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BUREAU OF REAL ESTATE

By [signature]

FLAG.

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of RPM WESTSIDE, INC. and DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc., Respondents,	CalBRE No. H-38265 LA OAH No. 2012110555

DECISION

The Proposed Decision dated July 28, 2014, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Respondent shall pay the Real Estate Bureau its costs of investigation and enforcement in the amount of $6,165.63 within thirty (30) days after the issuance of the restricted real estate salesperson license to Respondent.

This Decision shall become effective at 12 o'clock noon on SEP 25 2014.

IT IS SO ORDERED 8/28/2014.

REAL ESTATE COMMISSIONER

[signature]

WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: RPM WESTSIDE, INC. and DAVID MICHAEL KRAUSSE, Individually and as designated officer of RPM Westside, Inc., Respondents.	Case No. H-38265 LA OAH No. 2012110555

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on June 18, 2014.

Lissete Garcia, Real Estate Counsel, represented complainant Maria Suarez, Deputy Real Estate Commissioner. Respondent David Michael Krausse represented himself.

Complainant seeks to discipline respondent's real estate broker license based on allegations that audits conducted in 2011 reveal respondent's violations of the Real Estate Law, and that respondent failed to disclose truthfully his history of prior discipline in connection with an application for license renewal. Respondent offered arguments in favor of his continued licensure.

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision on June 18, 2014. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

FACTUAL FINDINGS

1. Complainant made the Accusation and First Amended Accusation while acting in her official capacity.

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Respondent's License and Disciplinary History

2. On January 19, 1996, the Department of Real Estate, now known as the Bureau of Real Estate (Bureau), issued a real estate salesperson license to respondent. On August 6, 1996, the Bureau issued real estate broker license number 01205538 to respondent.

3. In the Decision in *In the Matter of the Accusation against EZ Lending Corporation and David Michael Krause, individually, and as former designated officer of EZ Lending Corporation*, case number H-36945-LA (EZ Lending case), pursuant to a Stipulation and Agreement effective June 20, 2011, the Bureau suspended respondent's licenses and licensing rights for a period of 60 days. The Bureau stayed 30 days of the period of suspension for one year on condition that, among other things, respondent pay a monetary penalty and take and pass the Professional Responsibility Examination administered by the Bureau.[1] Respondent's real estate broker license and licensing rights expire May 13, 2017.

Alleged Cause for Discipline

RPM Westside Inc. Audit

4. In 1992, respondent earned a master of business administration from California State University Fullerton. He worked in the banking industry before pursuing a career in real estate. As a real estate professional, respondent has experience with both wholesale and retail mortgage lending. At time of the 2008 housing market collapse, respondent "went through a spiral downfall." Respondent attempted to recover economically by advertising his availability to perform Designated Officer (DO) services for interested real estate concerns. According to respondent, "Being a broker of record was a way to earn a little income and to soften the blow." Working from his home office, respondent became the DO for at least two dozen corporate entities between 2009 and 2011.

5. RPM Westside Inc. (RPM), which is registered with the California Secretary of State as a business engaging in property management, was one such entity.[2] Respondent was acquainted with Edgar Robert Sanchez (Sanchez), RPM's chief executive officer, through the course of respondent's prior business dealings. At the hearing, respondent explained that the acronym RPM means "real estate property management" and that RPM "was a start up at the time" operating on a "franchise business model" providing software and accounting support to franchisees. Sanchez, who held a real estate salesperson license,

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[1] EZ Lending Corporation failed to file a Notice of Defense in the EZ Lending case. As a consequence, the Bureau issued and entered a Default Order revoking the real estate license and licensing rights of EZ Lending Corporation effective October 18, 2011.

[2] Effective July 12, 2013, the Bureau accepted RPM's petition to voluntarily surrender its corporate real estate license and license rights in lieu of litigating the allegations in this matter.

was looking for a DO, and Sanchez responded to respondent's advertisements. Because of his prior acquaintance with Sanchez, respondent "felt safe" about the risk [to which he] was exposing [himself]." Respondent's role was not to work with persons looking to lease property. Rather, respondent was to "just help with the general direction of the business; help with things as they come up; get property listed on the market." RPM maintained an executive suite in Beverly Hills, California, which respondent never visited even though Sanchez retained him to serve as RPM's DO. Respondent received a monthly compensation of $500 from RPM.

6. On June 29, 2011, the Bureau completed an audit of the books and records of RPM's real estate activities during the period May 3, 2010 through December 31, 2010. The stated purpose of the audit was "to determine whether . . . [RPM] handled and accounted for trust funds and other real estate activities in accordance with the Real Estate Law and Commissioner's Regulations." (Ex. 7.) Based on the audit findings, in paragraphs 11, 12, and 13 of the First Amended Accusation, complainant alleges that, as RPM's DO, respondent failed to exercise the reasonable supervision and control over RPM's licensed activities required by the Real Estate Law, thus causing RPM to violate the Real Estate Law as follows:

(a) Failed to maintain a complete and accurate columnar record of all trust funds received and disbursed in connection with RPM's property management activities in violation of Business and Professions Code section 10145, subdivision (a), and California Code of Regulations, title 10, section 2831.

(b) Failed to maintain complete an accurate separate record for each beneficiary of the trust funds that were received or disbursed in violation of Business and Professions Code section 10145, subdivision (a), and California Code of Regulations, title 10, section 2831.1.

(c) Failed to provide the Bureau with a monthly reconciliation of control records and total balance of separate beneficiary records in connection with RPM's property management activities in violation of Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.2.

(d) Failed to have respondent, the designated broker of RPM, as an authorized signor for RPM's bank account ending 4714, which held trust funds including rents and security deposits, in violation of Business and Professions Code section 10145, subdivision (a), and California Code of Regulations, title 10, section 2834.

