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FILED

MAR 27 2012

DEPARTMENT OF REAL ESTATE
BY: Hussakre M. Davis

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

| | | |
|--|---|---------------|
| In the Matter of the Accusation of |) | No. H-2499 FR |
| |) | |
| <u>WEBBER NELSON & SMITH INC.,</u> |) | |
| <u>CHARLES JOSEPH KELMIS, and</u> |) | |
| <u>JOSEPH CHARLES WILLIAMS,</u> |) | |
| |) | |
| Respondents. |) | |

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 , 2012, and the findings of fact set forth herein are based on one or more of the following: (1) Respondents WEBBER NELSON & SMITH INC's ("WNSI") and JOSEPH CHARLES WILLIAMS' ("WILLIAMS") express admissions; (2) affidavits; and (3) Department Audit Reports FR 08-0008 and FR 08-0042 and (4) other evidence.

FACTUAL FINDINGS

1.

On July 12, 2010, Tricia Sommers 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 and regular mail, to Respondents' last known mailing addresses on file with the Department of Real Estate ("Department") on July 12, 2010.

2.

On July 16, 2010, WNSI signed for receipt of the mailing. On July 22, 2010, WILLIAMS signed for receipt of the mailing. However, to date, only CHARLES JOSEPH KELMIS has filed a Notice of Defense.

3.

On , 2012, no Notice of Defense having been filed by WNSI or WILLIAMS within the time prescribed by Section 11506 of the Government Code, Respondents WNSI and WILLIAMS defaults were entered herein.

LICENSE HISTORY

4.

Respondent WNSI is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereafter "the Code") as a corporate real estate broker. Respondent WILLIAMS is presently licensed by the Department and/or has license rights under the Real Estate Law, as a real estate salesperson. WILLIAMS was licensed under the employ by WNSI from January 27, 2006 to February 23, 2009 and May 8, 2009 to September 12, 2010. In between February 23, 2009 and May 8, 2009, WILLIAMS' license had expired.

BROKERAGE

5.

At all times mentioned, in the City of Paso Robles, County of San Luis Obispo, WNSI acted as a real estate broker and conducted licensed activities within the meaning of Business and Professions Code ("Code") Sections 10131(a): selling and buying real property for others; and 10131(b): leasing or renting the real property of others.

TRUST ACCOUNT

6.

In so acting as a corporate real estate broker, as described in Paragraph 5, above, Respondent WNSI accepted or received funds in trust (hereinafter "trust funds") from or on behalf of sellers, buyers, borrowers, lenders, and others in connection with the sale of residential property, and thereafter from time to time made disbursements of said funds. Respondent

WNSI also accepted or received trust funds from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time to time made disbursements of said funds. The signatories on the Trust Account were Respondent KELMIS, Respondent WILLIAMS and Laura C. Williams (Real Estate Salesperson, License expired 03/24/2008) an employee of Respondent WNSI.

AUDIT

7.

On April 29, 2009, the Department completed an audit examination of the books and records of WNSI pertaining to the activities described in Finding 5, which require a real estate license. The audit examination covered a period of time beginning on January 1, 2007 to January 31, 2009. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Reports FR 08-0008 and FR 08-00042 and the exhibits and workpapers attached to said audit report.

VIOLATIONS

8.

In the course of activities described in Finding 5 and 6 above, and during the examination period described in Finding 7, Respondent WNSI acted in violation of the Code and the Regulations in that it:

- (a) caused, suffered, or permitted the balance of funds in the Trust Account to be reduced to an amount which, as of November 30, 2008, was approximately \$42,495.70 less than the aggregate liability of Respondent WNSI to all owners of such funds, without the prior written consent of each and every owner of such funds as required by Section 2832.1 of Title 10 of the California Code of Regulations (herein the "Regulations") and Section 10145(a) of the Code;
- (b) caused, suffered, or permitted the balance of funds in the Trust Account to be reduced to an amount which, as of January 1, 2009, was approximately \$39,688.00 less than the aggregate liability of Respondent WNSI to all owners of such funds, without the prior written consent of each and every owner of such funds as required by Section 2832.1 of the Regulations, and Section 10145(a) of the Code;

