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DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of CARLSBERG REALTY (MARYLAND) INC.; CARLSBERG MANAGEMENT COMPANY; and WILLIAM WARREN GEARY JR., Respondents.	No. H-37256 LA BAR ORDER (B&P § 10087)

TO: CARLSBERG REALTY (MARYLAND)
CARLSBERG MANAGEMENT COMPANY
and WILLIAM WARREN GEARY, JR.
(sometimes referred to as "Respondents")
200 17th Street Manhattan Beach, California 90266

Pursuant to the provisions of Section 10087 of the California Business and Professions Code ("Code"), you, Respondents CARLSBERG REALTY (MARYLAND), CARLSBERG MANAGEMENT COMPANY and WILLIAM WARREN GEARY, JR. ("Respondents"), are hereby notified that the California Real Estate Commissioner ("Commissioner") makes the following findings:

FINDINGS OF FACT

1. Respondents are presently licensed and/or have license rights under the Real Estate Law, Part1 of Division 4 of the Code as real estate brokers.

CARLSBERG REALTY (MARYLAND) ("CRMI"), CARLSBERG MANAGEMENT COMPANY ("CMC") are licensed by the Department as corporate real estate brokers by and through WILLIAM WARREN GEARY JR. ("GEARY"), as the designated officer and broker responsible, pursuant to Code Sections 10159.2 and 10211 of the Business and Professions Code for supervising the activities requiring a real estate license conducted on behalf of CRMI and CMC by their officers, agents and employees, including GEARY, as set forth.

2. CRMI and CMC are owned by WILLIAM WARREN GEARY JR., who is their president and treasurer.

3. Respondents failed to request a hearing within fifteen (15) days from the mailing of the Notice of Intention to Issue Bar Order on May 6, 2011.

4.1. CARLSBERG REALTY (MARYLAND) INC. At all times mentioned, in the City and County of Los Angeles, Respondents CRMI and GEARY engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers within the meaning of Code Section 10131(A), including the operation and conduct of a commercial and residential resale brokerage with the public wherein, for or in expectation of compensation, for another or others, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker, including the solicitation for listings of and the negotiation of the sale of real property as the agent of others.

4.2. CARLSBERG MORTGAGE COMPANY. At all times mentioned, in the City and County of Los Angeles, Respondents CMC and GEARY engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers within the meaning of Code Section 10131(b), including the operation and conduct of a property management brokerage with the public wherein, for or in expectation of compensation, for another or others, Respondents leased or rented or offered to lease or rent, or placed for rent, or solicited listings of

places for rent, or solicited for prospective tenants, or collected rents from real property, or improvements thereon; and

4.3. In addition, CRMI conducted broker-controlled escrows through its escrow division under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

CARLSBERG REALTY (MARYLAND) INC.

(AUDIT)

5. On September 2, 2010, the Department completed an audit examination of the books and records of CRMI pertaining to the real estate resales and broker-controlled escrow activities described in Paragraph 4, that require a real estate license. The audit examination covered a period of time beginning on April 1, 2007 to February 28, 2010. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 090208 & LA 090228 and the exhibits and work papers attached to said audit report.

6. At all times mentioned, in connection with the activities described in Paragraph 4, above, CRMI accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by CRMI including property owners and tenants. CRMI maintained two trust accounts:

"Carlsberg Realty, Inc.,
Town & Country Escrow Division Trust Account
xxxx0613"
First Regional Bank
Santa Monica, CA 90405 (T/A #1)

"Carlsberg Realty, Inc.,
Town & Country Escrow Division Trust Account
xxxx 0591"
First Regional Bank
Santa Monica, CA 90405 (T/A #2)

7. In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents CRMI and GEARY, acted in violation of the Code and the Regulations in that Respondents:

(a)(1) Permitted, allowed or caused the disbursement of trust funds from T/A #1, where the disbursement of funds reduced the total of aggregate funds in T/A #1, to an amount which, on February 28, 2010, the cutoff date of the audit examination, was $100,606.22, less than the existing aggregate trust fund liability to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145 and Regulations 2832.1, 2950(g) and 2951.

(a)(2) Permitted, allowed or caused the disbursement of trust funds from T/A #2, where the disbursement of funds reduced the total of aggregate funds in T/A #1, to an amount which, on February 28, 2010, was $36,596.90, less than the existing aggregate trust fund liability to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145 and Regulations 2832.1, 2950(g) and 2951.

(b) Failed to maintain an accurate and complete control record in the form of a columnar record in chronological order of all "Trust Funds Received - Not Placed In Broker's Trust Account, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.

