

FILED

MAR - 3 2011

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	
BILLY STUART LYNN,)	NO. H-2513 FR
)	
Respondent.)	
_____)	

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 February 17, 2011, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

1

On August 2, 2010, Luke Martin made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent BILLY STUART LYNN (LYNN), and Notice of Defense were mailed, by certified mail, to Respondent's last known mailing address on file with the Department on August 3, 2010.

On February 17, 2011, No Notice of Defense having been received, LYNN's default was entered herein.

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FIRST CAUSE OF ACTION

2

LYNN 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 (the Code) as a real estate broker.

3

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business wherein Respondent leased, rented, or offered to lease or rent, solicited listings for rent, collected rents from tenants or lessees, or performed other services for real property owners and tenants or lessees, all for or in expectation of compensation.

4

Beginning on November 19, 2008, and continuing intermittently through February 25, 2009, an Audit was conducted at LYNN's business for the period of August 1, 2007 through July 31, 2008 (the audit period).

5

While acting as a real estate broker as described in Paragraph 2, above, and within the audit period, LYNN accepted or received funds in trust (trust funds) from or on behalf of lenders, investors, borrowers and others in connection with the mortgage loan brokerage activities, deposited or caused to be deposited those funds into a bank accounts at Washington Mutual Bank, N. A., 329 Kern Street, Taft, California 93269 including: 1) Trust #1, designated "Bill Lynn Properties, Inc. (Trust Account), Account No. 934-117865-9, 2) Trust #2, designated "Bill Lynn Properties, Inc.", Account No. 442-135111-7 and 3) Account #2, designated "Bill Lynn Properties, Inc.", Account No. 934-117861-7, and thereafter from time to time made disbursement of said trust funds.

6

In the course of the activities described in Paragraph 2, in connection with the collection and disbursement of trust funds, LYNN:

- (a) Failed to designate Trust #2 as a trust account as required by Section 2832 of Chapter 6, Title 10, California Code of Regulations (Regulations);

- (b) Allowed Joyce Lynn and Tim Hubble, who were unlicensed and unbonded persons, to withdraw trust funds in violation of Section 2834 of the Regulations;
- (c) Trust Fund Accountability was established for Trust #1 and as of July 31, 2008, a shortage of \$49,557.15 was discovered, in violation of Section 10145 of the Code;
- (d) Failed to obtain the written consent of every owner of trust funds to allow the balance of the trust account to fall to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds in violation of Section 2832.1 of the Regulations;
- (e) Deposited his own funds into Trust #1 and left his management fees in Trust #1 to cure some of the shortages, thereby commingling funds in violation of Section 2835 of the Regulations;
- (f) Failed to maintain a record of all trust funds received and disbursed for Trust #1 and Trust #2 as required by Section 2831 of the Regulations;
- (g) Failed to maintain separate beneficiary records for Trust #1 and Trust #2 as required by Section 2831.1 of the Regulations and
- (h) Failed to perform monthly reconciliations comparing the balance of the control records to the total balance of the beneficiary records for Trust #1 and Trust #2 as required by Section 2831.2 of the Regulations.

SECOND CAUSE OF ACTION

7

Bruce and Dana Russell (Russells), Frank Wong (Wong) and Marlene Gill (Gill), each entered into property management contracts with Tower Property Management (Tower) to manage their respective properties as set forth below:

<u>Owner</u>	<u>Address of Rental</u>
Russells	216-4 th Street, Taft
Wong	509/511 Philippine Street, Taft
Gill	150 Harding Avenue, Taft

///

///

On August 1, 2007, when LYNN assumed ownership of Tower, in order to induce Tower's clients to allow him to assume their contracts, LYNN represented to owners, including, but not limited to those set forth above, that he would continue to perform property management duties, including, but not limited to, collecting, depositing and disbursing rents to them.

LYNN failed to deposit rent checks into a trust account on behalf of owners for each of the respective properties and months as set forth below:

<u>Owner</u>	<u>Address of Rental</u>	<u>Months</u>
Russells	216-4 th Street, Taft	08/07, 09/07 and 10/07
Wong	509/511 Philipine Street, Taft	05/08 and 06/08
Gill	150 Harding Avenue, Taft	06/08 and 07/08

Despite his duty to do so and the requests of each of the owners, LYNN has failed to disburse any of the rent as set forth above, to the respective owners.

LYNN's representations as described, above, were false or misleading and were known by LYNN to be false or misleading when made or were made by LYNN with no reasonable grounds for believing said representation to be true. In truth and in fact, LYNN knew that he would use the rent proceeds for himself or other purposes; and not deposit them into trust or disburse them to owners.