- (c) caused, suffered, or permitted the balance of funds in the Trust Account to be reduced to an amount which, as of November 30, 2008, was approximately \$3,586.00 less than the aggregate liability of Respondent WNSI to all owners of such funds, without the prior written consent of each and every owner of such funds as required by Regulation 2832.1;
- (d) caused, suffered, or permitted the balance of funds in the Trust Account to be reduced to an amount which, as of January 1, 2009, was approximately \$707.12 less than the aggregate liability of Respondent WNSI to all owners of such funds, without the prior written consent of each and every owner of such funds as required by Section 2832.1 of the Regulations;
- (e) allowed employee Laura C. Williams, unlicensed as of March 24, 2008, and not covered by a fidelity bond equal to the maximum amount of the trust funds to which LAURA C. WILLIAMS had access, to appear as a signatory on the Trust Account, in violation of Section 2834 of Title 10 the Regulations;
- (f) allowed Respondent WILLIAMS, unlicensed on February 23, 2009, and not covered by a fidelity bond equal to the maximum amount of the trust funds to which Respondent WILLIAMS had access, to appear as a signatory on the Trust Account, in violation of Section 2834 of the Regulations;
- (g) failed to reconcile, at least once a month, the balance of all separate beneficiary or transaction records with the record of all trust funds received into and disbursed from the Trust Account as required by Section 2831.2 of the Regulations;
- (h) failed to keep an accurate record in chronological sequence of all trust funds received and disbursed from the Trust Account containing all the information required by Section 2831 of the Regulations;
- (i) failed to keep accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into the Trust Account, containing all of the information required by Section 2831.1 of the Regulations;

- (j) failed to retain for three years, as required by Section 10148(a) of the Code, copies of all cancelled checks issued on the Trust Account in connection with transactions for which a real estate license is required;
- (k) caused, suffered or permitted money of others which was received and held by Respondents in the Trust Account to be commingled with Respondents' own money, in violation of Section 10176(e) of the Code;
- (l) on or about July 10, 2007, Respondents misrepresented to the owner of the property identified as 1069 Niblick Road, Paso Robles, California (hereinafter "the PROPERTY") that an earnest money deposit consisting of funds in the amount of \$5,000.00 were obtained from buyer TROY CANTRELL (hereinafter "BUYER") and were being held by Respondent WNSI when BUYER made the offer on the PROPERTY. The true facts were that Respondents had received no funds from BUYER when BUYER made the offer on the PROPERTY, such representation being in violation of Section 10176(a), 10176(b), and 10176(i) and 10177(g).

DETERMINATION OF ISSUES

1.

The conduct of Respondent WNSI as described in Findings 5 through 8 herein above, is in violation of Code Sections 10145, 10176(a), 10176(b), 10176(e), 10176(i) and 10177(g) and Title 10, Chapter 6, California Code of Regulations ("Regulations") 2831, 2831.1, 2831.2, 2832.1 and 2834, and is cause for disciplinary action pursuant to Code Section 10177(d).

2.

The conduct of Respondent WILLIAMS, as described in Finding 8(1), herein above, is cause for disciplinary action pursuant to Code Sections 10176(a), 10176(b), 10176(i) and 10177(g).

3.

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

ORDER

The real estate licenses and license rights of Respondents WEBBER NELSON & SMITH INC and JOSEPH CHARLES WILLIAMS 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 APR 16 2012, 2012

DATED: 3/14, 2012

BARBARA J. BIGBY
Acting Real Estate Commissioner



1 Department of Real Estate
2 320 West Fourth Street, Suite 350
3 Los Angeles, CA 90013

FILED

MAR 05 2012

DEPARTMENT OF REAL ESTATE
BY: James B. [Signature]

4
5
6
7
8 (213) 576-6982

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) NO. H-02499 FR
13)
14 WEBBER NELSON & SMITH INC.,) DEFAULT ORDER
15 CHARLES JOSEPH KELMIS, and)
16 JOSEPH CHARLES WILLIAMS,)
17 Respondents.)

18 Respondents WEBBER NELSON & SMITH INC., and JOSEPH
19 CHARLES WILLIAMS, having failed to file a Notice of Defense
20 within the time required by Section 11506 of the Government
21 Code, are now in default. It is, therefore, ordered that a
22 default be entered on the record in this matter.

