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FILED

AUG 05 2022

DEPARTMENT OF REAL ESTATE
By B. A. Chiu

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

13 CRYRAG, INC.;)

14 and)

15 RANDY ALAN GULARTE, as designated)
16 officer of Cryrag, Inc.,)

17 Respondents.)

No. H-7150 SAC

ACCUSATION

18 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
19 of the State of California, for cause of Accusation against CRYRAG, INC. and RANDY ALAN
20 GULARTE (collectively referred to as "Respondents"), is informed and alleges as follows:

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

24 PRELIMINARY ALLEGATIONS

25 2

26 Respondents are presently licensed and/or have license rights under the Real
27 Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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2 At all times mentioned, Respondent CRYRAG, INC. (CRYRAG) was and is
3 licensed by the Department as a real estate corporate broker, License ID 01823519. CRYRAG
4 was licensed by the Department as a real estate corporation on or about September 12, 2007.
5 Unless renewed, CRYRAG's corporate broker license will expire September 11, 2023.

6 At all times mentioned, RANDY ALAN GULARTE (GULARTE) was and is
7 licensed by the Department as the designated broker officer of CRYRAG. As said designated
8 officer-broker, GULARTE was responsible pursuant to Section 10159.2 of the Code for the
9 supervision of the activities of the officers, agents, real estate licensees, and employees of
10 CRYRAG for which a license is required.

11 At all times mentioned, CRYRAG was licensed to do business under the
12 fictitious business name "Crown Realty Property Mgmt."

13 4

14 At all times mentioned, Respondent GULARTE was and is licensed by the
15 Department individually as a real estate broker, License ID 00458347, and as the designated
16 officer of CRYRAG. GULARTE was licensed as a real estate broker on June 30, 1976. Unless
17 renewed, GULARTE's broker license will expire May 22, 2025.

18 5

19 At no time prior to October 21, 2021, was Fernanda Cristal Navarro (Navarro)
20 licensed by the Department in any capacity. At all times after October 22, 2021, Navarro was
21 and is licensed by the Department as a real estate salesperson, License ID 02162170.

22 At all times after November 29, 2021, Navarro's salesperson was licensed was
23 affiliated under the brokerage of CRYRAG.

24 6

25 From on or about January 16, 1996 through February 14, 2020, Crystal Wood
26 Gularte (C. Gularte) was licensed by the Department as a real estate salesperson, License ID
27 01205452.

1 From January 25, 2012, through December 13, 2012, C. Gularte's real estate
2 salesperson license was affiliated under the brokerage of CRYRAG. At all times after December
3 14, 2012, C. Gualarte had no broker affiliation.

4 At no time after February 14, 2020, was C. Gularte licensed by the Department in
5 any capacity.

6 7

7 At all times mentioned, Danielle Gulante Maloney (Maloney) was and is licensed
8 by the Department individually as a real estate broker, License ID 01456446. Maloney was
9 licensed as a real estate salesperson on October 1, 2004, and as a broker on June 26, 2008.
10 Unless renewed, Maloney's broker license will expire June 25, 2024.

11 As of October 4, 2021, Maloney was and is affiliated as a broker associate under
12 CRYRAG.

13 8

14 At all times mentioned, Kriss William Kimbrough (Kimbrough) was and is
15 licensed by the Department individually as a real estate broker, License ID 00601293.
16 Kimbrough was licensed as a real estate broker on October 2, 1983. Unless renewed, Maloney's
17 broker license will expire October 1, 2023.

18 As of November 5, 2021, Kimbrough was and is affiliated as a broker associate
19 under CRYRAG.

20 9

21 At all times mentioned, Haley Ann Nissen (Nissen) was and is licensed by the
22 Department individually as a real estate broker, License ID 01302508. Nissen was licensed as a
23 real estate salesperson on January 5, 2001, and as a broker on September 29, 2008. Unless
24 renewed, Nissen's broker license will expire September 28, 2024.

25 As of October 21, 2021, Nissen was and is affiliated as a broker associate under
26 CRYRAG.

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At all times mentioned, Tanner Bushby (Bushby) was and is licensed by the Department as a real estate salesperson, License ID 01811933. Bushby was licensed as a real estate salesperson on June 14, 2007. Unless renewed, Bushby’s salesperson license will expire July 15, 2023.

At all times after October 28, 2021, Bushby’s salesperson was licensed was affiliated under the brokerage of CRYRAG.