(e) Failed to disclose to the owners of trust funds held in RPM's trust account that RPM could benefit from the trust funds handled through the trust account in violation of Business and Professions Code section 10176, subdivision (g).

(f) Failed to retain for the Bureau's inspection records in connection with RPM's property management activities in violation of Business and Professions Code section 10148.

7. Respondent does not dispute the audit findings. He admitted to "not having hands-on supervision" over RPM's real estate activities. Respondent appeared, however, to minimize the significance of the audit findings. He contended that "they are record keeping violations" and that any revocation of his real estate broker license constitutes a "severe penalty for record keeping violations." [3]

8. Respondent's admission establishes both his incompetence and his failure as RPM's designated officer to control and reasonably supervise the licensed activities of RPM and to keep RPM in compliance with the Real Estate Law.

License Renewal Application

9. On April 26, 2013, the Bureau received a Broker Renewal Application from respondent. Respondent signed the application under penalty of perjury and certified that the information in the application was true and correct.

10. Questions 6 and 7 of the application queried as follows:

6. WITHIN THE SIX-YEAR PERIOD PRIOR TO FILING THIS APPLICATION, HAVE YOU HAD A DENIED, SUSPENDED, RESTRICTED OR REVOKED BUSINESS OR PROFESSIONAL LICENSE (INCLUDING REAL ESTATE) IN CALIFORNIA OR ANY OTHER STATE?

7. ARE THERE ANY LICENSE DISCIPLINARY ACTIONS PENDING AGAINST A BUSINESS OR PROFESSIONAL LICENSE YOU HOLD AT THIS TIME? IF YES, TO EITHER ITEM 6 OR 7, COMPLETE ITEM 25 ON PAGE 3.

11. Respondent answered "Yes" to question 6, and "No" to question 7. In item 25 (which requests a "detailed explanation of item 6 and/or 7"), respondent provided the following:

TYPE OF LICENSE	LICENSE ID NO.	LICENSE EXPIRATION DATE	STATE
Broker	01205538	08/31/12	CA DRE

ACTION	DATE OF ACTION	DATE ACTION TERMINATED	CODE VIOLATED
Released	06/20/11	12/13/11	H-36945-LA

[3] Respondent first expressed this attitude in correspondence set forth in Factual Finding 13.

Respondent also provided the following additional information: "Case #36945-LA. Licensed [*sic*] was suspended 60 days, then released on 12/13/2011." (Ex. 10.)

12. Complainant contends that respondent failed to disclose the Accusation in this matter (Case No. H-38265 LA) in his renewal application, and that such non-disclosure constitutes cause for the suspension or revocation of respondent's real estate broker license and licensing rights. In support of its contention, complainant alleges and argues that the Accusation in this matter was "filed and served on [respondent] . . . on or about July 17, 2012. On August 14, 2012, the Bureau received a letter from [r]espondent, wherein he acknowledged receipt of the Accusation in Case No. H-38265 LA." (Ex. 1.)

13. Respondent wrote the Bureau expressing his view of the Accusation and the allegations therein as follows:

> The DRE can make all the accusations they want against me. The absolute truth is that I served the people of California with exceptionally high ethical standards. As you know, I have been a licensed broker since 1996. In that time there has never been an accusation or complaint of any kind that I have harmed a consumer. No consumer (or institution) has been harmed, or claims to have been harmed, in any transaction that I was a broker. Your accusation (as with the prior one) makes no claims that a consumer has been harmed.
>
> Doesn't the DRE have more severe issues to deal with than people like me? Everyday [*sic*] I hear about mortgage fraud, straw buyers, shell corporations, Ponzi schemes, etc. I'm not cheating people or institutions out of any money. Not one dollar in 16 years! I'm just a small time broker trying to make an honest living and trying to support his family. Each of these violations pertains to not keeping proper bookkeeping records, not to cheating people out of money. I will readily admit, I should have used tighter controls in my capacity of broker on each of these accusations. Am I really a threat to the people of California? Does the punishment of a revoked license really fit the crime?
>
> As you see, my license will expire at the end of this month. I don't have the money to pay for continuing education, the license fee, or the cost of the first audit. I will not be renewing the license at any time in the foreseeable future.
>
> . . . I believe you have an ethical decision to make. Either you can take the steps to revoke my license or you can let me be, knowing that I have already paid a severe price . . . .

(Ex. 9.)

14. Respondent explained that he received no response to his correspondence from the Bureau, and he assumed that the Bureau ceased enforcement of the matter. He "didn't realize that the matter was still pending." Respondent incorrectly, but mistakenly, linked the June 2011 resolution of the EZ Lending case with the circumstances surrounding the June 2011 RPM audit, which is a basis for the Accusation and First Amended Accusation in this matter. Respondent credibly testified that he "wasn't trying to be evasive" because "the information is in the [Bureau's] files."

15. It is not established by clear and convincing evidence that respondent attempted to procure a real estate license renewal by fraud, misrepresentation, or deceit.

16. Respondent has not used his real estate broker license in more than three years. When he initially learned about the RPM audit, on advice of legal counsel, respondent cancelled all arrangements he had to provide DO services. Currently, respondent is employed working for a wholesale lending company. His duties include "going to mortgage brokers throughout California and trying to get them to submit loan packages."

17. Respondent testified, "This was a horrible mistake; I've learned from it."

Costs of Investigation and Prosecution

18. The Bureau incurred costs of investigation and prosecution totaling $8,220.84.

19. Respondent testified that he lacks the current capacity to pay the Bureau's costs of investigation and prosecution. "I would need a payment plan."