23 IT IS SO ORDERED March 5, 2012

24 BARBARA J. BIGBY

Acting Real Estate Commissioner

25 BY: Dolores Weeks

26 DOLORES WEEKS

27 Regional Manager

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JAMES DEMUS, Counsel (SBN 225005)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

SEP 07 2011

DEPARTMENT OF REAL ESTATE
BY: *Shirley M. Davis*

Telephone: (213) 576-6982
(Direct) (213) 576-6910

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

| | | |
|------------------------------------|---|----------------------|
| In the Matter of the Accusation of |) | |
| |) | NO. H- 2499 FR |
| WEBBER NELSON & SMITH INC., |) | |
| CHARLES JOSEPH KELMIS, and |) | <u>FIRST AMENDED</u> |
| JOSEPH CHARLES WILLIAMS, |) | <u>ACCUSATION</u> |
| |) | |
| Respondents. |) | |

This Accusation amends the Accusations filed on July 12, 2010. The Complainant, LUKE MARTIN, in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against WEBBER NELSON & SMITH INC. (hereinafter "Respondent WNSI"), CHARLES JOSEPH KELMIS (hereinafter "Respondent KELMIS") and JOSEPH CHARLES WILLIAMS (hereinafter "Respondent WILLIAMS"), (collectively referred to herein as "Respondents"), is informed and alleges as follows:

1

Respondent WNSI is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereafter "the Code") as a corporate real estate broker acting by and through Respondent KELMIS as its designated broker officer.

1 2

2 At all times herein mentioned, Respondent WNSI conducted business under its own
3 licensed name and the registered DBA names "Fred J. Smith & Associates" and "Real Property
4 Management" associated with Respondent WNSI's corporate real estate broker license.

5 3

6 Respondent KELMIS is presently licensed by the Department of Real Estate
7 (hereafter "the Department") and/or has license rights under the Real Estate Law, Part 1 of Division
8 4 of the Code as a real estate broker.

9 4

10 At all times herein mentioned, Respondent KELMIS was licensed by the Department
11 as the designated broker/officer of Respondent WNSI. As the designated broker officer,
12 Respondent KELMIS was responsible, pursuant to Section 10159.2 of the Code, for the supervision
13 of the activities of the officers, agents, real estate licensees and employees of Respondent WNSI for
14 which a real estate license is required.

15 5

16 Respondent WILLIAMS is presently licensed by the Department and/or has license
17 rights under the Real Estate Law, Part 1 of Division 4 of the Code as a real estate salesperson.

18 6

19 Respondent WILLIAMS is a 50.0% owner of Respondent WNSI. LAURA C.
20 WILLIAMS (Real Estate Salesperson, License Expired March 24, 2008) is also 50.0% owner of
21 Respondent WNSI.

22 7

23 Whenever reference is made in an allegation in this Accusation to an act or omission
24 of Respondent WNSI, such allegation shall be deemed to mean that the officers, directors,
25 employees, agents and/or real estate licensees employed by or associated with Respondent WNSI
26 committed such act or omission while engaged in furtherance of the business or operations of
27 Respondent WNSI and while acting within the course and scope of their authority and employment.

At all times herein mentioned, Respondent WNSI engaged in the business of, acted in the capacity of, advertised, or assumed to act as a corporate real estate broker within the State of California on behalf of others, for compensation or in expectation of compensation within the meaning of:

- (a) Section 10131(a) of the Code, including the operation and conduct of a real estate brokerage that included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or exchange of real property or a business opportunity; and
- (b) Section 10131(b) of the Code in the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent WNSI leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

In so acting as a corporate real estate broker, as described in Paragraph 8, above, Respondent WNSI accepted or received funds in trust (hereinafter "trust funds") from or on behalf of sellers, buyers, borrowers, lenders, and others in connection with the sale of residential property, and thereafter from time to time made disbursements of said funds.

In so acting as a corporate real estate broker, as described in Paragraph 8, above, Respondent WNSI accepted or received trust funds from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time to time made disbursements of said funds.

1
2 The trust funds accepted or received by Respondent WNSI as described in
3 Paragraphs 9 and 10, above, were deposited or caused to be deposited by Respondent WNSI into a
4 bank account, maintained by Respondent WNSI for the handling of trust funds, and thereafter from
5 time-to-time Respondent WNSI made disbursements of said trust funds, identified as follows:
6 Heritage Oaks Bank, 545 12th Street, Paso Robles, California, Account No. 1009984, entitled
7 "Webber Nelson & Smith Inc. dba Real Property Mgmt-Trust Account" (hereinafter "Trust
8 Account"). The signatories on the Trust Account were Respondent KELMIS, Respondent
9 WILLIAMS and LAURA C. WILLIAMS (Real Estate Salesperson, License expired 03/24/2008) an
10 employee of Respondent WNSI.

11 AUDIT

12 12

13 On or about February 24, 2009 and continuing intermittently through April 9, 2009,
14 an audit was conducted at Respondent WNSI's office located at 1925 Spring Street, Paso Robles,
15 California, wherein the auditor examined Respondent's records for the period of January 1, 2007
16 through January 31, 2009 (hereinafter "the audit period").

