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FILED

JUL 13 2020

DEPT. OF REAL ESTATE

By *Zou - J*

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11
12 In the Matter of the Accusation of) No. H-05165 SD
13 ALAN MANDELBERG)
14 and)
15 BONNIE B. ELLERT,)
16 Respondents.)
17)

18 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
19 State of California, for cause of Accusation against Respondents ALAN MANDELBERG and
20 BONNIE B. ELLERT (collectively, "Respondents"), is informed and alleges as follows:

21 1.

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

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27 DRE ACCUSATION: ALAN MANDELBERG & BONNIE B. ELLERT

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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.

DRE LICENSE HISTORY

RESPONDENT ALAN MANDELBERG

3.

ALAN MANDELBERG ("MANDELBERG" or "Respondent MANDELBERG") 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 ("REB"), Department of Real Estate ("Department" or "DRE") license ID 01105710.

4.

According to DRE records to date, MANDELBERG was first licensed by the Department as a real estate salesperson ("RES") on or about March 25, 1991 and as a REB on or about April 15, 1992.

5.

According to DRE records to date, MANDELBERG's mailing and main address of record are the same: 1219 E. Barham Dr., #172, San Marcos, CA 92078 ("Barham address"); MANDELBERG has three (3) active DBAs under his REB license, for Approved Finance and Approved Realty, both active as of July 25, 2007 and Sell It Quick Realty, active as of November 5, 2007; and one (1) branch office located at 6440 Convoy Ct., #315, San Diego, CA 92117 ("Convoy address").

6.

According to DRE records to date, MANDELBERG is a broker associate for C2 Financial Corporation, DRE license ID 01821025 and he has six (6) real estate salespersons licensed under his REB license.

1 7.

2 According to DRE records to date, MANDELBERG also holds a Nationwide
3 Multistate Licensing System ("NMLS") mortgage loan originator ("MLO") endorsement, NMLS
4 ID 330951.

5 8.

6 According to DRE records to date, MANDELBERG's license will expire on May
7 20, 2020.

8 9.

9 At all times mentioned herein, Respondent engaged in the performance of
10 activities requiring a real estate license pursuant to Code Section 10130, and acted and ordered,
11 caused, authorized or participated in licensed activities within the meaning of Code Section
12 10131.

13 10.

14 **RESPONDENT BONNIE B. ELLERT**

15 BONNIE B. ELLERT ("ELLERT" or "Respondent ELLERT") is presently
16 licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as
17 a RES, DRE license ID 01352192.

18 11.

19 According to DRE records to date, ELLERT was first licensed by the Department
20 as a RES on or about September 12, 2002.

21 12.

22 According to DRE records to date, ELLERT's mailing address of record is
23 MANDELBERG's Convoy address and she is licensed under REB MANDELBERG.

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1 13.

2 According to DRE records to date, ELLERT's license will expire on September
3 11, 2022.

4 **6460 Convoy Court, #177, San Diego, California 92117 ("The Property")**

5 14.

6 **Manufactured Home Listing Agreement for Real and Personal Property ("MHL")**

7 On or about February 3, 2019, Ernest A. ("Seller") and Sell It Quick Realty
8 entered into a Manufactured Home Listing Agreement ("MHL") for ELLERT to list Seller's
9 property located at Kearney Lodge, 6460 Convoy Court, #177, San Diego, California 92117 ("the
10 property") for a list price of \$184,500 for the listing period beginning February 3, 2019 and
11 ending December 1, 2019. ELLERT signed the MHL as the listing agent for Sell It Quick
12 Realty.

13 15.

14 Incorporated and made part of Seller's MHL was Addendum No. 1, also dated
15 February 3, 2019, which included the term, "BONNIE ELLERT's non-refundable retainer of
16 \$1,500.00 to be deducted from \$12,000.00 commission at close of escrow."

17 16.

18 On or about February 9, 2019, Seller paid ELLERT by personal check number
19 1154 payable to "Bonnie Ellert" the amount \$1,500.00. According to the back of the check,
20 Seller's check number 1154 was endorsed by ELLERT on February 11, 2019.

21 17.

22 On or about June 1, 2019, Seller submitted to ELLERT and Sell It Quick Realty a
23 request to cancel the MHL and a request for his \$1,500.00.

