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FILED

APR 10 2017

BUREAU OF REAL ESTATE
By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	NO. H- 11980 SF
ACW ENTERPRISES and)	
ERIK IBARRA,)	<u>FIRST AMENDED</u>
)	<u>ACCUSATION</u>
_____ Respondents)	

The Complainant, ROBIN S. TANNER, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity against ACW ENTERPRISES ("ACW"), also doing business as "Accountable Property Management," and ERIK IBARRA ("IBARRA"), (collectively "Respondents"), and is informed and alleges as follows:

1

At all times herein mentioned, Respondents were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) ("Code").

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At all times herein mentioned, ACW was and now is licensed by the State of California Bureau of Real Estate ("Bureau") as a corporate real estate broker, by and through IBARRA as designated officer-broker of ACW, to qualify said corporation and to act for said corporation as a real estate broker.

At all times herein mentioned, IBARRA was and now is licensed by the Bureau as the designated officer-broker of ACW. As said designated officer-broker, IBARRA was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of ACW for which a license is required.

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

FIRST CAUSE OF ACTION

As Against All Respondents

At all times herein mentioned Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others, for compensation or in expectation of compensation within the State of California, within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein Respondents leased or rented or offered to lease or rent, or placed for rent, or solicited listings or places for rent, or solicited

1 for prospective tenants, or negotiated the sale, purchase, or exchange of leases on real
2 property or on a business opportunity, or collected rents from real property, or improvements
3 thereon, or from business opportunities.

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5 In so acting as real estate brokers as described in Paragraph 5, above,
6 Respondents accepted or received funds in trust ("trust funds") from or on behalf of tenants,
7 owners, and others in connection with renting and the collection of rents on real property or
8 improvements thereon, and thereafter from time-to-time made disbursements of said funds.

9 7

10 The aforesaid trust funds accepted or received by Respondents were deposited
11 or caused to be deposited by Respondents into one or more bank accounts ("trust fund
12 accounts") maintained by Respondents for the handling of trust funds at the following
13 financial institutions:

- 14 a) Wells Fargo Bank, Alameda, CA 94501, account number xxxxxx4649
15 ("Trust Account #1"); and,
16 b) Wells Fargo Bank, Alameda, CA 94501, account number xxxxxx9464
17 ("Trust Account #2).

18 8

19 Between about May 6, 2015, and about May 29, 2015, an audit was conducted
20 of the records of Respondents in connection with the activities described in Paragraphs 5, 6,
21 and 7, above. The auditor herein examined the records for the period between about
22 September 18, 2014, and about April 30, 2015, and found Respondents:

- 23 a) caused, suffered, or permitted the balance of funds in Trust Account #1
24 to be reduced to an amount, which as of April 30, 2015, was approximately \$6,791.77 less
25 than the aggregate liability of ACW to all owners of such funds, without the prior written
26 consent of the owners of such funds, in violation of Section 10145 of the Code and Section
27 2832.1 of Chapter 6, Title 10, of the California Code of Regulations ("Regulations");

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

3 As to Paragraph 8(d), under Sections 10177(d) and/or 10177(g) of the Code in
4 conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

5 As to Paragraph 8(e), under Sections 10177(d) and/or 10177(g) of the Code in
6 conjunction with Section 2831.2 of the Regulations; and,

7 As to Paragraph 8(f), under Sections 10177(d) and/or 10177(g) of the Code in
8 conjunction with Section 10140.6(b) of the Code and Section 2773 of the Regulations.

9 SECOND CAUSE OF ACTION

10 As Against Respondent IBARRA

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12 Each and every allegation contained in Paragraphs 1 through 9, inclusive, is
13 incorporated by this reference as if fully set forth herein.

14 11

15 Respondent IBARRA failed to exercise reasonable supervision over the acts of
16 ACW in such a manner as to allow the acts and events described above to occur.

17 12

18 The acts and/or omissions of IBARRA described in Paragraph 11, above,
19 constitute failure on the part of IBARRA, as designated broker-officer for ACW, to exercise
20 reasonable supervision and control over the licensed activities of ACW as required by
21 Section 10159.2 of the Code and Section 2725 of the Regulations.

22 13

23 The facts described above as to the Second Cause of Action constitute cause
24 for the suspension or revocation of the licenses and license rights of Respondent IBARRA
25 under Section 10177(g) of the Code, Section 10177(h) of the Code, and/or Section 10177(d)
26 of the Code in conjunction with Section 10159.2 of the Code and Section 2725 of the
27 Regulations.

1 COST RECOVERY

2 14

3 Audit Costs

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

6 15

7 Investigation and Enforcement Costs

8 Section 10106 of the Code provides, in pertinent part, that in any order issued
9 in resolution of a disciplinary proceeding before the Bureau, the Commissioner may request
10 the Administrative Law Judge to direct a licensee found to have committed a violation of this
11 part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
12 the case.

13 WHEREFORE, Complainant prays that a hearing be conducted on the
14 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
15 disciplinary action against all licenses and license rights of Respondent under the Real Estate
16 Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of the
17 investigation and enforcement as permitted by law, for the cost of the audit as permitted by
18 law, and for such other and further relief as may be proper under other applicable provisions
19 of law.

20 
21 ROBIN S. TANNER
Supervising Special Investigator

22 Dated at Oakland, California

23 this 5th day of April, 2016.