Whenever reference is made in an allegation in this Accusation to an act or omission of CRYRAG, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with CRYRAG committed such acts or omissions while engaged in furtherance of the business or operation of CRYRAG and while acting within the course and scope of their corporate authority and employment.

AUDIT OK21-0021

On or about April 15, 2022, the Department completed its audit (OK21-0021) of the books and records of CRYRAG property management activities described in Paragraph 13. The auditor herein examined the records for the period of January 1, 2019, through August 31, 2021.

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Sections 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

1 As of the audit examination, Respondents managed 3,560 residential properties
2 with 3,697 units, fifty-one (51) apartment complexes with 587 units, twenty-six (26) commercial
3 buildings with 106 units, and three (3) mobile homes with eighty-eight (88) units for 1,855
4 owners. Respondents collected approximately \$44,666,350 in trust funds annually.

5 Respondents' property management services include, but not limited to, collecting
6 rents and security deposits for real property; soliciting for tenants; advertising properties; making
7 mortgage, property tax, and insurance payments; and responsibility for repairs and maintenance.
8 For such property management services, Respondents charged a management fee of between
9 \$250 and \$1,500 per unit per month and between five (5) to ten (10) percent of collected rents
10 per unit per month. Respondents also charged between 25 and 75 percent for lease execution
11 and between 15 and 100 percent of rent for lease renewal.

12 14

13 While acting as a real estate broker as described in Paragraph 13, Respondents
14 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in
15 connection with the leasing, renting, and collection of rents on real property or improvements
16 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust
17 funds.

18 The trust funds accepted or received by Respondents were deposited or caused to
19 be deposited by Respondents into accounts which were maintained by Respondents for the
20 handling of trust funds, and thereafter from time-to-time Respondents made disbursements of
21 said trust funds, identified as follows:

TRUST ACCOUNT # 1	
Bank Name and Location:	Bank of Marin 1715 Second Street Napa, CA 94559

1	Account No.:	XXXX-0051
2	Account Name:	Cryrag Inc.
3		dba Crown Realty Property Management
4		Trust Account Multi Investors
5	Signatories:	GULARTE
6		Maloney
7		Kimbrough
8		Nissen
9		Teresa Ganze (RES)
10		Tanner Bushby (RES)
11		Katherine Ocnaske (RES)
12		Navarro
13	Purpose:	Trust Account #1 was used for the handling of trust funds
14		from property management activities. Deposits consisted of
15		rent and owner contributions. Disbursements consisted of
16		owner proceeds, security deposit disposition, repairs and
17		maintenance payments, and management fees..

18		
19		BANK ACCOUNT # 2
20	Bank Name and Location:	Bank of Marin
21		1715 Second Street
22		Napa, CA 94559
23	Account No.:	XXXX-0317
24	Account Name:	Cryrag Inc.
25		dba Crown Realty Property Management
26		Onsite Manager Account
27		

<p>1 Signatories:</p> <p>2</p> <p>3</p> <p>4</p>	<p>GULARTE</p> <p>Maloney</p> <p>Teresa Ganze (RES)</p> <p>C. Gularte</p>
<p>5 Purpose:</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p>	<p>Bank Account #2 was used for the handling of trust funds from property management activities related to the compensation of the onsite managers for the properties being managed by CRYRAG. Deposits consisted for funds transferred from Trust Account #1. Disbursements consisted of payroll payments to the onsite managers.</p>

<p>11</p> <p>12 BANK ACCOUNT # 3</p>	
<p>13 Bank Name and Location:</p> <p>14</p> <p>15</p>	<p>Bank of Marin</p> <p>1715 Second Street</p> <p>Napa, CA 94559</p>
<p>16 Account No.:</p>	<p>XXXX-0374</p>
<p>17 Account Name:</p> <p>18</p> <p>19</p>	<p>Cryrag Inc.</p> <p>dba Crown Realty Property Management</p> <p>Bill Pay Account</p>
<p>20 Signatories:</p> <p>21</p> <p>22</p>	<p>GULARTE</p> <p>Maloney</p> <p>C. Gularte</p>
<p>23 Purpose:</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p>	<p>Bank Account #2 was used for the handling of utility bills for the properties managed. Deposits consisted of funds transferred from Trust Account #1. Disbursements consisted of payments to several vendors who require ACH payments or</p>

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	separate checks for each property.
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In the course of the property management activities described in Paragraph 13, and during the audit examination period described in Paragraph 12, Respondents violated the Code and Regulations described below:

Trust Account Accountability and Balances

16

Bank account reconciliations were prepared for Trust Account #1, Bank Account #2, and Bank Account #3 as of June 30, 2021. The adjusted bank balance was calculated by using the ending bank balance per the bank statement provided plus deposits in transit minus outstanding checks as identified from the Record of Trust Funds Received and Disbursed, also referred to as the Control Record/Bank Register/Check Register. The adjusted bank balance was then compared to the corresponding sum of all the Separate Records for Each Beneficiary, as referred to as "Owner Trust Account Requirement"/Accountability.

