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DEPT. OF REAL ESTATE

By *Q. Q. Q. Q. Q.*

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9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation against

DRE No. H-41653 LA

13 JARRARD & ASSOCIATES, INC. and
KIMBERLY ANN JARRARD, individually and as
14 designated officer for Jarrard & Associates, Inc.,

ACCUSATION

15 Respondents.

16
17 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the
18 Department of Real Estate ("Department") of the State of California, for cause of Accusation
19 against JARRARD & ASSOCIATES, INC. and KIMBERLY ANN JARRARD, individually and
20 as designated officer for Jarrard & Associates, Inc. (collectively "Respondents"), alleges as
21 follows:

22 1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a
23 Supervising Special Investigator, makes this Accusation against Respondents.
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1 2. All references to the "Code" are to the California Business and Professions Code,
2 all references to the "Real Estate Law" are to Part 1 of Division 4 of the Code, and all references
3 to "Regulations" are to the Regulations of the Real Estate Commissioner, Title 10, Chapter 6,
4 California Code of Regulations.

5 3. Respondents are presently licensed and/or have license rights under the Real
6 Estate Law (Part 1 of Division 4 of the Code).

7 4. On June 27, 2015, the Department issued a real estate corporation license to
8 Respondent JARRARD & ASSOCIATES, INC. ("JAI"), License ID 01984658. Respondent
9 JAI's license is scheduled to expire on June 26, 2023.

10 5. Respondent JAI is licensed to do business as Re/Max Freedom and Freedom
11 Escrow, a Non-Independent Broker Escrow. JAI has two branch offices listed with the
12 Department.

13 6. On March 23, 2013, the Department issued a real estate broker license to
14 Respondent KIMBERLY ANN JARRARD ("JARRARD"), License ID 01840446. Respondent
15 JARRARD's broker license is scheduled to expire on March 22, 2023.

16 7. Respondent JARRARD was formerly licensed as a real estate salesperson from
17 May 15, 2008 through March 22, 2013.

18 8. At all times relevant herein, JAI was licensed as a real estate corporation, acting
19 by and through Respondent JARRARD as designated officer-broker ("DO") for Respondent JAI
20 to qualify said corporation and to act for said corporation as a real estate broker.

21 9. At all times relevant herein,, Respondent JARRARD has been licensed as the DO
22 for Respondent JAI, pursuant to section 10211 of the Code. As JAI's DO, Respondent
23 JARRARD was at all times mentioned herein responsible pursuant to Section 10159.2 of the
24

1 Code for the supervision of the activities of the officers, agents, real estate licensees, and
2 employees of Respondent JAI for which a license is required.

3 10. Whenever reference is made in an allegation in this Accusation to an act or
4 omission of Respondent JAI, such allegation shall be deemed to mean that the officers, directors,
5 employees, agents and/or real estate licensees employed by or associated with Respondent JAI
6 committed such act or omission while engaged in the furtherance of the business or operations of
7 such corporate respondent and while acting within the course and scope of their authority and
8 employment.

9 Broker Activities

10 11. At all times mentioned herein, in the State of California, Respondents acted as
11 real estate brokers and conducted licensed activities within the meaning of Code section 10131,
12 subdivision (a), including the solicitation for listings of and the negotiation of the purchase and
13 sale of real property as the agent of others for or in expectation of compensation and the
14 conducting of broker-controlled escrow activities under Respondents' real estate broker licenses
15 pursuant to Financial Code section 17006(a)(4).

16 Audit LA 180109

17 12. On or about August 20, 2019, the Department completed an audit examination of
18 the books and records of Respondent JAI's residential sales and broker escrow activities, which
19 require a real estate license pursuant to Code section 10131.

20 13. The audit covered the period of time from January 1, 2017 through April 30, 2019
21 ("audit period").

22 14. The audit examination revealed violations of the Code and the Regulations as set
23 forth in the following paragraphs, and more fully discussed in Audit Report LA 180109 and the
24 exhibits and work papers attached to said audit report.