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving by clear and convincing evidence to a reasonable certainty the allegations in the Accusation. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-6.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

First Cause for Discipline Alleged in the First Amended Accusation

2. The Bureau has authority to suspend or revoke a license where the licensee has willfully disregarded or violated the Real Estate Law; demonstrated negligence or incompetence in performing licensed acts; as a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a

corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. (Bus. & Prof. Code, § 10177, subds. (d), (g), and (h).)

3. The officer designated by a corporate broker licensee shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required. (Bus. & Prof. Code, § 10159.2.)

4. A real estate broker who accepts funds belonging to others in connection with a real estate transaction is required to deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal into a trust fund account maintained by the broker in a bank or recognized depository. (Bus. & Prof. Code, § 10145, subd. (a)(1).)

5. "A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature." (Bus. & Prof. Code, § 10148, subd. (a).)

6. The Bureau has authority to suspend or revoke a license where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of the Real Estate Law, has been guilty of any of claiming or taking any secret or undisclosed amount of compensation, commission, or profit. (Bus. & Prof. Code, § 10176, subd. (g).)

7. California Code of Regulations, title 10, section 2831 provides that "[e]very broker shall keep a record of all trust funds received[.]"

8. California Code of Regulations, title 10, section 2831.1 provides that "[a] broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit."

9. California Code of Regulations, title 10, section 2831.2 provides that "[t]he balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received

and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions."

10. California Code of Regulations, title 10, section 2834 provides for the specific circumstances under which certain enumerated individuals may make withdrawals from the trust fund account of individual brokers and corporate brokers.

11. California Code of Regulations, title 10, section 2725 provides that "[a] broker shall exercise reasonable supervision over the activities of his or her salespersons." Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage transactions requiring a real estate license; documents which may have a material effect upon the rights or obligations of a party to the transaction; filing, storage, and maintenance of such documents; the handling of trust funds; advertising of any service for which a license is required; familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination; and regular consistent reports of licensed activities of salespersons.

12. RPM retained respondent to function as its DO. Respondent's duty as RPM's DO includes the affirmative duty to supervise and control RPM's real estate activities and its officers and employees to ensure compliance with the Real Estate Laws. (See Legal Conclusions 3 and 11; see also *Sandler v. Sanchez* (2012) 206 Cal.App.4th 1431, 1437-1441 [discussing the legislative history of Business and Professions Code section 10159.2].) As its DO, respondent never visited RPM's place of business in Beverly Hills, California where it ostensibly conducted its real estate operations. The audit finding of violations of the Real Estate Law in connection with RPM real estate activities that are set forth in Factual Finding 6 clearly and convincingly establishes respondent's dereliction of duty. In aggravation, respondent expresses a cavalier attitude minimizing the audit findings as mere "record keeping violations." (See Factual Findings 7 and 13.) The purpose of the Real Estate Law, including its trust fund and record keeping requirements set forth in Legal Conclusions 4 through 10, inclusive, is to protect the public. (See Bus. & Prof. Code, § 10050.1 [providing that "[p]rotection of the pubic shall be the highest priority for the . . . [Bureau] of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."]) Notwithstanding respondent's 18 years as a licensed real estate broker, respondent's testimony and admissions establish his fundamental lack of understanding of the regulatory purposes of the Real Estate Law, including its record keeping requirements.

13. Cause exists to suspend or revoke real estate broker license number 01205538 pursuant to Business and Professions Code section 10177, subdivision (d), in that, as set forth in Factual Findings 6, 7, and 8, and Legal Conclusion 12, complainant has established

by clear and convincing evidence that respondent willfully disregarded or violated the Real Estate Law or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law.

14. Cause exists to suspend or revoke real estate broker license number 01205538 pursuant to Business and Professions Code section 10177, subdivision (g), in that, as set forth in Factual Findings 6, 7, and 8 and Legal Conclusion 12, complainant has established by clear and convincing evidence that respondent has demonstrated negligence or incompetence performing the acts for which he is licensed.

15. Cause exists to suspend or revoke real estate broker license number 01205538 pursuant to Business and Professions Code section 10177, subdivision (h), in that, as set forth in Factual Findings 6, 7, and 8, and Legal Conclusion 12, complainant has established by clear and convincing evidence that respondent, as RPM's DO, failed to exercise reasonable supervision and control of RPM's real estate activities as required by Business and Professions Code section 10159.2.

Second Cause for Discipline Alleged in the First Amended Accusation

16. The Bureau has authority to suspend or revoke the license of a real estate licensee who has done procured, or attempted to procure, a real estate license renewal by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement. (Bus. & Prof. Code, § 10177, subd. (a).)

17. Cause does not exist to suspend or revoke real estate broker license number 01205538 pursuant to Business and Professions Code section 10177, subdivision (a), in that as set forth in Factual Findings 14 and 15, complainant has not established by clear and convincing evidence that respondent attempted to procure a real estate license renewal by misrepresentation or by making a material misstatement of fact in a real estate license renewal application.

Fitness for Continued Licensure

18. The determination whether a person is fit for continued licensure should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, aggravation, or mitigation. "The licensee, of course, should be permitted to introduce evidence of rehabilitation." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747). Respondent has the burden of establishing his rehabilitation. (Evid. Code, § 500). Respondent has admitted to his incompetence and negligence. (Factual Findings 7 and 8.) He failed, as RPM's designated officer, to control and reasonably supervise the licensed activities of RPM as well as to keep RPM in compliance with the Real Estate Law. (Legal Conclusions 13, 14, and 15.) To permit respondent's continuing licensure as a real estate broker is to put the public in harm's way. Respondent has not met his burden of establishing his rehabilitation. The Order set

forth below is necessary for public protection. (See *Camacho v. Youde* (1979) 95 Cal, App. 3d 161, 164 [indicating that the purpose of an administrative proceeding such as this is to protect the public].)