During the audit, Respondents provided that corrections needed to be made to a few property balances on the initial Owner Trust Account Requirement reports provide for Trust Account #1, Bank Account #2, and Bank Account #3. The post correction reports were provided and used to determine accountability.

17

(Trust Account #1)

Based on the records provided during the audit, a bank reconciliation for Trust Account #1 was prepared for as of June 30, 2021. The adjusted bank balance of Trust Account #1 as of June 30, 2021, was compared to the beneficiaries' accountability for Trust Account #1 as of June 30, 2021.

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Adjusted Bank Balance	\$3,728,601.53
Accountability	<u>\$3,852,421.08</u>
Trust Fund Shortage	<u>(\$123,819.55)</u>

A shortage of \$123,819.55 was found in Trust Account #1 as of June 30, 2021.

The shortage was caused by the following:

- a. Negative balances in property/owner account in the amount of \$11,658.05;
- b. Negative balances of corporate ledgers in the amount of \$47,192.21;
- c. Funds being deposited into auditee's operating account instead of Trust Account #1 in error in the amount of \$32,583.88; and
- d. \$32,385.41 of the shortage was unidentified.

Respondents provided no evidence that the owners of the trust funds had given their written consent to allow Respondents to reduce the balance of the funds in Trust Account #1 to an amount less than the existing aggregate trust fund liabilities, in violation of Section 10145 of the Code and Section 2832.1 of Title 10, Chapter 6, California Code of Regulations (Regulations).

18

(Bank Account #2)

Based on the records provided during the audit, a bank reconciliation for Bank Account #2 was prepared for as of June 30, 2021. The adjusted bank balance of Bank Account #2 as of June 30, 2021, was compared to the beneficiaries' accountability for Bank Account #2 as of June 30, 2021.

Adjusted Bank Balance	\$3,538.80
Accountability	<u>\$4,108.06</u>
Trust Fund Shortage	<u>(\$569.26)</u>

1 A shortage of \$569.26 was found in Bank Account #2 as of June 30, 2021. The
2 cause of the trust fund shortage was a negative balance in the amount of \$569.26.

3 Respondents provided no evidence that the owners of the trust funds had given
4 their written consent to allow Respondents to reduce the balance of the funds in Bank Account
5 #1 to an amount less than the existing aggregate trust fund liabilities, in violation of Section
6 10145 of the Code and Section 2832.1 of the Regulations.

7 Separate Records

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9 Respondents failed to maintain accurate separate records for each beneficiary or
10 transaction, accounting therein for all funds which were deposited into Bank Account #3
11 containing all of the information required by Section 2831.1 of the Regulations.

12 Bank Account #3 contained unidentified and/or unaccounted for funds of at least
13 \$508.99. Respondent failed to maintain a separate records for the unidentified funds.

14 Trust Account Reconciliation

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16 Respondents failed to reconcile the balance of separate beneficiary or transaction
17 records with the control record of trust funds received and disbursed at least once a month, and/or
18 failed to maintain a record of such reconciliations for Trust Account #1, Bank Account #2, and
19 Bank Account #3 as required by Section 2831.2 of the Regulations.

20 Trust Account Designation

21 21

22 During the audit period, Bank Account #2 and Bank Account #3, accounts used to
23 hold trust funds, were not designated as trust accounts in the name of the broker or the broker's
24 fictitious business name as trustee, in violation of Section 10145 of the Code and Section 2832
25 Title 10, Chapter 6, California Code of Regulations (Regulations).

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1 Bank Account #2 was titled "Cryrag Inc. dba Crown Realty Property Management
2 Onsite Manager Account."

3 Bank Account #3 was titled "Cryrag Inc. dba Crown Realty Property Management
4 Bill Pay Account."

5 Trust Account Signatory

6 22

7 (Navarro)

8 Respondents caused, permitted, and/or allowed, the possible withdrawal of trust
9 funds from Trust Account #1, by Navarro, who was not licensed by the Department and not
10 covered by a fidelity bond in violation of Section 10145 of the Code and Section 2834 of the
11 Regulations.

