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FILED

AUG 04 2014

BUREAU OF REAL ESTATE

By 

7
8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-39561 LA
12)
13 CARLOS MARTINEZ,) A C C U S A T I O N
14 individually, and doing)
15 business as Platinum)
16 Consulting Rental Service,)
Respondent.)

17 The Complainant, Howard Alston, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against CARLOS MARTINEZ, individually and doing business as
20 Platinum Consulting Rental Service, is informed and alleges as
21 follows:

22 1.

23 The Complainant, Howard Alston, a Deputy Real Estate
24 Commissioner of the State of California, makes this Accusation
25 in his official capacity.

26 2.

27 Respondent CARLOS MARTINEZ ("Respondent") is presently
28 licensed and/or has license rights under the Real Estate Law,

1 Part 1 of Division 4 of the California Business and Professions
2 Code (hereinafter "Code") as a real estate broker, and is
3 authorized to use the fictitious business name "Platinum
4 Consulting Rental Services."

5 3.

6 All further references to Respondent herein include
7 Respondent, and also include employees, agents and real estate
8 licensees employed by or associated with Respondent who at the
9 times herein mentioned were engaged in the furtherance of the
10 business or operations of Respondent and who were acting within
11 the course and scope of their authority and employment.
12

13 4.

14 At all times mentioned herein Respondent engaged in
15 the business of supplying prospective tenants with listings of
16 residential real properties for tenancy, by publication or
17 otherwise, pursuant to an arrangement under which the
18 prospective tenants are required to pay an advance or
19 contemporaneous fee, which constitutes a Prepaid Rental Listing
20 Service ("PRLS"), and is subject to the provisions of Code
21 Section 10167 et seq.

22 5.

23 At all times mentioned herein Respondent engaged in
24 the business of advance fee brokerage within the definition of
25 Code Section 10131.2 by claiming, demanding, charging, receiving
26 or collecting an advance fee prior to fully completing the
27 service the licensee contracted to perform or represented would
28 be performed within the meaning of Code Section 10026 in

1 connection with any employment undertaken to provide a listing
2 as that term is defined in Code Section 10027(a).

3 6.

4 During the course of Respondent's PRLS activities
5 Respondent utilized a written agreement which bore the name
6 "Platinum Consulting Rentals," and described Respondent as a
7 prepaid rental listing service. Respondent additionally utilized
8 an addendum entitled "90 Day Limited Refund Guarantee Policy."
9 Together these documents comprise Respondent's PRLS agreement
10 ("PRLS Agreement").
11

12 7.

13 Respondent engaged in PRLS activities on behalf of
14 numerous prospective tenants, including but not limited to those
15 set forth below:

16 a. On or about January 3, 2012, Mary L. entered into
17 the PRLS Agreement with Respondent. Respondent's receipt of the
18 sum of \$180.00 from Mary L. is recited in the PRLS Agreement.

19 Respondent provided Mary L. with multiple rental
20 listings, but Mary L. determined that she did not want to rent
21 any of the properties provided to her by Respondent. Shortly
22 thereafter Mary L. demanded a refund of her payment. In response
23 to Mary L.'s demand Respondent advised Mary L. that no refund
24 would be paid to Mary L. until ninety (90) days had elapsed from
25 the inception of the PRLS agreement, and the terms of the
26 agreement had expired. Mary L. signed the Refund Form provided
27 to her by Respondent, which was dated after the expiration of
28

1 the PRLS agreement. At no time did Mary L. receive a refund of
2 her payment to Respondent.

3 b. On or about May 3, 2012, Debra D. entered into the
4 PRLS Agreement with Respondent. Respondent's receipt of the sum
5 of \$180.00 from Debra D. is recited in the PRLS Agreement.

6 Respondent provided Debra D. with multiple rental
7 listings. Debra D. investigated the listings from Respondent and
8 determined that the properties were either unavailable or non-
9 existent. Debra D. subsequently obtained a rental without the
10 assistance of Respondent. Debra D. requested that Respondent
11 refund the money she had paid Respondent. In response to Debra
12 D.'s request for a refund Respondent advised Debra D. in writing
13 that she would only receive a "reimbursement" if she returned
14 listing update materials covering a period of twenty-four weeks.
15 When Debra D. was unable to provide these materials Respondent
16 refused to refund any portion of Debra D.'s payment to her.

17 c. On or about September 26, 2012, Lorenzo C. entered
18 into the PRLS Agreement with Respondent. Respondent's receipt of
19 the sum of \$180.00 from Lorenzo C. is recited in the PRLS
20 Agreement.

