and are grounds for the suspension or
27 revocation of the real estate license and license rights of Respondent under the provisions of
28 Code Section 10167.12(a)(1).

1 28.

2 The conduct, acts and/or omissions of Respondent as described in Paragraphs 22,
3 23, and 24 above, in failing to inform prospective tenants of their rights to refund and refusing to
4 refund a fee paid by a prospective tenant if the prospective tenant obtained a rental other than
5 through the services of the licensee during the term of the contract or did not obtain a rental, is in
6 violation of Code Section 10167.10, subdivisions (b) and (c) and are grounds for the suspension
7 or revocation of the real estate license and license rights of Respondent under the provisions of
8 Code Section 10167.12(a)(1).

9 29.

10 Business and Professions Code Section 10167.10(e) provides that “[I]f the
11 licensee fails to make a refund as provided in this section and if the denial or delay in making the
12 refund is found to have been done in bad faith, a court of appropriate jurisdiction, including a
13 small claims court, shall be empowered to award damages to the plaintiff in an amount not to
14 exceed one thousand dollars (\$1,000) in addition to actual damages sustained by the plaintiff. If
15 the licensee refuses or is unable to pay the damages awarded by the court, the award may be
16 satisfied out of the security required under Section 10167.7.”

17 FOURTH CAUSE OF ACCUSATION

18 (Audit SD 100086)

19 30.

20 There is hereby incorporated in this Fourth, separate Cause of Accusation, all of
21 the allegations contained in Paragraphs 1 through 29, above, with the same force and effect as if
22 herein fully set forth.

23 31.

24 On March 21, 2012, the Department completed an audit examination of the books
25 and records of Respondent pertaining to Respondent’s property management activities which
26 require a real estate license pursuant to Code Section 10131(b). The audit examination covered a
27 period of time beginning on January 1, 2010, to December 31, 2011. The audit examination
28 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and

1 more fully discussed in Audit Report SD 100086 and the exhibits and work papers attached to
2 said audit report.

3 32.

4 Respondent claimed to have maintained two (2) bank accounts for the handling of
5 the receipts and disbursements of "Champion Real Estate Property Management" ("CREPM")
6 property management activities for the period of May 5, 2010, to July 31, 2011. Respondent was
7 licensed to do business as Champion Real Estate Property Management and Champion Real
8 Estate from May 5, 2010, to July 31, 2011.¹ Respondent was also licensed to do business as
9 Pacific Coast Credit Group from December 21, 2009, to February 5, 2012.

10 Violations

11 33.

12 In the course of activities described in Paragraph 31, above, and during the
13 examination period described in Paragraph 31, Respondent acted in violation of the Code and the
14 Regulations as follows:

15 CREPM

16 (a) CREPM managed at least ten (10) and as many as 20 residential and
17 condominium properties during the period of May 5, 2010, to July 31, 2011. McMillin owned
18 and operated CREPM out of Respondent's branch offices. According to Respondent, McMillin
19 retained all records related to CREPM's property management activities. Respondent failed to
20 retain records in connection with Respondent's property management activities requested by the
21 Department, in violation of Code Section 10148.

22 Pacific Coast Credit Group

23 (b) According to Respondent, Pacific Coast Credit Group, LLC is owned by
24 Lorenzo Jaimez, an unlicensed person. Lorenzo Jaimez operated Pacific Coast Credit Group,
25 LLC out of Respondent's branch office located at 4891 Pacific Hwy #216, San Diego,
26 California. On or about November 18, 2010, prospective tenant, Max C., entered into a PRLS
27

28 ¹ A separate audit (Audit SD 110044) was performed on Respondent's real estate activities while doing business as
Champion Real Estate, as set forth in Paragraphs 37 and 38, below.

1 agreement with Pacific Coast Credit Group, LLC. Max C. paid a \$185 fee to Pacific Coast
 2 Credit Group, LLC for a listing of residential real properties for tenancy. Max C. discovered that
 3 the rental properties on the listing provided by Pacific Coast Credit Group, LLC did not exist or
 4 were not as described or advertised by Pacific Coast Credit Group, LLC, in violation of Code
 5 Section 10167.11. Max C. made a timely request for a refund of the rental listing fee. Pacific
 6 Coast Credit Group, LLC failed to provide proof of any actual refund for any portion of the
 7 rental fee paid by Max C., as required under Code Section 10167.10(a).