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5 18.

6 The listing expired on December 31, 2019. To date, Seller has not received a
7 response from Respondents regarding his June 1, 2019 cancellation request. Nor has Seller
8 received a refund of his \$1,500.00.

9 19.

10 According to ELLERT, she requested that Seller pay her a \$1,500.00 retainer fee
11 in the event Seller broke the contract and would be deducted from her \$12,000.00 commission at
12 the close of escrow. Also according to Ellert, she used the \$1,500 "to pay for the extra costs
13 related to educating buyers about the seller financing opportuning in purchasing #177..[sic]Full
14 color MLS Feature Brochures. 50 to 60 fliers per week. And the convenience of an on site office
15 to keep the transaction on track 7 days a week...Funds deposited to my Bonnie Ellert
16 Incorporated account used for office expenses. I checked with my Broker ALAN
17 MANDELBERG. And he said it was documented properly so it was ok."

18 20.

19 According to the DRE's records, as of March 13, 2020, there are no approvals of
20 advance fee material, including advance fee contracts and advance fee advertising, submitted by,
21 or for the use of, ALAN MANDELBERG dba Sell It Quick Realty.

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

23 **Advance Fee Agreements and Materials**

24 **Code Section 10085 and Regulation 2970**

25 21.

26 Pursuant to Code Section 10085 *Advance Fee Agreements and Materials*:

27 "The commissioner may require that any or all materials used in obtaining
advance fee agreements, including but not limited to the contract forms, letters or cards used to
solicit prospective sellers, and radio and television advertising be submitted to him or her at least

1 10 calendar days before they are used. Should the commissioner determine that any such matter,
2 when used alone or with any other matter, would tend to mislead he or she may, within 10
3 calendar days of the date he or she receives same, order that it not be used, disseminated, nor
4 published. Any person or entity using, disseminating, or publishing any matter which the
5 commissioner has ordered, pursuant to this section, not to be used, published, or disseminated
6 shall be guilty of a misdemeanor punishable by a fine not exceeding two thousand five hundred
7 dollars (\$2,500) or by imprisonment in the county jail not exceeding six months, or both, for each
8 such use, dissemination, or publication. The commissioner may determine the form of the
9 advance fee agreements, and all material used in soliciting prospective owners and sellers shall
10 be used in the form and manner which he or she determines is necessary to carry out the purposes
11 and intent of this part. Any violation of any of the provisions of this part or of the rules,
12 regulations, orders or requirements of the commissioner thereunder shall constitute grounds for
13 disciplinary action against a licensee, or for proceedings under Section 10081 of this code, or
14 both. These sanctions are in addition to the criminal proceedings hereinbefore provided.”

15 22.

16 Pursuant to Regulation 2970 *Advance Fee Materials*:

17 “(a) A person who proposes to collect an advance fee as defined in Section 10026
18 in the Code shall submit to the Commissioner not less than ten calendar days before publication
19 or other use, all materials to be used in advertising, promoting, soliciting and negotiating an
20 agreement calling for the payment of an advance fee including the form of advance fee agreement
21 proposed for use. (b) Material used in advertising, promoting, soliciting and negotiating an
22 advance fee agreement shall not be approved if it: (1) Includes any representation which is false,
23 misleading or deceptive. (2) Does not set forth a specific, complete description of the services to
24 be rendered for the advance fee. (3) Does not set forth the total amount of the advance fee along
25 with the date on which the fee shall become due and payable. (4) Contains any provision which
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DRE ACCUSATION: ALAN MANDELBERG & BONNIE B. ELLERT

1 purports to relieve or exempt the person collecting the advance fee from an obligation to fulfill
2 verbal commitments and representations made by employees and agents of the person contracting
3 for the advance fee. (5) Contains any provision which purports to give a guarantee that the real
4 property or business opportunity in question will be purchased, leased or exchanged or that a loan
5 secured by real property will be obtained as a result of the services rendered by the person
6 collecting the advance fee. (6) Does not set forth a definite date for full performance of the
7 services promised under the advance fee agreement. (c) Not less than 10-point type shall be used
8 in advance fee agreements.”

9 **Payment of Advance Fee - Loan Secured by Lien on Real Property -**

10 **Code Section 10085.5**

11 23.