17 FIRST CAUSE OF ACTION

18 Audit Violations

19 13

20 Each and every allegation in Paragraphs 1 through 12, inclusive, above, is
21 incorporated by this reference as if fully set forth herein.

22 14

23 In the course of the activities described in Paragraphs 8 through 11, above, and
24 within the audit period, Respondents:

- 25 (a) caused, suffered, or permitted the balance of funds in the Trust Account
26 to be reduced to an amount which, as of November 30, 2008, was
27 approximately \$42,495.70 less than the aggregate liability of Respondent

1 WNSI to all owners of such funds, without the prior written consent of
2 each and every owner of such funds as required by Section 2832.1
3 of Title 10 of the California Code of Regulations (herein the
4 "Regulations") and Section 10145(a) of the Code;

5 (b) caused, suffered, or permitted the balance of funds in the Trust Account
6 to be reduced to an amount which, as of January 1, 2009, was
7 approximately \$39,688.00 less than the aggregate liability of Respondent
8 WNSI to all owners of such funds, without the prior written consent of
9 each and every owner of such funds as required by Section 2832.1
10 of Title 10 of the Regulations, and Section 10145(a) of the Code;

11 (c) caused, suffered, or permitted the balance of funds in the Trust Account
12 to be reduced to an amount which, as of November 30, 2008, was
13 approximately \$3,586.00 less than the aggregate liability of Respondent
14 WNSI to all owners of such funds, without the prior written consent of
15 each and every owner of such funds as required by Section 2832.1
16 of Title 10 of the Regulations;

17 (d) caused, suffered, or permitted the balance of funds in the Trust Account
18 to be reduced to an amount which, as of January 1, 2009, was
19 approximately \$707.12 less than the aggregate liability of Respondent
20 WNSI to all owners of such funds, without the prior written consent of
21 each and every owner of such funds as required by Section 2832.1
22 of Title 10 of the Regulations;

23 (e) allowed employee LAURA C. WILLIAMS, unlicensed as of March 24,
24 2008, and not covered by a fidelity bond equal to the maximum amount
25 of the trust funds to which LAURA C. WILLIAMS had access, to appear
26 as a signatory on the Trust Account, in violation of Section 2834 of Title
27 10 the Regulations;

- 1 (f) allowed Respondent WILLIAMS, unlicensed on February 23, 2009, and
2 not covered by a fidelity bond equal to the maximum amount of the trust
3 funds to which Respondent WILLIAMS had access, to appear as a
4 signatory on the Trust Account, in violation of Section 2834 of Title 10
5 the Regulations;
- 6 (g) failed to reconcile, at least once a month, the balance of all separate
7 beneficiary or transaction records with the record of all trust funds
8 received into and disbursed from the Trust Account as required by
9 Section 2831.2 of Title 10 the Regulations;
- 10 (h) failed to keep an accurate record in chronological sequence of all trust
11 funds received and disbursed from the Trust Account containing all the
12 information required by Section 2831 of the Regulations;
- 13 (i) failed to keep accurate separate records for each beneficiary or
14 transaction, accounting therein for all funds which were deposited into
15 the Trust Account, containing all of the information required by Section
16 2831.1 of the Regulations;
- 17 (j) failed to retain for three years, as required by Section 10148(a) of the
18 Code, copies of all cancelled checks issued on the Trust Account in
19 connection with transactions for which a real estate license is required;
- 20 (k) caused, suffered or permitted money of others which was received and
21 held by Respondents in the Trust Account to be commingled with
22 Respondents' own money, in violation of Section 10176(e) of the Code;
- 23 (l) on or about July 10, 2007, Respondents misrepresented to the owner of
24 the property identified as 1069 Niblick Road, Paso Robles, California
25 (hereinafter "the PROPERTY") that an earnest money deposit consisting
26 of funds in the amount of \$5,000.00 were obtained from buyer TROY
27 CANTRELL (hereinafter "BUYER") and were being held by

1 Respondent WNSI when BUYER made the offer on the PROPERTY.

2 The true facts were that Respondents had received no funds from
3 BUYER when BUYER made the offer on the PROPERTY, such
4 representation being in violation of Section 10176(a), (b), and (i) and/or
5 10177(g) and/or (j);

6 15

7 The acts and/or omissions of Respondents as alleged in Paragraph 14, above, violate
8 Sections 2831 (Maintenance of Trust Fund Records), 2831.1 (Maintaining Separate Record for
9 Each Beneficiary or Transaction), 2831.2 (Trust Account Reconciliation), 2832 (Trust Fund
10 Handling), and 2834 (Trust Account Withdrawals) of the Regulations, and Sections 10145
11 (Handling of Trust Funds) and 10176(a) (Misrepresentation), 10176(b) (False Promise to Induce),
12 10176 (e) (Commingling of Funds) and 10176(i) (Fraud or Dishonest Dealing) and 10177(g)
13 (Negligence or Incompetence in Performing Licensed Act) and 10177(j) (Fraud or Dishonest
14 Dealing) of the Code.

