

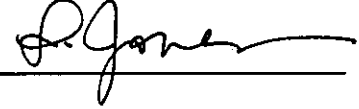
FILED

October 11, 2011

KENNETH C. ESPELL, (SBN 178757)
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P. O. Box 187007
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DEPARTMENT OF REAL ESTATE

By



Telephone: (916) 227-0789
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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
FIRST AMENDED
ACCUSATION

The Complainant, LUKE MARTIN, in his official capacity as Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JOHN RAYMOND NEWTON (hereinafter "NEWTON") and VICKI DENESE PURCELL (hereinafter "PURCELL"), (collectively "Respondents") is informed and alleges as follows:

THE RESPONDENTS

1

At all times relevant herein, Respondents NEWTON and PURCELL were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code").

2

At all times herein mentioned, NEWTON was and now is licensed by the Department as a real estate broker. Until May 18, 2010, NEWTON was the Designated

1 Officer/Broker of Newton Property Management, Inc. (hereinafter "NPM"). Despite knowing
2 that NPM had dissolved in 2005, NEWTON renewed his Designated Officer/Broker license for
3 NPM in 2006.. At no time until May 2010 did the Department of Real Estate (hereinafter
4 "Department") learn that NPM had dissolved.

5 3

6 Whenever reference is made in an allegation in this Accusation to an act or
7 omission of NEWTON, such allegation shall be deemed to mean that NEWTON, his employees,
8 agents and/or real estate licensees employed by or associated with NEWTON while acting within
9 the course and scope of their authority and employment with NEWTON and committed such act
10 or omission in the furtherance of the business or operations of NEWTON.

11 4

12 At all times herein mentioned, NEWTON and PURCELL engaged in the business
13 of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of
14 California (a) within the meaning of Sections 10131(a) and 10131(b) of the Code (Broker
15 defined), including the operation of a property management business with the public wherein, on
16 behalf of others, for compensation or in expectation of compensation, NEWTON and PURCELL
17 leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places
18 for rent, and solicited for prospective tenants of real property or improvements thereon, and
19 collected rents for the real property or improvements thereon.

20 5

21 On or about May 18, 2002, Newton Property Management, Inc. was issued a
22 corporate broker license by the Department. Despite representations to the Secretary of State
23 and the Department to the contrary, since at least 2002, PURCELL has been the actual owner
24 and the alter ego of NPM, Newton Property Management and/or Newton Property Management
25 Company d.b.a. Newton Property Apt. Rentals. On or about May 18, 2005, NPM dissolved and
26 is no longer a California Corporation in good standing with the California Secretary of State. At
27 all times since May 18, 2005, NPM was not authorized to conduct business in the state of

1 California. Since 2005, PURCELL has operated Newton Property Management and/or Newton
2 Property Management Company d.b.a. Newton Property Apt. Rentals out of the former business
3 address of NPM: 1629 Howard Road, Madera, California. Despite the dissolution of NPM in
4 2005, on May 10, 2006, Newton submitted his *Officer Renewal Application* for NPM to the
5 Department indicating under penalty of perjury that the corporation was in good standing with
6 the California Secretary of State when, in fact, NEWTON knew or should have known that the
7 corporation had dissolved in 2005.

8 6

9 Between approximately June 3, 2000, and June 1, 2010, PURCELL was licensed
10 by the Department as a real estate salesperson. According to PURCELL, in 2002 PURCELL
11 became the owner of NPM and directed that NPM incorporate with NEWTON as its
12 Officer/Broker. At no time prior to June 2011 has PURCELL been employed under NEWTON's
13 personal real estate broker license, but was solely employed by NPM until it was dissolved at the
14 direction of PURCELL in 2005. Despite NPM being dissolved, NEWTON renewed NPM's
15 Corporate Broker license in 2006 which eventually expired in 2010. Between 2005 and May 18,
16 2010 PURCELL continued to be a putative employee of the dissolved NPM. On June 1, 2010,
17 PURCELL's real estate salesperson license expired; however, PURCELL continued to operate
18 NPM. On or about May 4, 2011, the Commissioner issued a Desist and Refrain Order directing
19 PURCELL to cease operations unless and until she obtains the proper real estate license required
20 to operate a property management company. Utilizing the 2 year grace period afforded plenary
21 license holders, on or about June 13, 2011 PURCELL renewed her license and is currently an
22 employee of NEWTON.

23 7

24 Whenever reference is made in an allegation in this Accusation to an act or
25 omission of PURCELL, such allegation shall be deemed to mean that PURCELL, her
26 employees, agents and/or real estate licensees employed by or associated with PURCELL while
27 acting within the course and scope of their authority and employment with PURCELL and

1 committed such act or omission in the furtherance of the business or operations of PURCELL.

2 FIRST CAUSE OF ACTION

3 The Newton Audit

4 8

5 Complainant incorporates by reference each and every allegation contained in
6 Paragraphs 1 through 7, above, as if fully set forth herein.

7 9

8 Intermittently between January 14, 2010 and July 9, 2010, an audit was conducted
9 upon the books and records of NEWTON with the field work commencing on May 4, 2010, at
10 NEWTON's main office located at 1629 Howard Road, Madera, California wherein the
11 Department's auditor began his examination of NEWTON's records for the period January 1,
12 2010, to June 1, 2010 (the "Audit Period"). Present at the audit were NEWTON, PURCELL and
13 Kortni Brady, the Office Manager and daughter of PURCELL. Additional preparatory work and
14 other activities relating to the audit were conducted by the auditor at the Fresno District Office of
15 the Department of Real Estate, 2550 Mariposa Mall, Room 3070, Fresno, CA 93721-2273 with
16 the auditor issuing his Audit Report on or about July 9, 2010.

17 10

18 In so acting as real estate property managers, as described in Paragraph 5 above,
19 Respondents NEWTON and PURCELL accepted or received funds in trust (herein "trust funds")
20 from or on behalf of borrowers, lenders, owners, tenants and others in connection with the
21 leasing, renting, and collection of rents on real property or improvements thereon, as alleged
22 herein and thereafter from time to time made disbursements of said funds.

23 11

24 The aforementioned trust funds accepted or received by Respondents were
25 deposited or caused to be deposited by Respondents into one or more bank accounts (herein
26 "trust fund accounts") maintained by Respondents for the handling of property management trust
27 funds, including, but not necessarily limited to, the following accounts maintained by

1 Respondents at the Central Valley Community Bank, 1919 Howard Road, Madera, California
2 93637:

3 (a) Vicki Purcell dba Newton Property Management-Purcell Trust Account;
4 account number XXX11002 ("Trust Account #1");

5 (b) Vicki Purcell dba Newton Property Management Purcell Trust Account;
6 account number XXX10987 ("Trust Account #2"). According to NEWTON's records, Trust
7 Account #2 replaced a prior unidentified trust account that was "closed due to fraud."

8 12

9 In the course of the activities described in Paragraph 5, above, for the audit period
10 NEWTON:

11 (a) Failed to designate Trust Account #1 and Trust Account #2 as trust
12 accounts under the name of Broker NEWTON as trustee in violation of Sections 10145 (Trust
13 Fund handling) of the Code and Section 2832, Chapter 6, Title 10, California Code of
14 Regulations (hereinafter "the Commissioner's Regulations") (Trust Fund handling);

15 (b) A bank account reconciliation was performed for Trust Account #1 and
16 as of May 31, 2010 there was a shortage of \$27,939.65 in Trust Account #1 in violation of
17 Section 10145 of the Code and Section 2831.2 of the Commissioner's Regulations (Trust Fund
18 reconciliation);

19 (c) During the course of the audit period, PURCELL disclosed in a June 21,
20 2010, letter to the Department that there was an "additional trust account" that was previously
21 undisclosed to the auditor and which purportedly contained trust funds held for the benefit of an
22 unidentified property management client. This account was a WestAmerica Bank account
23 referred to by PURCELL as the "Main Trust Account", an account which allegedly belonged to
24 NEWTON prior to PURCELL assuming the assets and operational control of NPM, Newton
25 Property Management and/or Newton Property Management Company d.b.a. Newton Property
26 Apt. Rentals. According to documents provided by PURCELL, PURCELL obtained a May 17,
27 2010, Cashier's Check from WestAmerica Bank made payable to "Newton Properties/Arvilla