Cost Recovery

19. Business and Professions Code section 10106 authorizes the recovery of the Bureau's prehearing investigation and enforcement costs. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, instructs that the Bureau must exercise its discretion to reduce or eliminate costs so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Bureau "may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Bureau, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and the Bureau must consider whether the licensee has raised a colorable defense. The Bureau must also consider the licensee's ability to make payment.

20. Business and Professions Code section 10106 is silent on the apportionment of costs when all causes for discipline alleged in an accusation are not established. Civil cases addressing a prevailing party's recovery of attorney fees where apportionment is not covered by statutory or contractual clause are instructive. In *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, where a party prevailing on both a contract containing a fee clause and on a tort theory precluding fee recovery, the fees were allocated between the two causes of action. In *Slavin v. Fink* (1994) 25 Cal.App.4th 722, a similar allocation occurred where, as in this case, a party prevailed on some, but not all, of its claims.

21. The Bureau was unsuccessful establishing respondent's violation of Business and Professions Code section 10177, subdivision (a). This unsuccessful allegation against respondent nonetheless required work, with attendant costs, that overlapped with the work performed and costs incurred on otherwise successful allegations. Without more specific evidence to determine a precise apportionment, the Bureau's total costs of investigation and enforcement are apportioned equally among the four grounds alleged for discipline as set forth in Legal Conclusions 13, 14, 15, and 17. The Bureau may therefore recoup $6,165.63 of its costs of investigation and prosecution.

22. Considering all of the *Zuckerman* factors, pursuant to Business and Professions Code section 10106, respondent shall pay the Board its reasonable costs in the amount of $6,165.63 pursuant to a payment plan as set forth in the Order below.

23. All factual and legal arguments contained in the Accusation and First Amended Accusation in this case and asserted during the June 18, 2014 hearing not addressed herein are deemed unsupported by the evidence, irrelevant, without merit, or constitute surplusage.

ORDER

All licenses and licensing rights of David Michael Krausse under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau the appropriate fee for the restricted license within 90 days form the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to the respondent David Michael Krausse may be suspended prior to hearing by Order of the Real Estate Commissioner (Commissioner) in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent David Michael Krausse may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate law, the Subdivided Lands Law, Regulations of the Commissioner or conditions attaching to the restricted license.

3. Respondent David Michael Krausse shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent David Michael Krausse shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent present such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

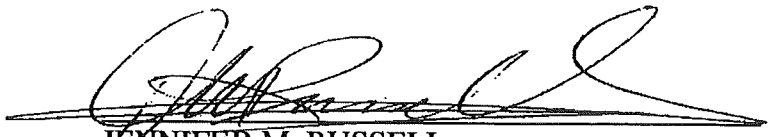
5. Respondent David Michael Krausse shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau which shall certify:

   (a) That the employing broker has read the Decision which granted the right to a restricted real estate salesperson license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

6. In the event that the Bureau issues the restricted real estate salesperson license to respondent, respondent shall pay the Bureau its costs of investigation and enforcement David Michael Krausse in the amount of $6,165.63 pursuant to a Bureau-approved payment plan.

DATED: July 28, 2014



JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

Sacto Flores

FILED

AUG 19 2013

BUREAU OF REAL ESTATE

By Laura B. Olson

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RPM WESTSIDE, INC. and DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc., Respondents.	BRE No. H-38265 LA OAH No. 2012110555

ORDER VACATING DECISION AND SETTING ASIDE DEFAULT

On June 27, 2013, a Default Order was filed. Thereafter, on July 17, 2013, a Decision was rendered herein revoking the real estate broker license of DAVID MICHAEL KRAUSSE ("Respondent"), which was to become effective August 8, 2013.

On August 1, 2013, the Bureau of Real Estate received a request from Respondent to vacate the Decision of July 17, 2013, and set aside the Default Order of June 27, 2013, based on

Respondent's mistake or inadvertence to file a Notice of Defense. On August 8, 2013, the effective date of the Decision of July 17, 2013, was stayed for ten (10) days to consider Respondent's motion to vacate the Decision.

NOW, THEREFORE, IT IS ORDERED that the Default Order of June 27, 2013, is set aside and the Decision of July 17, 2013, is vacated, and that the Matter of the Accusation filed against Respondent DAVID MICHAEL KRAUSSE herein on July 17, 2012, be remanded to the Office of Administrative Hearings.

This Order is effective immediately.

DATED: August 19, 2013

REAL ESTATE COMMISSIONER

By: JEFFREY MASON
Chief Deputy Commissioner

Sacto Hag

FILED

AUG - 8 2013

BUREAU OF REAL ESTATE

By Laura B. Olson

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RPM WESTSIDE, INC. and DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc., Respondents.	BRE NO. H-38265 LA OAH NO. 2012110555

ORDER STAYING EFFECTIVE DATE

On July 17, 2013, a Decision was rendered in the above-entitled matter to become effective August 8, 2013.

IT IS HEREBY ORDERED that the effective date of the Decision of July 17, 2013, is stayed for a period of ten (10) days to consider Respondent's motion to vacate the Decision of July 17, 2013.

The Decision of July 17, 2013, shall become effective at 12 o'clock noon on August 19, 2013.

DATED: August 8, 2013.

WAYNE S. BELL
Real Estate Commissioner

By: Phillip Ihde

PHILLIP IHDE
Regional Manager

FILED

JUL 19 2013

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of RPM WESTSIDE, INC. and DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc., Respondents.	No. H-38265 LA

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on September 19, 2012, and the findings of fact set forth herein are based on one or more of the following: (1) Respondents' express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

1.

On June 28, 2012, Maria Suarez made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed by certified mail, return receipt requested, to Respondent DAVID MICHAEL KRAUSSE on July 17, 2012.