<u>Escrow #</u>	<u>Buyer</u>	<u>Amount</u>	<u>Closing Date</u>
18229-SB	S.I/M.M.	<\$480.00>	01/14/2019
19041-SB	D.R.A.M.	<\$45.00>	02/28/2019

21. On July 10, 2019, Respondent JARRARD provided the Department's auditor with a batch of Deposit Detail Reports followed by their respective deposit tickets totaling \$1,270.00 to cure the minimum shortage of <\$1,270.00> in T/A 1 as of April 0, 2019.

22. Issue Two. Code section 10145 and Regulations 2831, 2950(d), and 2951. Trust fund records to be maintained/Broker handled escrow.

During the audit period, Respondent JAI failed to maintain accurate or complete records of trust funds received and disbursed (control records) for T/A 1, in violation of Code section 10145 and Regulations 2381, 2950, subdivision (d), and 2951. Based on the records produced for examination, the control record for T/A 1 did not reflect accurate dates of receipt and date of deposits. The amount of a deposit was inaccurately recorded. A trust fund deposit into T/A 1 was not recorded on the control record. A disbursement from T/A 1 was not recorded. A check was recorded as "voided" when it was actually cleared through T/A 1. The control record did not reflect an accurate daily balance. Examples include the following, without limitation:

23. Example of an inaccurate trust fund amount recorded:

<u>Escrow #</u>	<u>Date of Deposit</u>	<u>Amount Recorded</u>	<u>Accurate Amount</u>	<u>Funds Received From</u>
19041-SB	02/26/2019	\$52,650.54	\$52,605.54	D.M.

24. Example of a deposit that was not recorded:

<u>Escrow #</u>	<u>Date of Deposit</u>	<u>Actual Date of Deposit</u>	<u>Amount</u>	<u>Funds Received From</u>
18241 & 18251	Not recorded	01/31/2019	\$6,340.00	JAI

25. Example of a disbursement that was not recorded on the control record:

<u>Escrow #</u>	<u>Date</u>	<u>Payee</u>	<u>Check No.</u>	<u>Amount</u>
18197	12/20/2018	C.I.V.	Wire	\$694.00

26. Example of a disbursement that was recorded on the control record as void though it was cleared through T/A 1:

<u>Escrow #</u>	<u>Check #</u>	<u>Date</u>	<u>Amount</u>	<u>Amount Recorded</u>	<u>Payee</u>
18229	45495	01/15/2019	\$480.00	Void	O.R.H.

27. Issue Three. Regulation 2950(h). Financial Interest when broker handles escrow.

During the audit period, Respondents failed to advise all parties in writing that Respondent JARRARD held an interest as a stockholder, officer, or owner of JAI holding the escrow, in violation of Regulation 2950, subdivision (h). On July 10, 2019, Respondent JARRARD provided a copy of JAI's revised escrow instructions containing the statement that JARRARD (JAI's DO) is the owner of JAI dba Freedom Escrow.

28. Examples of the transactions include, but are not limited to, the following:

<u>Escrow #</u>	<u>Buyer/Borrower</u>	<u>Total Consideration</u>	<u>Close of Escrow</u>
19009-SB	F.A.R.	\$216,500.00	02/19/2019
19038-SB	J.F.	\$232,500.00	03/07/2019
19071-SB	J.B. & E.B.	\$475,000.00	03/27/2019
19008-SB	E.T.	\$145,000.00	02/07/2019
18229-SB	S.I. & M.M.	\$222,000.00	01/14/2019
18117-MC	L.C.	\$210,000.00	07/06/2018
18197-MC	K.K.H. & C.M.W.	\$270,000.00	12/12/2018

29. Issue Four. Code sections 10145 and 10176(g). Secret profit/Undisclosed compensation.

During the audit period, Respondent JAI maintained an earnings credit relationship at Citizens Business Bank without disclosing the earnings credit relationship in writing to all the trust fund owners in T/A 1, in violation of Code sections 10145 and 10176, subdivision (g). The monthly earnings credit was used to offset the bank service charges of T/A 1. JAI received earnings credit from Citizens Business Bank totaling \$3,842.00 for the period from February 2018 to March 2019.

