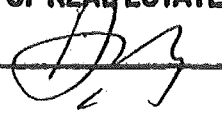


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JUL 22 2014

BUREAU OF REAL ESTATE

By 

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

9 **STATE OF CALIFORNIA**

10 * * * * *

11 In the Matter of the Accusation of)
12)
13 HORIZON PROPERTY GROUP INC.; and) No. H- 39545 LA
14)
14 ALETA VICTORIA WINTERS,) ACCUSATION
14 individually and as former designated)
15 officer of Horizon Property Group Inc.,)
16)
16 Respondents.)
17)

18 The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the
19 State of California, Bureau of Real Estate ("Bureau") for cause of Accusation against
20 HORIZON PROPERTY GROUP INC. ("HPGI") and ALETA VICTORIA WINTERS
21 ("WINTERS,") individually and as former designated officer of Horizon Property Group Inc.
22 (collectively "Respondents,") is informed and alleges as follows:

23 1.

24 The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the
25 State of California, makes this Accusation in her official capacity.

2.

All references to the "Code" are to the Part 1 of Division 4 California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

Individuals and Entities

3.a

From August 28, 2012, through the present, Respondent HPGI has been licensed as a corporate real estate broker. At all times relevant herein, HPGI was acting by and through Respondent WINTERS as its designated officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3.b

Respondent ALETA VICTORIA WINTERS ("WINTERS") was originally licensed as a real estate broker on June 15, 2005, and previously as a real estate salesperson. From August 28, 2012 to August 20, 2013, she was the designated officer of HPGI.

3.c

Table: Horizon Property Group Inc. Management Structure and Ownership

Name	License	Ownership/Title	
Aleta Victoria Winters	Broker	Designated Officer	0%
Joseph A. D'Angelo Sr.	Non-Licensee	President/CFO/ Treasurer	51%
Joseph Henri. D'Angelo Jr.	Non-Licensee	Vice President/Secretary	49%

4.

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents" such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondents committed such act or omission while engaged in the furtherance of the business or operations

1 of Respondents and while acting within the course and scope of their corporate authority and
2 employment, including WINTERS, Joseph A. D'Angelo Sr., Joseph Henri D'Angelo Jr. and
3 bookkeeper Cristina Luna.

4 FIRST CAUSE OF ACCUSATION
5 (Property Management Audit)

6 5.

7 : At all times mentioned, in the City of Upland, County of Los Angeles,
8 Respondents HPGI and WINTERS acted as a real estate brokers and conducted licensed
9 activities within the meaning of Code Section 10131(b) wherein they conducted a property
10 management brokerage.

11
12 HPGI is engaged in property management activity and managed seven (7) .
13 residential properties for approximately fifty three (53) owners. HPGI collected rents, paid
14 expenses, and screened tenants for compensation. Approximately \$2,320,000.00 in trust funds
15 was handled during the last twelve (12) months. HPGI charged a property management fee of
16 5.5% to 6.5%.

17
18 Audit Examination

19 6.

20 On April 30, 2014, the Bureau completed an audit examination of the books and
21 records of Respondent HPGI pertaining to the property management activities described in
22 Paragraph 5, which require a real estate license. The audit examination covered a period of time
23 beginning on January 1, 2012 and ending on June 30, 2013. The audit examination revealed
24 violations of the Code and Regulations as alleged in the following paragraphs, and more fully
25 set forth in Audit Report LA 120297 and the exhibits and work papers attached thereto.

26 ///

1 Bank Account

2 7.

3 At all times mentioned, in connection with the real estate activities described in
4 Paragraph 6, above, HPGI accepted or received funds including funds in trust ("trust funds")
5 from or on behalf of property owners and tenants handled by HPGI and thereafter made deposits
6 and or disbursements of such funds. From time to time herein mentioned, during the audit
7 period and thereafter, said trust funds were deposited and/or maintained by HPGI in the bank
8 account described below:

9
10 Bank Account 1 (B/A 1)

11 Bank: Pacific Premier Bank
12 1600 Sunflower Avenue
13 Costa Mesa, CA 92626

14 Account Name: Horizon Property Group Inc

15 Account Number: xxxx-xxxx-8113

16 Signatories: Joseph A. D'Angelo Sr.
17 Joseph H. D'Angelo Jr.

18 Number of Signatures Required: one

19 (BA-1 was used to handle deposits of rent receipts, accounting and disbursements related
20 to HPGI's property management activity.)

21 Violations of the Real Estate Law

22 8.