(c) Failed to place trust funds, including security deposits and tenant rents, accepted on behalf of another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund account in the name of the trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson, in violation of Code Section 10145 and Regulation 2832(d), 2950(d) and 2951.

(d) Misrepresented to sellers Jones, Luna and Engelhard that CRMI held their earnest money deposits, in violation of Code Section 10176(a).

(e) Failed to place trust funds from borrowers into a trust account in the name of

the broker as trustee at a bank or other financial institution in connection with CRMI's escrow activities, in violation of Code Section 10145 and Regulations 2832(a), 2950(d) and 2951.

(f) Permitted Esther Cordero, an unlicensed and unbonded employee of CRMI, to be an authorized signatory on the trust accounts, into which were deposited trust funds for buyers and sellers, in violation of Code Section 10145 and Regulations 2834(a), 2950(d) and 2951.

(g) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed for the trust accounts, in violation of Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

(h) While acting in the capacity of an escrow holder in two purchase and sale transactions (escrow Numbers 3055 and 1458), failed to place trust funds, including earnest money deposits, accepted on behalf of another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund account in the name of the broker at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson, in violation of Code Section 10145 and Regulations 2832(e), 2950(f) and 2951.

(i) CRMI mixed and commingled trust funds and personal funds and made unauthorized disbursals of beneficiary trust funds by transferring trust funds to and from T/A #1 and T/A #2, and vice-versa, then transferring said trust funds to CMC's B/A #1, CMC's main bank account for its property management activities issuing checks therefrom GEARY's operating expenses for several entities owned by him, in violation of Code Sections 10145, 10176(e), 10176(i) and/or 10177(g) and Regulation 2950(g).

(j) CRMI Failed to disclose in writing to all parties of GEARY's financial interest and ownership of CRMI's escrow division, in violation of Code Sections 10145, 10176(g) and Regulation 2950(h).

(k) Used the fictitious name of "Town & Country Escrow Division", to conduct licensed activities including realty resales and broker-controlled escrows without holding a

license bearing said fictitious business name, in violation of Code Section 10159.5 and Regulation 2731.

8. The conduct of Respondents CRMI and GEARY, as alleged and described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Section 10145 and Regulations 2832.1, 2950(g) and 2951
7(b)	Code Section 10145 and Regulations 2831, 2950(d) and 2951
7(c)	Code Section 10145 and Regulations 2832(d), 2950(d) and 2951
7(d)	Code Section 10176(a)
7(e)	Code Section 10145 and Regulation 2832(a), 2950(d) and 2951
7(f)	Code Section 10145 and Regulations 2834(a), 2950(d) and 2951
7(g)	Code Section 10145 and Regulation 2831.1, 2950(d) and 2951
7(h)	Code Section 10145 and Regulations 2832(e), 2950(f) and 2951

7(i)	Code Sections 10145, 10176(e), 10176(i) and/or 10177(g)
7(j)	Code Section 10145, 10176(g) and Regulation 2950(h)
7(k)	Code Section 10159.5 and Regulation 2731

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of CRMI and GEARY under the provisions of Code Sections 10176(a), 10176(e), 10176(g), 10176(i), 10177(d) and/or 10177(g).

CARLSBERG MANAGEMENT COMPANY

(Audit)

9. On September 30, 2010, the Department completed an audit examination of the books and records of CMC pertaining to the property management activities described in Paragraph 4, that require a real estate license. The audit examination covered a period of time beginning on July 1, 2007 to April 30, 2010. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 090257 and the exhibits and work papers attached to said audit report.

10. At all times mentioned, in connection with the activities described in Paragraph 4, above, CMC accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions, handled by CMC including property owners and tenants, buyers and sellers. CMC maintained eight trust accounts of which four are scheduled below:

"CMC Realty Inc.,
xxxx 2115"
First Regional Bank
Santa Monica, CA 90405 (B/A #1)

"Carlsberg Management Company
CMC-Ocean Walk Shoppes
xxxx 2033"
First Regional Bank
Santa Monica, CA 90405 (B/A #2)

"Carlsberg Management Company/
AAF Rancho Carlsbad Golf Course
xxxx 8398"
First Regional Bank
Santa Monica, CA 90405 (B/A #3)

"Carlsberg Management Company
CMC-Price/O'Brien Apartments
xxxx 4079"
First Regional Bank
Santa Monica, CA 90405 (B/A #4)

11. In the course of activities described in Paragraphs 4 and 10, above, and during the examination period described in Paragraph 9, Respondents CMC and GEARY, acted in violation of the Code and the Regulations in that Respondents:

(a)(1) Permitted, allowed or caused the disbursement of trust funds from B/A #1, where the disbursement of funds reduced the total of aggregate funds in B/A #1, to an amount which, on April 30, 2010, the cutoff date of the audit examination, was $2,588,107.37, less than the existing aggregate trust fund liability to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Sections 10145, 10176(i) and/or 10177(g) and Regulation 2832.1.