15 16

16 The facts alleged in Paragraphs 14 and 15, above, are grounds for the suspension or
17 revocation of the licenses and license rights of Respondents under the provisions of the Code and/or
18 the Regulations noted above in conjunction with Section 10177(d) (Willful Disregard/Violation of
19 Real Estate Law) of the Code.

20 SECOND CAUSE OF ACTION

21 Negligence and/or Incompetence

22 17

23 Each and every allegation in Paragraphs 1 through 16, inclusive, above, is
24 incorporated by this reference as if fully set forth herein.

25
26 18
27

1 The acts and omissions of Respondents as described in Paragraphs 14 through 16,
2 above, constitute negligence or incompetence in performing acts requiring a real estate license, and
3 constitute cause under Section 10177(g) (Negligence/Incompetence) of the Code for suspension or
4 revocation of all licenses and license rights of Respondents.

5 THIRD CAUSE OF ACTION (as to Respondent KELMIS)

6 Failure to Supervise

7 19

8 Each and every allegation in Paragraphs 1 through 18, inclusive, above, is
9 incorporated by this reference as if fully set forth herein.

10 Monguio Transaction

11 20

12 On or about April 14, 2006, Ines Monguio hired WNSI d.b.a. "Real Property
13 Management" to provide property management services for her property located at 5380 Morning
14 Star Place, Paso Robles, CA, 93466 (hereinafter "property"). In April 2008, the tenants of the
15 property stopped paying rent. On October 27, 2008, Real Property Management, hired attorney
16 Frank Edward Kocs to pursue an unlawful detainer against the tenants. On or about November 25,
17 2008, Mr. Kocs secured a judgment against the tenants for \$14,191. Between June 19, 2009 and
18 July 12, 2010, Mr. Kocs collected \$10,287 from the garnished wages of the tenants, which he
19 turned over to Real Property Management. As of August 10, 2010, Real Property Management had
20 not returned any of the garnished wages to Ines Monguio.

21 Unpaid Property Management Funds

22 21

23 During the period when KELMIS was the designated officer of WNSI d.b.a. "Real
24 Property Management", WNSI failed to return rent money and/or security deposits due to multiple
25 property owners who had hired WNSI for property management services. The aggrieved property
26 owners include, but are not necessarily limited to, the following:
27

| Property Owner(s) | Property Involved | Amount Owed |
|----------------------------|---|---|
| Scott & Laura Cyr | 2951 Park Street, Paso Robles, CA | 2 months rent & deposit |
| Andrew Wise | 1405 Stony Creek, Paso Robles, CA | 2 months rent & deposit |
| Steve Benakovich | 5220 TrafficWay, Atascadero, CA | \$19,976 |
| Rafael Rojas | 1956 Willowbrook Lane, Paso Robles, CA | \$2,989 |
| James P. Gentry | 7270 Cortez Avenue, Atascadero, CA | \$1,800 |
| Dan Larsen | 812 & 908 Experimental Station Road, Paso Robles, CA | Unknown amount of unpaid rent |
| Josephine Brown | 458 San Jacinto Avenue, Atascadero, CA | \$2,300 |
| Shirley & Bill Peterson | 547 Sacagawea Court, Paso Robles, CA | A portion of 1 month's rent & entire deposit |

22

Respondent KELMIS, as the designated officer broker of Respondent WNSI, and supervising broker of Respondent WILLIAMS and LAURA C. WILLIAMS, was required to exercise reasonable supervision and control over the activities of Respondents WNSI, WILLIAMS and LAURA C. WILLIAMS. Respondent KELMIS failed to exercise reasonable supervision over the acts of Respondents WNSI, WILLIAMS and LAURA C. WILLIAMS in such a manner as to allow the acts and omissions on the part of Respondent WNSI, WILLIAMS and LAURA C. WILLIAMS as described above to occur, all in violation of Section 10159.2 of the Code (Responsibility of Corporate Officer) and Section 2725 (Failure to Exercise Reasonable Supervision) of the Regulations, and which constitute cause for suspension or revocation of all licenses and license rights of Respondent KELMIS under Code Section 10177(d) (Willful Disregard/Violation of Real Estate Law), Code. Section 10177(g) (Negligence and Incompetence) and Code Section 10177(h) (failure to exercise reasonable supervision).