On June 27, 2013, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent DAVID MICHAEL KRAUSSE's default was entered herein.

2.

From August 6, 1996, through August 31, 2012, Respondent DAVID MICHAEL KRAUSSE ("Respondent") was licensed as a real estate broker, Department ID 01205538. Respondent's license expired on August 31, 2012. The Department retains jurisdiction pursuant to Business and Professions Code ("Code") Section 10103.

3.

From May 3, 2010, through February 8, 2011, Respondent RPM WESTSIDE, INC. ("RPMW") was acting by and through Respondent KRAUSSE as its designated broker responsible, pursuant to Code Section 10159.2, for supervising the activities requiring a real estate license conducted on behalf of RPMW by RPMW's officers, agents and employees, as necessary to secure full compliance with the Real Estate Law as set forth in Code Section 10159.2.

4.

Respondent RPMW is a California corporation. Edgar Robert Sanchez is the owner and director of RPMW. Edgar Robert Sanchez is presently licensed as a real estate salesperson, Department ID 01867433. From May 4, 2010, through February 7, 2011, Edgar Robert Sanchez was licensed under the employment of Respondent RPMW.

PRIOR DISCIPLINE

5.

On or about June 20, 2011, the Department suspended Respondent KRAUSSE's real estate broker license in Case No. H-36945 LA. The suspension was released on December 13, 2011.

BROKERAGE

6.

At all times mentioned, in the County of Los Angeles, RPMW acted as a corporate real estate broker and conducted licensed property management activities within the meaning of Code Section 10131(b).

AUDIT OF RPMW

7.

On June 29, 2011, the Department completed an audit examination of the books and records of RPMW pertaining to the property management activities described in Paragraph 6, that require a real estate license. The audit examination covered a period of time beginning on May 3, 2010 to December 31, 2010. The audit examination revealed violations of the Code and the Regulations of the Real Estate Commissioner, California Code of Regulations, Title 10, Chapter 6 ("Regulations") as set forth in the following paragraphs, and more fully set forth in Audit Report LA 100064 and the exhibits and workpapers attached thereto.

TRUST ACCOUNT

8.

At all times mentioned, in connection with the activities described in Paragraph 6, above, RPMW accepted or received funds including funds in trust ("trust funds") from or on behalf of real property owners, lessors or prospective tenants and thereafter made deposits and or disbursements of such funds in a client trust account ("T/A"). From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by RPMW in the bank trust account as follows:

T/A
"RPM Westside, Inc. (T/A) XXXXXX4714"
Wells Fargo Bank
Portland, OR

VIOLATIONS OF THE REAL ESTATE LAW

9.

In the course of activities described in Paragraph 6, above, and during the examination period described in Paragraph 7, Respondent RPMW is alleged to have acted in violation of the Code and the Regulations in that it:

(a) Failed to maintain a complete and accurate columnar record of all trust funds received and disbursed in connection with

RPMW's property management activities, in violation of Code Section 10145(a) and Regulation 2831.

(b) Failed to maintain complete and accurate separate record for each beneficiary of the trust funds that were received or disbursed, in violation of Code Section 10145(a) and Regulation 2831.1.

(c) Failed to provide a monthly reconciliation of the control record and total balance of separate beneficiary records in connection with RPMW's property management activities, in violation of Code Section 10145 and Regulation 2831.2.

(d) Failed to have designated broker KRAUSSE as an authorized signor for RPMW's bank account (T/A) XXXXXX4714 which held trust funds including rents and security deposits, in violation of Code Section 10145(a) and Regulation 2834.

(e) RPMW earned points based from (T/A) XXXXXX4714 which could be redeemed by RPMW's owner, Edgar Robert Sanchez, as merchandise or cash in lieu of merchandise. RPMW failed to disclose to the owners of trust funds held in RPMW's trust account (T/A) XXXXXX4714 that RPMW could benefit from the trust funds handled through (T/A) XXXXXX4714, in violation of Code Section 10176(g).

(f) Failed to retain records in connection with its property management activities requested by the Department, in violation of Code Section 10148.

10.

The conduct of Respondent RPMW, as described in Paragraph 9, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
9(a)	Code Section 10145(a) and Regulation 2831
9(b)	Code Section 10145(a) and Regulation 2381.1
9(c)	Code Section 10145(a) and Regulation 2831.2
9(d)	Code Section 10145(a) and Regulation 2834
9(e)	Code Section 10176(g)
9(f)	Code Section 10148

11.

The overall conduct of Respondent KRAUSSE 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 RPMW as required by Code Section 10159.2, and

to keep RPMW in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of KRAUSSE pursuant to the provisions of Code Sections 10177(h), 10177(d) and 10177(g).

DETERMINATION OF ISSUES

1.

The overall conduct of Respondent KRAUSSE 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 RPMW as required by Code Section 10159.2, and to keep RPMW in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of KRAUSSE pursuant to the provisions of Code Sections 10177(h), 10177(d) and 10177(g).

2.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

The license and license rights of Respondent DAVID MICHAEL KRAUSSE under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on August 8, 2013.

DATED: July 17, 2013.

Real Estate Commissioner

By: JEFFREY MASON
Chief Deputy Commissioner

Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, California 90013-1105

FILED
JUN 27 2013
DEPARTMENT OF REAL ESTATE
BY: C.S.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of RPM WESTSIDE, INC. and DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc., Respondents.	NO. H-38265 LA DEFAULT ORDER

Respondent, DAVID MICHAEL KRAUSSE, having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, is now in default. It is, therefore, ordered that a default be entered on the record in this matter as to DAVID MICHAEL KRAUSSE.

IT IS SO ORDERED June 27, 2013.