(a)(2) Caused a $1,931,000.00 discrepancy to exist in B/A #2, the CMC-Ocean Walk Shoppes trust account, where such discrepancy was caused by the disbursement of trust funds from B/A #2 to B/A #1, without first obtaining the prior written consent of the owners of said trust funds in B/A #2, in violation of Code Sections 10145, 10176(i) and/or 10177(g).

(a)(3) Caused a $11,000.00 discrepancy to exist in B/A #3, the AAF Rancho

Carlsbad Gold Course trust account, where such discrepancy was caused by the disbursement of trust funds from B/A #3 to B/A #1, without first obtaining the prior written consent of the owners of said trust funds in B/A #3, in violation of Code Sections 10145, 10176(i) and/or 10177(g) and Regulations 2950(g) and 2951.

(a)(4) Caused a $1,100.00 discrepancy to exist in B/A #3, CMC-Price/O'Brien Apartments trust account, where such discrepancy was caused by the disbursement of trust funds from B/A #3 to B/A #1, without first obtaining the prior written consent of the owners of said trust funds in B/A #4, in violation of Code Sections 10145, 10176(i) and/or 10177(g).

(b) Failed to maintain an accurate and complete control record in the form of a columnar record in chronological order of all trust funds received, deposited and disbursed by B/A #1 through B/A #4, in violation of Code Sections 10145, 10176(i) and/or 10177(g) and Regulation 2831.

(c) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received, deposited and disbursed by B/A #1, in violation of Code Section 10145 and Regulation 2831.2.

(d) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed for the trust accounts, in violation of Code Section 10145 and Regulation 2831.1.

(e) Failed to place trust funds into a trust account in the name of the broker as trustee at a bank or other financial institution in connection with CMC's property management activities, in violation of Code Section 10145 and Regulation 2832(a). B/A #1 through B/A 4 were not designated as trust accounts. B/A #1 was not in the name of the broker.

(f) Permitted Esther Cordero and Kathryn Schiebel, unlicensed and unbonded employees of CMC, to be an authorized signatory on the trust accounts and permitted Gerald Cockrell, an unlicensed and unbonded person, into which were deposited trust funds for property owners and tenants, in violation of Code Section 10145 and Regulation 2834(a).

(g) Trust funds, including but not limited to rents, that had been deposited into CRMI's T/A #1 and T/A #2, and CMC's B/A #2 through B/A #4, and subsequently transferred to B/A #1, CMC's and GEARY's operating account, it appeared that the banks, American Patriot Bank (Acct. #6623512) and First Community Bank (Acct. #2011294) were located in the states of Tennessee and Kansas respectively and the investors for the corresponding out-of-state banks were not the exempt institutional investors, in violation of the trust fund handling procedures of Code Section 10145(a).

(h) Failed to disclose that CMC charged property owners service fees and charges for which no agreement or authorization existed. CMC charged property owner Price Apt LLC a maintenance fee in the amount of $350.00 for use of CMC's computer. CMC also charged property owner Ocean Walk Shoppes a $5,000.00 administration fee for at the end of year where the administration fee was neither authorized nor contained in the management agreement between CMC and Ocean Walk Shoppes, in violation of Code Section 10176(g).

(i) CMC mixed and commingled trust funds and personal funds and made unauthorized disbursals of beneficiary trust funds by transferring trust funds to and from T/A #1 and T/A #2, and vice-versa, then transferring said trust funds to CMC's B/A #1, CMC's main bank account for its property management activities issuing checks therefrom GEARY's operating expenses for several entities owned by him, in violation of Code Sections 10145, 10176(e), 10176(i) and/or 10177(g).

12. The conduct of Respondents CMC and GEARY, as alleged and described in Paragraph 11, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
11(a)	Code Sections 10145, 10176(i) and/or 10177(g) and Regulation 2832.1
11(b)	Code Section 10145, 10176(i) and/or 10177(g) and Regulation 2831

11(c)	Code Section 10145, 10176(i) and/or 10177(g) and Regulation 2831.2
11(d)	Code Sections 10145, 10176(a) and Regulation 2831.1
11(e)	Code Sections 10145, 10176(i) and/or 10177(g) and Regulation 2832(a)
11(f)	Code Section 10145 and Regulations 2834(a)
11(g)	Code Section 10145(a)
11(h)	Code Section 10176(g)
11(i)	Code Sections 10145, 10176(e), 10176(i) and/or 10177(g)

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of CMC and GEARY under the provisions of Code Sections 10176(e), 10176(g), 10176(i), 10177(d) and 10177(g).