23 In the course of activities described in Paragraphs 5 and 7, above, and during the
24 examination period, described in Paragraph 6, Respondents HPGI and WINTERS acted in
25 violation of the Code and the Regulations in which Respondents:
26

1 (a) Permitted, allowed or caused the disbursement of trust funds from HPGI's
2 property management trust account into which trust funds in the form of rents and security
3 deposit collection, and where the disbursement of funds reduced the total of aggregate funds in
4 B/A 1 to an amount which, on June 30, 2013, was at a minimum accountability of \$96,481.98,
5 less than the existing aggregate trust fund accountability of HPGI to every principal who was an
6 owner of said funds, without first obtaining the prior written consent of the owners of said
7 funds, in violation of Code Section 10145(a) and Regulation 2832.1. To date, the shortage
8 remains unrepatriated.
9

10 (b) Failed to place trust funds in the form of rent receipts, accepted on behalf of
11 another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund
12 account in the name of the trustee at a bank or other financial institution, in violation of Code
13 Section 10145 and Regulation 2832(a);
14

15 (c) (1) Permitted Joseph A. D'Angelo Sr., HPGI's president, and Joseph Henri
16 D'Angelo Jr., HPGI's vice president, unlicensed and unbonded persons, to be authorized
17 signatories on the property management bank account into which trust funds in the form of
18 collected rents and security deposits were placed, in violation of Code Section 10145 and
19 Regulation 2834(a); and
20

21 (c) (2) WINTERS was not a signatory on the trust account, in violation of Code
22 Section 10145 and Regulation 2834(b);
23

24 (d) Failed to maintain an accurate and complete control record in the form of a
25 columnar record in chronological order of trust funds received but not deposited into B/A 1, in
26 violation of Code Section 10145 and Regulation 2831;

1 (e) Failed to maintain an accurate and complete separate record for each
2 beneficiary or transaction, thereby failing to account for all trust funds received, deposited and
3 disbursed for B/A 1, in violation of Code Section 10145 and Regulation 2831.1;

4 (f) Failed to perform an accurate and complete monthly reconciliation of the
5 balance of all separate beneficiary or transaction records maintained pursuant to Regulation
6 2831.1 with the record of all trust funds received and disbursed by B/A 1, in violation of Code
7 Section 10145 and Regulation 2831.2;

8 (g) Mixed and commingled trust funds and personal funds by depositing all trust
9 funds received from tenants and property owners into B/A 1 as well as HPGI's general funds
10 and operating expenses, prohibiting using B/A 1 as both a trust account and a general operating
11 account, in violation of Code Section 10176(e) and Regulation 2832;

12 (h) HPGI Permitted and/or caused the disbursement of trust funds to itself and/or
13 third party providers on the representation that these amounts were needed to pay for
14 maintenance services, which payments exceeded the actual costs of these services by HPGI.
15 Respondent did not disclose these overcharged "mark-ups" to the beneficiaries of said trust
16 funds, did not obtain their consent to these "mark-ups" and paid itself the difference between the
17 amounts paid and the actual costs of the services, in violation of Code Section 10176(g);

18 (i) (a) Property Management Agreements with property owners and Rental
19 Agreements with tenants were signed by non-licensee resident managers, in violation of Code
20 Section 10145 and Regulation 2831;

21 (i) (b) Property Management Agreements with property owners and Rental
22 Agreements with tenants were signed by non-licensee resident managers, in violation of Code
23 Section 10145 and Regulation 2831;

1 (i) (c) Property Management Agreements were not signed by the parties to the
2 Agreements, in violation of Code Section 10145 and Regulation 2831; and

3 (i) (d) HPGI collected management fees without having a signed agreement with
4 property owners during the audit period, in violation of Code Section 10145 and Regulation
5 2831;

6 (j) HPGI make disbursements of trust funds from B/A 1 in the amount \$65,000.00
7 to Dennis Winters Law Firm for legal services in connection with real estate syndications that
8 were not authorized by the property owners and without providing invoices for the disbursements
9 to said property owners, in violation of Code Sections 10145 and 10176(i);

10 (k) Conducted escrow activities at 968 W. 7th St., Suite 53, Upland, California and,
11 prior to obtaining branch office licenses from the Bureau, in violation of Code Section 10163 and
12 Regulation 2715;

13 (l) HPGI conducted real estate activity at an office location that was not registered
14 as its main office as stated on its corporate broker license. HPGI's main address was located at
15 968 W. 7th St., Suite 53, Upland, California. During part of the audit period, to wit, from August
16 28, 2012 to August 19, 2013, HPGI had no broker affiliation as a result of the departure of
17 WINTER as HPGI's designated officer. During this period, HPGI performed real estate activity
18 requiring a real estate license at 461 N. Central Avenue, in Upland, California, without notice to
19 the Bureau, in violation of Code Section 10162 and Regulation 2715. From August 29, 2013 to
20 date, HPGI remains Non Broker Affiliated;

21 (m) Used the fictitious names of "Horizon Property Group," Horizon Property
22 Group LLC, " and "HPG" to conduct licensed activities without first obtaining from the Bureau
23 a license bearing said fictitious business names, in violation of Code Section 10159.5 and
24
25
26

1 Regulation 2731;

2 (n) Failed to retain all records of Respondents HPGI's activity during the audit
3 period requiring a real estate broker license, in violation of Code Section 10148;

4 (o) WINTERS failed to adequately supervise and control the real estate and
5 property management activity conducted under HPGI's real estate broker license. Additionally,
6 Respondent WINTERS had no system in place for regularly monitoring HPGI's compliance
7 with the Real Estate Law especially in regard to establishing, systems, policies and procedures
8 to review trust fund handling, and to keep HPGI in compliance with the Real Estate Law, in
9 violation of Code Sections 10159.2, 10177(h) and Regulation 2725.

