

FILED

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DEPT. OF REAL ESTATE

By _____

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9 BEFORE THE DEPARTMENT OF REAL ESTATE
 10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H-42089 LA
 13)
 14 WISH PROPERTIES, INC.,)
 15 and ERNEST ALLEN WISH , individually) ACCUSATION
 16 and as designated officer of Wish Properties, Inc.,)
 Respondents.)

17 The Complainant, Maria Suarez, a Supervising Special Investigator of the State
 18 of California, for cause of Accusation against WISH PROPERTIES, INC. and ERNEST
 19 ALLEN WISH (collectively "Respondents") alleges as follows:

20 1.

21 The Complainant, Maria Suarez, a Supervising Special Investigator of the State
 22 of California, makes this Accusation in her official capacity.

23 2.

24 All references to the "Code" are to the California Business and Professions Code
 25 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

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27 ///

1 supervision of the activities conducted on behalf of WPI by its officers, agents, real estate
2 licensees, and employees pursuant to Section 10159.2 of the Code.

3
4 5.

4 At all times relevant herein Respondents were engaged in the business of, acted
5 in the capacity of, advertised or assumed to act as a real estate corporation, within the meaning
6 of Section 10131(a) and (b) of the Code. Respondents' activities included, but not limited to,
7 broker-controlled escrows through WPI under the exemption set forth in California Financial
8 Code section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate
9 transaction where the broker is a party and where the broker is performing acts for which a real
10 estate license is required. Respondents' activities also included purchase and sale of real
11 property on behalf of others for compensation or in expectation of compensation.

12 (AUDIT LA200062)

13
14 6.

14 On or about April 30, 2020, the Department completed an audit examination of
15 the books and records of WPI pertaining to the real estate broker escrow activities described in
16 Paragraph 5 above. The audit examination covered the period of time from August 1, 2019,
17 through August 31, 2020 ("audit period"). The primary purpose of the examination was to
18 determine whether Respondents conducted real estate activities in accordance with the Real
19 Estate Law. The audit examination revealed violations of the Code and the Regulations as set
20 forth in the following paragraphs, and more fully discussed in Audit No. LA200062, and the
21 exhibits and work papers attached to said audit report.

22
23 7.

23 At all times mentioned herein, and in connection with the broker escrow
24 activities described in Paragraph 5, above, WPI accepted or received funds, including funds in
25 trust ("trust funds") from or on behalf of actual or prospective parties to transactions handled by
26 Respondents and thereafter made deposits and/or disbursements of such funds. According to the
27 documents provided, WPI maintained 2 bank accounts for handling of the receipts and

1 disbursements of funds during the audit period in connection with the broker escrow activities.

2 The bank account is as follows:

3 Trust Account 1 ("TA 1")

4 Bank: East West Bank
5 Account Name: Wish Properties Inc Dba Jencor Escrow Trust
6 Account Number: xxxxxxxx9525
7 Signatories: Ernest A. Wish, David C Rees (non-licensee), Mynelle B Berana (non-
8 licensee), Elizabeth A Hotz (Broker, ID No. 01458895), Valerie
9 Shtolzberg (Salesperson, NBA, ID No. 01341583), and Tracy L Demars
10 (non-licensee)

11 Signatures Required: One

12 Purpose: TA 1 was maintained to handle trust funds in the escrow broker activity
13 for multiple beneficiaries.

14 Trust Account 2 ("TA 2")

15 Bank: East West Bank
16 Account Name: Wish Properties Inc Dba Jencor Escrow Trust Calabasas
17 Account Number: xxxxxxxx2271
18 Signatories: Ernest A. Wish, Kalin Dodge (non-licensee), Mynelle B Berana (non-
19 licensee), and Elizabeth A Hotz (Broker, ID No. 01458895)

20 Signatures Required: One

21 Purpose: TA 2 was maintained to handle trust funds in the escrow broker activity
22 for multiple beneficiaries.

23 Violations of the Real Estate Law

24 8.

25 The audit examination revealed violations of the Code and the Regulations, as
26 set forth in the following paragraphs, and more fully discussed in Audit Report No. LA200062,
27 and the exhibits and work papers attached to the audit report:

1 **(a) Trust Fund Handling For Multiple Beneficiaries/When Broker Handles**
2 **Escrow (Code section 10145 and Regulations sections 2832.1, 2950(g), and 2951.** Based on
3 an examination of TA 1's records, there was a combined minimum trust fund shortage of
4 \$74,267.58 as of August 31, 2020 in violation of Code section 10145 and Regulations sections
5 2832.1, 2950(g), and 2951. There is no evidence that Respondents were given written consent
6 from the owners of the trust funds to allow Respondents to reduce the balance of the funds in
7 TA 1 to an amount less than the aggregate trust fund liabilities of WPI to all owners of the trust
8 funds.

9 **(b) Trust Account Withdrawal/ When Broker Handles Escrow (Code**
10 **section 10145 and Regulations section 2834 and 2951).** Based on an examination of TA 1's
11 records, Respondent WPI's bank signature card contained the signatories David C Rees (non-
12 licensee), Mynelle B Berana (non-licensee), Valerie Shtolzberg (Salesperson, NBA, ID No.
13 01341583), and Tracy L Demars (non-licensee), who were allowed to sign and make
14 withdrawals from TA 1. WPI did not maintain insurance or fidelity bond equal to at least the
15 maximum amount of the trust funds to which the unlicensed employees had access.

16 Based on an examination of TA 2's records, Respondent WPI's bank signature
17 card contained the signatories Kalin Dodge (non-licensee) and Mynelle B Berana (non-
18 licensee), who were allowed to sign and make withdrawals from TA 2. WPI did not maintain
19 insurance or fidelity bond equal to at least the maximum amount of the trust funds to which the
20 unlicensed employees had access.

