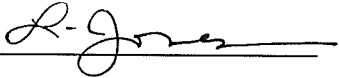


FILED

October 3, 2012

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2 Real Estate Counsel
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

By 

6 Telephone: (916) 227-0789
7 -or- (916) 227-0788 (Direct)

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11
12 In the Matter of the Accusation of)
13 RUTHERFORD BERNARD BROWNING III,)
14 Respondent.)

No. H-5856 SAC
FIRST AMENDED
ACCUSATION

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

20 1

21 BROWNING is presently licensed and/or has license rights under the Real Estate
22 Law (Part 1 of Division 4 of the California¹ Business and Professions Code) (hereinafter
23 "Code") as a real estate salesperson.

24 2

25 At all times relevant herein, BROWNING was and is the President of Acclaim
26 Properties & Investments, Inc. (hereinafter "Acclaim"), a California corporation.

27 ¹ All references are to California Codes and Regulations, unless otherwise stated.

1 3

2 On or about January 25, 2012, BROWNING made application to the Department
3 for a real estate broker license.

4 4

5 On or about February 8, 2012, BROWNING, on behalf of Acclaim, made
6 application for a corporate real estate license for Acclaim with BROWNING as the designated
7 officer/broker.

8 5

9 In response to Part D, Question 2 of BROWNING's real estate broker license
10 application described in paragraph 3, above, to wit: "Are there criminal charges pending against
11 you at this time?", BROWNING concealed and failed to disclose the pending criminal charges
12 against BROWNING filed on April 6, 2011, before the San Joaquin County Superior Court, case
13 number TF036194A, which led to the convictions identified in paragraph 7, below.

14 6

15 In response to Section II, Question 18 of Acclaim's corporate real estate broker
16 license application described in paragraph 4, above, to wit: "Are there criminal charges pending
17 against you at this time?", BROWNING concealed and failed to disclose the pending criminal
18 charges against BROWNING filed on April 6, 2011, before the San Joaquin County Superior
19 Court, case number TF036194A, which led to the convictions identified in paragraph 7, below.

20 7

21 On or about April 3, 2012, in the San Joaquin County Superior Court, State of
22 California, case number TF036194A, BROWNING was convicted upon a plea of guilty to
23 violating Section 368(b)(1) of the Penal Code (Elder or Dependent Adult Abuse), a
24 misdemeanor, and was convicted upon a plea of nolo contendere to violating Section 597(b) of
25 the Penal Code (Cruelty to Animals), a felony, both crimes which independently and jointly
26 bear a substantial relationship under Section 2910, Title 10, Code of Regulations, to the
27 qualifications, functions, or duties of a real estate licensee.

1
2 BROWNING's failure to reveal in his application for a real estate broker license
3 the convictions set forth in paragraph 7, above, constitutes the procurement of or attempt to
4 procure a real estate license by fraud, misrepresentation, or deceit, or by making a material
5 misstatement of fact in an application, which failure is cause pursuant to the provisions of
6 Section 10177(a) (Attempt to Procure License by Fraud/Misrepresentation/Deceit, or Making of
7 False Statement Required to Be Revealed in License Application) of the Code, for the
8 suspension or revocation of all licenses and license rights of BROWNING under the Real Estate
9 Law.

10
11 BROWNING's failure to reveal in Acclaim's application for a corporate real
12 estate broker license the convictions set forth in paragraph 7, above, constitutes the procurement
13 of or attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making
14 a material misstatement of fact in an application, which failure is cause pursuant to the
15 provisions of Section 10177(a) of the Code, for the suspension or revocation of all licenses and
16 license rights of BROWNING under the Real Estate Law.

17
18 The facts alleged in paragraph 7, above, constitute cause under Sections 490
19 (Conviction of Crime) and 10177(b) (Conviction of Crime Substantially Related to
20 Qualifications, Functions or Duties of Real Estate Licensee) of the Code for the suspension or
21 revocation of all licenses and license rights of BROWNING under the Real Estate Law.

22 Matter in Aggravation

23
24 In response to Section II, Question 1A of Acclaim's corporate real estate broker
25 license application described in paragraph 4, above, to wit: "Do you currently hold or have you
26 previously held a real state license in California?" BROWNING responded "Yes". In response
27 to Section II, Question 1C, of said corporate license application, to wit: "Type of License",

1 BROWNING responded "Broker". However, at no time has BROWNING ever been issued a
2 real estate broker license by the Department.

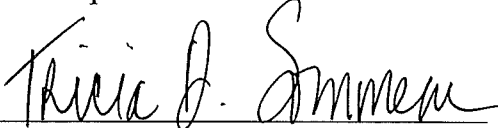
3 12

4 BROWNING is currently a Respondent in a Statement of Issues brought by the
5 Department of Real Estate, Case Number H-5857 SAC. This Accusation and the Statement of
6 Issues have common questions of fact and law. Therefore, pursuant to Government Code
7 Section 11507.3, the Department intends to seek consolidation of these actions prior to hearing.

8 13

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

13 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
14 of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and
15 license rights of BROWNING under the Real Estate Law (Part 1 of Division 4 of the Business
16 and Professions Code), for the cost of investigation and enforcement as permitted by law, and for
17 such other and further relief as may be proper under the provisions of law.

18 
19 TRICIA D. SOMMERS
20 Deputy Real Estate Commissioner

21 Dated at Sacramento, California,
22 this 2nd day of October, 2012.

23 ///

24 ///

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DISCOVERY DEMAND:

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

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