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FILED

MAR 19 2018

BUREAU OF REAL ESTATE

By *Gregg Hansen*

7
8 **BEFORE THE BUREAU OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of)

No. H-04983 SD

12 ALL SERVICE PROPERTY MANAGEMENT -)
13 EAST COUNTY, INC.;)

ACCUSATION

14 ANTHONY RAYMOND TIBBETTS;)

15 COLLEEN K. MCDADE;)

16 TONY WIM STRUYK; and)

17 ARMADILLO INC.)

18 Respondents.)
19

20 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
21 State of California, for cause of Accusation against ALL SERVICE PROPERTY
22 MANAGEMENT - EAST COUNTY, INC.; ANTHONY RAYMOND TIBBETTS; COLLEEN
23 K. MCDADE; TONY WIM STRUYK; and ARMADILLO INC., alleges as follows:

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1.

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

2.

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

BRE LICENSE HISTORY

3.

ALL SERVICE PROPERTY MANAGEMENT – EAST COUNTY, INC.

A. Respondent ALL SERVICE PROPERTY MANAGEMENT – EAST COUNTY, INC. ("ASPMECI") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate broker (corporation), California Bureau of Real Estate ("BRE" or "Bureau" or "CalBRE") license ID 01927937.

B. ASPMECI was originally licensed by the BRE on or about May 6, 2013.

C. ASPMECI's BRE mailing and main address of record are the same: 8200 Allison Ave., La Mesa, CA 91942 ("Allison address").

D. According to BRE records to date, ASPMECI has four (4) active DBAs under its BRE license, for: (1) Keys Certified Property Management, active as of January 22, 2018; (2) Keys Properties, active as of January 22, 2018; (3) Keys Property Group, active as of January 22, 2018; and (4) Keys Realty, active as of July 11, 2017.

E. According to BRE records to date, ASPMECI has no branch offices.

F. According to BRE records to date, ASPMECI has one broker associate, real estate broker ("REB") Victor Ming Liong, CalBRE license ID 01072978.

G. According to BRE licensing records, the designated officers ("D.O.") of record history for ASPMECI is as follows:

1 1. from May 6, 2013 to April 13, 2015: REB Michael Lawrence Stowers
2 (“Stowers”), BRE license ID 01158246;

3 2. from April 13, 2015 to September 12, 2016,: no D.O. of record;

4 3. from September 13, 2016 through and including the present: REB
5 ANTHONY RAYMOND TIBBETTS;

6 H. ASPMECI’s BRE license will expire on May 5, 2021.

7 4.

8 ANTHONY RAYMOND TIBBETTS

9 A. Respondent ANTHONY RAYMOND TIBBETTS (“TIBBETTS”) is presently
10 licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as
11 a REB, BRE license ID 01931080.

12 B. TIBBETTS was originally licensed by the BRE as a real estate salesperson
13 (“RES”) on or about October 8, 2013, and as a REB on or about August 24, 2016.

14 C. According to BRE records, TIBBETTS’ RES employment history before his
15 licensure as a REB includes the following:

16 - 10/1/5 to 8/23/16: REB ARMADILLO INC.;

17 - 4/15/15 to 9/27/15: Jim Kelly Insurance Agency Inc. (“JKIAI”), BRE
18 license ID 01911656); and

19 - 10/8/13 to 4/6/15: ASPMECI.

20 D. TIBBETT’s BRE mailing address of record is: 11236 Corte Playa Madera, San
21 Diego, CA 92124. TIBBETT’s BRE main address of record is the same as Respondent
22 ASPMECI’s Allison address.

23 E. According to BRE records to date, TIBBETTS has no current DBAs under his
24 BRE license.

25 F. According to BRE records to date, TIBBETTS has no branch offices.

1 G. TIBBETTS is the D.O. of record for ASPMECI until his officer expiration date
2 of May 5, 2021.

3 H. TIBBETTS' BRE license will expire on August 25, 2021.

4 5.