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///

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

6 Dated at Fresno, California

7
8 this 31st day of August, 2011.
9

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12 _____
13 LUKE MARTIN
14 Deputy Real Estate Commissioner
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1 ANNETTE E. FERRANTE, Counsel (SBN 258842)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED

JUL 12 2010

DEPARTMENT OF REAL ESTATE

By K. Contreras

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 WEBBER NELSON & SMITH INC.,) NO. H- 2499 FR
13 CHARLES JOSEPH KELMIS, and) ACCUSATION
14 JOSEPH CHARLES WILLIAMS,)
15 Respondents.)

16
17 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy Real
18 Estate Commissioner of the State of California, for cause of Accusation against WEBBER
19 NELSON & SMITH INC. (hereinafter "Respondent WNSI"), CHARLES JOSEPH KELMIS
20 (hereinafter "Respondent KELMIS") and JOSEPH CHARLES WILLIAMS (hereinafter
21 "Respondent WILLIAMS"), (collectively referred to herein as "Respondents"), is informed and
22 alleges as follows:
23

24 RESPONDENTS

25 1

26 Respondent WNSI is presently licensed and/or has license rights under the Real
27 Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereafter "the Code") as a

1 corporate real estate broker acting by and through Respondent KELMIS as its designated broker
2 officer.

3 2

4 At all times herein mentioned, Respondent WNSI conducted business under its own
5 licensed name and the registered DBA names "Fred J. Smith & Associates" and "Real Property
6 Management" associated with Respondent WNSI's corporate real estate broker license.
7

8 3

9 Respondent KELMIS is presently licensed by the Department of Real Estate
10 (hereafter "the Department") and/or has license rights under the Real Estate Law, Part 1 of Division
11 4 of the Code as a real estate broker.

12 4

13 At all times herein mentioned, Respondent KELMIS was licensed by the Department
14 as the designated broker/officer of Respondent WNSI. As the designated broker officer,
15 Respondent KELMIS was responsible, pursuant to Section 10159.2 of the Code, for the supervision
16 of the activities of the officers, agents, real estate licensees and employees of Respondent WNSI for
17 which a real estate license is required.
18

19 5

20 Respondent WILLIAMS is presently licensed by the Department of Real Estate
21 (hereafter "the Department") and/or has license rights under the Real Estate Law, Part 1 of Division
22 4 of the Code as a real estate salesperson.
23

24 6

25 Respondent WILLIAMS is a 50.0% owner of Respondent WNSI. LAURA C.
26 WILLIAMS (Real Estate Salesperson, License Expired March 24, 2008) is also 50.0% owner of
27 Respondent WNSI.

1
2 Whenever reference is made in an allegation in this Accusation to an act or omission
3 of Respondent WNSI, such allegation shall be deemed to mean that the officers, directors,
4 employees, agents and/or real estate licensees employed by or associated with Respondent WNSI
5 committed such act or omission while engaged in furtherance of the business or operations of
6 Respondent WNSI and while acting within the course and scope of their authority and
7 employment.
8

9
10 At all times herein mentioned, Respondent WNSI engaged in the business of,
11 acted in the capacity of, advertised, or assumed to act as a corporate real estate broker within the
12 State of California on behalf of others, for compensation or in expectation of compensation within
13 the meaning of:
14

- 15 (a) Sections 10131(a) of the Code, including the operation and conduct of a real
16 estate brokerage that included the sale or offer of sale, purchase or offer of
17 purchase, solicitation of prospective sellers and purchasers of, solicitation or
18 obtaining listings of, or negotiations of the purchase, sale or exchange of real
19 property or a business opportunity; and
20
21 (b) Section 10131(b) of the Code in the operation and conduct of a property
22 management business with the public wherein, on behalf of others, for
23 compensation or in expectation of compensation, Respondent WNSI leased or
24 rented and offered to lease or rent, and placed for rent, and solicited listings of
25 places for rent, and solicited for prospective tenants of real property or
26 improvements thereon, and collected rents from real property or improvements
27 thereon.