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CARSLBERG REALTY (MARYLAND) INC., CARLSBERG MANAGEMENT COMPANY

(Slush Fund)

13. The conduct of Respondents CARSLBERG REALTY (MARYLAND) INC., CARLSBERG MANAGEMENT COMPANY and WILLIAM WARREN GEARY JR., of making unauthorized transfers trust funds from protected beneficiary trust accounts to fund Respondents' personal, business and investment ventures, accompanied by falsification of trust funds records to deceive the trust fund owner-beneficiaries as to the true status of their defalcated trust funds, constitutes the use of client trust funds as a slush fund, is in violation of Code Sections:

(a) 10176(a) for substantial misrepresentation.

(b) 10176(b) for making false promises of a character likely to influence, persuade or induce buyers and sellers, property owners and renters into believing their escrowed funds, deposits and rents maintained in bona fide trust accounts.

(c) 10176(e) for commingling beneficiary trust funds.

(d) 10176(i) for fraud and dishonest dealing in connection with the ongoing systematic scheme to convert client-beneficiary trust funds for use as a private banking reserve fund for Respondents' own purposes.

(e) 10176(i) for conversion of trust funds.

(f) 10176(i) for concealment of trust fund status by falsification of trust fund accounting records.

(g) 10176(i) for fraud in concealment the conversion of trust funds owned by Ocean Walk Shoppes by classifying the $1,931,000.00 unauthorized disbursement as a loan to Respondents.

(h) 10177(i) for breach of fiduciary for the slush fund defalcation scheme; and

(i) 10177(g) for negligence or incompetence in exposing client trust funds to seizure for by federal and California tax authorities and general creditors by Respondents, transfer to unprotected non trust fund accounts.

(Negligence)

14. The overall conduct of Respondents CARSLBERG REALTY (MARYLAND) INC. and CARLSBERG MANAGEMENT COMPANY and WILLIAM WARREN GEARY JR. constitutes negligence and is cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to Code Section 10177(g).

(Fiduciary Duty)

15. The overall conduct of Respondents CARSLBERG REALTY (MARYLAND) INC. and CARLSBERG MANAGEMENT COMPANY and WILLIAM WARREN GEARY JR. constitutes a breach of fiduciary duty with respect to the said Respondent's real estate consumers and clientele. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to Code Section 10176(i).

(Failure to Supervise)

16. The overall conduct of Respondent WILLIAM WARREN GEARY JR. constitutes a failure on his part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of CARLSBERG REALTY (MARYLAND) INC. and CARLSBERG MANAGEMENT COMPANY, as required by Code Section 10159.2. This conduct is cause for the discipline of the real estate license and license rights of Respondent pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

LEGAL CONCLUSIONS

17. Based on the information contained in Paragraphs 2 through 16, above, Respondents committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the public and involves dishonesty, fraud, or deceit, as described in Section 10087(a)(1) and Section 10087(a)(2) of the Code.

18. Respondent's failure to request a hearing pursuant Code Section 10087(b) constitutes a waiver of the right to a hearing.

BAR ORDER

Based on the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, it is HEREBY ORDERED that Respondents CARLSBERG REALTY (MARYLAND), CARLSBERG MANAGEMENT COMPANY and WILLIAM WARREN GEARY, JR. are barred and prohibited for a period of thirty-six (36) months from the effective date of this ORDER from performing in any position of employment, management, or control the following activities in the State of California:

(a) Participating in any capacity to further the business activity of a real estate salesperson or real estate broker, or engaging in any business activity involving real estate that is subject to regulation under Division 4 (Sections 10000 through 11288) of the Code;

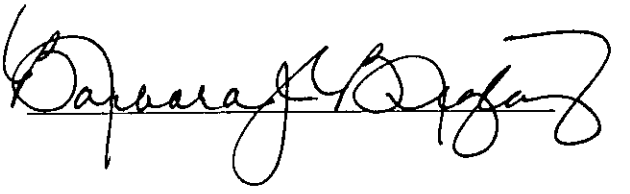
(b) Participating in any activity for which a real estate salesperson or a real estate broker license is required;

(c) Engaging in any real estate related business activity on the premises where a real estate salesperson or real estate broker is conducting business which requires a real estate license;

(d) Participating in any real estate related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company; and

(e) Holding any position of employment, management, control, or ownership, as a real estate broker, a real estate salesperson, or an unlicensed person, in any business involving any of the activities mentioned in paragraphs (a) through (d) above.

This Order shall be effective immediately.

It is so ordered this 7th day of July, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner