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FILED

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DEPARTMENT OF REAL ESTATE

By K. Knapp

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:)

12 GEOFFREY CURTIS DAVIS JR.)
13 and SUNSHINE REAL ESTATE)
14 SOLUTIONS, INC.)

No. H-12260 SF

ACCUSATION

15 Respondents.)
16)

17 The Complainant, ROBIN S. TANNER, in her official capacity as a Supervising
18 Special Investigator of the State of California, Department of Real Estate ("Department"), brings
19 this Accusation against GEOFFREY CURTIS DAVIS JR. ("DAVIS") and SUNSHINE REAL
20 ESTATE SOLUTIONS, INC. ("SRES"), (collectively "Respondents"), and is informed and alleges
21 as follows:

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

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DAVIS is presently licensed by the Department and/or has license rights under the Code as a real estate broker.

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At all relevant times herein, DAVIS was the designated officer for SRES.

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At all relevant times herein, SRES was doing business under the fictitious business of Keyrenter East Bay.

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At all relevant times herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate licensees 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, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented or offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

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

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Beginning on or about July 12, 2017, and continuing through July 13, 2017, an audit was conducted of the real estate business activities of SRES, located at 1900 Addison St. Ste. 200, Berkeley, CA 94704. The auditor examined the business records of SRES for the period of July 1, 2016, through June 30, 2017, ("audit period").

While engaging in the real estate activities described in Paragraph 5, above, and within the audit period, SRES accepted or received funds in trust ("trust funds") and deposited or caused the trust funds to be deposited into two accounts maintained as follows:

Bank Account #1

Bank Name: Mechanics Bank
P.O. Box 5610, Hercules, CA 94547
Account Name: Sunshine Real Estate Solutions, Inc.
dba Keyrenter East Bay
Account No.: Last 4 Digits: 1177
Description: Bank Account #1 was used to hold rents and to disburse owners' proceeds, management fees, and maintenance expenses for properties managed by SRES.

Bank Account #2

Bank Name: Mechanics Bank
P.O. Box 5610, Hercules, CA 94547
Account Name: Sunshine Real Estate Solutions, Inc.
dba Keyrenter East Bay
Account No.: Last 4 Digits: 1150
Description: Bank Account #2 was used to hold security deposits for properties managed by SRES.

FIRST CAUSE OF ACTION

(Audit Violations)

Each and every allegation in Paragraphs 1 through 8, inclusive, is incorporated by reference as if fully set forth herein.

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

- (a) As of June 30, 2017, Bank Account #1 contained a shortage of \$16,984.29;
- (b) Respondents failed to obtain prior written permission from the owners of the trust funds in Bank Account #1 so as to allow the balance of the funds to drop below the accountability of the account;

1 (c) The shortage was partially caused by SRES disbursing \$12,397.44 in
2 "Management and Other fees/expense reimbursements" from Bank Account #1, despite not having
3 sufficient funds to make the disbursements; and

4 (d) Bank Account #1 and Bank Account #2 were not designated as trust accounts
5 in the name of the broker as trustee.

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7 The acts and/or omissions of Respondents, as described above in the First Cause of
8 Action, constitute violations of Sections 10145 (trust fund handling), 10177(d) (willfully
9 disregarding of violating real estate law), 10177(g) (negligence), 10177(j) (fraud or dishonest
10 dealing), 10176(i) (fraud and dishonest dealing while engaging in real estate activity), and 10176(g)
11 (taking undisclosed compensation) of the Code, in conjunction with Title 10, of the California Code
12 of Regulations ("Regulations") Sections 2832 (trust account designation) and 2832.1 (trust account
13 accountability and balance).

14 SECOND CAUSE OF ACTION

15 **(Constructive Fraud)**

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17 Each and every allegation in Paragraphs 1 through 11, inclusive, is incorporated by
18 reference as if fully set forth herein.

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20 At all relevant times herein, Respondents owed fiduciary duties to the beneficiaries
21 of Bank Account #1 and Bank Account #2 by virtue of their broker/beneficiary relationship.

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23 Respondents' fiduciary duties included the duty of utmost loyalty, good faith and
24 candor, among other duties.

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26 As fiduciaries, Respondents had a duty to refrain from taking actions detrimental to
27 the interests of the beneficiaries.

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2 Respondents breached their fiduciary duty to the beneficiaries in the ways set forth
3 above in Paragraphs 1 through 15.

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5 The acts and/or omissions of Respondents, as described above in the Second Cause
6 of Action, constitute violations of Sections 10177(g) (negligence), 10177(j) (fraud or dishonest
7 dealing), and 10176(i) (fraud and dishonest dealing within the course of engaging in real estate
8 licensed activity) of the Code.

9 THIRD CAUSE OF ACTION

10 **(Failure to Supervise)**

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12 Each and every allegation made in Paragraphs 1 through 17 inclusive, above, is
13 incorporated by this reference as if fully set forth herein.

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15 DAVIS, as the designated officer of SRES, was required to exercise reasonable
16 supervision and control over the activities of SRES, its employees, and the real estate activities
17 being conducted by SRES.

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19 DAVIS failed to exercise reasonable supervision over the acts and/or omissions of
20 SRES and its employees, in such a manner as to allow the acts and/or omissions as described above
21 in the First and Second Causes of Action to occur.

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23 The acts and/or omissions of DAVIS, as described above in the Third Cause of
24 Action, further constitute violations of Sections 10159.2 (supervision by the designated corporate
25 officer) and 10177(h) (failure to exercise reasonable supervision) of the Code, in conjunction with
26 Sections 2725 (broker supervision over salespersons) of the Regulations.

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1 AUDIT COSTS

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

6 COST OF INVESTIGATION AND ENFORCEMENT

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

12 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of
13 this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and license
14 rights of Respondents under the Real Estate Law, for the cost of investigation and enforcement as
15 permitted by law, for the cost of the audit as permitted by law, and for such other and further relief
16 as may be proper under other provisions of law.

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19 ROBIN S. TANNER
Supervising Special Investigator

20 Dated at Oakland, California,
21 this 16th day of July, 2018.

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23 DISCOVERY DEMAND

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