30. Examples include the following, without limitation:

<u>Month/Year</u>	<u>Earnings Allowance</u>	<u>Analyzed Charges</u>	<u>Analyzed Fees</u>
02/18	\$140.00	\$496.00	\$356.00
03/18	\$337.00	\$830.00	\$493.00
04/18	\$202.00	\$6889.00	\$487.00
05/18	\$166.00	\$643.00	\$477.00
06/18	\$229.00	\$792.00	\$563.00
07/18	\$298.00	\$672.00	\$374.00
08/18	\$297.00	\$772.00	\$475.00
09/18	\$327.00	\$620.00	\$293.00
10/18	\$166.00	\$475.00	\$309.00
11/18	\$197.00	\$529.00	\$332.00
12/18	\$340.00	\$793.00	\$453.00
01/19	\$271.00	\$827.00	\$556.00
02/19	\$355.00	\$803.00	\$448.00

<u>Month/Year</u>	<u>Earnings Allowance</u>	<u>Analyzed Charges</u>	<u>Analyzed Fees</u>
03/19	\$517.00	\$999.00	\$482.00
Total:	\$3,842.00	\$9,940.00	\$6,098.00

31. Issue Five. Code sections 10159.2, 10177(h), and Regulation 2725. Broker supervision.

During the audit period, Respondent JARRARD failed to adequately supervise the activities of Respondent JAI's salespersons, employees, or agents and failed to establish policies, rules, procedures, and systems to review, oversee, inspect, and manage transactions requiring a real estate license and the handling of trust funds to ensure compliance with the Real Estate Law, in violation of Code sections 10159.2, 10177, subdivision (h), and Regulation 2725.

JAI

32. The conduct, acts, and/or omissions of Respondent JAI as described above in Paragraphs 19 through 30, violated the Code and the Regulations as set forth below:

<u>Issue</u>	<u>Paragraphs</u>	<u>Violations</u>
One	19-21	Code section 10145 and Regulations 2832.1, 2950(g), and 2951
Two	22-26	Code section 10145 and Regulations 2831, 2950(d), and 2951
Three	27-28	Regulation 2950(h)
Four	29-30	Code sections 10145 and 10176(g)

33. The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent JAI under the provisions of Code section 10177, subdivisions (d) and/or (g) and Code section 10176, subdivision (g).

1 34. The violation of Regulation 2950, subdivision (h), as alleged above in Paragraphs
2 27 and 28, constitutes cause for the suspension or revocation of the real estate licenses and
3 license rights of Respondent JARRARD under the provisions of Code section 10177,
4 subdivisions (d) and/or (g).

5 Issue Five Broker Supervision - Respondent JARRARD

6 35. Based on the audit violations noted above in Paragraphs 19 through 30,
7 Respondent JARRARD failed to adequately supervise the activities of JAI's salespersons,
8 employees, or agents and failed to establish policies, rules, procedures, and systems to review,
9 oversee, inspect, and manage transactions requiring a real estate license and the handling of trust
10 funds to ensure compliance with the Real Estate Law and Regulations, in violation of Code
11 section 10159.2 and Regulation 2725, which constitutes cause to suspend or revoke the real
12 estate licenses and license rights of Respondent JARRARD pursuant to Code section 10177,
13 subdivisions (h), (d) and/or (g).

14 Audit Costs

15 36. Code section 10148, subdivision (b) provides, in pertinent part, that the
16 Commissioner shall charge a real estate broker for the cost of any audit, if the Commissioner has
17 found in a final decision following a disciplinary hearing that the broker has violated Code
18 section 10145 or a regulation or rule of the Commissioner interpreting said section.

19 Investigation/Enforcement Costs

20 37. Code section 10106 provides, in pertinent part, that in any order issued in
21 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner
22 may request the administrative law judge to direct a licensee found to have committed a violation
23 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement
24 of the case.

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

7 Dated at San Diego, California this 20 day of April, 2020.

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9 
10 VERONICA KILPATRICK
Supervising Special Investigator

11 cc: Jarrard & Associates, Inc.
12 Kimberly Ann Jarrard
13 Veronica Kilpatrick
14 Sacto
Audits/David Quek
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