DETERMINATION OF ISSUES

The above acts and/or omissions of Respondent LYNN as alleged above violate Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2834 and 2835 of the Regulations and Sections 10145, 10176(e) and 10176(i) of the Code and are grounds for suspension or revocation of his real estate broker license under the provisions of Sections 10176(e), 10176(i), 10177(d) and 10177(g) of the Code.

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

ORDER

All licenses and licensing rights of BILLY STUART LYNN, under the provisions of Part I of Division 4 of the Business and Professions Code, are revoked.

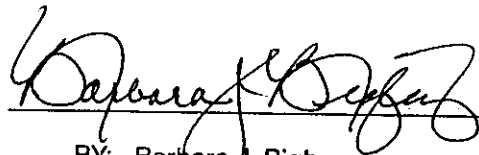
Respondent BILLY STUART LYNN is ordered to pay the Department the cost of audit Nos. FR 070042 and FR 080036, which is \$6,872.42 on or before the effective date of this Decision.

This Decision shall become effective at 12 o'clock noon on

MAR 24 2011

DATED: 2/28, 2011

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

FEB 17 2011

DEPARTMENT OF REAL ESTATE

By K. Max

9 BEFORE THE
10 DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of

14 BILLY STUART LYNN,

15 Respondent.

No. H-2513 FR

DEFAULT ORDER

16
17 Respondent, BILLY STUART LYNN, having failed to file a Notice of Defense
18 within the time required by Section 11506 of the Government Code, is now in default. It is,
19 therefore, ordered that a default be entered on the record in this matter.

20 IT IS SO ORDERED February 16, 2011.

21 JEFF DAVI
22 Real Estate Commissioner

23
24 By:

Phillip Hilde
25 PHILLIP HILDE
26 Northern Regional Manager
27

1 RICHARD K. UNO, COUNSEL (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 (916) 227-2380 (Direct)

FILED

AUG - 3 2010

DEPARTMENT OF REAL ESTATE

By A. Mar

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

10 * * *

11 In the Matter of the Accusation of

12 BILLY STUART LYNN,

13 Respondent.
14

No. H-2513 FR

ACCUSATION

15
16 The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of
17 the State of California for cause of Accusation against BILLY STUART LYNN (LYNN), is
18 informed and alleges as follows:

19 1

20 The Complainant makes this Accusation in his official capacity.

21 2

22 At all times mentioned herein, LYNN was licensed by the Department as a real
23 estate broker.

24 3

25 At all times mentioned, Respondent engaged in the business of, acted in the
26 capacity of, advertised or assumed to act as a real estate broker in the State of California, within
27 the meaning of Section 10131(b) of the Code, including the operation and conduct of a property

1 management business wherein Respondent leased, rented, or offered to lease or rent, solicited
2 listings for lease or rent, collected rents from tenants or lessees, or performed other services for
3 real property owners and tenants or lessees, all for or in expectation of compensation.

4 FIRST CAUSE OF ACTION

5 4

6 Beginning on or about November 19, 2008 and intermittently through
7 February 25, 2009, the Department conducted an audit of LYNN's property management
8 business for the period of August 1, 2007 to July 31, 2008 as set forth in Audits No. FR-070042
9 and No. FR080036, dated February 25, 2009. During the course of the property management
10 activities described in Paragraph 3, Respondent received and disbursed funds held in trust on
11 behalf of others.

12 5

13 The following facts were ascertained by the audit for the period referred to above:

14 a. LYNN maintained three bank accounts at Washington Mutual Bank, N. A.,
15 329 Kern Street, Taft, California 93268:

16 (1) Trust #1 was designated as the "Bill Lynn Properties Inc. (Trust Account)",
17 Account No. 934-117865-9;

18 (2) Trust #2 was designated as the "Bill Lynn Properties Inc.", Account
19 No. 442-135111-7;

20 (3) Account #2 was designated as the "Bill Lynn Properties Inc.," Account
21 No. 934-117861-7.

