

1 JOHN W. BARRON, Counsel (SBN 171246)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789 (main)
5 (916) 227-0792 (direct)

FILED
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DEPARTMENT OF REAL ESTATE
By R. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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12	In the Matter of the Accusation of)	
13)	No. H-11440 SF
14	ANTIOCH REALTY GROUP, INC.)	
14	and ALLEN RAY SCHNIBBEN,)	<u>ACCUSATION</u>
15)	
15	Respondents.)	
16)	

17 The Complainant, ROBIN S. TANNER, in her official capacity as a Deputy Real
18 Estate Commissioner of the State of California, for cause of Accusation against ANTIOCH
19 REALTY GROUP, INC., ("ARG"), individually and doing business as "Keller Williams
20 Premier Properties", and ALLEN RAY SCHNIBBEN, ("SCHNIBBEN"), (collectively
21 "Respondents"), is informed and alleges as follows:

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23 ARG is presently licensed and/or has license rights under the Real Estate Law,
24 Part 1 of Division 4 of the Business and Professions Code ("the Code"), as a corporate real
25 estate broker.

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SCHNIBBEN is presently licensed and/or has license rights under the Code as a real estate broker. At all times relevant herein, SCHNIBBEN was licensed by the Department as the designated broker/officer of ARG. As the designated broker/officer, SCHNIBBEN was responsible, pursuant to Section 10159.2 (responsibility of corporate officer in charge) of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of ARG for which a real estate license is required.

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At all times relevant, Jennifer Rae Haus, ("Haus"), was licensed and/or had license rights under the Code as a real estate salesperson under the broker license of ARG.

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At all times relevant, Richard G. Geha, ("Geha"), was licensed and/or had license rights under the Code as a real estate salesperson. However, Geha was licensed under the real estate broker license of Nick McTojo, Inc., not ARG or SCHNIBBEN.

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At no time has Joe Dauskurdas, ("Dauskurdas"), been licensed by the Department in any capacity to conduct real estate activity in the State of California.

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At all times relevant herein, 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 Section 10131(d) (Broker Defined – performing services for borrowers/lenders in connection with loans secured by real property) of the Code, including the operation and conduct of a loan brokerage business with the public, wherein, on behalf of others, for compensation or in expectation of compensation, Respondents solicited lenders and borrowers for loans secured directly or collaterally by liens on real property, and wherein Respondents arranged, negotiated, processed and consummated such loans; and engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within

1 the State of California within the meaning of Section 10131(b) of the Code (Broker Defined –
2 Property Management/Collection of Rent), including the operation and conduct of a property
3 management business with the public, wherein, on behalf of others, for compensation or in
4 expectation of compensation, Respondents leased or rented or offered to lease or rent, and
5 solicited for prospective tenants of real property or improvements thereon, and collected rents
6 from real property or improvements thereon.

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

13 FIRST CAUSE OF ACTION

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15 On or about January 25, 2010, and continuing intermittently through February
16 26, 2010, an audit was conducted of ARG at its main office located at 4041 Lone Tree Way,
17 Suite 101, Antioch, California, where the auditor examined the records for the period of January
18 1, 2008, through December 31, 2009 (the audit period).

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20 While acting as a real estate broker as described in Paragraph 6, above, and
21 within the audit period, ARG accepted or received funds in trust (trust funds) in the course of
22 the loan brokerage and property management activities described in Paragraph 6, above, and
23 deposited or caused the funds to be deposited into a bank accounts maintained by ARG,
24 including:

25 Trust Account #1

26 Fremont Bank
27 200 Sand Creek Road, Suite F
Brentwood, CA 94513

1 Account No.: XXXX1267
2 Account Name: Antioch Realty Group Inc Trust Account
3 Signatories: Jennifer Haus, RES (Team Leader)
4 Joe Dauskurdas, Non-licensee (Secretary)
Richard Geha, RES (President)

5 Thereafter, from time-to-time, Respondents made disbursements of said trust funds.

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7 In the course of the activities described in Paragraph 6, above, in connection
8 with the collection and disbursement of trust funds:

9 (a) On or about December 31, 2009, there was a \$1,916.78 shortage for Trust
10 Account #1. ARG did not provide evidence that the owners of the trust
11 funds had given their written consent allowing it to reduce the balance of the
12 funds in Trust Account #1 to an amount less than the existing aggregate trust
13 fund liabilities. Such acts and/or omissions by ARG violate Section 10145
14 (handling of trust funds) of the Code and Section 2832.1 (trust fund handling
15 for multiple beneficiaries) of Title 10 of the California Code of Regulations
16 (“the Regulations”).