21 **(c) Trust Fund Records to be Maintained/When Broker Handles Escrow**
22 **(Code section 10145 and Regulations sections 2831, 2950(d), 2951).** WPI failed to maintain
23 complete and accurate columnar record for all trust funds received and disbursed (control
24 record) for TA 1, which was used for WPI's broker escrow activities during the audit period in
25 violation of Code section 10145 and Regulations sections 2831, 2950(d), and 2951. The control
26 record maintained by Respondents had inaccurate daily balances of trust funds and incorrect
27 entries.

1 (d) **Separate Records for Each Beneficiary/When Broker Handles Escrow**
2 **(Code section 10145 and Regulations sections 2831.1, 2950(d), 2951)**. WPI failed to
3 maintain complete and accurate separate records for each beneficiary or transaction of all trust
4 fund receipts and disbursements for TA 1 in connection with WPI's broker escrow activities
5 during the audit period in violation of Code section 10145 and Regulations section 2831.1,
6 2950(d), and 2951. The separate records maintained by Respondents had inaccurate daily
7 balances of trust funds and inaccurate entries.

8 (e) **Trust Account Reconciliation/When Broker Handles Escrow (Code**
9 **section 10145 and Regulations sections 2831.2, 2950(d), and 2951)**. During the audit period,
10 WPI did not perform and maintain a complete and accurate monthly reconciliation of the
11 balance of all separate beneficiary and/or transaction records to the balance of the records of all
12 trust funds received and disbursed for TA 1 in violation of Code section 10145 and Regulations
13 sections 2831.2, 2950(d), and 2951.

14 (f) **Use of False or Fictitious Name (Code section 10159.5 and Regulations**
15 **section 2731)**. During the audit period, Respondent WPI used the unlicensed fictitious business
16 name of "Jencor Escrow". The fictitious name used did not include the term "a non-
17 independent broker escrow" in violation of Code section 10159.5 and Regulations section 2731.

18 (g) **Salesperson and Broker Associate Retention and Termination/Notice of**
19 **Change of Broker (Code section 10161.8 and Regulations section 2752)**. Based on an
20 examination of broker-salesman relationship agreements dated May 30, 2019 to October 3,
21 2019, there were seven (7) broker associates employed under WPI but WPI failed to provide
22 notification to the Department until October 22, 2020 in violation of Code section 10161.8 and
23 Regulations section 2752. WPI failed to timely notify the Department of the affiliation of the
24 seven (7) brokers entering into a written agreement with WPI in the capacity of a salesperson.

25 (h) **Escrow Activity Reporting (Code section 10141.6)**. Based on an
26 examination of WPI's records, during the period from August 12, 2019 to December 30, 2019,
27 WPI closed at least 50 escrow transaction with total consideration of approximately seventy

1 five million seven hundred and twenty five thousand and five hundred fifty five dollars
2 (\$75,725,555.00). WPI met the escrow threshold but did not submit an Escrow Activity Report
3 within 60 days after the end of the 2019 calendar year. According to the Department's records,
4 Respondents filed an Escrow Activity Report for 2019 on February 17, 2021.

5 (i) **Responsibility of Corporate Office in Charge/Broker Supervision (Code**
6 **sections 10159.2 and 10177(h) and Regulations section 2725)**. Based on the violations in
7 Paragraphs 8 (a)-(h) above, Respondent WISH failed to exercise adequate supervision and
8 control over Respondent WPI's broker escrow activities in violation of Code section 10159.2.
9 Respondent WISH failed to provide established policies, rules, procedures, and systems to
10 review, oversee, inspect, and manage transactions requiring a real estate license and the
11 handling of trust funds in violation of Regulations section 2725.

12 **Additional Violations of the Real Estate Law**

13 9.

14 The overall conduct of Respondents violates the Real Estate Law and constitutes
15 cause for the suspension or revocation of their real estate license and license rights under the
16 provisions of **Code Section 10177(g)** for negligence and **Code Section 10177(d)** for willful
17 disregard of the Real Estate Law.

18 10.

19 Each of the foregoing violations in Paragraphs 8 (a)-(f) above constitute cause
20 for the suspension or revocation of the real estate license and/or license rights of Respondents
21 under the provisions of Code sections 10177(d), 10177(g), and 10177(h) (as to WISH).

22 **COSTS**

23 (AUDIT COSTS)

24 11.

25 Section 10148(b) of the Code, provides, in pertinent part, that the Real Estate
26 Commissioner shall charge a real estate broker for the costs of any audit if the Commissioner
27 has found in a final decision, following a disciplinary hearing, that the broker has violated

1 Section 10145 of the Code or a regulation or rule of the Commissioner interpreting said Code
2 section.

3 (INVESTIGATION AND ENFORCEMENT COSTS)

4 12.

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

9 PRAYER

10 WHEREFORE, Complainant prays that a hearing be conducted on the
11 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
12 disciplinary action against all the licenses and/or license rights of Respondents WISH
13 PROPERTIES, INC. and ERNEST ALLEN WISH under the Real Estate Law, for the costs of
14 investigation and enforcement as permitted by law, for the cost of the audit, and for such other
15 and further relief as may be proper under other applicable provisions of law.

16
17 Dated at Los Angeles, California this 11th day of August, 2021.

18
19
20 Maria Suarez
21 Maria Suarez
22 Supervising Special Investigator

23
24 cc: WISH PROPERTIES, INC.
25 ERNEST ALLEN WISH
26 Maria Suarez
27 Sacto.
Audits -- Anna Hartoonian