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BUREAU OF REAL ESTATE

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7

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 BROKKER, INC.,)
14 PETER GLENN CAPONIO, and)
15 SLAVKA T. THOMSON,)
Respondents.)

NO. H-11721 SF
ACCUSATION

16 The Complainant, ROBIN S. TANNER, in her official capacity as a Deputy Real
17 Estate Commissioner of the State of California, for cause of Accusation against BROKKER,
18 INC. ("BROKKER"), individually and doing business as "Alameda Realty", PETER GLENN
19 CAPONIO ("CAPONIO"), and SLAVKA T. THOMSON ("THOMSON"), (collectively
20 "Respondents"), is informed and alleges as follows:

21 1

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

25 2

26 At all times relevant, CAPONIO was licensed and/or had license rights by the
27 Bureau as a real estate broker, and was licensed by the Bureau as the designated broker/officer of

1 BROKKER. As the designated broker/officer, CAPONIO was responsible, pursuant to Section
2 10159.2 (responsibility of corporate broker in charge) of the Code for the supervision of the
3 activities of the officers, agents, real estate licensees and employees of BROKKER for which a
4 real estate license is required.

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6 At all times relevant, THOMSON was licensed and/or had license rights by the
7 Bureau as a real estate salesperson, and was licensed under the real estate broker license of
8 BROKKER.

9 4

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

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

23 FIRST CAUSE OF ACTION

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25 On or about August 8, 2013, an audit was conducted of BROKKER at their main
26 office located at 2310-1/2 Alameda Avenue, Alameda, California, where the auditor examined
27 the records for the period of July 1, 2011, through July 31, 2013 (the audit period).

1
2 While acting as a real estate broker as described in Paragraph 5, above, and within
3 the audit period, BROKKER accepted or received funds in trust (trust funds) in the course of the
4 real estate activities described in Paragraph 5, above, and deposited or caused to be deposited
5 those funds into a bank account maintained by BROKKER, including, but not limited to:

6 Bank Account #1

7 Bank of Alameda
8 2130 Otis Drive
9 Alameda, CA 94501-5728

10 Account No.: XXX3035

11 Account Name: Thomson Properties Client Trust Account

12 Signatories: Slavka T Thomson (RES)
13 Erin R Thomson (unlicensed)
14 W Lance Russum (unlicensed)
15 Pete Caponio (D.O.)

16 Thereafter, BROKKER from time-to-time made disbursement of said trust funds.

17 In the course of the activities described in Paragraph 5, above, in connection with
18 the collection and disbursement of trust funds:

19 (a) As of April 30, 2013, there was a shortage in BROKKER's Bank Account
20 #1 of at least \$8,154.32. As of June 28, 2013, there was a shortage in BROKKER's Bank
21 Account #1 of at least \$8,164.32. BROKKER failed to obtain the prior written consent of every
22 principal who is an owner of the funds in Bank Account #1 prior to any disbursement which
23 would reduce the balance of the funds in Bank Account #1 to an amount less than the existing
24 aggregate account liability of BROKKER to all owners and/or principals of those funds. Such
25 acts and/or omissions by BROKKER violate Section 10145 (handling of trust funds) of the Code
26 and Section 2832.1 (trust fund handling for multiple beneficiaries) of Title 10 of the California
27 Code of Regulations ("the Regulations").

1 (b) BROKKER failed to designate Bank Account #1 as a trust account with
2 BROKKER as the trustee. Such acts and/or omissions by BROKKER violate Section 10145 of
3 the Code and Section 2832 (trust fund handling) of the Regulations.

4 (c) BROKKER mingled trust funds with non-trust funds in Bank Account #1.
5 Such acts and/or omissions by BROKKER violate Section 10176(e) (commingling) of the Code
6 and Section 2835 (commingling) of the Regulations.

7 (d) BROKKER failed to maintain complete and accurate separate records of
8 each beneficiary of funds held in Trust Accounts #1 and #2. Such acts and/or omissions by
9 BROKKER violate Section 10145 of the Code and Section 2831.1 (requirement of separate
10 records for each beneficiary or transaction) of the Regulations.

11 (e) BROKKER allowed non-licensees Erin Thomson and Lance Russum to be
12 signatories on Bank Account #1. In addition, BROKKER failed to maintain adequate fidelity
13 bond coverage for Erin Thomson and Lance Russum. Such acts and/or omissions by BROKKER
14 violate Section 10145 of the Code and Section 2834 (trust account withdrawals) of the
15 Regulations.

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

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21 The acts and/or omissions of BROKKER as set forth in Paragraph 8, above, are
22 grounds for the discipline of the licenses and license rights of BROKKER under Sections
23 10176(e), 10177(d) (willful disregard of Real Estate Law) and/or 10177(g) (negligence or
24 incompetence) of the Code. In addition, the Bureau is entitled to reimbursement from
25 BROKKER for the costs of its audit pursuant to Section 10148(b) (cost of audit in final
26 decision following disciplinary hearing) of the Code.

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1 and license rights of BROKKER and CAPONIO under Sections 10177(d) and/or 10177(g) of the
2 Code.

3 FIFTH CAUSE OF ACTION

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5 THOMSON engaged in licensed real estate activities after the expiration of
6 her real estate salesperson license on May 24, 2013. Specifically, THOMSON collected rent
7 receipts in June 2013 and entered into at least two (2) property management agreements in
8 July 2013.

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10 The acts and/or omissions of THOMSON as set forth in Paragraph 16, above,
11 violate Section 10130 (real estate license requirement) of the Code, and are grounds for the
12 discipline of the license and license rights of THOMSON under Sections 10177(d) and/or
13 10177(g) of the Code.

14 SIXTH CAUSE OF ACTION

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16 The website www.thomsonproperties.com, which THOMSON owns and controls,
17 failed to disclose THOMSON's real estate license identification number.

18 19

19 The acts and/or omissions of THOMSON as set forth in Paragraph 18, above,
20 violate Section 10140.6 (disclosure of license information in advertising) of the Code and
21 Section 2773 (disclosure of license identification number on solicitation materials) of the
22 Regulations, and are grounds to discipline the license and license rights of THOMSON under
23 Sections 10177(d) and/or 10177(g) of the Code.

24 SEVENTH CAUSE OF ACTION

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26 At all times relevant herein, CAPONIO was responsible, as the designated
27 broker/officer for BROKKER, for the supervision and control of the activities conducted on

1 behalf of the corporation by its officers and employees. CAPONIO failed to exercise reasonable
2 supervision and control over the real estate activities of BROKKER. In particular, CAPONIO
3 permitted, ratified and/or caused the conduct described in the First through Sixth Causes of
4 Action, above, to occur, and failed to take reasonable steps, including, but not limited to, the
5 supervision of employees and the implementation of policies, rules, procedures and systems to
6 ensure the compliance of the corporation with the Real Estate Law and the Regulations.

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8 The acts and/or omissions of CAPONIO as set forth in Paragraph 20, above,
9 violate Section 10159.2 (responsibilities of corporate officer in charge) of the Code and
10 Section 2725 (broker supervision) of the Regulations, and are grounds for the discipline of the
11 license and license rights of CAPONIO under Sections 10177(d) and/or 10177(g), and 10177(h)
12 (reasonable supervision requirements for broker) of the Code.

13 COST RECOVERY

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

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

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25 ROBIN S. TANNER
26 Deputy Real Estate Commissioner

27 Dated at Oakland, California
this 16th day of June, 2014.