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FILED

JAN 25 2013

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
)
JOHN RAYMOND NEWTON, and)
VICKI DENESE PURCELL,)
)
Respondents.)

No. H-2622 FR

SECOND AMENDED
ACCUSATION

The Complainant, BRENDA SMITH, in her official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Second Amended Accusation against JOHN RAYMOND NEWTON and VICKI DENESE PURCELL (collectively referred to herein as "Respondents"), is informed and alleges as follows:

1

Respondent JOHN RAYMOND NEWTON (hereinafter "NEWTON") is presently licensed by the Department of Real Estate (hereinafter the "Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter the "Code") as a real estate broker. Respondent VICKI DENESE PURCELL (hereinafter "PURCELL") is presently licensed by the Department and/or has license rights under the Code as a real estate salesperson.

On or about May 18, 2002, NEWTON PROPERTY MANAGEMENT INC (hereinafter "NPMI") was issued a corporate broker license by the Department wherein NEWTON was the designated officer/broker. NEWTON remained the designated officer/broker until approximately May 17, 2010.

As the designated officer/broker, NEWTON was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of NPMI for which a real estate license is required to ensure the compliance of the corporation with the Real Estate Law and Title 10 of the California Code of Regulations (hereinafter the "Regulations").

Whenever reference is made in an allegation in this Second Amended Accusation to an act or omission of NPMI, such allegation shall be deemed to mean that the officers, employees, agents, real estate licensees, and others employed by or associated with NPMI committed such act or omission while engaged in furtherance of the business or operations of NPMI and while acting within the course and scope of their authority and employment.

At all times mentioned herein, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California, within the meaning of:

Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, and for compensation or in expectation of compensation. Respondents leased or rented, or offered to lease or rent places for rent, or solicited listings of places for rent or solicited for prospective tenants, or negotiated the sale, purchase or exchange of leases on real property, or on a business opportunity, or collected rents from tenants.

1 FIRST CAUSE OF ACTION

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3 Each and every allegation in Paragraphs 1 through 5, inclusive, is incorporated by
4 reference as if fully set forth herein.

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6 Beginning on January 14, 2010 and continuing intermittently until July 9, 2010,
7 an audit was conducted by the Department of Respondents' main office location at
8 1629 Howard Road in Madera, California, wherein the auditor examined Respondents' records
9 for the period of January 1, 2010 through June 1, 2010 (hereinafter the "audit period").

10 8

11 While acting as a real estate broker as described in Paragraph 5, and within the
12 audit period, Respondents accepted or received funds in trust (hereinafter "trust funds") from or
13 on behalf of lessees, tenants, prospective tenants, or from the negotiation of sale, purchase, or
14 exchange of leases on real property, or on a business opportunity, or from the collection of rents
15 from real property or improvements thereon, or from business opportunities, for or in expectation
16 of compensation, as alleged herein, and thereafter from time-to-time made disbursements of said
17 trust funds.

18 9

19 The trust funds accepted or received by Respondents as described in Paragraph 8
20 were deposited or caused to be deposited by Respondents into two (2) bank accounts which were
21 maintained by Respondents for the handling of trust funds, and thereafter from time-to-time
22 Respondents made disbursements of said trust funds, identified as follows:

23

BANK ACCOUNT # 1	
24 Bank Name and Location:	Central Valley Community Bank, 1919 Howard Road, Madera, California 93637
25 Account No. (Last 4 Digits):	1002
26 Entitled:	"Vicki Purcell dba Newton Property Management 27 Purcell Trust Account"

Signatories:	John Raymond Newton, Arvilla Bayless, Vicki Denese Purcell, and Gerald L. Purcell.
Purpose:	Maintained to handle trust funds related to property management activities only. Note Gerald L. Purcell was neither licensed nor bonded as to this account during the audit period.

BANK ACCOUNT # 2	
Bank Name and Location:	Central Valley Community Bank, 1919 Howard Road, Madera, California 93637
Account No. (Last 4 Digits):	0987
Entitled:	"Vicki Purcell dba Newton Property Management Purcell Trust Account"
Signatories:	John Raymond Newton, Arvilla Bayless, Vicki Denese Purcell, and Gerald L. Purcell.
Purpose:	Maintained to handle trust funds related to property management activities only. Note Gerald L. Purcell was neither licensed nor bonded as to this account during the audit period.