1 Bayless" in the amount of \$17,777.55. PURCELL claimed that these funds were trust funds
2 that should have been deposited in Trust Account #1 at some time in the past. PURCELL
3 further claimed that the transfer of these funds partially cured the shortage identified in
4 Paragraph 12(b), above. Despite PURCELL's position that the funds from WestAmerica Bank
5 were trust funds that should have been deposited into Trust Account #1, and assuming
6 PURCELL was correct in her contention, Trust Account #1 had a shortage of \$10,162.10. On
7 June 22, 2010, more than 3 days after the date of the WestAmerica Bank Cashier's Check and
8 more than eight (8) years after PURCELL assumed operational control of NPM; Newton
9 Property Management and/or Newton Property Management Company d.b.a. Newton Property
10 Apt. Rentals, PURCELL allegedly deposited the WestAmerica Bank Cashier's Check into Trust
11 Account #1. The acts and/or omission enumerated in Paragraph 12(c) constitute violations of
12 real estate law by NEWTON which includes, but is not limited to, the violation of Section
13 10145 of the Code and Sections 2831 (Trust Fund records), 2831.1 (Trust Fund Multiple
14 Beneficiary records), 2831.2 (Trust Fund reconciliation) and 2832 (Trust Fund handling) of the
15 Commissioner's Regulations;

16 (d) NEWTON failed to maintain an accurate record of trust funds received
17 and disbursed for Trust Account #1 in violation of Section 2831 of the Commissioner's
18 Regulations;

19 (e) NEWTON did not present the auditor with evidence that the beneficiaries
20 of the trust funds held on deposit in Trust Account #1 had given their written consent to allow
21 NEWTON to reduce the funds in the trust account to an amount less than the existing trust fund
22 liability in violation of Section 2832.1 of the Commissioner's Regulations (Multiple Beneficiary
23 Trust Fund handling);

24 (f) A bank account reconciliation was performed for Trust Account #2, an
25 account which purportedly replaced a former trust account due to fraudulent activity in the
26 former account, and as of May 31, 2010 there was a shortage of \$4,257.76 in violation of
27 Section 10145 of the Code and Section 2831.2 of the Commissioner's Regulations;

1 (g) NEWTON did not present the auditor with evidence that the beneficiaries
2 of the trust funds held on deposit in Trust Account #2 had given their written consent to allow
3 NEWTON to reduce the funds in the trust account to an amount less than the existing trust fund
4 liability in violation of Section 2832.1 of the Commissioner's Regulations;

5 (h) NEWTON failed to maintain an accurate record of trust funds received
6 and disbursed for Trust Account #2 in violation of Section 2831 of the Commissioner's
7 Regulations;

8 (i) NEWTON failed to maintain accurate separate beneficiary records of
9 Trust Account #2 in violation of Section 2831.1 of the Commissioner's Regulations;

10 (j) NEWTON failed to reconcile the balance of all separate beneficiary
11 records with records of all trust funds received and disbursed in violation of Section 2831.2 of
12 the Commissioner's Regulations;

13 (k) Gerald L. Purcell, an individual who at all times prior to May 22, 2011,
14 was not a licensee of the Department yet had signatory authority on both Trust Account #1 and
15 Trust Account #2. NEWTON was required to maintain a fidelity bond in an amount at least
16 equal to the maximum amount of the trust funds to which the unlicensed Gerald L. Purcell had
17 access. However, NEWTON failed to obtain a fidelity bond in an amount at least equal to the
18 maximum amount of the trust funds to which the unlicensed Gerald L. Purcell had access or in
19 any amount at all in violation of Section 2834 of the Commissioner's Regulations (Fidelity
20 Bond Requirement for Trust Fund Withdrawals);

21 (l) NEWTON failed to provide the auditor with a written
22 Broker/Salesperson Agreement between NEWTON and Arvilla Bayless, a real estate broker,
23 then an officer of NPM, but not employed by NPM in violation of Section 2726 of the
24 Commissioner's Regulations. In addition, as Bayless was a signatory on at least Trust Account
25 #1, NPM, by not having a written employment agreement with Bayless, violated Section 2834
26 (a) (2) (Employee broker not permitted as signatory on trust account absent compliance with
27 Section 2726 of the Commissioner's Regulations) or, in the alternative, Section 2834(b) (1) of

1 the Commissioner's Regulations (Officer through whom the corporation is licensed pursuant to
2 Section 10158 (Additional corporate broker license)) or Section 10211 of the Code (Fee for
3 additional corporate broker license);

4 (m) NEWTON failed to register the fictitious business names Purcell Trust
5 Account and Newton Property Management Company d.b.a. Newton Property Apt. Rentals
6 with the Department in violation of Section 2731 of the Commissioner's Regulations.