17 (b) ARG allowed improper signatories on Trust Account #1, including
18 Dauskurdas, who was not licensed by the Department to conduct real estate
19 activities and was not an employee of ARG; Geha, who was licensed as a
20 real estate salesperson by the Department under the broker license of
21 someone other than ARG or SCHNIBBEN; and Haus, who was licensed as a
22 real estate salesperson by the Department under the broker license of ARG,
23 but did not have proper written authority to make withdrawals from Trust
24 Account #1. In addition, SCHNIBBEN was not listed as a signatory on Trust
25 Account #1. Such acts and/or omissions by ARG violate Section 10145 of
26 the Code and Section 2834 (trust account withdrawals) of the Regulations.

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(c) ARG failed to maintain a record of all trust funds deposited into and disbursed from Bank Account #1. Such acts and/or omissions by ARG violate Section 10145 of the Code and Section 2831 (trust fund records) of the Regulations.

(d) ARG failed to maintain separate records for each beneficiary of funds held in Trust Account #1. Such acts and/or omissions by ARG violate Section 10145 of the Code and Section 2831.1 (requirement of separate records for each beneficiary or transaction) of the Regulations.

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

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The acts and/or omissions of ARG as set forth in Paragraph 10, above, violate Section 10145 of the Code, and Sections 2831, 2831.1, 2831.2, 2832.1 and 2834 of the Regulations, and are grounds for discipline under Sections 10177(d) (willful disregard/violation of real estate law) and/or 10177(g) (negligence or incompetence) of the Code. In addition, the Department is entitled to reimbursement for the costs of its audit pursuant to Section 10148(b) (cost of audit in final decision following disciplinary hearing) of the Code.

SECOND CAUSE OF ACTION

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ARG used the fictitious business name of "Keller Williams Realty – TOP Management" in conducting the real estate sales and property management activity set forth in Paragraph 6, above, without first obtaining a license bearing that fictitious business name from the Department.

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The acts and/or omissions of ARG as alleged in Paragraph 12, above, violate Section 10159.5 (fictitious business name) of the Code and Section 2731 (use of false or fictitious business name) of the Regulations, and are grounds for the suspension or revocation of ARG's license and license rights under Sections 10177(d) and/or 10177(g) of the Code.

THIRD CAUSE OF ACTION

In at least three (3) real estate transactions, ARG failed to collect the earnest money deposit from buyers even though the purchase contract indicated such deposits had been collected, including:

<u>Buyer</u>	<u>Property</u>	<u>Offer Date</u>	<u>Alleged Deposit</u>
Alejandro Prieto	1733 Brampton Place Brentwood, CA	03/19/08	\$5,000
Andrew & Silvia Fulwiler	1476 Carpenter Road Oakley, CA	11/19/08	\$6,500
Robert & Angela Robinson	931 Orchid Court Brentwood, CA	07/10/09	\$8,000

The acts and/or omissions of ARG described in Paragraph 14, above, violate Section 10176(a) of the Code (substantial misrepresentation), and are grounds for suspension or revocation of ARG's license and license rights under Sections 10176(a), 10176(i) (fraud or dishonest dealing), and 10177(d) and/or 10177(g) of the Code.

FOURTH CAUSE OF ACTION

As the designated broker/officer for ARG, SCHNIBBEN was responsible for the supervision and control of the activities conducted on behalf of ARG by its officers and employees. SCHNIBBEN failed to exercise reasonable supervision and control over the

1 property management activities of ARG. In particular, SCHNIBBEN permitted, ratified and/or
2 caused the conduct described in the First through Third Causes of Action, above, to occur, and
3 failed to take reasonable steps, including, but not limited to, the handling of trust funds,
4 supervision of employees and the implementation of policies, rules, procedures and systems to
5 ensure the compliance of the corporation with the Real Estate Law and the Regulations.

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7 The acts and/or omissions of SCHNIBBEN as set forth in Paragraph 16, above,
8 violate Section 10159.2 of the Code and Section 2725 (broker supervision) of the Regulations,
9 and are grounds for disciplinary action under Sections 10177(d) and/or 10177(g), and 10177(h)
10 (reasonable broker supervision) of the Code.

11 COST RECOVERY

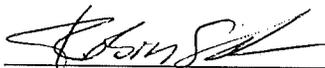
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13 Section 10106 of the Code provides, in pertinent part, that in any order issued in
14 resolution of a disciplinary proceeding before the department, the commissioner may request
15 the administrative law judge to direct a licensee found to have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

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Code, for the reasonable cost of investigation and prosecution of this case, including agency attorney's fees, and for such other and further relief as may be proper under other provisions of law.



ROBIN S. TANNER
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 15th day of August, 2012.