

FILED

June 18, 2012

DEPARTMENT OF REAL ESTATE

By *S. Jones*

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8 **BEFORE THE DEPARTMENT OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

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11 In the Matter of the Accusation of)
12)
13 BARRY LEON WINNETT,)
14 Respondent.)

No. H-5840 SAC
ACCUSATION

15 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy
16 Real Estate Commissioner of the State of California, for cause of Accusation against BARRY
17 LEON WINNETT (hereinafter "Respondent"), is informed and alleges as follows:

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19 Respondent is presently licensed and/or has license rights under the Real Estate
20 Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "Code") as a real
21 estate salesperson.

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23 On or about January 11, 2012, in the United States District Court for the
24 Northern District of California, case number 10CR 495 MCE, Respondent was convicted of
25 violating United States Code Section 18:1343 (Wire Fraud), a felony which bears a substantial
26 relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications,
27 functions, or duties of a real estate licensee and constitutes cause for revocation of all licenses

1 and license rights of Respondent under Sections 490 and 10177(b) of the California Business
2 and Professions Code.

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4 Recovery of Reasonable Costs of Investigation and Enforcement

5 Section 10106 of the Code¹ provides, in pertinent part, that in any order issued in
6 resolution of a disciplinary proceeding before the department, the commissioner may request the
7 administrative law judge to direct a licensee found to have committed a violation of this part to
8 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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17 ¹ **10106.** (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the
18 department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation
19 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (b) In the case of a
20 disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed
21 partnership. (c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed
22 by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of
23 investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date
24 of the hearing, including, but not limited to, charges imposed by the Attorney General. (d) The administrative law judge shall
25 make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant
26 to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the commissioner
27 to increase the cost award. The commissioner may reduce or eliminate the cost award, or remand to the administrative law judge
where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a). (e) Where an order for
recovery of costs is made and timely payment is not made as directed in the commissioner's decision, the commissioner may
enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the
commissioner may have as to any licensee to pay costs. (f) In any action for recovery of costs, proof of the commissioner's
decision shall be conclusive proof of the validity of the order of payment and the terms for payment. (g) (1) Except as provided
in paragraph (2), the department shall not renew or reinstate the license of any licensee who has failed to pay all of the costs
ordered under this section. (2) The department may, in its discretion, conditionally renew or
reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal
agreement with the department to reimburse the department within that one-year period for the unpaid costs. (h) All costs
recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the Real
Estate Fund to be available, notwithstanding Section 10451, upon appropriation by the Legislature. (i) Nothing in this section
shall preclude the department from including the recovery of the costs of investigation and enforcement of a case in any
stipulated settlement.

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 revoking all licenses and
3 license rights of Respondent(s) under the Real Estate Law (Part 1 of Division 4 of the Business
4 and Professions Code), for the cost of investigation and enforcement as permitted by law, and for
5 such other and further relief as may be proper under other provisions of law.

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8 TRICIA D. SOMMERS
9 Deputy Real Estate Commissioner

9 Dated at Sacramento, California,
10 this 29th day of May, 2012.

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13 DISCOVERY DEMAND

14 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedures Act*, the Department of
15 Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the
16 *Administrative Procedures Act*. Failure to provide Discovery to the Department of Real Estate
17 may result in the exclusion of witnesses and documents at the hearing or other sanctions that the
18 Office of Administrative Hearings deems appropriate.