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In the course of the activities described in Paragraph 4 and within the audit period,

Respondents:

(a) caused, suffered, or permitted the balance of trust funds in Bank Account #1 to be reduced to an amount which, as of May 31, 2010, was approximately \$27,939.65 less than the aggregate liability of Bank Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145(a) of the Code and Section 2832.1 of the Regulations;

(b) caused, suffered, or permitted the balance of trust funds in Bank Account #2 to be reduced to an amount which, as of May 31, 2010, was approximately \$4,257.76 less than the aggregate liability of Bank Account #2 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145(a) of the Code and Section 2832.1 of the Regulations;

1 (c) failed to maintain complete and accurate records of all trust funds received
2 and disbursed (hereinafter referred to as the "control record") for Bank Account #2, resulting in
3 the discovery of unidentified and unaccounted funds amounting to \$17,734.07, in violation of
4 Section 10145(g) of the Code and Section 2831 of the Regulations;

5 (d) failed to maintain complete and accurate records of the control record for
6 Bank Accounts #1 and #2, including, but not limited to information identifying the owners, dates
7 and check numbers of disbursements and a running balance after the posting of transactions, in
8 violation of Section 10145(g) of the Code and Section 2831 of the Regulations;

9 (e) failed to perform and maintain reconciliations of the total of separate
10 beneficiary records with a control record on at least a monthly basis for Bank Accounts #1 and
11 #2, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;

12 (f) failed to properly designate Bank Accounts #1 and #2 as trust accounts in
13 the name of broker NEWTON as trustee, in violation of Section 10145(a)(1) of the Code and
14 Section 2832 of the Regulations;

15 (g) provided signatory authority to an unlicensed individual, Gerald L. Purcell,
16 as to both Bank Account #1 and #2, and failed to obtain a fidelity bond in an amount at least
17 equal to the maximum amount of the trust funds to which the unlicensed Gerald L. Purcell had
18 access, in violation of Section 10145 of the Code and Section 2834 of the Regulations; and

19 (h) operated the real estate business under the fictitious business name of
20 "Purcell Property Management" without obtaining a license bearing said fictitious business
21 name, in violation of Section 10145 of the Code and Section 2731 of the Regulations.

22 11

23 The acts and/or omissions of Respondents as alleged in Paragraph 10 violate
24 Sections 10145 of the Code, and Sections 2731, 2831, 2832, 2832.1, and 2834 of the
25 Regulations, and are grounds for discipline under Sections 10177(d) and/or 10177(g) of the
26 Code.

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1 (hereinafter "Application"). Declarations contained in the Application included representations
2 that the corporation was currently in good legal standing with the Office of the Secretary of State;
3 that it remained in the same name; a listing of the current corporation mailing and corporation
4 main office addresses; and indication that the corporation engaged in property management
5 during the past 12 months. As a result, renewal was granted by the Department as to NPMI and
6 NEWTON.

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8 Discovery was made, by the Department, of the activities described in Paragraphs
9 15 and 16 during the audit period of approximately January 14, 2010 through July 9, 2010.

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11 In the course of the activities described in Paragraphs 15 and 16, Respondents:

12 (a) procured, or attempted to procure, a real estate license or license renewal,
13 for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a
14 material misstatement of fact in an application for a real estate license, license renewal, or
15 reinstatement, in violation of Section 10177(a) of the Code and Section 2742(c) of the
16 Regulations;

17 (b) engaged in the business of a real estate broker while not in good legal
18 standing with the Office of the Secretary of State, in violation of Section 10177(d) of the Code
19 and Section 2742(c) of the Regulations;

20 (c) engaged in conduct, whether of the same or a different character than
21 specified in this section, that constitutes fraud or dishonest dealing, in violation of Section
22 10177(j) of the Code; and

23 (d) demonstrated negligence or incompetence in performing an act for which he
24 or she is required to hold a license, in violation of Section 10177(g) of the Code.