5 COLLEEN K. MCDADE

6 A. Respondent COLLEEN K. MCDADE ("MCDADE"), a.k.a. Colleen K. Collins
7 or Colleen Kerriann Staufenbeil, is presently licensed and/or has license rights under the Real
8 Estate Law (Part 1 of Division 4 of the Code) as a REB, BRE license ID 01247165.

9 B. MCDADE was originally licensed by the BRE as a RES on or about October
10 16, 1998, and as a REB on or about November 27, 2017.

11 C. According to BRE records, MCDADE's employment history before her
12 licensure as a REB includes the following:

13 - 9/19/17 to 11/26/17: REB Sandro Natale, BRE license ID 01842350;

14 - 9/13/16 to 9/18/17: REB TIBBETTS;

15 - 10/8/15 to 9/12/16: REB ARMADILLO INC.;

16 - 4/15/15 to 9/27/15: JKIAI; and

17 - 11/1/13 to 4/2/15: ASPMECI.

18 D. MCDADE's BRE mailing and main address of record are the same: 1033 Iron
19 Wheel Street, Santee, CA 92071.

20 E. According to BRE records to date, MCDADE has one (1) current DBA under
21 her BRE license, for McDade Realty Group, active as of November 27, 2017.

22 F. According to BRE records to date, MCDADE has no branch offices.

23 G. MCDADE's BRE license will expire on November 26, 2021.

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6.

TONY WIM STRUYK

A. Respondent TONY WIM STRUYK ("STRUYK"), a.k.a. Anthony Wim Struyk, is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB, BRE license ID 00908082.

B. STRUYK was originally licensed by the BRE as a RES on or about January 10, 1986, and as a REB on or about January 31, 1990.

C. STRUYK's BRE mailing and main address of record are the same: 1262 Scott Street, San Diego, CA 92106 ("Scott address").

D. According to BRE records to date, STRUYK has no current DBAs under his BRE license.

E. According to BRE records to date, STRUYK has no branch offices.

F. STRUYK is the D.O. of record for ARMADILLO INC. until his officer expiration date of July 23, 2018.

G. STRUYK's BRE license will expire on March 30, 2018.

7.

ARMADILLO INC.

A. Respondent ARMADILLO INC. ("ARMADILLO") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB (corporation), BRE license ID 01216851.

B. ARMADILLO was originally licensed by the BRE as a RES on or about July 31, 1997.

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1 C. ARMADILLO's BRE mailing and main address of record are the same as
2 STRUYK's Scott address.¹

3 D. According to BRE records to date, ARMADILLO has no current DBAs under
4 its BRE license.

5 E. According to BRE records to date, ARMADILLO has no branch offices.

6 F. STRUYK is the D.O. of record for ARMADILLO INC. until his officer
7 expiration date of July 23, 2018.

8 G. ARMADILLO's BRE license will expire on July 23, 2018.

9 **APPLICABLE SECTIONS OF THE REAL ESTATE LAW**

10 **License Required - Code Sections 10130, 10131, and 10132, and Regulation 2740**

11 8.

12 Pursuant to Code Section 10130, "It is unlawful for any person to engage in the
13 business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real
14 estate salesperson within this state without first obtaining a real estate license from the
15 department, or to engage in the business of, act in the capacity of, advertise as, or assume to act
16 as a mortgage loan originator within this state without having obtained a license endorsement.
17 The commissioner may prefer a complaint for violation of this section before any court of
18 competent jurisdiction, and the commissioner and his or her counsel, deputies, or assistants, may
19 assist in presenting the law or facts at the trial. *Prosecution of Violations:* It is the duty of the
20 district attorney of each county in this state to prosecute all violations of this section in their
21 respective counties in which the violations occur."

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25 ¹ According to the BRE records, ARMADILLO's BRE main office address shows an address of "12162 Scott St."
26 while its BRE mailing office address shows the address as "1262 Scott St."