Real Estate Commissioner

Dolores Weeks

By: DOLORES WEEKS
Regional Manager

FUNG

FILED

AUG 27 2013

BUREAU OF REAL ESTATE

By Norma Simms

LISSETE GARCIA, Counsel (SBN 211552)
Bureau of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
Direct: (213) 576-6914
Fax: (213) 576-6917

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RPM WESTSIDE, INC. and **DAVID MICHAEL KRAUSSE**, individually and as designated officer of RPM Westside, Inc., Respondents.	BRE No. H-38265 LA OAH No. 2012110555 FIRST AMENDED ACCUSATION

This First Amended Accusation amends the Accusation filed on July 12, 2012. The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc., is informed and alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

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2.

Respondent DAVID MICHAEL KRAUSSE ("Respondent KRAUSSE") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code ("Code")).

3.

From August 6, 1996, through the present, Respondent KRAUSSE has been licensed as a real estate broker, Bureau License No. 01205538.

Prior Discipline

4.

On or about June 20, 2011, the Bureau suspended the real estate broker license of Respondent KRAUSSE for sixty (60) days, stayed upon certain terms and conditions in Bureau Case No. H-36945 LA. The suspension was released on or about December 13, 2011.

RPM Westside, Inc.

5.

From May 3, 2010, to August 7, 2013, RPM Westside, Inc. ("RPMW") was licensed by the Bureau of Real Estate ("Bureau") as a corporate real estate broker, Bureau License No. 01877673. RPMW surrendered its real estate license effective on August 8, 2013.

6.

From May 3, 2010, through February 8, 2011, Respondent RPMW was acting by and through Respondent KRAUSSE as its designated broker responsible, pursuant to Code Section 10159.2, for supervising the activities requiring a real estate license conducted on behalf of RPMW by RPMW's officers, agents and employees, as necessary to secure full compliance with the Real Estate Law as set forth Code Section 10159.2.

7.

RPMW is a California corporation. Edgar Robert Sanchez is the owner and director of RPMW. Edgar Robert Sanchez is presently licensed as a real estate salesperson, License No. 01867433. From May 4, 2010, through February 7, 2011, Edgar Robert Sanchez was licensed under the employment of Respondent RPMW.

FIRST CAUSE OF ACCUSATION - Audit No. LA 100064

Brokerage

8.

At all times mentioned, in the County of Los Angeles, RPMW acted as a corporate real estate broker and conducted licensed property management activities within the meaning of Code Section 10131(b).

Audit of RPMW

9.

On June 29, 2011, the Bureau completed an audit examination of the books and records of RPMW pertaining to the property management activities described in Paragraph 8, that require a real estate license. The audit examination covered a period of time beginning on May 3, 2010 to December 31, 2010. The audit examination revealed violations of the Code and the Regulations of the Real Estate Commissioner, California Code of Regulations, Title 10, Chapter 6 ("Regulations") as set forth in the following paragraphs, and more fully set forth in Audit Report LA 100064 and the exhibits and workpapers attached thereto.

TRUST ACCOUNT

10.

At all times mentioned, in connection with the activities described in Paragraph 8, above, RPMW accepted or received funds including funds in trust ("trust funds") from or on

behalf of real property owners, lessors or prospective tenants and thereafter made deposits and or disbursements of such funds in a client trust account ("T/A"). From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by RPMW in the bank trust account as follows:

T/A

"RPM Westside, Inc. (T/A) XXXXXX4714"

Wells Fargo Bank

Portland, OR

VIOLATIONS OF THE REAL ESTATE LAW

11.

In the course of activities described in Paragraph 8, above, and during the examination period described in Paragraph 9, Respondent RPMW, acted in violation of the Code and the Regulations in that it:

(a) Failed to maintain a complete and accurate columnar record of all trust funds received and disbursed in connection with RPMW's property management activities, in violation of Code Section 10145(a) and Regulation 2831.

(b) Failed to maintain complete and accurate separate record for each beneficiary of the trust funds that were received or disbursed, in violation of Code Section 10145(a) and Regulation 2831.1.

(c) Failed to provide a monthly reconciliation of the control record and total balance of separate beneficiary records in connection with RPMW's property management activities, in violation of Code Section 10145 and Regulation 2831.2.

(d) Failed to have designated broker KRAUSSE as an authorized signor for RPMW's bank account (T/A) XXXXXX4714 which held trust funds including rents and security

deposits, in violation of Code Section 10145(a) and Regulation 2834.

(e) RPMW earned points based from (T/A) XXXXXX4714 which could be redeemed by RPMW's owner, Edgar Robert Sanchez, as merchandise or cash in lieu of merchandise. RPMW failed to disclose to the owners of trust funds held in RPMW's trust account (T/A) XXXXXX4714 that RPMW could benefit from the trust funds handled through (T/A) XXXXXX4714, in violation of Code Section 10176(g).

(f) Failed to retain records in connection with its property management activities requested by the Bureau, in violation of Code Section 10148.

12.

The conduct of Respondent RPMW, described in Paragraph 11, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
11(a)	Code Section 10145(a) and Regulation 2831
11(b)	Code Section 10145(a) and Regulation 2381.1
11(c)	Code Section 10145(a) and Regulation 2831.2
11(d)	Code Section 10145(a) and Regulation 2834
11(e)	Code Section 10176(g)
11(f)	Code Section 10148

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent RPMW under the provisions of Code Section 10177(d).

13.

The overall conduct of Respondent KRAUSSE 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 RPMW and Edgar Robert Sanchez, as is required by Code Section 10159.2 and Regulation 2725, and to keep RPMW and Edgar Robert Sanchez in compliance with the Real Estate Law, is cause for the suspension or revocation of the real estate license and license rights of KRAUSSE pursuant to the provisions of Code Sections 10177(h), 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION – Failure to Disclose

14.

