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FILED

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BUREAU OF REAL ESTATE

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7
8 BEFORE THE
9 BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

13 EARL GENE KILMER,)

14 Respondent.)

NO. H-6225 SAC

ACCUSATION

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16 The Complainant, TRICIA D. PARKHURST, in her official capacity as a
17 Deputy Real Estate Commissioner of the State of California, for cause of Accusation against
18 EARL GENE KILMER ("Respondent"), individually and doing business as "Kilmer &
19 Associates", is informed and alleges as follows:

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21 At all times relevant, Respondent was licensed and/or had license rights by the
22 Bureau of Real Estate ("the Bureau") as a restricted real estate broker under the Real Estate Law,
23 Part 1 of Division 4 of the Business and Professions Code ("the Code").

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25 At all times relevant, Respondent engaged in the business of, acted in the capacity
26 of, advertised or assumed to act as real estate broker in the State of California within the meaning
27 of Section 10131(a) (sale/purchase of real estate) of the Code, including selling or offering to

1 sell, buying or offer to buy, soliciting prospective sellers or purchasers of, soliciting or obtaining
2 lists of, or negotiating the purchase, sale or exchange of real property; and Section 10131(b)
3 (property management) of the Code, including the operation and conduct of a property
4 management business with the public, wherein, on behalf of others, for compensation or in
5 expectation of compensation, Respondent leased or rented and offered to lease or rent, and
6 solicited for prospective tenants of real property or improvements thereon, and collected rents
7 from real property or improvements thereon.

8 FIRST CAUSE OF ACTION

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10 In or about the period of August 2, 2013, and continuing intermittently through
11 October 25, 2013, an audit was conducted of Respondent at his main office located at
12 1234 Travis Boulevard, Suite A, Fairfield, California, and at the Bureau's District Office located
13 at 1651 Exposition Boulevard, Sacramento, California, where the auditor examined the records
14 for the period of November 1, 2010, through October 31, 2013 (the audit period).

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16 While acting as a real estate broker as described in Paragraph 2, above, and within
17 the audit period, Respondent accepted or received funds in trust (trust funds) in the course of the
18 real estate activities described in Paragraph 2, above, and deposited or caused to be deposited
19 those funds into a bank account maintained by Respondent, including, but not limited to:

20 Bank Account #1

21 Community Business Bank
22 725 Riverpoint Court
23 West Sacramento, CA 95605

24 Account No.: XXXXX2946

25 Account Name: Earl Kilmer, Broker
Kilmer & Associates Property

26 Signatories: Earl Kilmer (REB)

27 Thereafter, Respondent from time-to-time made disbursement of said trust funds.

In the course of the activities described in Paragraph 2, above, in connection with the collection and disbursement of trust funds:

(a) As of April 30, 2013, there was a shortage in Respondent's Bank Account #1 of at least \$42,572.46. As of July 31, 2013, there was a shortage in Respondent's Bank Account #1 of at least \$50,832.19. Respondent failed to obtain the prior written consent of every principal who is an owner of the funds in Bank Account #1 prior to any disbursement which would reduce the balance of the funds in Bank Account #1 to an amount less than the existing aggregate account liability of Respondent to all owners and/or principals of those funds. Such acts and/or omissions by Respondent violate Section 10145 (handling of trust funds) of the Code and Section 2832.1 (trust fund handling for multiple beneficiaries) of Title 10 of the California Code of Regulations ("the Regulations").

(b) Respondent failed to reconcile the total of separate beneficiary/property records with a control record on a monthly basis for Bank Account #1. Such acts and/or omissions by Respondent violate Section 10145 of the Code and Section 2831.2 (trust fund reconciliation requirement) of the Regulations.

(c) Respondent failed to designate Bank Account #1 as a trust account in the name of Respondent or Respondent's dba as trustee. Such acts and/or omissions by Respondent violate Section 10145 of the Code and Section 2832 (trust fund handling) of the Regulations.

(d) Respondent failed to maintain a record of trust funds received – not placed into Broker's Trust Account. Such acts and/or omissions by Respondent violate Section 10145 of the Code and Section 2831(a)(6) (requirement to maintain record of trust funds not deposited into broker's trust account) of the Regulations.

The acts and/or omissions of Respondent as set forth in Paragraph 5, above, are grounds for the discipline of the licenses and license rights of Respondent under Sections 10177(d) (willful disregard of Real Estate Law) and/or 10177(g) (negligence or incompetence)

1 of the Code. In addition, the Bureau is entitled to reimbursement from Respondent for the costs
2 of its audit pursuant to Section 10148(b) (cost of audit in final decision following disciplinary
3 hearing) of the Code.

4 SECOND CAUSE OF ACTION

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6 Complainant refers to Paragraphs 1 through 6, above, and incorporates the same,
7 herein by reference.

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9 Respondent failed to disclose his Bureau broker license identification number on
10 the business cards used in his real estate activities.

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12 The acts and/or omissions of Respondent set forth in Paragraph 8, above, violate
13 Section 10140.6 (disclosure of license status in advertising) of the Code and Section 2773
14 (disclosure of license identification number on solicitation material) of the Regulations, and are
15 grounds for the suspension or revocation of Respondent's license and license rights under
16 Sections 10177(d) and/or 10177(g) of the Code.

17 THIRD CAUSE OF ACTION

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19 Complainant refers to Paragraphs 1 through 9, above, and incorporates the same,
20 herein by reference.

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22 Respondent utilized the services of Central Valley Maintenance ("CVM"), a
23 company which provided repair and maintenance services for the real property managed by
24 Respondent on behalf of Judi G. Specifically, Respondent failed to disclose his part ownership
25 of CVM in the property management agreement between Respondent and Judi G. signed on
26 January 1, 2013.

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The facts alleged in Paragraph 11, above, are grounds for the suspension or revocation of Respondent's license(s) and license rights under Sections 10176(g) (undisclosed compensation – affiliated company), 10177(d) and/or 10177(g) of the Code.

PRIOR ADMINISTRATIVE PROCEEDINGS

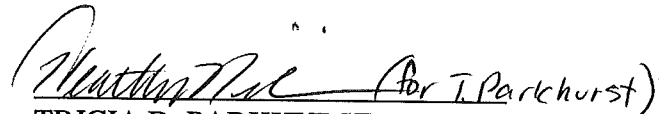
Effective July 13, 1993, in Case No. H-2911 SAC, a Desist and Refrain Order was issued against Respondent's real estate broker license and Respondent's corporate real estate broker license based on Respondent, through his dba "Kilmer & Associates", performing real estate activity despite the suspension of Respondent's corporate status by the California Secretary of State.

Effective May 9, 1994, in Case No. H-2912 SAC, Respondent's real estate broker license was revoked by the Real Estate Commissioner ("Commissioner") pursuant to violations of Sections 10145 (trust fund handling) and 10177(d) (willful disregard of Real Estate Law) of the Code, and Sections 2830 (placement of trust funds with financial institutions), 2831 (maintenance of trust fund records), 2831.1 (maintenance of separate records for each beneficiary/transaction), 2831.2 and 2832.1 of the Regulations; and Respondent was granted the right to a restricted real estate broker license under the terms of a Stipulation and Agreement.

COST RECOVERY

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

1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
3 disciplinary action against all licenses and license rights of Respondent under the Code, and for
4 such other and further relief as may be proper under the provisions of law.
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8 TRICIA D. PARKHURST
9 Deputy Real Estate Commissioner

10 Dated at Sacramento, California
11 this 23rd day of February, 2015.
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