

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker 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, Respondent leased or rented or offered to lease or rent, or solicited listings of places for rent or solicited for prospective tenants, or negotiated the sale, purchase or exchange of leases on real property, or on a business opportunity, or collected rent from tenants.

FIRST CAUSE OF ACTION

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

On or about January 17, 2019, and continuing intermittently through January 24, 2019, an audit was conducted of the records of Respondent. The auditor examined the records for the period of January 1, 2017, to October 31, 2019 (the audit period).

Respondent, while acting as a real estate broker, as described in Paragraph 3, accepted or received funds in trust (trust funds) from or on behalf of owners, lessees and others in connection with property management activities, and deposited those funds into bank accounts maintained by Respondent, at Exchange Bank, P.O. Box 3788, Santa Rosa, California 95402-3788, including but not limited to the following:

BANK ACCOUNT #1	
Account No.:	XXXXXX9926
Entitled:	HOMETOWN PROPERTY MANAGEMENT LLC

BANK ACCOUNT #2	
Account No.:	XXXXXX9926
Entitled:	HOMETOWN PROPERTY MANAGEMENT LLC

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and thereafter from time-to-time made disbursement of said trust funds.

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In the course of the activities described in Paragraph 6, in connection with collection and disbursement of trust funds, it was determined that:

- (a) Respondent failed to properly designate Bank Account #1 and Bank Account #2 as trust accounts with the broker as trustee, as required by Section 10145 of the Code and Section 2832 of Chapter 6, Title 10, California Code of Regulations (Regulations);
- (b) An accountability was performed on Bank Account #1, and as of October 31, 2018, a shortage of \$35.59 was revealed, in violation of Section 10145 of the Code;
- (c) Respondents failed to obtain written permission from owners of trust funds in Bank Account #1 to allow the balance to drop below accountability, in violation of Section 2832.1 of the Regulations;
- (d) Respondent allowed an unlicensed person to be a signatory on Bank Account #1 and Bank Account #2 without an adequate fidelity bond, in violation of Section 10145 of the Code and Section 2834 of the Regulations;
- (e) Respondent conducted real estate activities using the fictitious business name "Hometown Property Management" without first registering with the Department, in violation of Section 2731 of the Regulations; and
- (f) Respondent was not an authorized signer on Bank Account #1 and Bank Account #2 during the audit period in violation of Section 2725 of the Regulations.

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The acts and/or omissions described above constitute violations of Sections 2725 (Broker Supervision), 2731 (Use of False/Fictitious Name), 2832 (Bank Accounts Not Properly Designated as Trust Accounts), 2832.1 (Written Permission for Balance Below Accountability), and 2834 (Trust Fund Signatories) of the Regulations, and Sections 10145 (Trust Fund Handling) and 10159.2 (Fictitious name) of the Code, and are grounds for discipline under Sections 10177(d) (Willful Disregard of Real Estate Laws) and/or 10177(g) (Negligence/Incompetence Licensee) of the Code.

SECOND CAUSE OF ACTION

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

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During the audit, it was revealed that Jose Hernandez, a salesperson licensed under Respondent, performs all property management activities under Respondent's license. Respondent does not perform any trust fund handling, trust fund record keeping, or reconciliation of the trust funds. Furthermore, Respondent did not have established written policies, rules and procedures covering trust fund handling and the performance of acts requiring a real estate license.

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Respondent failed to exercise reasonable supervision and control over the property management activities of Jose Hernandez. In particular, Respondent permitted, ratified and/or caused the conduct described above to occur, and failed to take reasonable steps, including but not limited to, the handling of trust funds, supervision of employees, and the implementation of policies, rules and systems to ensure the compliance of the business with the Real Estate Law and the Regulations.

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The acts and or omissions above violate Section 2725 of the Regulations, and constitute grounds for disciplinary action under the provisions of Sections 10177 (d), 10177 (g), and 10177 (h) (Broker Supervision) of the Code.

COST RECOVERY

Audit Costs

The acts and/or omissions of Respondent, as alleged above, entitle the Department to reimbursement of the costs of its audits pursuant to Section 10148(b) (Audit Costs for Trust Fund Handling Violations) of the Code.

Costs 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 Department, the Real Estate 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 imposing disciplinary action against all licenses and license rights of Respondent under the Code, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under the provisions of law.



ROBIN S. TANNER
Supervising Special Investigator

Dated at Oakland, California,
this 19th day of February, 2020