7 13

8 NEWTON's acts and/or omissions as alleged in Paragraphs 12(a) through 12(m),
9 above, violate Sections 10085; 10185.5; 10145; 10146; and 10160 of the Code; and Sections
10 2753; 2831.2; 2832; 2832.1; 2834; and 2970 of the Commissioner's Regulations, each of which
11 jointly and severally constitutes grounds for discipline of NEWTON under Section 10177(d) of
12 the Code.

13 SECOND CAUSE OF ACTION

14 Unlicensed Activity
15 As to Purcell only

16 14

17 Complainant incorporates by reference each and every allegation contained in
18 Paragraphs 1 through 13, above, as if fully set forth herein.

19 15

20 At no time has PURCELL held a real estate broker license issued by the
21 Department. PURCELL has never been employed under NEWTON's personal license. At no
22 time relevant herein did PURCELL qualify for the licensing exceptions set forth in Section
23 10131.1 of the Code. PURCELL having obtained the assets of NPM in 2002; was instrumental
24 in not only incorporating NPM but was instrumental in its dissolution. Therefore, PURCELL
25 was aware that NEWTON dissolved NPM on May 18, 2005; PURCELL knew or should have
26 known that NPM was no longer in good standing with the California Secretary of State; and
27 PURCELL knew or should have know that as of May 18, 2005, she was no longer employed by

1 NPM with NEWTON as NPM's Designated Officer/Broker as her supervising broker. At no
2 time between May 2005 and May 2011 has PURCELL been employed by a new supervising
3 broker and therefore, since 2005 has been conducting unlicensed property management
4 activities. Further, on June 1, 2010, PURCELL's real estate salesperson license expired and was
5 not renewed until May 2011 and only then did she become employed by NEWTON. Despite
6 PURCELL's expired license status and lacking a supervising broker between May 2005 and May
7 2011, PURCELL continued to operate NPM in violation of Sections 10130 (License Required)
8 and 10131 (Broker Defined) of the Code, which constitutes separate cause for the suspension or
9 revocation of the license and license rights of PURCELL.

10
11 THIRD CAUSE OF ACTION

12 Employment of Unlicensed Individual in Position Requiring
13 A Valid California Real Estate License

14 16

15 Complainant incorporates by reference each and every allegation contained in Paragraphs
16 1 through 15, above, as if fully set forth herein.

17 17

18 Since at least 2000 NEWTON has employed Paula Taylor, an individual who at all
19 times relevant herein does not hold and has not held a valid California Real Estate License in
20 any capacity, yet operates NEWTON's property management business wherein, on behalf of
21 others, for compensation or in expectation of compensation, Paula Taylor leased or rented and
22 offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited
23 for prospective tenants of real property or improvements thereon, and collected rents from real
24 property or improvements thereon, acts which require a real estate broker license under Section
25 10131(a) (Real Estate License Required for Enumerated Acts) and Section 10137 (Unlawful
26 Employment or Compensation) of the Code, each a violation which constitutes cause for the
27 suspension or revocation of the license and license rights of NEWTON under Section 10177(d)
of the Code.

1 FOURTH CAUSE OF ACTION
2 Misrepresentation

3 18

4 Complainant incorporates by reference each and every allegation contained in
5 Paragraphs 1 through 17, above, as if fully set forth herein.

