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BUREAU OF REAL ESTATE

By K. Contreras

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

11 * * *

12 In the Matter of the Accusation of)
13 ERNEST CLARK, JR.,) NO. H-11685 SF
14 Respondent.) ACCUSATION
15)

16 The Complainant, ROBIN S. TANNER, in her official capacity as a Deputy
17 Real Estate Commissioner of the State of California, for cause of Accusation against ERNEST
18 CLARK, JR. ("Respondent"), individually and doing business as "Seville Real Estate", is
19 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 real estate broker under the Real Estate Law, Part 1 of
23 Division 4 of the Business and Professions Code ("the Code").

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25 At all times herein mentioned, Respondent was engaged in the business of, acted
26 in the capacity of, advertised or assumed to act as real estate broker in the State of California
27 within the meaning of Section 10131(b) of the Code (property management), including the

1 operation and conduct of a property management business with the public, wherein, on behalf of
2 others, for compensation or in expectation of compensation, Respondent leased or rented and
3 offered to lease or rent, and solicited for prospective tenants of real property or improvements
4 thereon, and collected rents from real property or improvements thereon.

5 FIRST CAUSE OF ACTION

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7 On or about April 12, 2013, and continuing intermittently through July 16, 2013,
8 an audit was conducted of Respondent at his main office located at 1700 Broadway, 3rd Floor,
9 Oakland, California, and at the Bureau's District Office located at 1515 Clay Street, Suite 702,
10 Oakland, California, where the auditor examined the records for the period of January 1, 2012,
11 through March 31, 2013 (the audit period).

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

17 Bank Account #1

18 Comerica Bank
19 1442 North Main Street
20 Walnut Creek, CA 94596-4332

21 Account No.: XXXXXX2123

22 Account Name: Seville Real Estate & Management Inc Trust Account

23 Signatories: Ernest Clark (REB)
Maya Clark (REB-associate)

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

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26 In the course of the activities described in Paragraph 4, above, in connection with
27 the collection and disbursement of trust funds:

1 (a) As of March 31, 2013, there was a shortage in Respondent's Bank Account
2 #1 of at least \$7,683.08. Respondent failed to obtain the prior written consent of every principal
3 who is an owner of the funds in Bank Account #1 prior to any disbursement which would reduce
4 the balance of the funds in Bank Account #1 to an amount less than the existing aggregate
5 account liability of Respondent to all owners and/or principals of those funds. Such acts and/or
6 omissions by Respondent violate Section 10145 (handling of trust funds) of the Code and
7 Section 2832.1 (trust fund handling for multiple beneficiaries) of Title 10 of the California Code
8 of Regulations ("the Regulations").

9 (b) Respondent failed to deposit trust funds collected into a broker trust
10 account. Instead, Respondent deposited trust funds collected into Bank Account #1, which was
11 owned by an unlicensed corporate entity, "Seville Real Estate and Management, Inc.". Such acts
12 and/or omissions by Respondent violate Section 10145 of the Code and Section 2832 (trust fund
13 handling) of the Regulations.

14 (c) Respondent failed to maintain adequate Control Records for Bank Account
15 #1. Such acts and/or omissions by Respondent violate Section 10145 of the Code and Section
16 2831 (trust fund records maintenance) of the Regulations.

17 (d) Respondent failed to maintain accurate written monthly reconciliations for
18 the balances of all of the separate records with the control records for Bank Account #1. Such
19 acts and/or omissions by Respondent violate Section 10145 of the Code and Section 2831.2
20 (trust account reconciliation) of the Regulations.

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22 The facts alleged in Paragraph 5, above, are grounds for the suspension or
23 revocation of the license and license rights of Respondent under Sections 10177(d) (willful
24 disregard of Real Estate Law) and/or 10177(g) (negligence/incompetence) of the Code. In
25 addition, the Bureau is entitled to reimbursement from Respondent for the costs of its audit
26 pursuant to Section 10148(b) (cost of audit in final decision following disciplinary hearing) of
27 the Code.

1 COST RECOVERY

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

7 WHEREFORE, Complainant prays that a hearing be conducted on the
8 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
9 disciplinary action against all licenses and license rights of Respondent under the Code, and for
10 such other and further relief as may be proper under the provisions of law.

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14 ROBIN S. TANNER
15 Deputy Real Estate Commissioner

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18 Dated at Oakland, California

19 this ____ day of April, 2014.