21 Respondent provided Lorenzo C. with multiple rental
22 listings. Lorenzo C. investigated the listings from Respondent
23 and determined that the properties did not meet the criteria
24 Lorenzo C. and his wife specified when he signed up with
25 Respondent. The number of bedrooms and/or bathrooms and/or the
26 amount of rent the landlord was seeking differed from the
27 information on the rental listing provided by Respondent.
28

1 Additionally, each of the owner/landlords Lorenzo C. spoke with
2 advised him that they had never heard of Respondent service.
3 Lorenzo C. requested that Respondent refund the money paid to
4 Respondent. Respondent gave Lorenzo C. a refund form to fill out
5 but stated that a refund was not guaranteed. Respondent failed
6 to provide Lorenzo C. with a refund of his payment.

7 d. On or about October 27, 2012, Keith T. entered into
8 the PRLS Agreement with Respondent. Respondent's receipt of the
9 sum of \$180.00 from Keith T. is recited in the PRLS Agreement.

10 Respondent provided Keith T. with multiple rental
11 listings, but only a few hours after he signed the agreement
12 Keith T. determined that he did not want to utilize Respondent's
13 service to obtain a rental house or apartment. Keith T. did not
14 utilize any information provided by Respondent. When Keith T.
15 requested a refund Respondent suggested that he think about it
16 for a couple of days and make the refund request the following
17 Monday if he still wanted to cancel the agreement. On October
18 29, 2012, Keith T. returned to Respondent's office and filled out
19 a refund form. Respondent told Keith T. that it would be ten
20 (10) days before he received a refund. When Keith T. called
21 Respondent after ten (10) days had elapsed, Respondent told
22 Keith T. that ninety (90) days would need to pass before he
23 received a refund. After ninety (90) days had passed, Respondent
24 still failed to provide Keith T. with the requested refund.

25 e. On or about December 19, 2012, Kit H. entered into
26 the PRLS Agreement with Respondent. Respondent's receipt of the
27 sum of \$180.00 from Kit H. is recited in the PRLS Agreement.
28

1 Respondent advised Kit H. that if she did not find a suitable
2 rental \$130 of her payment would be refunded.

3 Respondent initially provided Kit H. with rental
4 listings for five properties. She was instructed by Respondent's
5 staff not to disturb the occupants. Kit H. investigated the
6 listings from Respondent and determined that two of the property
7 addresses did not exist. The other three did not meet the
8 criteria Kit H. specified when she entered into the PRLS
9 Agreement with Respondent. When Kit H. requested that Respondent
10 refund the money paid to Respondent, Respondent told her that
11 she would have to come back to the office on consecutive
12 occasions to receive a refund. After hearing this, Kit H.
13 accepted an additional five listings from Respondent. When Kit
14 H. knocked on the doors of two of the properties she was told
15 that the properties were not available for rent. The other
16 properties on the list did not fulfill her requirements. When
17 Kit H. requested a refund of \$130 she was advised that she would
18 have to provide a copy of the rental agreement for the property
19 she ultimately rented through her own efforts, and would further
20 need to provide copies of her utility bills. Kit H. stated that
21 she was not informed that she would have to provide these items
22 to obtain a refund at the time she signed up for the rental
23 listing service. Kit H. said she was originally told that she
24 would be entitled to a refund if Respondent PRLS did not find a
25 rental property for her. Respondent failed to provide Kit H.
26 with the requested refund.
27
28

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1 FIRST CAUSE OF ACCUSATION
2 (PRLS Advance Approval Violation)

3 8.

4 The provisions of Code Section 10167.9(c) require the
5 proposed PRLS Agreement to be filed with and approved by the
6 Bureau of Real Estate ("Bureau") for compliance with the
7 provisions of Code Section 10167.9 prior to its use.

8 9.

9 Respondent failed to submit the PRLS Agreement to the
10 Bureau prior to its use in violation of Code Section 10167.9(c).

11 10.

12 The conduct, acts and/or omissions of Respondent, as
13 set forth above, are cause for the suspension or revocation of
14 the license and license rights of Respondent pursuant to Code
15 Sections 10177(d) and/or 10177(g).

16 SECOND CAUSE OF ACCUSATION

17 (Violation of Provision for Refund of PRLS Advance Fee)

18 11.

19 Complainant hereby incorporates by reference the
20 allegations set forth in Paragraphs 1 through 10, above.

21 12.

22 Respondent failed to comply with the provisions of
23 Code Section 10167.10 setting forth a prospective tenant's right
24 to obtain a refund of an advance fee paid for PRLS services by
25 failing and refusing to refund fees under circumstances
26 entitling prospective tenants, including but not limited to
27
28

1 those listed in Paragraph 7, above, to receive a full or partial
2 refund of the advance fee.