Pursuant to Code Section 10131, "A real estate broker within this meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

(a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.

(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.

(c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

(e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof."

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Pursuant to Code Section 10132, "A real estate salesperson within the meaning of this part is a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6."

11.

Pursuant to Regulation 2740, "No acts for which a real estate license is required may be performed for, or in the name of, a corporation when there is no officer of the corporation licensed under Section 10158 or 10211."

A. According to Code Section 10158, "When a real estate license is issued to a corporation, if it desires any of its officers other than the officer designated by it pursuant to Section 10211, to act under its license as a real estate broker, it shall procure an additional license to so employ each of such additional officers."

B. According to Code Section 10211, "If the licensee is a corporation, the license issued to it entitles one officer thereof, on behalf of the corporation, to engage in the business of real estate broker without the payment of any further fee, such officer to be designated in the application of the corporation for a license. For each officer other than the officer so designated, through whom it engages in the business of real estate broker, the appropriate original or renewal fee is to be paid in addition to the fee paid by the corporation."

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1 Trust Fund Handling – Code Section 10145 and Regulations 2831.2, 2832, 2832.1, and 2834

2 13.

3 Pursuant to Code Section 10145:

4 (a)(1): “A real estate broker who accepts funds belonging to others in connection
5 with a transaction subject to this part shall deposit all those funds that are not immediately placed
6 into a neutral escrow depository or into the hands of the broker’s principal, into a trust fund
7 account maintained by the broker in a bank or recognized depository in this state. All funds
8 deposited by the broker in a trust account shall be maintained there until disbursed by the broker
9 in accordance with instructions from the person entitled to the funds.

10 (2) Withdrawals may be made from a trust fund account of an individual broker
11 only upon the signature of that broker, or in the case of a corporate broker, only upon the
12 signature of an officer through whom the corporation is licensed pursuant to Section 10158 or
13 10211, or one, or more, of the following persons if specifically authorized in writing by the
14 individual broker or officer:

15 (A) A real estate salesperson licensed to the broker.

16 (B) Another broker acting pursuant to a written agreement with the
17 individual broker that conforms to the requirements of this part and any regulations promulgated
18 pursuant to this part.

19 (C) An unlicensed employee of the individual broker, if the broker has
20 fidelity bond coverage equal to at least the maximum amount of the trust funds to which the
21 unlicensed employee has access at any time. For purposes of this section, bonds providing
22 coverage may be written with a deductible of up to 5 percent of the coverage amount. For bonds
23 with a deductible, the employing broker shall have evidence of financial responsibility that is
24 sufficient to protect members of the public against a loss subject to the deductible amount.

25 Evidence of financial responsibility shall include one or more of the following:
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(i) Separate fidelity bond coverage adequate to cover the amount of the fidelity bond deductible.

(ii) A cash deposit held in a separate account, apart from other funds of the broker, the broker's employees, or the broker's principals, in a bank or recognized depository in this state adequate to cover the amount of the fidelity bond deductible and held exclusively and solely for the purpose of paying the fidelity bond deductible amount.

(iii) Any other evidence of financial responsibility approved by the commissioner.

(3) An arrangement under which a person enumerated in subparagraph (A),(B), or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

...

(b) A real estate broker acting as a principal pursuant to Section 10131.1² shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or notes is made simultaneously with the receipt of the purchase funds.

...

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds..."

²Code Section 10131.1 states, "(a) A real state broker within the meaning of this part is also a person who engages as a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property..."

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14.

Pursuant to Regulation 2831.1, "(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. The record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

- (1) Date of deposit.
- (2) Amount of deposit.
- (3) Date of each related disbursement.
- (4) Check number of each related disbursement.
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account.
- (7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2."

15.

Pursuant to Regulation 2831.2, "The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a

1 month, except in those months when the bank account did not have any activities. A record of
2 the reconciliation must be maintained, and it must identify the bank account name and number,
3 the date of the reconciliation, the account number or name of the principals or beneficiaries or
4 transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or
5 transactions.”