6 19

7 PURCELL's actions as set forth in Paragraphs 14 and 15 above, were willful,
8 deceptive, dishonest and a breach of her fiduciary duties to PURCELL's clients in that
9 PURCELL, NEWTON and/or NPM: (1) failed to disclose to clients, potential tenants and
10 tenants that PURCELL was not a licensed real estate broker; (2) failed to disclose to clients,
11 potential tenants, tenants that at the direction of PURCELL, in 2005 NPM had dissolved and
12 was no longer a corporation in good standing with the California Secretary of State, and
13 therefore was not authorized to act as a licensed corporate real estate broker in violation of
14 Section 2742 of the Commissioner's Regulations (Corporate broker must be in good standing
15 with the California Secretary of State) and due to its lack of good standing, NPM could not
16 employ PURCELL, (3) NPM and/or PURCELL could it execute a verification as an agent of a
17 landlord plaintiff in an unlawful detainer action or as an agent of a landlord represent the
18 business interests of the landlord in a civil lawsuit; (4) PURCELL, as an unlicensed property
19 manager continued to operate a property management business using the unlicensed fictitious
20 business names Newton Property Management and/or Newton Property Management Company
21 d.b.a. Newton Property Apt. Management; (5) PURCELL made available to the public flyers
22 advertizing for rent certain residential and commercial rent properties; and (6) that as of June
23 10, 2010 PURCELL's real estate salesperson license had expired and PURCELL was no longer
24 qualified to conduct any real estate related activities which required a valid real estate license,
25 yet she continued to conduct licensed activities for or in expectation of compensation.

26 20

27 At no time until May 2010 did NEWTON or PURCELL inform the Department

1 that NPM had dissolved in 2005. In fact, in furtherance of the fraudulent scheme designed to
2 mislead the Department into believing that PURCELL was employed by NEWTON as the
3 supervising corporate broker for NPM in May 2006, some one year after NPM had dissolved,
4 NEWTON prepared and executed under penalty of perjury an *Officer Renewal Application*
5 wherein NEWTON sought to renew his Officer/Broker license for NPM. In this renewal
6 application NEWTON falsely claimed NPM was in good standing with the California Secretary
7 of State when, in fact, NEWTON knew or should have known that NPM had been dissolved in
8 2005. In reliance on the corporate status misrepresentation contained in the renewal application,
9 the Department renewed NEWTON's Corporate Officer/Broker license with an effective date of
10 May 18, 2006. The fraudulent conduct upon the Department was not discovered until the audit
11 of the books and records were conducted by the Department until the audit that PURCELL and
12 NEWTON had made this misrepresentation to the Department. PURCELL, by directing the
13 dissolution of NPM in 2005, ratified, consented to and/or otherwise agreed to the fraudulent and
14 misleading conduct of NEWTON in his preparation and presentation of his May 2006 *Officer*
15 *Renewal Application* to the Department. PURCELL continued to perpetuate this fraud and
16 misrepresentation to the Department until May 17, 2010, the date the broker officer license
17 fraudulently obtained by NEWTON expired. To date, a new application for a NPM corporate
18 officer license has not been received by the Department, nor has NPM sought to undue its
19 dissolution and return to good standing with the California Secretary of State.

20 21

21 NEWTON, by presenting his May 2006 *Officer Renewal Application* for NPM
22 and the Department renewing NEWTON's officer/broker license constitutes the procurement of
23 a real estate license by fraud, misrepresentation, deceit, or by making a material misstatement of
24 fact all in violation of Section 10177(a) of the Code.

25 22

26 In addition, NEWTON, in an attempt to conceal from the Department that
27 Paula Taylor, an unlicensed individual, was under NEWTON's employ and was performing

1 property management duties for which a real estate license is required, NEWTON willfully and
2 knowingly withheld records from the Department's auditor which concerned the duties,
3 responsibilities and employment of Paula Taylor which NEWTON was required to produced
4 pursuant to Section 10148 of the Code. This course of conduct violates Sections 10176(a)
5 (Making a substantial misrepresentation); 10176(c) (Continued and flagrant course of
6 misrepresentation or the making of false promises); and 10176(i) (Any other conduct, whether of
7 the same or a different character than specified in this section, which constitutes fraud or
8 dishonest dealing) and constitutes a separate cause for the suspension or revocation of the
9 licenses and license rights of NEWTON under Section 10177(d) of the Code.

10 23

11 Therefore, the conduct of NEWTON and PURCELL as set forth in this *Third*
12 *Cause of Action* violated Sections 10140 (False Advertising); 10176(a) (Making a substantial
13 misrepresentation); 10176(b) (Making any false promise of a character likely to influence,
14 persuade or induce); 10176(c) (Continued and flagrant course of misrepresentation or the
15 making of false promises); 10177(i) (Fraud or dishonest dealing); and 10177(a) (the
16 procurement of a license by fraud, misrepresentation or deceit) of the Code or, in the alternative,
17 Section 10177(g) of the Code (Negligence or incompetence in licensed activities); each
18 violation constitutes separate cause for the suspension or revocation of the licenses and license
19 rights of NEWTON and PURCELL under Section 10177(d) of the Code.

