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FILED

JUN 13 2017

BUREAU OF REAL ESTATE

By B. Nicholas

7
8 **BEFORE THE BUREAU OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of:) NO. H- 12104 SF
12)
13 Z & M ASSOCIATES INC.,)
14 and MOISE NAHOURAII,) ACCUSATION
Respondents.)

15 The Complainant, ROBIN S. TANNER, in her official capacity as a Supervising
16 Special Investigator of the State of California, for cause of Accusation against Z & M
17 ASSOCIATES INC. ("Z & M"), and MOISE NAHOURAII ("NAHOURAII"), (collectively
18 referred to as "Respondents"), is informed and alleges as follows:

19 1

20 Respondent Z & M is presently licensed by the California Bureau of Real Estate
21 ("the Bureau") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
22 California Business and Professions Code ("the Code"), as a corporate real estate broker, and at all
23 relevant times herein was acting by and through NAHOURAII as its designated officer broker.

24 2

25 NAHOURAII is presently licensed and/or has license rights under the Real Estate
26 Law, Part 1 of Division 4 of the Code ("the Real Estate Law") as an individual real estate broker
27 and, at all relevant times herein, was the designated broker officer of Z & M.

1
2 Whenever reference is made in an allegation in this Accusation to an act or omission
3 of Z & M, such allegation shall be deemed to mean that the employees, agents, real estate licensees,
4 and others employed by or associated with Z & M committed such act or omission while engaged in
5 furtherance of the business or operations of Z & M and while acting within the course and scope of
6 their authority and employment.

7
8 At all times herein mentioned, Respondents engaged in the business of, acted in the
9 capacity of, advertised, or assumed to act as real estate brokers within the State of California on
10 behalf of others, for compensation or in expectation of compensation within the meaning of Section
11 10131(b) of the Code, including the operation and conduct of a property management business with
12 the public wherein, on behalf of others, for compensation, leased or rented or offered to lease or
13 rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or
14 negotiated for sale, purchase or exchanges of leases on real property, or on a business opportunity,
15 or collected rent from real property, or improvements thereon, or from business opportunities.

16 **COUNT ONE**

17 **AUDIT VIOLATIONS**

18 (As to Respondents Z & M and NAHOURAIL)

19 Each and every allegation in paragraphs 1 through 4, inclusive, above, is
20 incorporated by this reference as if fully set forth herein.

21
22 On or about March 21, 2016, and continuing intermittently through March 22, 2016,
23 the Bureau conducted an audit of the books and records related to the real estate activities of
24 Respondents at Z & M's main office located at 1601 S De Anza Blvd. #150, Cupertino, CA 95014,
25 where the auditor examined records for the period of January 1, 2015, to February 29, 2016 ("audit
26 period").
27

1
2 While acting as real estate brokers, as described above in paragraph 4, and within the
3 audit period, Respondents accepted or received funds in trust ("trust funds") and deposited or
4 caused the trust funds to be deposited into bank accounts maintained by Respondents, and
5 thereafter, from time-to-time, Respondents made disbursements of said trust funds, identified as
6 follows:

7 Trust Account #1

8 Bank Name: Wells Fargo Bank
9 Account No.: Last 4 Digits: xxxxxx3959
10 Account Name: "Z & M Associates Inc Referral Realty Management Main
11 Trust Account"
12 Signatories: Moise Nahouraii (D.O./REB), Vickie Cook (RES), and
13 Nathan Nahouraii (REB)
14 Purpose: Used for deposits and disbursements related to property
15 management for Referral Realty of Cupertino.

16 Trust Account #2

17 Bank Name: Wells Fargo Bank
18 Account No.: Last 4 Digits: xxxxxx2821
19 Account Name: "Referral Realty Z & M Associates Inc Referral Realty
20 Brace/Mercy Trust Account"
21 Signatories: Moise Nahouraii (D.O./REB), Vickie Cook (RES), and
22 Nathan Nahouraii (REB)
23 Purpose: Used for deposits and disbursements related to the
24 management of two properties owned by Adriana D'Elia.

25 Trust Account #3

26 Bank Name: Wells Fargo Bank
27 Account No.: Last 4 Digits: xxxxxx4597
Account Name: "Real Estate Management Services"
Signatories: Lynn Web (RES), Kathleen L. Short (RES), and
Moise Nahouraii (D.O./REB) (added 2/19/16)
Purpose: Used for deposits and disbursements related to the
management of properties under Real Estate Management
Services.

28 Trust Account #4

29 Bank Name: Wells Fargo Bank
30 Account No.: Last 4 Digits: xxxxxx4605
31 Account Name: "Real Estate Management Services"

1 Signatories: Lynn Web (RES), Kathleen L. Short (RES), and
2 Purpose: Moise Nahouraii (D.O./REB) (added 2/19/16)
3 Used to hold security deposits for the management of
4 properties under Real Estate Management Services.