1
2 In so acting as a corporate real estate broker, as described in Paragraph 8, above,
3 Respondent WNSI accepted or received funds in trust (hereinafter "trust funds") from or on behalf
4 of sellers, buyers, borrowers, lenders, and others in connection with the sale of residential property,
5 and thereafter from time to time made disbursements of said funds.
6

7
8 In so acting as a corporate real estate broker, as described in Paragraph 8, above,
9 Respondent WNSI accepted or received trust funds from or on behalf of owners and tenants in
10 connection with the leasing, renting, and collection of rents on real property or improvements
11 thereon, as alleged herein, and thereafter from time to time made disbursements of said funds.
12

13
14 The trust funds accepted or received by Respondent WNSI as described in
15 Paragraphs 9 and 10, above, were deposited or caused to be deposited by Respondent WNSI into a
16 bank account, maintained by Respondent WNSI for the handling of trust funds, and thereafter from
17 time-to-time Respondent WNSI made disbursements of said trust funds, identified as follows:
18 Heritage Oaks Bank, 545 12th Street, Paso Robles, California, Account No. 1009984, entitled
19 "Webber Nelson & Smith Inc. dba Real Property Mgmt-Trust Account" (hereinafter "Trust
20 Account"). The signatories on the Trust Account were Respondent KELMIS, Respondent
21 WILLIAMS and LAURA C. WILLIAMS (Real Estate Salesperson, License expired 03/24/2008) an
22 employee of Respondent WNSI.
23

24 AUDIT

25
26
27 On or about February 24, 2009 and continuing intermittently through April 9, 2009,
an audit was conducted at Respondent WNSI's office located at 1925 Spring Street, Paso Robles,

1 California, wherein the auditor examined Respondents' records for the period of January 1, 2007
2 through January 31, 2009 (hereinafter "the audit period").

3 FIRST CAUSE OF ACTION

4 Audit Violations

5 13

6 Each and every allegation in Paragraphs 1 through 12, inclusive, above, is
7 incorporated by this reference as if fully set forth herein.

8 14

9 In the course of the activities described in Paragraph 8 through 11, above, and within
10 the audit period, Respondents:

- 11
- 12 (a) caused, suffered, or permitted the balance of funds in the Trust Account to be
13 reduced to an amount which, as of November 30, 2008, was approximately
14 \$42,495.70 less than the aggregate liability of Respondent WNSI to all owners of
15 such funds, without the prior written consent of each and every owner of such funds
16 as required by Section 2832.1 of Title 10 of the California Code of Regulations
17 (herein the "Regulations") and Section 10145(a) of the Code;
- 18
- 19 (b) caused, suffered, or permitted the balance of funds in the Trust Account to be
20 reduced to an amount which, as of January 1, 2009, was approximately \$39,688.00
21 less than the aggregate liability of Respondent WNSI to all owners of such funds,
22 without the prior written consent of each and every owner of such funds as required
23 by Section 2832.1 of Title 10 of the Regulations, and Section 10145(a) of the Code;
- 24
- 25 (c) caused, suffered, or permitted the balance of funds in the Trust Account to be
26 reduced to an amount which, as of November 30, 2008, was approximately
27 \$3,586.00 less than the aggregate liability of Respondent WNSI to all owners of such

1 funds; without the prior written consent of each and every owner of such funds as
2 required by Section 2832.1 of Title 10 of the Regulations;

3 (d) caused, suffered, or permitted the balance of funds in the Trust Account to be
4 reduced to an amount which, as of January 1, 2009, was approximately \$707.12 less
5 than the aggregate liability of Respondent WNSI to all owners of such funds, without
6 the prior written consent of each and every owner of such funds as required by
7 Section 2832.1 of Title 10 of the Regulations;

8
9 (e) allowed employee LAURA C. WILLIAMS, unlicensed as of March 24, 2008, and not
10 covered by a fidelity bond equal to the maximum amount of the trust funds to which
11 LAURA C. WILLIAMS had access, to appear as a signatory on the Trust Account, in
12 violation of Section 2834 of Title 10 the Regulations;

13
14 (f) allowed Respondent WILLIAMS, unlicensed on February 23, 2009, and not covered by a
15 fidelity bond equal to the maximum amount of the trust funds to which Respondent
16 WILLIAMS had access, to appear as a signatory on the Trust Account, in violation of
17 Section 2834 of Title 10 the Regulations;

18
19 (g) failed to reconcile, at least once a month, the balance of all separate beneficiary or
20 transaction records with the record of all trust funds received into and disbursed from
21 the Trust Account as required by Section 2831.2 of Title 10 the Regulations;

22
23 (h) failed to keep an accurate record in chronological sequence of all trust funds received
24 and disbursed from the Trust Account containing all the information required by
25 Section 2831 of the Regulations;

26
27 (i) failed to keep accurate separate records for each beneficiary or transaction,
accounting therein for all funds which were deposited into the Trust Account,
containing all of the information required by Section 2831.1 of the Regulations;