20 FOURTH CAUSE OF ACTION

21 Failure to Supervise

22 As to NEWTON only

23 24

24 Complainant incorporates by reference each and every allegation contained in
25 Paragraphs 1 through 23, above, as if fully set forth herein.

26 25

27 NEWTON, as the designated officer/broker of NPM was required to exercise reasonable
supervision and control over the activities of NPM and PURCELL. NEWTON failed to

1 exercise reasonable supervision over the acts of NPM and/or PURCELL thereby allowing,
2 permitting and/or ratifying the acts and omissions as described in the paragraphs above to occur,
3 all in violation of Section 10159.2 of the Code (Corporate Officer supervision), which
4 constitutes cause for suspension or revocation of all licenses and license rights of Respondent
5 NEWTON under Sections 10177(d) and 10177(h) of the Code (Failure to exercise reasonable
6 supervision over the activities of the corporation, salespersons and employees).

7 FIFTH CAUSE OF ACTION

8 Failure to maintain records

9 26

10 Complainant incorporates by reference each and every allegation contained in
11 Paragraphs 1 through 11, above, as if fully set forth herein.

12 27

13 Section 10148 of the Code requires a broker to maintain records for three years
14 after the close of the transaction or from the date of the listing if a transaction is not closed.
15 However, Respondent record retention policy was to destroy records three years after the
16 document was generated regardless of whether the property management assignment had
17 concluded. This willful destruction of records prevented the Department's auditor from auditing
18 the records which had been untimely destroyed all in violation of Section 10148 of the Code the
19 violation of which constitutes a separate cause for the suspension or revocation of the licenses
20 and license rights of NEWTON under Section 10177(d) of the Code.

21 28

22 In addition, NEWTON maintained certain business records in electronic format
23 without maintaining the means to access the electronic records in violation of Section 2729
24 and/or 2729.5 of the Commissioner's Regulations and Section 10148 of the Code. NEWTON's
25 computer system suffered a hard drive crash and loss of data preventing the Departments access
26 to Newton's electronic records either from the principal computer or a back-up copy of the
27 electronic data which would provide access to Newton's electronic records all of which

1 constitutes a separate cause for the suspension or revocation of the licenses and license rights of
2 NEWTON under Section 10177(d) and 10177(g) of the Code.

3 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
4 of this Accusation and that upon proof thereof a decision be rendered imposing discipline against
5 all licenses and license rights of Respondents JOHN RAYMOND NEWTON and VICKI
6 DENESE PURCELL under the Real Estate Law (Part 1 of Division 4 of the Business and
7 Professions Code) and for such other and further relief as may be proper under other applicable
8 provisions of law.

9
10 

11 LUKE MARTIN,
12 Deputy Real Estate Commissioner

13 Dated at Fresno, California

14 this 15th day of September, 2011.

15
16 **DISCOVERY DEMAND:**

17 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedures Act*, the Department
18 of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in
19 the *Administrative Procedures Act*. Failure to provide Discovery to the Department of Real
20 Estate may result in the exclusion of witnesses and documents at the hearing on this
21 Accusation and for other sanctions that the Office of Administrative Hearings deems
22 appropriate.

FLAG

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FILED

MAY 18 2011

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 JOHN RAYMOND NEWTON and)
14 VICKI DENESE PURCELL,)
15 Respondents.)

NO. H- 2622 FR

ACCUSATION

16 The Complainant, LUKE MARTIN, in his official capacity as Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation against JOHN RAYMOND
18 NEWTON (hereinafter "NEWTON") and VICKI DENESE PURCELL (hereinafter
19 "PURCELL"), (collectively "Respondents") is informed and alleges as follows:

20 THE RESPONDENTS

21 1

22 At all times relevant herein, Respondents NEWTON and PURCELL were and
23 now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the
24 Business and Professions Code) (herein "the Code").

25 2

26 At all times herein mentioned, NEWTON was and now is licensed by the
27 Department as a real estate broker. Until May 18, 2010, NEWTON was the Designated

1 Officer/Broker of Newton Property Management, Inc. (hereinafter "NPM"). Despite knowing
2 that NPM had dissolved in 2005, NEWTON renewed his Designated Officer/Broker license for
3 NPM in 2006. At no time until May 2010 did the Department of Real Estate (hereinafter
4 "Department") learn that NPM had dissolved.