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6 In the course of the real estate broker activities described in paragraph 4, above, and
7 during the audit period, Respondents:

8 (a) caused, suffered, or permitted the balance of funds in Trust Account #1 to be
9 reduced to an amount which, as of February 29, 2016, was approximately \$76.09 less than the
10 aggregate liability of Trust Account #1 to all owners of such funds, without the prior written
11 consent of each and every owner of such funds, in violation of Section 10145 of the Code and
12 Section 2832.1 of Title 10 of the California Code of Regulations ("the Regulations");

13 (b) failed to properly designate Trust Account #3 and Trust Account #4, used to
14 hold trust funds, as trust accounts in the name of Respondents and/or a fictitious business name
15 associated with Respondents, as trustee, in violation of Section 10145 of the Code and Section 2832
16 of the Regulations;

17 (c) allowed real estate salesperson Kathleen Short, who was not employed by
18 Z & M, to serve as a signatory on Trust Account #3 and Trust Account #4, in violation of Section
19 10145 of the Code and Section 2834 of the Regulations;

20 (d) failed to have the designated officer serve as a signatory on Trust Account #3
21 and Trust Account #4 during the audit period, in violation of Section 10145 of the Code and Section
22 2834 of the Regulations;

23 (e) failed to maintain complete and accurate records of all trust funds received
24 and disbursed (control records) for Trust Account #3, in violation of Section 10145 of the Code and
25 Section 2831 of the Regulations;

26 (f) failed to maintain and/or keep accurate and complete separate records for the
27 receipt and disposition of all trust funds deposited into Trust Account #3, in violation of Section
10145(g) of the Code and Section 2831.1 of the Regulations;

1 receipt and disposition of all trust funds deposited into Trust Account #3, in violation of Section
2 10145(g) of the Code and Section 2831.1 of the Regulations;

3 (g) conducted property management services under the fictitious business name
4 "Real Estate Management Services" without first registering the fictitious business name with the
5 Bureau, in violation of Section 10159.5 of the Code and Section 2731 of the Regulations;

6 (h) conducted property management services from 501 Stockton Ave. #106 in
7 San Jose, and 6081 Meridian Ave., Suite 70-291 in San Jose, without first registering with the
8 Bureau the aforementioned addresses as branch office locations, in violation of Section 10163 of
9 the Code;

10 (i) failed to disclose the license identification number for Z & M on its
11 company website, in violation of Section 10140.6 of the Code and Section 2773 of the Regulations;
12 and,

13 (j) failed to notify the Bureau that real estate salesperson Kathleen Short was
14 employed by Z & M during the audit period, in violation of Section 10140.6 of the Code and
15 Section 2773 of the Regulations.

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17 The acts and/or omissions of Respondents as alleged in paragraph 8, above,
18 constitute grounds for the suspension or revocation of all licenses and license rights of Respondents
19 pursuant to the following provisions of the Code and Regulations:

20 As to Paragraph 8(a), under Section 10177(d) and/or 10177(g) of the Code, in
21 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

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

24 As to Paragraph 8(c), under Section 10177(d) and/or 10177(g) of the Code, in
25 conjunction with Section 10145 of the Code and Section 2834 of the Regulations;

26 As to Paragraph 8(d), under Section 10177(d) and/or 10177(g) of the Code, in
27 conjunction with Section 10145 of the Code and Section 2834 of the Regulations;

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

3 As to Paragraph 8(g), under Section 10177(d) and/or 10177(g) of the Code, in
4 conjunction with Section 10159.5 of the Code and Section 2731 of the Regulations;

5 As to Paragraph 8(h), under Section 10177(d) and/or 10177(g) of the Code, in
6 conjunction with Section 10163 of the Code;

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

9 As to Paragraph 8(j), under Section 10177(d) and/or 10177(g) of the Code, in
10 conjunction with Section 10140.6 of the Code and Section 2773 of the Regulations.

11 **COUNT TWO**
12 **FAILURE TO SUPERVISE**
13 **(As to Respondent NAHOURAII)**

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15 Each and every allegation in Paragraphs 1 through 9, inclusive, above, is
16 incorporated by this reference as if fully set forth herein.

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18 NAHOURAII, as the designated officer of Z & M, was required to exercise
19 reasonable supervision and control over the activities of Z & M and its employees and the real
20 estate activities being conducted by Z & M.

21 12

22 NAHOURAII failed to exercise reasonable supervision over the acts and/or
23 omissions of Z & M and its employees in such a manner as to allow the acts and/or omissions as
24 described above in the First Cause of Action to occur, which constitutes cause for the suspension or
25 revocation of the licenses and license rights of NAHOURAII under Sections 10177(d) and/or
26 10177(g), 10177(h) and 10159.2 of the Code in conjunction with Section 2725 of the Regulations.

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1 COST RECOVERY

2 Audit Costs

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

7 Investigation and Enforcement Costs

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

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

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20 _____
21 ROBIN S. TANNER
22 Supervising Special Investigator

21 Dated at Oakland, California,
22 this 8th day of June, 2017.

24 DISCOVERY DEMAND

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