8 (c) Respondent used an unlicensed fictitious business name, Pacific Coast Credit
 9 Group, LLC, to engage in PRLS activities out of his branch office, in violation of Code Sections
 10 10167.2, 10167.3, 10159.5, and Regulation 2731.

11 (d) Pacific Coast Credit Group, LLC accepted a fee of \$185 from prospective
 12 tenant, Max C., for a listing of residential rental properties for tenancy without first obtaining an
 13 approved written contract with the Department, in violation of Code Section 10167.9.

14 (e) Respondent failed to retain records in connection with Pacific Coast Credit
 15 Group, LLC's mortgage loan activities requested by the Department, in violation of Code
 16 Section 10148.

17 Disciplinary Statutes

18 34.

19 The conduct of Respondent described in Paragraph 33, above, violated the Code
 20 and the Regulations as set forth below:

21 PARAGRAPH	PROVISIONS VIOLATED
22 33(a)	Code Section 10148
23 33(b)	Code Sections 10167.11 and 10167.10(a)
24 33(c)	Code Sections 10167.2, 10167.3, 10159.5, and Regulation 2731
25 33(d)	Code Section 10167.9
26 33(e)	Code Section 10148

27 ///

1 also involved in property management activities from May 5, 2010, to July 31, 2011, while doing
2 business as CREPM. Respondent charged a management fee of ten percent (10%) of the rents
3 collected by CREPM. Respondent claimed that CREPM and Champion Real Estate did not
4 conduct any mortgage loan and broker escrow activities during the audit period of January 1,
5 2010, to December 31, 2011, which is contrary to the broker escrow activities by Champion Real
6 Estate's Escrow Division alleged in Paragraphs 8 through 12, above. Respondent informed the
7 Department's auditor that Respondent did not maintain a trust account for Champion Real
8 Estate's real estate sales activities during the audit period. Respondent failed to disclose the
9 Trust Account #1 maintained by Champion Real Estate's Escrow Division as alleged in
10 Paragraphs 8 through 12, above.

11 Violations

12 39.

13 In the course of activities described in Paragraph 38, above, and during the
14 examination period described in Paragraph 38, Respondent acted in violation of the Code and the
15 Regulations as follows:

16 (a) Champion Real Estate closed approximately 17 real estate sales transactions
17 during the period between May 5, 2010, and July 31, 2011. CREPM managed at least ten (10)
18 and as many as 20 residential and condominium properties during the period of May 5, 2010, to
19 July 31, 2011. McMillin owned and operated Champion Real Estate and CREPM out of
20 Respondent's branch offices. According to Respondent, McMillin retained all records related to
21 Champion Real Estate and CREPM's real estate activities. Respondent failed to retain records in
22 connection with Respondent's residential resale and property management activities requested by
23 the Department, in violation of Code Section 10148.

24 40.

25 The foregoing violation constitutes cause for the suspension or revocation of the
26 real estate license and license rights of Respondent, as aforesaid, under the provisions of Code
27 Sections 10177(d) for violation of the Real Estate Law and/or 10177(g) for negligence.

1 41.

2 The overall conduct of Respondent constitutes a failure on Respondent's part, as
3 officer designated by a corporate broker licensee, to exercise the reasonable supervision and
4 control over the licensed activities of McMillin, Champion Real Estate, CREPM, and his branch
5 offices to stay in compliance with the Real Estate Law as required by Code Section 10159.2 and
6 Regulation 2725 is cause for the suspension or revocation of the real estate license and license
7 rights of Respondent pursuant to the provisions of Code Sections 10177(h), 10177(d) and/or
8 10177(g).

9 42.

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

15 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
16 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
17 action against all licenses and/or license rights of Respondent DANIEL J. SEKELY under the
18 Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of
19 investigation and enforcement as permitted by law, and for such other and further relief as may
20 be proper under other provisions of law.

21 Dated at San Diego, California
22 this 18 day of March, 2013.

23
24
25 
26 VERONICA KILPATRICK
Deputy Real Estate Commissioner

27 cc: Daniel J. Sekely
28 Veronica Kilpatrick
Sacto.