3 13.

4 The conduct, acts and/or omissions of Respondent, as
5 set forth above, are cause for the suspension or revocation of
6 the license and license rights of Respondent pursuant to Code
7 Sections 10177(d) and/or 10177(g).

8 THIRD CAUSE OF ACCUSATION

9 (Violation of PRLS Provision Prohibiting False, Misleading or
10 Deceptive Advertisements or Representations)

11 14.

12 Complainant hereby incorporates by reference the
13 allegations set forth in Paragraphs 1 through 13, above.
14

15 15.

16 Respondent violated Code Sections 10167.11, 10177(a),
17 and/or 10177(i) in that Respondent made false, misleading and/or
18 deceptive representations to prospective tenants, including but
19 not limited to those described in Paragraph 7, above, concerning
20 their entitlement to receive a refund of the fee as well as with
21 listings for rental properties which failed to meet the
22 requirements represented by Respondent, did not exist or were
23 unavailable for tenancy, had not been confirmed for availability
24 and as to which Respondent had failed to obtain written or oral
25 permission from the property owner, manager or other authorized
26 agent to list the property for rent.

27 ///

28 ///

16.

The conduct, acts and/or omissions of Respondent as described above are grounds for the suspension or revocation of the real estate license and license rights of Respondent under the provisions of Code Sections 10176(a), 10177(d), 10177(j) and/or 10177(g).

FOURTH CAUSE OF ACCUSATION
(Audit Violations)

17.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 16, above.

18.

On or about September 7, 2010, the Bureau completed an audit examination of the books and records of Respondent doing business as Platinum Consulting Rental Service pertaining to Respondent's PRLS activities described in Paragraph 4, above, covering a period from February 1, 2011, to August 31, 2013.

19.

At all times mentioned herein, and in connection with the activities described in Paragraph 4, above, Respondent accepted or received funds, including advance fees to be held in trust ("trust funds") from parties to PRLS activities handled by Respondent, and thereafter made deposits and/or disbursements of such funds. From time-to-time herein mentioned during the audit

1 period, said trust funds were deposited into two bank accounts
2 maintained by Respondent as follows:

3 BA #1

4 Account Name: "Carlos Martinez dba PFC Realty"
5 Bank: JP Morgan Chase Bank, N.A.
6 Account No.: #3192494xxx
7 Bank Address: 925 N. Hacienda Blvd., La Puente, Ca
8 91744
9 Signatories: Not provided for audit
10 Closed: June 13, 2013

11 BA #2

12 Account Name: "Carlos Martinez, Elena Alba"
13 Bank: Bank of America
14 Account No.: #00046640xxxx
15 Bank Address: P.O. Box 15284
16 Wilmington, Delaware 19850
17 Signatories: Carlos Martinez (REB), Elena Alba

18 20.

19 The audit examination revealed violations of the Code
20 and Title 10, Chapter 6, California Code of Regulations
21 ("Regulations") by Respondent, as set forth in the following
22 paragraphs, and more fully discussed in Audit Report No. LA
23 130041 and the exhibits and work papers attached to the audit
24 report:

25 (a) Respondent collected, accepted or received trust
26 funds but did not maintain any trust accounts for PRLS
27 activities during the audit period in violation of Code Section
28 10145 and Sections 2832 and 2832.1 of the Regulations.

(b) Respondent permitted, allowed or caused the

1 withdrawal or disbursement of trust funds from BA #1 and BA #2
2 so that as of the audit cutoff date of August 31, 2013, there
3 was a combined minimum shortage of \$26,910 in BA #1 and BA #2 so
4 that the total of aggregate funds remaining in the accounts was
5 less than the existing aggregate trust fund liability of
6 Respondent to every principal who was an owner of said funds
7 without first obtaining the prior written consent of the owners
8 of said funds as is required by Code Section 10145 and Section
9 2832.1 of the Regulations.
10

11 (c) Respondent failed to establish and maintain a
12 trust account at a bank or other recognized financial
13 institution in the name of the broker for deposit of advance
14 fees collected by Respondent, in violation of Code Sections
15 10145 and 10146 and Section 2972 of the Regulations.
16

17 (d) Respondent collected advance fees in connection
18 with Respondent's PRLS activities without maintaining and
19 providing accounting content to the prospective tenants which
20 shows the services to be rendered, the trust account the funds
21 were deposited to and details of how the funds were disbursed in
22 violation of Code Section 10146 and Section 2972 of the
23 Regulations.
24

25 (e) Respondent collected, accepted or received trust
26 funds which were deposited into Respondent's general accounts (BA
27 #1 and BA #2) and commingled with Respondent's own funds, or used
28 to pay operating expenses without first depositing them to

Respondent's general accounts, in violation of Code Sections 10145, 10176(e) and 10177(j) and Section 2832 of the Regulations.