1 (j) failed to retain for three years, as required by Section 10148(a) of the Code, copies of all
2 cancelled checks issued on the Trust Account in connection with transactions for which a
3 real estate license is required;

4 (k) caused, suffered or permitted money of others which was received and held by
5 Respondents in the Trust Account to be commingled with Respondents' own money,
6 in violation of Section 10176(e) of the Code;

7
8 (l) on or about July 10, 2007, Respondents misrepresented to the owner of the property
9 identified as 1069 Niblick Road, Paso Robles, California (hereinafter "the
10 PROPERTY") that an earnest money deposit consisting of funds in the amount of
11 \$5,000.00 were obtained from buyer TROY CANTRELL (hereinafter "BUYER")
12 and were being held by Respondent WNSI when BUYER made the offer on the
13 PROPERTY. The true facts were that Respondents had received no funds from
14 BUYER when BUYER made the offer on the PROPERTY, such representation
15 being in violation of Section 10176(a), (b), and (i) and/or 10177(g) and/or (j);
16

17 15

18 The acts and/or omissions of Respondent as alleged in Paragraph 14, above, violate
19 Sections 2831 (Maintenance of Trust Fund Records), 2831.1 (Maintaining Separate Record for Each
20 Beneficiary or Transaction), 2831.2 (Trust Account Reconciliation), 2832 (Trust Fund Handling),
21 and 2834 (Trust Account Withdrawals) of the Regulations, and Sections 10145 (Handling of Trust
22 Funds) and 10176(a) (Misrepresentation), 10176(b) (False Promise to Induce), 10176 (e)
23 (Commingling of Funds) and 10176(i) (Fraud or Dishonest Dealing) and 10177(g) (Negligence or
24 Incompetence in Performing Licensed Act) and 10177(j) (Fraud or Dishonest Dealing) of the Code.
25

26 ///

27 ///

1
2 The facts alleged in Paragraphs 14 and 15, above, are grounds for the suspension or
3 revocation of the licenses and license rights of Respondent under the provisions of the Code and/or
4 the Regulations noted above in conjunction with Section 10177(d) (Willful Disregard/Violation of
5 Real Estate Law) of the Code.

6 SECOND CAUSE OF ACTION

7
8 Negligence and/or Incompetence

9
10 Each and every allegation in Paragraphs 1 through 16, inclusive, above, is
11 incorporated by this reference as if fully set forth herein.

12
13 The acts and omissions of Respondents as described in Paragraphs 14 through 16,
14 above, constitute negligence or incompetence in performing acts requiring a real estate license, and
15 constitute cause under Section 10177(g) (Negligence/Incompetence) of the Code for suspension or
16 revocation of all licenses and license rights of Respondents.

17
18 THIRD CAUSE OF ACTION (as to Respondent KELMIS)

19 Failure to Supervise

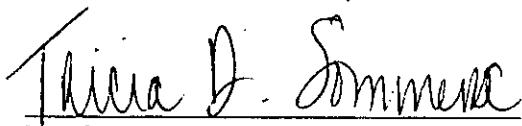
20
21 Each and every allegation in Paragraphs 1 through 18, inclusive, above, is
22 incorporated by this reference as if fully set forth herein.

23
24 Respondent KELMIS, as the designated officer broker of Respondent WNSI, and
25 supervising broker of Respondent WILLIAMS and LAURA C. WILLIAMS, was required to
26 exercise reasonable supervision and control over the activities of Respondent WILLIAMS and
27

1 LAURA C. WILLIAMS. Respondent KELMIS failed to exercise reasonable supervision over the
2 acts of Respondent WILLIAMS and LAURA C. WILLIAMS in such a manner as to allow the acts
3 and omissions on the part of Respondent WILLIAMS and LAURA C. WILLIAMS as described
4 above to occur, all in violation of Section 10177(g) (Negligence/Incompetence) of the Code and
5 Section 2725 (Failure to Exercise Reasonable Supervision) of the Regulations, and which
6 constitute cause for suspension or revocation of all licenses and license rights of Respondent
7 KELMIS under Section 10177(d) (Willful Disregard/Violation of Real Estate Law) of the Code.
8

9 PRAYER

10 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of
11 this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action
12 against all licenses and license rights of all Respondents named herein under the Real Estate Law
13 (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as
14 may be proper under other provisions of law.
15

16
17 
18 TRICIA D. SOMMERS
19 Deputy Real Estate Commissioner

20 Dated at Sacramento, California

21 this 12th day of July, 2010.
22
23
24
25
26
27