

FILED

1 MARY F. CLARKE, Counsel (SBN 186744)
2 Bureau of Real Estate
3 1651 Exposition Blvd.
4 P. O. Box 137007
5 Sacramento, CA 95813-7007

JUL 16 2015

BUREAU OF REAL ESTATE
By S. Black

6 Telephone: (916) 263-8670 (Main)
7 -or- (916) 263-7303 (Direct)
8 -or- (916) 263-3767 (Fax)

9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13) NO. H-6284 SAC
14 KELLY WYLER,)
15) ACCUSATION
16 Respondent.)
17)

18 The Complainant, HEATHER NISHIMURA, as a Supervising Special
19 Investigator of the State of California, makes this Accusation in her official capacity against
20 KELLY WYLER (herein "Respondent") and is informed and alleges as follows:

21 1

22 At all times herein mentioned, Respondent was and now is licensed and/or has
23 license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions
24 Code) (herein "the Code").

25 2

26 At all times herein mentioned, Respondent was and now is licensed by the State
27 of California Bureau of Real Estate (herein "the Bureau") as a real estate broker.

3

At all times herein mentioned, Respondent engaged in the business of, acted in
the capacity of, advertised, or assumed to act as real a estate broker for compensation or in the

1 expectation of compensation within the State of California within the meaning of Section 10131(b)
2 of the Code, including the operation and conduct of a property management business with the public
3 wherein, on behalf of others, Respondent leased or rented or offered to lease or rent, or placed for
4 rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated the sale,
5 purchase or exchanges of leases on real property or on a business opportunity, or collected rents from
6 real property, or improvements thereon, or from business opportunities.

7 4

8 In so acting as a real estate broker as described in Paragraph 3, above, Respondent
9 accepted or received funds in trust (herein "trust funds") from or on behalf of tenants, owners,
10 and others in connection with real estate leasing, renting, and collection of rents on real property
11 or improvements thereon, and thereafter from time to time made disbursements of said funds.

12 5

13 The aforesaid trust funds accepted or received by Respondent were deposited or
14 caused to be deposited by Respondent into one or more bank accounts (herein "trust fund
15 accounts") maintained by Respondent for the handling of trust funds at the Fair Oaks, California,
16 Safeway branch of US Bank, account title "Access Real Estate," signatory Kelly Wyler, bearing
17 account number xxxxxxxx8305 (herein "Bank Account #1").

18 6

19 Between about June 30, 2014 and about July 17, 2014, an audit was conducted of
20 the records of Respondent in connection with the activities described in Paragraphs 3 through 5,
21 above. The auditor herein examined the records for the period between about January 1, 2013
22 and about June 30, 2014, and found Respondent:

- 23 (a) caused, suffered or permitted the balance of funds in Bank Account #1 to be
24 reduced to the amounts shown below, which were less than the aggregate
25 liability of Respondent to all owners of such funds, without the prior written
26 consent of the owners of such funds, in violation of Section 2832.1 of Chapter
27 6, Title 10, of the California Code of Regulations (herein "the Regulations")

<u>Date</u>	<u>Shortage Amount</u>
4/30/14	\$60,507.75
5/31/14	\$16,598.00;

- (b) failed to place trust funds entrusted to Respondent into the hands of a principal on whose behalf the funds were received, into a neutral escrow depository, or into a trust fund account in the name of Respondent as trustee at a bank or other financial institution for Bank Account #1, in violation of Section 10145 of the Code and Section 2832 of the Regulations;
- (c) failed to reconcile at least once a month, the balance of all separate beneficiary or transaction records with Bank Account #1, as required by Section 2831.2 of the Regulations;
- (d) over disbursed management fees for the months shown below, totaling about \$40,803.79 in violation of Section 10177(g) of the Code:

<u>Months:</u>	<u>Total Earned:</u>	<u>Checks Paid:</u>	<u>Transfers:</u>	<u>Difference:</u>
Dec. 2013	\$6,035.97	none	\$12,000.00	-\$5,963.03
Jan. 2014	\$6,203.06	\$5,829.06	\$16,000.00	-\$15,626.00
Feb. 2014	\$6,384.33	\$6,524.33	\$12,500.00	-\$12,640.00
Mar. 2014	\$6,924.55	none	none	\$6,924.55
Apr. 2014	\$6,961.77	\$20,461.08	none	-\$13,490.31
<u>Totals:</u>	<u>\$32,510.68</u>	<u>\$32,814.47</u>	<u>\$40,500.00</u>	<u>-\$40,803.79</u>

7

The facts alleged above are grounds for the suspension or revocation of the license and license rights of Respondent under the following provisions of the Code and/or the Regulations:

- (a) as to Paragraph 6(a) under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph 6(b) under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) as to Paragraph 6(c) under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code; and

1 (d) as to Paragraph 6(d) under Section 10177(g) of the Code.

2 COST RECOVERY

3 8

4 Audit Costs

5 The acts and/or omissions of Respondent as alleged above entitle the Bureau to
6 reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

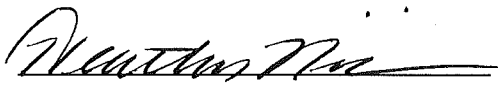
7 9

8 Investigation and Enforcement Costs

9 Section 10106 of the Code provides, in pertinent part, that in any order issued in
10 resolution of a disciplinary proceeding before the Bureau, 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 imposing disciplinary
15 action against all licenses and license rights of Respondent under the Real Estate Law (Part 1
16 of Division 4 of the Business and Professions Code), for the cost of the investigation and
17 enforcement as permitted by law, and for such other and further relief as may be proper under
18 other applicable provisions of law.

19
20 Dated at Sacramento, California
21 this 15th day of July, 2015


HEATHER NISHIMURA
Supervising Special Investigator

22
23 DISCOVERY DEMAND

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