12 Pursuant to Code Section 10085.5 *Payment of Advance Fee - Loan Secured by*
13 *Lien on Real Property:*

14 “(a) It shall be unlawful for any person to claim, demand, charge, receive, collect,
15 or contract for an advance fee (1) for soliciting lenders on behalf of borrowers or performing
16 services for borrowers in connection with loans to be secured directly or collaterally by a lien on
17 real property, before the borrower becomes obligated to complete the loan or, (2) for performing
18 any other activities for which a license is required, unless the person is a licensed real estate
19 broker and has complied with the provisions of this part.

20 (b) This section does not prohibit the acceptance or receipt of an advance fee by
21 any bank, savings association, credit union, industrial loan company, or person acting within the
22 scope of a license issued to that person pursuant to Division 9 (commencing with Section 22000)
23 of the Financial Code, or in connection with loans to be secured directly or collaterally by a lien
24 on real property. This section does not apply to charges made by title insurers and controlled
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1 escrow companies pursuant to Chapter 1 (commencing with Section 12340) of Part 6 of Division
2 2 of the Insurance Code.

3 (c) A violation of this section is a public offense punishable by a fine not
4 exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to
5 exceed six months, or by both that fine and imprisonment, or if by a corporation, the violation is
6 punishable by a fine not exceeding fifty thousand dollars (\$50,000).”

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

8 24.

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

12 ...

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

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

19 25.

20 Pursuant to Regulation 2725 *Broker Supervision*:

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

24 (a) Transactions requiring a real estate license.

1 (b) Documents which may have a material effect upon the rights or obligations of
2 a party to the transaction.

3 (c) Filing, storage and maintenance of such documents.

4 (d) The handling of trust funds.

5 (e) Advertising of any service for which a license is required.

6 (f) Familiarizing salespersons with the requirements of federal and state laws
7 relating to the prohibition of discrimination.

8 (g) Regular and consistent reports of licensed activities of salespersons.

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

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

16 **VIOLATIONS OF THE REAL ESTATE LAW – CAUSES FOR DISCIPLINE**

17 26.

18 Complainant re-alleges and incorporates by reference the preceding paragraphs as
19 set forth herein.

20 27.

21 In the course of the activities described above, and based on the facts discovered
22 by the Department, also described above, the acts and/or omissions of Respondent **BONNIE B.**
23 **ELLERT** are in violation of **Code Sections 10085 (advance fee agreements and materials to**
24 **be submitted to Commissioner at least ten (10) calendar days prior to use) and 10085.5**
25 **(claim, demand, charge, receive, collect or contract for an advance fee for activities**
26

1 **requiring a real estate license); Code Section 10137 (compensation accepted for real estate**
2 **activities from person other than REB to whom she is licensed); and Code Section 10177(g)**
3 **(negligence), and constitute cause for the suspension or revocation of all licenses and license**
4 **rights of Respondent BONNIE ELLERT under the Real Estate Law.**

5 28.

6 In the course of the activities described above, and based on the facts discovered
7 by the Department, also described above, the acts and/or omissions of Respondent ALAN
8 MANDELBERG are in violation of Code Sections 10085 (advance fee agreements and
9 materials to be submitted to Commissioner at least ten (10) calendar days prior to use) and
10 10085.5 (claim, demand, charge, receive, collect or contract for an advance fee for activities
11 requiring a real estate license); Code Sections 10177(g) (negligence); and 10177(h) and
12 Regulation 2725 (failure to exercise reasonable supervision over RES ELLERT's
13 activities), and constitute cause for the suspension or revocation of all licenses and license rights
14 of Respondent ALAN MANDELBERG under the Real Estate Law.

15 COSTS

16 29.

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

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all the licenses and license rights of Respondents ALAN MANDELBERG and
4 BONNIE B. ELLERT under the Real Estate Law (Part 1 of Division 4 of the Business and
5 Professions Code), and for such other and further relief as may be proper under other applicable
6 provisions of law.

7 Dated at San Diego, California

8 this 17 day of June 2020.

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11 
12 Veronica Kilpatrick
13 Supervising Special Investigator

14 cc: ALAN MANDELBERG
15 BONNIE B. ELLERT
16 V. Kilpatrick
17 Sacto.
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