6 16.

7 Pursuant to Regulation 2832, “(a) Compliance with Section 10145 of the Code
8 requires that the broker place funds accepted on behalf of another into the hands of the owner of
9 the funds, into a neutral escrow depository or into a trust fund account in the name of the broker,
10 or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as
11 trustee at a bank or other financial institution not later than three business days following receipt
12 of the funds by the broker or by the broker’s salesperson...”

13 17.

14 Pursuant to Regulation 2834:

15 (a) “Withdrawals may be made from a trust fund account of an individual broker
16 only upon the signature of the broker or one or more of the following persons if specifically
17 authorized in writing by the broker:

18 (1) a salesperson licensed to the broker.

19 (2) a person licensed as a broker who has entered into a written agreement
20 pursuant to Section 2726 with the broker.

21 (3) an unlicensed employee of the broker with fidelity bond coverage at least
22 equal to the maximum amount of the trust funds to which the employee
23 has access at any time.

24 (b) Withdrawals may be made from the trust fund account of a corporate broker
25 only upon the signature of:

1 (1) an officer through whom the corporation is licensed pursuant to Section
2 10158 or 10211 of the Code or

3 (2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision
4 (a) above, provided that specific authorization in writing is given by the officer through whom
5 the corporation is licensed and that the officer is an authorized signatory of the trust fund
6 account.

7 (c) An arrangement under which a person enumerated in paragraph (1), (2) or (3)
8 of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker
9 shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from
10 responsibility or liability as provided by law in handling trust funds in the broker's custody."

11 **Responsibility of Corporate Officer in Charge – Code Section 10159.2 and Regulation 2725**

12 18.

13 Pursuant to Code Section 10159.2(a), "The officer designed by a corporate broker
14 license pursuant to Section 10211 shall be responsible for the supervision and control of the
15 activities conducted on behalf of the corporation by its officers and employees as necessary to
16 secure full compliance with the provisions of this division, including supervision of salespersons
17 licensed to the corporation in the performance of acts for which a real estate license is
18 required..."

19 19.

20 Pursuant to Regulation 2725, "A broker shall exercise reasonable supervision over
21 the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the
22 establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- 23 a) Transactions requiring a real estate license.
24 b) Documents which may have a material effect upon the rights or obligations of
25 a party to the transaction.
26

- c) Filing, storage and maintenance of such documents.
- d) The handling of trust funds.
- e) Advertising of any service for which a license is required.
- f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.”

False or Fictitious Business Name – Code Section 10159.5 and Regulation 2731

20.

Pursuant to Code Section 10159.5(a)(1), “Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.”

21.

Pursuant to Regulation 2731(a), “A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious business name.”

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(5) Name and business address of the real estate broker to whom the salesperson was last licensed and the date of termination of that relationship.

(6) Certification by the salesperson that the predecessor broker has notice of the termination of the relationship.

As an acceptable alternative to (5) and (6) above, the form may be utilized by the predecessor broker to give notice of the termination of the broker/salesperson relationship as required by Section 10161.8(b) of the Business and Professions Code if this notice is mailed to the commissioner not more than ten days following such termination.”

Secret Profit or Unauthorized/Undisclosed Compensation –
Code Section 10176(g) and Regulation 2830

24.

Pursuant to Code Section 10176, “The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

...

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission, or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee’s compensation, commission, or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form

1 of the agreement, whether evidenced by documents in an escrow or by any other or different
2 procedure.”

3 25.

4 Pursuant to Regulation 2830, “The relationship between a real estate broker and a
5 client for whom the broker holds funds in trust is an agency relationship. As an agent, the broker
6 owes a fiduciary duty to the client regarding the handling of the trust. Any benefit received by
7 the broker relating to the broker’s handling of client funds in trust belongs to the client by law,
8 and the broker must pass that benefit along to the client.

