

1 TRULY SUGHRUE, Counsel
State Bar No. 223266
2 Department of Real Estate
P.O. Box 137007
3 Sacramento, CA 95813-7007

4 Telephone: (916) 263-8672
(916) 263-8676 (Direct)
5
6 Fax: (916) 263-3767
7

FILED

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DEPARTMENT OF REAL ESTATE
By B. Nicholas

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 ZEN, INC. and JOHN FRANK PERKINS,) No. H-12388 SF
13 Respondents.) ACCUSATION
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15 The Complainant, ROBIN S. TANNER, a Supervising Special Investigator of the
16 State of California, for cause of Accusation against ZEN, INC. and JOHN FRANK PERKINS
17 (collectively "Respondents"), are informed and allege as follows:

18 PRELIMINARY ALLEGATIONS

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20 The Complainant, ROBIN S. TANNER, a Supervising Special Investigator of
21 the State of California, makes this Accusation in her official capacity.

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23 Respondents are presently licensed and/or have license rights under the Real
24 Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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At all times mentioned, Respondent ZEN, INC. (ZEN) was and is licensed by the State of California Department of Real Estate (Department) as a real estate broker corporation.

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At all times mentioned, Respondent JOHN FRANK PERKINS (PERKINS) was and is licensed by the Department individually as a real estate broker. At all times mentioned prior to November 1, 2018, PERKINS was licensed as the designated broker officer of ZEN. As said designated broker officer, PERKINS was 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 ZEN for which a license is required.

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

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At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of Section 10131(b) of the Code in 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 and offered to lease or rent, and placed for rent, and solicited listings of places for 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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1 FIRST CAUSE OF ACTION

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3 Each and every allegation in Paragraphs 1 through 6, inclusive, is incorporated by
4 this reference as if fully set forth herein.

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6 On or about November 7, 2018, through November 8, 2018, an audit was
7 conducted of the records of ZEN. The auditor herein examined the records for the period of
8 March 1, 2018, through October 31, 2018.

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10 While acting as a real estate broker as described in Paragraph 6, Respondents
11 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in
12 connection with the leasing, renting, and collection of rents on real property or improvements
13 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust
14 funds.

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16 The trust funds accepted or received by Respondents as described in Paragraph 9
17 were deposited or caused to be deposited by Respondents into trust accounts which were
18 maintained by Respondents for the handling of trust funds, and thereafter from time-to-time
19 Respondents made disbursements of said trust funds, identified as follows:

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ACCOUNT # 1	
21 Bank Name and Location:	MUFG Union Bank 22 1109 E. Argues Avenue 23 Sunnyvale, CA 94085
24 Account No.:	XXXX3035
25 Entitled:	Zenplace Inc. dba Zen Inc.

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ACCOUNT # 2	
Bank Name and Location:	MUFG Union Bank 1109 E. Argues Avenue Sunnyvale, CA 94085
Account No.:	XXXX3043
Entitled:	Zenplace Inc. dba Zen Inc.

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In the course of the activities described in Paragraph 6, Respondents:

(a) caused, suffered, or permitted the balance of funds in Account #1 to be reduced to an amount which, as of September 28, 2018, was approximately \$60,884.95 less than the aggregate liability of Account #1 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations (Regulations);

(b) caused, suffered, or permitted the balance of funds in Account #2 to be reduced to an amount which, as of September 28, 2018, was approximately \$1,052.00 less than the aggregate liability of Account #2 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the Regulations;

(c) failed to deposit trust funds into a trust fund account in the name of ZEN as trustee at a bank or other financial institution, in conformance with Section 10145 of the Code and Section 2832 of the Regulations; and

(d) caused, permitted, and/or allowed, the possible withdrawal of trust funds from Account #2 by a person, Sudeep Virk, who was not licensed to the broker, ZEN, and not covered by a fidelity bond in violation of Section 2834 of the Regulations.

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The facts alleged in the First Cause of Action are grounds for the suspension or revocation of Respondents' licenses and license rights under the following Sections of the Code and Regulations:

1 As to Paragraphs 11(a) and (b), under Sections 10177(d) and/or 10177(g) of the
2 Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

3 As to Paragraph 11(c), under Sections 10177(d) and/or 10177(g) of the Code in
4 conjunction with Section 10145 of the Code and Section 2832 of the Regulations; and

5 As to Paragraph 11(d), under Sections 10177(d) and/or 10177(g) of the Code in
6 conjunction with Section 10145 of the Code and Section 2834 of the Regulations;

7 SECOND CAUSE OF ACTION

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

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12 In the course of the activities described in Paragraph 6, Respondents conducted
13 real estate activities using the fictitious business name "Zenplace Property Management",
14 without first registering these fictitious business names with the Department as required by
15 Section 10159.5 of the Code and Section 2731 of the Regulations.

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17 The facts alleged in the Second Cause of Action are grounds for the suspension or
18 revocation of Respondents' licenses and license rights under Sections 10177(d) and/or 10177(g)
19 of the Code in conjunction with Section 10159.5 of the Code and Section 2731 of the
20 Regulations.

21 THIRD CAUSE OF ACTION

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

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Respondent PERKINS failed to exercise reasonable supervision over the acts of ZEN in such a manner as to allow the acts and events described above to occur.

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The acts and/or omissions of PERKINS as described in Paragraph 17, constitutes failure on the part of PERKINS, as designated broker-officer for ZEN, to exercise reasonable supervision and control over the licensed activities of ZEN as required by Section 10159.2 of the Code and Section 2725 of the Regulations.

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The facts described above as to the Third Cause of Action constitute cause for the suspension or revocation of the licenses and license rights of Respondent PERKINS under Section 10177(g) and/or Section 10177(h) of the Code, and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

COST RECOVERY

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

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Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, 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.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing discipline on all
3 licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the
4 Business and Professions Code), for the cost of the investigation and enforcement of this case as
5 permitted by law, for the cost of the Department's audit as permitted by law, and for such other
6 and further relief as may be proper under the provisions of law.

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ROBIN S. TANNER
Supervising Special Investigator

10 Dated at Oakland, California,
11 this 16th day of May, 2019
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14 DISCOVERY DEMAND

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