(f) Respondent disbursed advance fees/unearned PRLS fees totaling \$26,910 before completing prospective tenants' PRLS activities in violation of Code Sections 10145, 10176(i) and 10177(j).

(g) Respondent collected trust funds totaling \$39,600 from 220 prospective tenants during the audit period but failed to maintain a complete, accurate and continuous control record in the form of a columnar record in chronological order of all trust funds received, deposited and disbursed in violation of Code Section 10145 and Section 2831 of the Regulations.

(h) Respondent failed to maintain a separate record for each beneficiary of trust funds showing a running balance after each transaction was posted in violation of Code Section 10145 and Section 2831.1 of the Regulations.

(i) Respondent failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Section 2831.1 of the Regulations with the record of all trust funds received and disbursed in violation of Code Section 10145 and Section 2831.2 of the Regulations.

(j) Respondent acted without Bureau authorization in using "Platinum Consulting," "Platinum Consulting Rentals," and "Platinum Consulting Credit and Rental Referral Services" as

1 fictitious business names to engage in activities requiring the
2 issuance of a real estate license in violation of Code Section
3 10159.5 and Section 2731 of the Regulations.

4 (k) Respondent failed to maintain all records of PRLS
5 activities during the audit period, including a PRLS contract,
6 complete rental specifications of prospective tenants, bank
7 signature cards for BA #1 and BA #2 and bank account records of
8 receipts, deposits and disbursements in violation of Code
9 Section 10148.
10

11 (l) Respondent failed to have a system in place for
12 regularly monitoring compliance with the Real Estate Law,
13 particularly with respect to establishing systems, policies and
14 procedures to review trust fund handling in violation of Code
15 Section 10177(h) and Section 2725 of the Regulations.
16

17 DISCIPLINE STATUTES AND REGULATIONS

18 21.

19 The conduct of Respondent described in Paragraph 20,
20 above, violated the Code and the Regulations as set forth below:

21 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
22 20(a)	Code Section 10145; Reg. Sections 23 2832 and 2832.1 24
25 20(b)	Code Section 10145; Reg. Section 26 2832.1 27 28

	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
1		
2	20(c)	Code Sections 10145 and 10146;
3		Reg. Section 2972
4		
5	20(d)	Code Section 10146; Reg. Section
6		2972
7		
8	20(e)	Code Sections 10145, 10176(e) and
9		10177(j); Reg. Section 2832
10	20(f)	Code Sections 10145, 10176(i) and
11		10177(j)
12		
13	20(g)	Code Section 10145; Reg. Section
14		2831
15		
16	20(h)	Code Section 10145; Reg. Section
17		2831.1
18	20(i)	Code Section 10145; Reg. Section
19		2831.2
20		
21	20(j)	Code Section 10159.5; Reg. Section
22		2731
23	20(k)	Code Section 10148
24		
25	20(l)	Code Section 10177(h); Reg. Section
26		2725

27 The foregoing violations, as set forth in Paragraph 20,
28 above, constitute cause for the suspension or revocation of the

1 real estate licenses and license rights of Respondent under the
2 provisions of Code Sections 10177(d) for violation of the Real
3 Estate Law and/or 10177(g) for negligence or incompetence.

4 Code Section 10106 provides, in pertinent part, that in
5 any order issued in resolution of a disciplinary proceeding
6 before the Bureau, the Commissioner may request the
7 administrative law judge to direct a licensee found to have
8 committed a violation of this part to pay a sum not to exceed the
9 reasonable costs of investigation and enforcement of the case.

10 WHEREFORE, Complainant prays that a hearing be
11 conducted on the allegations of this Accusation and that upon
12 proof thereof, a decision be rendered imposing disciplinary
13 action against all licenses and/or license rights of Respondent
14 CARLOS MARTINEZ, individually, and doing business as Platinum
15 Consulting Rental Service, under the Real Estate Law (Part 1 of
16 Division 4 of the California Business and Professions Code), for
17 the cost of investigation and prosecution as permitted by Code
18 Section 10106, and for such other and further relief as may be
19 proper under other applicable provisions of law.
20
21

22 Dated at Los Angeles, California

23 this 4th day of August, 2014.

24
25 

26 Howard Alston
27 Deputy Real Estate Commissioner

28 cc: CARLOS MARTINEZ
Howard Alston
Sacto