There is hereby incorporated in this Second, separate, Cause of Accusation, all of the allegations contained in Paragraphs 1 through 13 above, with the same force and effect as if herein fully set forth.

15.

The Accusation in this matter was filed and served on Respondent KRAUSSE on or about July 17, 2012. On August 14, 2012, the Bureau received a letter from Respondent, wherein he acknowledged receipt of the Accusation in Case No. H-38265 LA.

16.

On October 16, 2012, Respondent KRAUSSE signed a broker license renewal application under penalty of perjury. In response to Question 7of the license renewal application, to wit: "ARE THERE ANY LICENSE DISCIPLINARY ACTIONS PENDING AGAINST A BUSINESS OR PROFESSIONAL LICENSE YOU HOLD AT THIS TIME?", Respondent marked the box denoted "No" and failed to reveal the pending Accusation filed

against him by the Bureau in Case No. H-38265 LA. The license renewal application was submitted to the Bureau on or about April 26, 2013.

17.

Respondent's failure to disclose the disciplinary action pending against him, as set forth above in Paragraph 16, in his broker license renewal application, constitutes the procurement of a real estate license by fraud, misrepresentation, or deceit, or by making a false statement of material fact in a renewal application, which constitutes cause for the suspension or revocation of the real estate license and license rights of Respondent KRAUSSE pursuant to Code Section 10177(a).

18.

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

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights of Respondent DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc., under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law.

this 21st day of August, 2013.

MARIA SUAREZ
Deputy Real Estate Commissioner

cc: David Michael Krausse
Maria Suarez
Audits - Manijeh Khazrai
Sacto.
OAH

SAC

FILED

JUL 19 2013

DEPARTMENT OF REAL ESTATE
BY:

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RPM WESTSIDE, INC. and DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc., Respondents.	DRE No. H-38265 LA OAH No. 2012110555

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On July 17, 2012, an Accusation was filed in this matter against Respondent RPM WESTSIDE, INC.

On June 11, 2013, Respondent petitioned the Commissioner to voluntarily surrender its corporate real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent RPM WESTSIDE, INC.'s petition for voluntary surrender of its corporate real estate broker license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated June 11,

2013, (attached as Exhibit "A" hereto). Respondent's license certificate, pocket card and any branch office license certificate shall be sent to the below listed address so that they reach the Department on or before the effective date of this Order:

Department of Real Estate
Atten: Licensing Flag Section
P.O. Box 187000
Sacramento, CA 95818-7000

This Order shall become effective at 12 o'clock noon on August 8, 2013.

DATED: July 12, 2013.

REAL ESTATE COMMISSIONER

Wayne S. Bell

EXHIBIT "A"

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RPM WESTSIDE, INC. and DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc., Respondents.	DRE No. H-38265 LA OAH No. L-2012070708

DECLARATION

My name is Edgar Robert Sanchez and I am an officer and/or director of Respondent RPM WESTSIDE, INC. ("Respondent") which is licensed as a corporate real estate broker and/or has license rights with respect to said license. I am authorized and empowered to sign this declaration on behalf of RPM WESTSIDE, INC. I am acting on behalf of RPM WESTSIDE, INC. in this matter. RPM WESTSIDE, INC. is represented by Roger Kirnos, Attorney at Law in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act

(Sections 11400 et seq., of the Government Code), RPM WESTSIDE, INC. wishes to voluntarily surrender its real estate license (and/or mortgage loan originator endorsement), issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

I understand that by RPM WESTSIDE, INC. so voluntarily surrendering its license, (and/or mortgage loan originator endorsement), RPM WESTSIDE, INC. can only have its license reinstated by petitioning for reinstatement in accordance with the provisions of Section 11522 of the Government Code. I also understand that by so voluntarily surrendering its license, RPM WESTSIDE, INC. agrees to the following:

1. The filing of this Declaration shall be deemed as RPM WESTSIDE, INC.'s petition for voluntary surrender.

2. It shall also be deemed to be an understanding and agreement by RPM WESTSIDE, INC. that it waives all rights it has to require the Commissioner to prove the allegations contained in the Accusation filed in this matter at a hearing held in accordance with the provisions of the Administrative Procedure Act (Government Code Sections 11400 et seq.), and that RPM WESTSIDE, INC. also waives other rights afforded to it in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

3. RPM WESTSIDE, INC. further agrees that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the

Department in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Department Case No. H-38265 LA, may be considered by the Department to be true and correct for the purpose of deciding whether to grant re-licensure or reinstatement pursuant to Government Code Section 11522.

4. RPM WESTSIDE, INC. freely and voluntarily surrenders all its licenses and license rights under the Real Estate Law.

5. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto. If and when a petition application is made for reinstatement of a surrendered license or endorsement, the Real Estate Commissioner will consider as one of the criteria of rehabilitation, whether or not restitution has been made to <u>any person</u> who has suffered monetary losses through "substantially related" acts or omissions of Respondent, whether or not such persons are named in the investigation file in this case.

6. RPM WESTSIDE, INC. further agrees to pay the Commissioner's reasonable cost for the audit which led to this action. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. RPM WESTSIDE, INC. will pay the audit cost within 60 days of receiving an invoice from the

Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities.

7. RPM WESTSIDE, INC. is aware that if RPM WESTSIDE, INC. petitions for reinstatement in the future, payment of the audit costs will be a condition of reinstatement.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that I am acting freely and voluntarily on behalf of RPM WESTSIDE, INC. to surrender its license and all license rights attached thereto. This declaration was executed on 6/11/13, 2013, at Beverly Hills (City), California.