22 b. Trust #1 and Trust #2 were used for property management activities. Account
23 #1 was used for business purposes. Deposits consisted of rents and security deposits collected
24 from tenants. Disbursements consisted of payments for expenses related to the properties
25 managed, remittances to owners and to LYNN for management fees;

26 c. LYNN failed to have Trust #2 designated as a trust account as required by
27 Section 2832 of the Regulations;

1 d. LYNN allowed Joyce Lynn and Tim Hubble, who were unlicensed and
2 unbonded persons, to withdrawal trust funds in violation of Section 2834 of the Regulations;

3 e. Trust Fund Accountability was established for Trust #1 and as of July 31, 2008
4 a shortage of \$49,557.15 was discovered, in violation of Section 10145 of the Code;

5 f. LYNN failed to obtain the written consent of every owner of trust funds to
6 allow the balance of the trust account to fall to an amount less than the existing aggregate trust
7 fund liability of the broker to all owners of the funds in violation of Section 2832.1 of the
8 Regulations. After discovery, LYNN failed to notify owners of the trust funds of the trust
9 account shortages;

10 g. LYNN deposited his own funds into the Trust #1 and left his management fees
11 in Trust #1 to cure some of the shortages, thereby commingling funds in violation of Section
12 2835 of the Regulations;

13 h. LYNN failed to maintain a record of all trust funds received and disbursed for
14 Trust #1 and Trust #2 as required by Section 2831 of the Regulations;

15 i. LYNN failed to maintain separate beneficiary records for Trust #1 and
16 Trust #2 as required by Section 2831.1 of the Regulations and;

17 j. LYNN failed to perform the required monthly reconciliations comparing the
18 balance of the control records to the total balance of the beneficiary records for Trust #1 and
19 Turst #2, as required by Section 2831.2 of the Regulations.

20 6

21 The acts and omissions of Respondent LYNN described in Paragraph 5, above,
22 constitute violations of Sections 2831 (Control Records), 2831.1 (Separate Beneficiary Records),
23 2831.2 (Monthly Reconciliations), 2832 (Trust Fund Designation), 2832.1 (Written Consent
24 Trust Fund Owners), 2834 (Trust Fund Signatories) and 2835 (Commingling) of the Regulations
25 and Sections 10145 (Trust Fund Handling) and 10176(e) (Commingling) of the Code and
26 constitute grounds for disciplinary action under Sections 10176(e) (Commingling), 10177(d)

27 ///

1 (Willful Disregard/Violation of Real Estate Law) and 10177(g) (Negligence/Incompetence Real
2 Estate Licensee) of the Code.

3 SECOND CAUSE OF ACTION

4 7

5 Complainant refers to Paragraphs 1 through 6, above, and incorporates them
6 herein by reference.

7 8

8 Bruce and Dana Russell (Russells), Frank Wong (Wong) and Marlene Gill (Gill),
9 each entered into property management contracts with Tower Property Management (Tower) to
10 manage their respective properties as set forth below:

11 <u>Owner</u>	12 <u>Address of Rental</u>
13 Russells	216-4 th Street, Taft
14 Wong	509/511 Philippine Street, Taft
15 Gill	150 Harding Avenue, Taft

16 9

17 On August 1, 2007, when LYNN assumed ownership of Tower, in order to induce
18 Tower's clients to allow him to assume their contracts, LYNN represented to owners, including,
19 but not limited to those set forth in Paragraph 8, above, that he would continue to perform
20 property management duties, including, but not limited to, collecting, depositing and disbursing
21 rents to them.

22 10

23 LYNN failed to deposit rent checks into a trust account on behalf of owners for
24 each of the respective properties and months as set forth below:

25 <u>Owner</u>	26 <u>Address of Rental</u>	27 <u>Months</u>
Russells	216-4 th Street, Taft	08/07, 09/07 and 10/07
Wong	509/511 Philippine Street, Taft	05/08 and 06/08
Gill	150 Harding Avenue, Taft	06/08 and 07/08
///		

Despite his duty to do so and the requests of each of the owners, LYNN has failed to disburse any of the rent as set forth in Paragraph 10, above, to the respective owners.

LYNN's representations as described in Paragraph 8, above, were false or misleading and were known by LYNN to be false or misleading when made or were made by LYNN with no reasonable grounds for believing said representation to be true. In truth and in fact, LYNN knew that: he would use the rent proceeds for himself or other purposes and not deposit them in trust or disburse them to owners.

The above acts and/or omissions of LYNN violate Sections 2832 (Trust Fund Handling), 2835 (Commingling) of the Regulations and Sections 10145 (Trust Fund Handling), 10176(e) (Commingling), 10176(i) (Fraud/Dishonest Dealing) of the Code and constitute grounds for disciplinary action under the provisions of Sections 10176(e), 10176(i), 10177(d) (Willful Disregard/Violation of Real Estate Law) and 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

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 license rights of Respondents, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under the provisions of law.



LUKE MARTIN
Deputy Real Estate Commissioner

Dated at Fresno California,

this 2nd day of August, 2010.