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26 The acts and/or omissions of Respondents as alleged in Paragraph 18 violate
27 Sections 10177(a) and 10177(c) of the Code, and Section 2742(c) of the Regulations, and are

1 grounds for discipline of Respondents' real estate license and license rights under Section
2 10177(a), (c) and (d) and/or 10177(g) of the Code.

3 THIRD CAUSE OF ACTION

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5 Each and every allegation in Paragraphs 1 through 19, inclusive, is incorporated
6 by reference as if fully set forth herein.

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8 Respondent PURCELL has at no time held a real estate broker license issued by
9 the Department. PURCELL was licensed as a real estate salesperson from approximately June 3,
10 2000 through June 1, 2010, such license currently set to expire effective June 12, 2015. From the
11 onset of her employment with NPMI in 2002 until at least June 10, 2010, PURCELL was
12 designated as a licensed salesperson under NPMI's corporate broker license, as opposed to under
13 NEWTON's personal broker license.

14 22

15 PURCELL purports to have purchased the assets of NPMI from NEWTON in
16 2002, and knew or should have known that NPMI was no longer incorporated or in good legal
17 standing with the Secretary of State effective October 18, 2005. Between NPMI's corporate
18 dissolution on October 18, 2005 and up to and including the conclusion of the Department's
19 audit period of July 19, 2010, PURCELL had no designated employing broker.

20 23

21 In the course of the activities described in Paragraphs 21 and 22, PURCELL:

22 (a) engaged in the business of, acted in the capacity of, advertised or assumed to
23 act as a real estate broker without first obtaining a real estate license from the Department, in
24 violation of Sections 10130 and 10131 of the Code, and Section 2740 of the Regulations.

25 24

26 The acts and/or omissions of PURCELL as alleged in Paragraph 23 violate
27 Sections 10130 and 10131 of the Code, Section 2740 of the Regulations, and are grounds for

1 discipline of PURCELL'S real estate license and license rights under Section 10177(d) and/or
2 10177(g) of the Code.

3 FOURTH CAUSE OF ACTION

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5 Each and every allegation in Paragraphs 1 through 24, inclusive, is incorporated
6 by reference as if fully set forth herein.

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8 As the designated officer/broker for NPML, NEWTON was responsible for the
9 supervision and control of the activities conducted on behalf of NPML by its officers and
10 employees. NEWTON failed to exercise reasonable supervision and control over the property
11 management activities of NPML. In particular, NEWTON permitted, ratified and/or caused the
12 conduct described in the First, Second, and Third Causes of Action to occur, and failed to take
13 reasonable steps, including, but not limited to, the handling of trust funds, supervision of
14 employees and the implementation of policies, rules, procedures and systems to ensure the
15 compliance of the corporation with the Real Estate Law and the Regulations.

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17 The acts and/or omissions of NEWTON set forth in Paragraph 26 violate
18 Section 10159.2 of the Code and Section 2725 of the Regulations, and are grounds for
19 disciplinary action under Sections 10177(d) and/or 10177(g) and 10177(h) of the Code.

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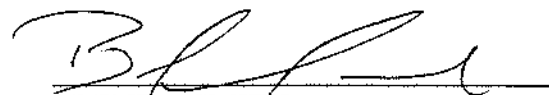
21 COST RECOVERY

22 The acts and/or omissions of Respondents as alleged in Paragraph 10 entitle the
23 Department to reimbursement of the costs of its audit pursuant to Section 10148 of the Code, in
24 conjunction with Section 10145 of the Code.

25 Section 10106 of the Code provides, in pertinent part, that in any order issued in
26 resolution of a disciplinary proceeding before the Department, the Commissioner may request
27 the Administrative Law Judge to direct a licensee found to have committed a violation of this

1 part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
2 case.

3 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
4 of this Second Amended Accusation and that upon proof thereof, a decision be rendered
5 revoking all licenses and license rights of all Respondents named herein under the Real Estate
6 Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation
7 and enforcement as permitted by law, and for such other and further relief as may be proper
8 under the provisions of law.

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12 BREND A SMITH
13 Deputy Real Estate Commissioner
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16 Dated at Fresno, California,

17 this 23 day of January, 2013.
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