Respondent RPM WESTSIDE, INC.
By: Edgar Robert Sanchez

SAC ✓

LISSETE GARCIA, Counsel (SBN 211552)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
Direct: (213) 576-6914
Fax: (213) 576-6917

FILED
JUL 17 2012
DEPARTMENT OF REAL ESTATE
BY: C.R

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RPM WESTSIDE, INC. and DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc., Respondents.	NO. H-38265 LA A C C U S A T I O N

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against RPM WESTSIDE, INC. and DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc. ("Respondents"), is informed and alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

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2.

Respondents RPM WESTSIDE, INC. ("Respondent RPMW") and DAVID MICHAEL KRAUSSE ("Respondent KRAUSSE") are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code ("Code")).

3.

From May 3, 2010, through the present, Respondent RPMW has been licensed by the Department of Real Estate ("Department") as a corporate real estate broker, Department License No. 01877673.

4.

From August 6, 1996, through the present, Respondent KRAUSSE has been licensed as a real estate broker, Department License No. 01205538.

5.

From May 3, 2010, through February 8, 2011, Respondent RPMW was acting by and through Respondent KRAUSSE as its designated broker responsible, pursuant to Code Section 10159.2, for supervising the activities requiring a real estate license conducted on behalf of RPMW by RPMW's officers, agents and employees, as necessary to secure full compliance with the Real Estate Law as set forth Code Section 10159.2.

6.

Respondent RPMW is a California corporation. Edgar Robert Sanchez is the owner and director of RPMW. Edgar Robert Sanchez is presently licensed as a real estate salesperson,

License No. 01867433. From May 4, 2010, through February 7, 2011, Edgar Robert Sanchez was licensed under the employment of Respondent RPMW.

PRIOR DISCIPLINE

7.

On or about June 20, 2011, the Department suspended Respondent KRAUSSE's real estate broker license in Case No. H-36945 LA. The suspension was released on or about December 13, 2011.

BROKERAGE

8.

At all times mentioned, in the County of Los Angeles, RPMW acted as a corporate real estate broker and conducted licensed property management activities within the meaning of Code Section 10131(b).

AUDIT OF RPMW

9.

On June 29, 2011, the Department completed an audit examination of the books and records of RPMW pertaining to the property management activities described in Paragraph 8, that require a real estate license. The audit examination covered a period of time beginning on May 3, 2010 to December 31, 2010. The audit examination revealed violations of the Code and the Regulations of the Real Estate Commissioner, California Code of Regulations, Title 10, Chapter 6 ("Regulations") as set forth in the following paragraphs, and more fully set forth in Audit Report LA 100064 and the exhibits and workpapers attached

thereto.

TRUST ACCOUNT

10.

At all times mentioned, in connection with the activities described in Paragraph 8, above, RPMW accepted or received funds including funds in trust ("trust funds") from or on behalf of real property owners, lessors or prospective tenants and thereafter made deposits and or disbursements of such funds in a client trust account ("T/A"). From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by RPMW in the bank trust account as follows:

T/A
"RPM Westside, Inc. (T/A) XXXXXX4714"
Wells Fargo Bank
Portland, OR

VIOLATIONS OF THE REAL ESTATE LAW

11.

In the course of activities described in Paragraph 8, above, and during the examination period described in Paragraph 9, Respondent RPMW, acted in violation of the Code and the Regulations in that it:

(a) Failed to maintain a complete and accurate columnar record of all trust funds received and disbursed in connection with RPMW's property management activities, in violation of Code Section 10145(a) and Regulation 2831.

(b) Failed to maintain complete and accurate separate record for each beneficiary of the trust funds that were

received or disbursed, in violation of Code Section 10145(a) and Regulation 2831.1.

(c) Failed to provide a monthly reconciliation of the control record and total balance of separate beneficiary records in connection with RPMW's property management activities, in violation of Code Section 10145 and Regulation 2831.2.

(d) Failed to have designated broker KRAUSSE as an authorized signor for RPMW's bank account (T/A) XXXXXX4714 which held trust funds including rents and security deposits, in violation of Code Section 10145(a) and Regulation 2834.

(e) RPMW earned points based from (T/A) XXXXXX4714 which could be redeemed by RPMW's owner, Edgar Robert Sanchez, as merchandise or cash in lieu of merchandise. RPMW failed to disclose to the owners of trust funds held in RPMW's trust account (T/A) XXXXXX4714 that RPMW could benefit from the trust funds handled through (T/A) XXXXXX4714, in violation of Code Section 10176(g).

(f) Failed to retain records in connection with its property management activities requested by the Department, in violation of Code Section 10148.

12.

The conduct of Respondent RPMW, described in Paragraph 11, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
11(a)	Code Section 10145(a) and Regulation 2831
11(b)	Code Section 10145(a) and Regulation 2381.1
11(c)	Code Section 10145(a) and Regulation 2831.2
11(d)	Code Section 10145(a) and Regulation 2834

11(e)	Code Section 10176(g)
11(f)	Code Section 10148

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent RPMW under the provisions of Code Section 10177(d).

13.

The overall conduct of Respondent RPMW constitutes negligence or incompetence. This conduct and violations are cause for the suspension or revocation of the real estate licenses and license rights of Respondent RPMW pursuant to Code Section 10177(g).

14.

The overall conduct of Respondent KRAUSSE 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 RPMW as required by Code Section 10159.2, and to keep RPMW in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of KRAUSSE pursuant to the provisions of Code Sections 10177(h), 10177(d) and/or 10177(g).

15.

Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to

exceed the reasonable costs of the investigation and enforcement of the case.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights of Respondents RPM WESTSIDE, INC. and DAVID MICHAEL KRAUSSE, individually and as designated officer of RPM Westside, Inc., under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law.

this 28th day of June, 2012.

MARIA SUAREZ
Deputy Real Estate Commissioner

cc: RPM Westside, Inc.
David Michael Krausse
Maria Suarez
Audits - Manijeh Khazrai
Sacto.