9 (a) Unless in possession of written permission from the client, it is unlawful for
10 any real estate broker, including any corporate broker, to receive, directly or indirectly, any
11 commission, compensation, or other consideration, whether personal or professional, from any
12 person or institution other than the client as an inducement for the placement of a trust fund
13 account in accordance with Section 10145 of the Business and Professions Code. Actual
14 placement of a trust fund account is not a precondition to a violation of this section, whether the
15 violation is or is not a per se violation pursuant to subsection (c), below.”

16 **Further Grounds for Disciplinary Action – Code Section 10177**

17 26.

18 Pursuant to Code Section 10177, “The commissioner may suspend or revoke the
19 license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the
20 issuance of a license to an applicant, who has done any of the following:

21 ...

22 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing
23 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and
24 regulations of the commissioner for the administration and enforcement of the Real Estate Law
25 and Chapter 1 (commencing with Section 11000) of Part 2.”

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(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required..."

BRE AUDIT OF ALL SERVICE PROPERTY MANAGEMENT – EAST COUNTY, INC.

(SD 160026)

27.

On October 27, 2017, the BRE completed an audit examination of the books and records of Respondent ASPMECI pertaining to its property management activities described in Paragraphs 28 through 31, below, which require a real estate license. The audit examination covered a period of time beginning on April 13, 2015 and ending on March 31, 2017 ("audit examination period" or "audit period"), and was performed between April 24, 2017 June 16, 2017 ("field work period"), during which the D.O. of ASPMECI was TIBBETTS. The final report of October 27, 2017 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report SD 160026.

28.

ASPMECI's Business Activities & Corporate Structure

At all times mentioned in San Diego County, California, Respondent ASPMECI acted as a real estate broker, and ordered, caused, authorized or participated in licensed activities within the meaning of Code Section 10131(b), wherein ASPMECI engaged in property management activities, and 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,

1 purchase or exchanges of leases on real property, or on a business opportunity, or collected rent
2 from real property, or improvements thereon, or from business opportunities ("property
3 management").

4 29.

5 ASPMECI's Corporate Structure

6 According to D.O. TIBBETTS, the corporate structure of ASPMECI as of the
7 audit examination date was: he is the Chief Financial Officer, Managing Partner, Director and
8 fifty-percent (50%) owner of ASPMECI, and Richard Singley (non-CalBRE licensee)
9 ("Singley") is the President, Chief Executive Officer, Director and other fifty-percent (50%)
10 owner of ASPMECI. Also, as of April 24, 2017: both ASPMECI and D.O. TIBBETTS had a
11 main office located at the Allison address; TIBBETTS was a RES until the issuance of his REB
12 license on August 24, 2016; and TIBBETTS had one licensed employee under his license,
13 MCDADE.

14 30.

15 ASPMECI's Property Management Activities

16 A. According to D.O. TIBBETTS, as of April 24, 2017, ASPMECI manages:
17 approximately 115 one- to four-family residences with approximately 122 units, two (2)
18 apartment complexes with twelve (12) units, and two (2) commercial properties with four (4)
19 units, for approximately 91 owners. For these 91 owners, ASPMECI collects rents, pays
20 expenses, and solicits/screens tenants for compensation. Between April 1, 2016 and March 31,
21 2017, ASPMECI collected and deposited approximately \$3,033,450 in rents and security
22 deposits from tenants. Also according to TIBBETTS, seventy percent (70%) of rents are
23 received online. ASPMECI charges a management fee of between five and one-half percent
24 (5.5%) to ten percent (10%) of collected rents, and a lease execution fee of \$350. In addition,
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1 ASPMECI charges a one-time placement fee of fifty percent (50%) of the monthly rent for
2 owners managing their own properties.

3 B. According to TIBBETTS, ASPMECI uses AppFolio software.

4 31.

5 ASPMECI's Other Real Estate Sales Activities

6 According to D.O. TIBBETTS, ASPMECI also performs some residential real
7 estate sales activity within the meaning of Code Section 10131(a) ("real estate sales") for owners
8 who want to sell their rental property. ASPMECI does not perform mortgage loan or broker
9 escrow activity.

10 32.

11 Bank Accounts

12 A. According to D.O. TIBBETTS and to the books and records provided,
13 ASPMECI maintained two (2) bank accounts at Chase Bank, 101505 Tierrasanta Blvd., San
14 Diego, CA 92124 ("Tierrasanta branch"), for the receipts and disbursements of trust funds during
15 the audit examination period. The bank accounts that were sampled for the BRE audit are:

16 Bank Account #1 ("BA 1")

- 17 * Account Name: "All Service Property Management – East County, Inc."
- 18 * Bank: Chase Bank, Tierrasanta branch
- 19 * Account No. #####7135
- 20 * Signatories: TIBBETTS
- 21 * Date Opened: May 20, 2015

22 ASPMECI opened BA 1 on or about May 20, 2015 as a depository for rents and
23 security deposits collected from tenants related to properties owned by multiple owners.
24 Disbursements from BA 1 were payments for expenses related to the properties managed, owner
25 remittances, and to ASPMECI for management fees.

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27 ///

1 Bank Account #2 (“BA2”)

2 * Account Name: “All Service Property Management – East County, Inc.”

3 * Bank: Chase Bank, Tierrasanta branch

4 * Account No. #####5860

5 * Signatories: TIBBETTS, Singley

6 * Date Closed: July 20, 2015 (and replaced by BA 1)

7 ASPMCI used BA2 as a depository for rents and security deposits collected from
8 tenants. Disbursements from BA 2 were payments for expenses related to the properties
9 managed, owner remittances, and to ASPMECI for management fees. BA 2 was closed on or
10 about July 20, 2015 due to fraudulent activity and replaced by BA 1. On or about June 4, 2015, a
11 deposit of \$222,149.40 was made from BA 2 into BA 1, and the balance of \$386.06 was
12 transferred to BA 1 on July 20, 2015 to close out BA 2.

13 C. Bank reconciliations were prepared as of March 31, 2017 and August 31, 2016
14 for BA1, and the adjusted bank balance was compared to the total balance of
15 the separate beneficiary records (accountability).

16 **AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW**

17 33.

18 In the course of activities as described in Paragraphs 28 through 31, above, and
19 during the audit examination period described in Paragraph 27, Respondent ASPMECI acted in
20 violation of the Code and the Regulations, as described below:

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1 management business since 2013. Stowers was the D.O. of ASPMECI from May 6, 2013 to
2 April 12, 2015, during which time TIBBETTS was the owner and an RES employed by
3 ASPMECI. Subsequent to the cancellation of Stowers' officer designation, ASPMECI continued
4 to collect trust funds and earn commission for licensed activity. TIBBETTS did not receive his
5 REB license until on or about August 24, 2016; TIBBETTS did not become the D.O. of
6 ASPMECI until on or about September 13, 2016. ASPMECI's performance of acts for which a
7 real estate license is required during a period of time when it had no D.O. is in violation of Code
8 **Section 10130 and Regulation 2740.**

9 36.

10 **Trust Fund Handling – Trust Account Reconciliation (Code Section 10145**
11 **and Regulation 2831.2)**

12 During the audit period, ASPMECI failed to perform and maintain a monthly
13 reconciliation comparing the balance of all separate records to the balance of the record of all
14 trust funds received and disbursed (control record) for BA1 and BA 2, in violation of Code
15 **Section 10145 and Regulation 2831.2.**

16 37.

17 **Trust Fund Handling – Trust Account Designation (Code Section 10145 and**
18 **Regulation 2832)**

19 Although BA1 and BA2 are accounts used by ASPMECI to hold trust funds that
20 are received and disbursed in connection with its property management activities, they were not
21 designated as trust accounts in the name of ASPMECI as trustee, in violation of Code Section
22 **10145 and Regulation 2832.**

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1 38.

2 **Trust Fund Handling – Trust Account Withdrawals (Code Section 10145**
3 **and Regulation 2834) START HERE**

4 Singley was an unlicensed officer of ASPMECI and was not covered by a fidelity
5 bond. However, Singley was allowed to make withdrawals from BA 2 as a signatory during the
6 audit period, in violation of **Code Section 10145 and Regulation 2834.**

7 39.

8 **Secret Profit or Unauthorized/Undisclosed Compensation (Code Section**
9 **10176(g) and Regulation 2830)**

10 According to D.O. TIBBETTS, late fees collected from tenants were typically
11 paid to ASPMECI, with no portion paid to the owners. In at least one property management
12 agreement examined by the BRE auditor, for the property located at ##### Escobar (“Escobar”),
13 ASPMECI was to receive ten percent (10%) of the late fees. ASPMECI collected late fees of
14 \$100 from the tenants at Escobar, and received compensation. During the audit period, the
15 Escobar tenant paid \$1,800 in late fees for September 15 through January 2017 and March 2017
16 rents. According to the management agreement, ASPMECI should have received ten percent
17 (10%) of the \$1,800 in late fees, that is, \$180.00. However, ASPMECI received 100% of the late
18 fees, which equaled \$1,620 more than the agreed and authorized amount, in violation of **Code**
19 **Section 10176(g) and Regulation 2830.**

20 40.

21 **Use of False or Fictitious Business Names (Code Section 10159.5 and**
22 **Regulation 2731)**

23 During the audit period, ASPMECI used fictitious business names without first
24 obtaining a license from the Bureau bearing such fictitious business names:
25
26
27

1 A. "All Service Property Management" ("ASPM") was used on business cards,
2 lease agreements, management agreements, and on the website;

3 B. "All Service Property Management Inc." ("ASPMI") was used on email
4 correspondence and on checks; and

5 C. "All Service Property Management East" ("ASPME") was used on
6 management agreements.

7 ASPMECI used the aforementioned fictitious business names during the audit period without
8 first obtaining a license from the Bureau bearing such fictitious names, in violation of Code
9 **Section 10159.5 and Regulation 2731.**

10 41.

11 **Notice of Change of Broker/Salesperson Employment (Code Section 10161.8**
12 **and Regulation 2752)**

13 According to the REB-RES agreement, RES MCDADE was employed by
14 ASPMECI. MCDADE's represented ASPMECI in property management activities and signed
15 lease agreements. However, according to the BRE's licensing records, MCDADE's employing
16 broker was not ASPMECI. As of April 24, 2017 and September 7, 2017, MCDADE's
17 employing REB was TIBBETTS. CalBRE was not properly notified of RES MCDADE's
18 employment with ASPMECI, in violation of **Code Section 10161.8 and Regulation 2752.**

19 42.

20 **Unlawful Employment or Payment of Compensation (Code Section 10137)**

21 A. MCDADE

22 According to MCDADE's Declaration submitted on or about July 25, 2016, by
23 attorney Robert W. Tiangco to BRE Special Investigator Jesse H., in tax year 2015 she was an
24 employee of ASPMECI and was paid sales commissions by ASPMECI as an independent
25 contractor; MCDADE provided supporting documentation of these statements in the form of
26

1 forms W-2 and 1099-MISC for tax year 2015.

2 1. MCDADE's Declaration stated that she was paid on a semi-monthly
3 basis, and received a salary and a percent of management fees collected, and that she completed
4 fifty-two (52) property management agreements; 162 leases; and eleven (11) sales over the past
5 three years.

6 2. MCDADE further stated in her Declaration that "As of October 2015,
7 the company and myself are currently working under the broker Anthony Wim Struyk, Lic
8 9080802. From April 2015 to October 2015 the company and myself were working under the
9 broker James Kelly, Lic 01503548. From Nov 2012 to April 2015 the company operated under
10 the broker Michael Stowers, Lic 01158246."

11 3. According to the BRE's records, from October 8, 2015 to September 12,
12 2016, Respondent MCDADE was licensed and associated with ARMADILLO, not ASPMECI
13 [from which her employ/affiliation terminated on or about April 2, 2015]. Respondent
14 MCDADE engaged in the business of, or acted in the capacity of a RES to perform licensed acts
15 for, and was compensation by, ASPMECI, during the period October 8, 2015 to September 12,
16 2016, while she was licensed to and affiliated with ARMADILLO INC.; both ASPMECI's
17 issuance of compensation to MCDADE and MCDADE's receipt of such compensation, are in
18 violation of **Code Section 10137**.

19 **B. TIBBETTS**

20 According to TIBBETTS' Declaration submitted on or about July 27, 2016, by
21 attorney Robert W. Tiangco to BRE Special Investigator Jesse H., in tax year 2015 he was an
22 employee of ASPMECI; TIBBETTS provided supporting documentation of this statements in the
23 form of form W-2 for tax year 2015.

24 1. TIBBETTS' Declaration stated that and that he completed five (5)
25 property management agreements and five (5) leases over the past three years.

1 management services through ASPMECI, and that they are paid through ASPMECI.
2 Additionally, STRUYK stated in his Declaration that, "I am aware that they are operating as
3 property managers for All Service Property Management East County, Inc. Armadillo, Inc. is the
4 brokerage company over that company." The acts and/or omissions of STRUYK demonstrate a
5 failure to adequately supervise the real estate activities of ARMADILLO INC. and its
6 salespersons and its employees to ensure compliance with the Real Estate laws and regulations.
7 STRUYK had knowledge that at least two of ARMADILLO INC.'s RES, TIBBETTS and
8 MCDADE, were performing licensed acts for, and being compensated by, ASPMECI, a REB
9 other than ARMADILLO INC. The acts and/or failures to act constitute grounds for the
10 suspension or revocation of the license and license rights of Respondent STRUYK under the
11 provisions of **Code Sections 10159.2 and 10177(h) and Regulation 2725.**

12 **Additional Violations of the Real Estate Law**

13 44.

14 The overall conduct of Respondents ASPMECI, TIBBETTS, MCDADE,
15 STRUYK and ARMADILLO is violative of the Real Estate Law and constitutes cause for the
16 suspension or revocation of their real estate licenses and license rights under the provisions of
17 **Code Section 10177(g)** for negligence and **Code Section 10177(d)** for willful disregard of the
18 Real Estate Law.

19 **COSTS**

20 **Investigation and Enforcement Costs**

21 45.

22 **Code Section 10106** provides, in pertinent part, that in any order issued in
23 resolution of a disciplinary proceeding before the Bureau of Real Estate, the Commissioner may
24 request the administrative law judge to direct a licensee found to have committed a violation of
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27

1 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
2 the case.

3 **Audit Costs**

4 46.

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

9 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
10 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
11 action against the licenses and license rights of Respondents ALL SERVICE PROPERTY
12 MANAGEMENT – EAST COUNTY, INC.; ANTHONY RAYMOND TIBBETTS; COLLEEN
13 K. MCDADE; TONY WIM STRUYK; and ARMADILLO INC. under the Real Estate Law (Part
14 1 of vision 4 of the Business and Professions Code), for the cost of investigation and
15 enforcement as permitted by law, and for such other and further relief as may be proper under
16 other provisions of law, and for costs of audit.

17 Dated at San Diego, California

18 this 13 day of March, 2018.

19 
20 _____
Veronica Kilpatrick

Supervising Special Investigator

21 cc: ALL SERVICE PROPERTY MANAGEMENT – EAST COUNTY, INC.
22 ANTHONY RAYMOND TIBBETTS
23 COLLEEN K. MCDADE
24 TONY WIM TRUYK
25 ARMADILLO INC.
Enforcement - V. Kilpatrick
Audits - J. Borromeo
26 Sacto.