5 3

6 On or about May 18, 2002, Newton Property Management, Inc. was issued a
7 corporate broker license by the Department. Despite representations to the Secretary of State and
8 the Department to the contrary since at least 2002 PURCELL has been the actual owner and the
9 alter ego of NPM, Newton Property Management and/or Newton Property Management
10 Company d.b.a. Newton Property Apt. Rentals. On or about May 18, 2005 NPM dissolved and is
11 no longer a California Corporation in good standing with the California Secretary of State. At all
12 times since May 18, 2005 NPM was not authorized to conduct business in the state of California.
13 Since 2005 PURCELL has operated Newton Property Management and/or Newton Property
14 Management Company d.b.a. Newton Property Apt. Rentals out of the former business address
15 of NPM: 1629 Howard Road, Madera, California. Despite the dissolution of NPM in 2005, on
16 May 10, 2006 Newton submitted his *Officer Renewal Application* for NPM to the Department.

17 4

18 Whenever reference is made in an allegation in this Accusation to an act or
19 omission of NEWTON, such allegation shall be deemed to mean that NEWTON, his employees,
20 agents and/or real estate licensees employed by or associated with NEWTON while acting within
21 the course and scope of their authority and employment with NEWTON and committed such act
22 or omission in the furtherance of the business or operations of NEWTON.

23 5

24 At all times herein mentioned, NEWTON and PURCELL engaged in the
25 business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the
26 State of California (a) within the meaning of Sections 10131(a) and 10131(b) of the Code
27 (Broker defined), including the operation of a property management business with the public

1 wherein, on behalf of others, for compensation or in expectation of compensation, NEWTON
2 and PURCELL leased or rented and offered to lease or rent, and placed for rent, and solicited
3 listings of places for rent, and solicited for prospective tenants of real property or improvements
4 thereon, and collected rents for the real property or improvements thereon.

5 6

6 Between approximately June 3, 2000 and June 1, 2010, PURCELL was licensed
7 by the Department as a real estate salesperson. According to PURCELL, in 2002 PURCELL
8 became the owner of NPM and directed that NPM incorporated with NEWTON as its
9 Officer/Broker. At no time relevant herein has PURCELL been employed under NEWTON's
10 personal real estate broker license, but was solely employed by NPM until it was dissolved at the
11 direction of PURCELL in 2005. Despite NPM being dissolved in 2005 NEWTON renewed his
12 Corporate Broker's license for NPM in 2006 which eventually expired in 2010. Between 2005
13 and May 18, 2010 PURCELL continued to be a putative employee of NPM. As of June 1, 2010
14 PURCELL's real estate salesperson license expired and has not been renewed. However,
15 PURCELL is within the two (2) year statutory grace period for a license renewal. Despite
16 PURCELL's expired license status, as of March 18, 2011, PURCELL continues to operate
17 Newton Property Management and/or Newton Property Management Company d.b.a. Newton
18 Property Apt. Rentals from the same business address that formerly housed NPM. Newton
19 Property Management and/or Newton Property Management Company d.b.a. Newton Property
20 Apt. Rentals are unlicensed property management companies and unregistered fictitious business
21 names of PURCELL. On or about May 4, 2011 the Commissioner issued a Desist and Refrain
22 Order directing PURCELL to cease operations unless and until she obtains the proper real estate
23 license required to operate a property management company.

24 6

25 Whenever reference is made in an allegation in this Accusation to an act or
26 omission of PURCELL, such allegation shall be deemed to mean that PURCELL, her employees,
27 agents and/or real estate licensees employed by or associated with PURCELL while acting within

1 the course and scope of their authority and employment with PURCELL and committed such act
2 or omission in the furtherance of the business or operations of PURCELL.

3 FIRST CAUSE OF ACTION

4 The Newton Audit

5 7

6 Complainant incorporates by reference each and every allegation contained in
7 Paragraphs 1 through 6, above, as if fully set forth herein.

