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FILED

NOV 27 2017

BUREAU OF REAL ESTATE

By H. Badilas

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:)

12 DONALD WAYNE MOSER and)
13 DWM PROPERTIES, INC.,)

14 Respondents.)

No. H-12123 SF

ACCUSATION

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16 The Complainant, ROBIN S. TANNER, in her official capacity as a Supervising
17 Special Investigator of the State of California, Bureau of Real Estate ("Bureau"), brings this
18 Accusation against DONALD WAYNE MOSER ("MOSER") and DWM PROPERTIES, INC.
19 ("DWM") (collectively "Respondents"), and is informed and alleges as follows:

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21 DWM is presently licensed by the Bureau and/or has license rights under the Real
22 Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as a
23 corporate real estate broker.

24 2

25 MOSER is presently licensed by the Bureau and/or has license rights under the Real
26 Estate Law, Part 1 of Division 4 of the Code, as a real estate broker.

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2 At all relevant times herein, MOSER is and was the Designated Officer of DWM.

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

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12 Beginning on or about September 15, 2016, and continuing through November 3,
13 2016, an audit was conducted of the real estate business activities of DWM, located at 262 E. Main
14 Street, Los Gatos, CA, and at the Bureau's office located at 1515 Clay Street, Oakland, CA. The
15 Bureau's auditor examined the business records of DWM for the period of September 1, 2015,
16 through August 31, 2016 ("audit period").

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18 While engaging in real estate activities as described in Paragraph 4, above, and
19 within the audit period, Respondents accepted or received funds in trust ("trust funds") and
20 deposited or caused the trust funds to be deposited into bank/trust accounts maintained as follows:

21 Bank Name: Wells Fargo

22 Bank Address: 150 N. Santa Cruz Ave.

23 Los Gatos, CA 95030

24 Bank Account #1:

25 Account Name: DWM Properties

26 Account No.: Last 4 Digits: 7072

27 Signatory: Donald W. Moser, REB; Paula Moser, unlicensed

1 Description: Deposits and disbursements related to management of
2 properties under the licensed fictitious business name DWM
3 Properties and unlicensed and unlicensed corporation DWM
4 Properties, Inc.

5 Bank Account #2:

6 Account Name: DWM Properties The Clairmont Apartments

7 Account No.: Last 4 Digits: 0341

8 Signatories: Donald W. Moser, REB

9 Description: Deposits and disbursements related to the management of the
10 Clairmont Apartments, which were owned by Peter and Mark
11 Oliverez.

12 Trust Account #1:

13 Bank Name: Bank of America

14 Bank Address: 333 N. Santa Cruz Ave.

15 Los Gatos, CA 95030

16 Account Name: Donald Moser, Trustee DWM Properties Trust Account

17 Account No.: Last 4 Digits: 1695

18 Signatories: Donald W. Moser, REB

19 Description: Trust Account #1 was the "active tenant security deposit trust
20 account" used to handle security deposits related to
21 Respondents' property management activities.

22 Trust Account #2:

23 Bank Name: Bank of the West

24 Bank Address: 308 N. Santa Cruz Ave.

25 Los Gatos, CA 95030

26 Account Name: Donald Moser, Trustee DWM Properties Trust Account

27 Account No.: Last 4 Digits: 6999

1 Signatories: Donald W. Moser, REB

2 Description: Trust Account # 2 was used to keep \$88,000 of the tenant
3 security deposits.

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5 In the course of the real estate activities described in Paragraph 4, above, and during
6 the audit period, it was discovered:

7 (a) As of August 31, 2016, Bank Account #1 had a shortage of \$72,651.68, in
8 violation of Section 10145 of the Code and Section 2832.1, Title 10, California Code of the
9 Regulations ("Regulations");

10 (b) Respondents failed to obtain written permission from owners of the trust
11 funds in Bank Account #1 to allow the balance to drop below accountability, in violation of Section
12 10145 of the Code and Section 2832.1 of the Regulations;

13 (c) As of August 31, 2016, Bank Account # 2 had a shortage of \$1,357.37, in
14 violation of Section 10145 of the Code and Section 2832.1;

15 (d) Respondents failed to obtain written permission from owners of the trust
16 funds in Bank Account #2 to allow the balance to drop below accountability, in violation of Section
17 10145 of the Code and Section 2832.1 of the Regulations;

18 (e) Respondents failed to maintain adequate separate beneficiary records and
19 disposition of trust funds in Trust Account #1 and Trust Account #2 in violation of Section 10145 of
20 the Code and Section 2831.1 of the Regulations;

21 (f) Bank Account #1 and Bank Account # 2, which were used to hold trust
22 funds, were not in the name of the broker of a licensed fictitious business and were not designated
23 as trust accounts in violation of Section 10145(a) of the Code and Section 2832 of the Regulations;

24 (g) From June 10, 2013, through November 27, 2016, MOSER conducted
25 property management activities under the unlicensed corporation of DWM in violation of Section
26 10130 of the Code;

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The acts and/or omissions of MOSER, as described above in Paragraph 7(g) through 7(m), constitute grounds for discipline of MOSER'S real estate broker license pursuant to Sections 10130, 10159.5, 10161.8, 10176(i), 10177(d), 10177(g), and 10177(j) of the Code, in conjunction with Sections 2731, 2752, 2831.1, 2831.2, and 2834 of the Regulations.

AUDIT COSTS

The acts and/or omissions of Respondents as alleged above, entitle the Bureau to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund violations) of the Code.

COST OF INVESTIGATION AND ENFORCEMENT

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

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and license rights of Respondents under the Real Estate Law, for the cost of investigation and enforcement as

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1 permitted by law, for the cost of the audit as permitted by law, and for such other and further relief
2 as may be proper under other provisions of law.

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6 ROBIN S. TANNER
Supervising Special Investigator

7 Dated at Oakland, California,
8 this 21st day of November, 2017.

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10 DISCOVERY DEMAND

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