12 23

13 (C. Gularte)

14 Respondents caused, permitted, and/or allowed, the possible withdrawal of trust
15 funds from Bank Account #2 and Bank Account #3, by C. Gularte, who was not licensed by the
16 Department and not covered by a fidelity bond, and/or a salesperson under the employ of
17 CRYRAG in violation of Section 10145 of the Code and Section 2834 of the Regulations.

18 24

19 (Bushby)

20 Respondents caused, permitted, and/or allowed, the possible withdrawal of trust
21 funds from Trust Account #1, by Bushby, who was not a salesperson under the employ of
22 CRYRAG in violation of Section 10145 of the Code and Section 2834 of the Regulations.

23 Notice of Broker Affiliation

24 25

25 (Maloney)

26 Respondents entered into an independent contractor agreement with Maloney on
27 or about September 9, 2019, but failed to immediately notify the Department of his employment

1 until October 4, 2021, which constitutes a violation of Section 10161.8(c) of the Code and
2 Section 2752 of the Regulations.

3 26

4 (Kimbrough)

5 Respondents entered into an independent contractor agreement with Maloney on
6 or about September 9, 2019, but failed to immediately notify the Department of his employment
7 until November 5, 2021, which constitutes a violation of Section 10161.8(c) of the Code and
8 Section 2752 of the Regulations.

9 27

10 (Nissen)

11 Respondents entered into an independent contractor agreement with Maloney on
12 or about September 9, 2019, but failed to immediately notify the Department of his employment
13 until October 21, 2021, which constitutes a violation of Section 10161.8(c) of the Code and
14 Section 2752 of the Regulations.

15 FAILURE TO SUPERVISE

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17 Respondent GULARTE failed to exercise reasonable supervision over the acts of
18 CRYRAG in such a manner as to allow the acts and events described above to occur.

19 29

20 The acts and/or omissions of GULARTE as described in Paragraph 28, constitutes
21 failure on the part of GULARTE, as designated broker-officer for CRYRAG, to exercise
22 reasonable supervision and control over the licensed activities of CRYRAG as required by
23 Section 10159.2 of the Code and Section 2725 of the Regulations.

24 GROUND FOR DISCIPLINE

25 30

26 The acts and/or omissions of Respondents as alleged in the above constitute
27 grounds for the suspension or revocation of all licenses and license rights of Respondents,

1 pursuant to the following provisions of the Code and Regulations:

2 As to Paragraphs 16 through 18, under Sections 10177(d) and/or 10177(g) of the
3 Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

4 As to Paragraph 19, under Sections 10177(d) and/or 10177(g) of the Code in
5 conjunction with Section 10145 of the Code and Section 2831.1 of the Regulations;

6 As to Paragraph 20, under Sections 10177(d) and/or 10177(g) of the Code in
7 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

8 As to Paragraph 21, under Sections 10177(d) and/or 10177(g) of the Code in
9 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

10 As to Paragraphs 22 through 24, under Sections 10177(d) and/or 10177(g) of the
11 Code in conjunction with Section 10145 of the Code and Section 2834 of the Regulations; and

12 As to Paragraphs 25 through 27, under Sections 10177(d) and/or 10177(g) of the
13 Code in conjunction with Section 10161.8(c) of the Code and Section 2752 of the Regulations.

14 31

15 The acts and/or omissions of GULARTE as alleged in Paragraphs 28 and 29
16 constitute grounds for the suspension or revocation of all licenses and license rights of
17 GULARTE under Sections 10177(g) and/or 10177(h) of the Code, and Section 10159.2 of the
18 Code in conjunction with Section 10177(d) of the Code.

19 COST RECOVERY

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21 The acts and/or omissions of Respondents as alleged above, entitle the
22 Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

23 33

24 Section 10106 of the Code provides, in pertinent part, that in any order issued in
25 resolution of a disciplinary proceeding before the Department, the Commissioner may request the
26 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
27 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 allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondents under the Code, for the cost of
4 investigation and enforcement as permitted by law, and for such other and further relief as may
5 be proper under the provisions of law.

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8 TRICIA D. PARKHURST
9 Supervising Special Investigator

10 Dated at Sacramento, California,
11 this 22nd day of July, 2022
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21 DISCOVERY DEMAND

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