10 9.

11 The conduct of Respondents HPGI and WINTERS, described in Paragraph 8,
12 above, violated the Code and the Regulations as set forth below:

14 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
15 8(a)	Code Section 10145 and Regulation 2832.1
16 8(b)	Code Section 10145 and Regulation 2832
17 8(c)	Code Section 10145 and Regulation 2834
18 8(d)	Code Section 10145 and Regulation 2831
19 8(e)	Code Section 10145 and Regulation 2831.1
20 8(f)	Code Section 10145 and Regulation 2831.2
21 8(g)	Code Sections 10145 and 10176(e) and Regulation 2832
22 8(h)	Code Sections 10145 and 10176(g)
23 8(i)	Code Section 10145
24 8(j)	Code Sections 10145, 10176(i) and/or 10177(g)
25 8(k)	Code Section 10163 and Regulation 2715
26	

- 1 8(l) Code Section 10162 and Regulation 2715
- 2 8(m) Code Section 10159.5 and Regulation 2731
- 3 8(n) Code Section 10148
- 4 8(o) Code Sections 10159.5 and 10177(h) and Regulation 2725 (WINTERS)

5

6 The foregoing violations constitute cause for the discipline of the real estate licenses and license
 7 rights of Respondents HPGI and WINTERS under the provisions of Code Sections 10145,
 8 10159.2, 10176(i) and/or 10177(j), 10177(d), 10177(g), and 10177(h) for WINTERS.

9

10 SECOND CAUSE OF ACCUSATION
 11 (Negligence)

12 11.

13 The overall conduct of Respondents HPGI and WINTERS constitutes negligence
 14 and is cause for discipline of the real estate license and license rights of said Respondents
 15 pursuant to the provisions of Code Section 10177(g).

16 THIRD CAUSE OF ACCUSATION
 17 (Fiduciary Duty)

18 12.

19 The conduct, acts and omissions of Respondents HPGI and WINTERS
 20 constitutes a breach of fiduciary duty owed to HPGI's clients of good faith, trust, confidence and
 21 candor, within the scope of their property management relationship with property owners and
 22 tenants, in violation of Code Section 10177(g) and constitutes cause for discipline of the real
 23 estate license and license rights of said Respondents pursuant to the provisions of Code Section
 24 10177(g) and 10176(i) and/or 10177(j) for mishandling of trust funds, unauthorized
 25 disbursements of trust funds for the purpose of real estate syndication and conversion of trust
 26 funds.

///

1 FOURTH CAUSE OF ACCUSATION
2 (Supervision and Compliance with the Real Estate Law)

3 13.

4 The overall conduct of Respondent WINTER constitutes a failure on her part, as
5 former officer designated by a corporate broker licensee, to exercise the reasonable supervision
6 and control over the licensed activities of HPGI in violation of Code Section 10159.2 and
7 Regulation 2725, and to keep HPGI in compliance with the Real Estate Law. Said conduct, acts
8 and omissions are cause for the suspension or revocation of the real estate license and license
9 rights of WINTER pursuant to the provisions of Code Sections 10177(d) and 10177(h).
10 WINTER failed to exercise reasonable care and supervision over trust fund handling. Nor did
11 WINTER have policies and procedures in place to maintain and monitor HPGI's compliance
12 with the Real Estate Law. Nor did WINTER possess any familiarity with HPGI's corporate
13 structure, real estate activity or volume, nor was she a signatory on B/A, or know the bank
14 account name or number into which trust funds were deposited, nor provide documentation
15 including invoices for disbursements totaling \$65,000.

16 14.

17 Code Section 10106 provides, in part, that in any order issued in resolution of a
18 disciplinary proceeding before the Bureau of Real Estate, the Commissioner may request the
19 administrative law judge to direct a licensee found to have committed a violation of this part to
20 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

21 15.

22 Code Section 10148(b) provides, in pertinent part the Commissioner shall charge
23 a real estate broker for the cost of any audit, if the commissioner has found in a final decision
24 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation
25 or rule of the commissioner interpreting said section.
26

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 disciplinary
3 action against all licenses and/or license rights of Respondents HORIZON PROPERTY GROUP
4 INC. and ALETA VICTORIA WINTERS, individually and as former designated officer of
5 Horizon Property Group Inc., under the Real Estate Law (Part 1 of Division 4 of the California
6 Business and Professions Code) and for such other and further relief as may be proper under
7 other applicable provisions of law, including but not limited to, proof of cure of the remaining
8 shortage, restitution, and costs of investigation, enforcement and audit.
9

10 Dated at Los Angeles, California
11 this 15 day of July, 2014.
12

13 
14 ROBIN TRUJILLO
15 Deputy Real Estate Commissioner
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23 cc: Horizon Property Group Inc.
24 Aleta Victoria Winters
25 Robin Trujillo
26 Jennifer Lin - Audits
Sacto