8 9

9 Intermittently between January 14, 2010 and July 9, 2010, an audit was conducted
10 upon the books and records of NEWTON with the field work commencing on May 4, 2010 at
11 NEWTON's main office located at 1629 Howard Road, Madera, California wherein the
12 Department's auditor began his examination of NEWTON's records for the period January 1,
13 2010 to June 1, 2010 (the "Audit Period"). Present at the audit were NEWTON, PURCELL and
14 Kortni Brady, the Office Manager and daughter of PURCELL. Additional preparatory work and
15 other activities relating to the audit were conducted by the auditor at the Fresno District Office of
16 the Department of Real Estate, 2550 Mariposa Mall, Room 3070, Fresno, CA 93721-2273 with
17 the auditor issuing his Audit Report on or about July 9, 2010.

18 10

19 In so acting as real estate property managers, as described in Paragraph 5 above,
20 Respondents NEWTON and PURCELL accepted or received funds in trust (herein "trust funds")
21 from or on behalf of borrowers, lenders, owners, tenants and others in connection with the
22 leasing, renting, and collection of rents on real property or improvements thereon, as alleged
23 herein and thereafter from time to time made disbursements of said funds.

24 11

25 The aforementioned trust funds accepted or received by Respondents were
26 deposited or caused to be deposited by Respondents into one or more bank accounts (herein
27 "trust fund accounts") maintained by Respondents for the handling of property management trust

1 funds, including, but not necessarily limited to, the following account maintained by
2 Respondents at the Central Valley Community Bank, 1919 Howard Road, Madera, California
3 93637:

4 (a) Vicki Purcell dba Newton Property Management Purcell Trust Account;
5 account number XXX11002 ("Trust Account #1");

6 (b) Vicki Purcell dba Newton Property Management Purcell Trust Account;
7 account number XXX10987 ("Trust Account #2"). According to NEWTON's records Trust
8 Account #2 replaced a prior unidentified trust account that was "closed due to fraud."

9 12

10 In the course of the activities described in Paragraph 5, above, for the audit period
11 NEWTON:

12 (a) Failed to designate Trust Account #1 and Trust Account #2 as trust
13 accounts under the name of Broker NEWTON as trustee in violation of Sections 10145 (Trust
14 Fund handling) of the Code and Section 2832, Chapter 6, Title 10, California Code of
15 Regulations (hereinafter "the Commissioner's Regulations") (Trust Fund handling);

16 (b) A bank account reconciliation was performed for Trust Account #1 and as
17 of May 31, 2010 there was a shortage of \$27,939.65 in Trust Account #1 in violation of Section
18 10145 of the Code and Section 2831.2 of the Commissioner's Regulations (Trust Fund
19 reconciliation);

20 (c) During the course of the audit period PURCELL disclosed in a June 21,
21 2010 letter to the Department that there was an "additional trust account" that was previously
22 undisclosed to the auditor and which purportedly contained trust funds held for the benefit of an
23 unidentified property management client. This account was a WestAmerica Bank account
24 referred to by PURCELL as the "Main Trust Account" which was an account which allegedly
25 belonged to NEWTON prior to PURCELL assuming the assets and operational control of NPM,
26 Newton Property Management and/or Newton Property Management Company d.b.a. Newton
27 Property Apt. Rentals. According to documents provided by PURCELL, PURCELL obtained a

1 May 17, 2010 Cashier's Check from WestAmerica Bank made payable to "Newton
2 Properties/Arvilla Bayless" in the amount of \$17,777.55. PURCELL claimed that these funds
3 were trust funds that should have been deposited in Trust Account #1 at some time in the past.
4 PURCELL further claimed that the transfer of these funds partially cured the shortage identified
5 in Paragraph 12(b), above. Despite PURCELL's position that the funds from WestAmerica
6 Bank were trust funds that should have been deposited into Trust Account #1, and assuming
7 PURCELL was correct in her contention, Trust Account #1 had a shortage of \$10,162.10. On
8 June 22, 2010, more than 3 days after the date of the WestAmerica Bank Cashier's Check and
9 more than eight (8) years after PURCELL assumed operational control of NPM, Newton
10 Property Management and/or Newton Property Management Company d.b.a. Newton Property
11 Apt. Rentals, PURCELL allegedly deposited the WestAmerica Bank Cashier's Check into Trust
12 Account #1. The acts and/or omission enumerated in Paragraph 12(c) constitute violations of
13 real estate law by NEWTON which includes, but is not limited to, the violation of Section
14 10145 of the Code and Sections 2831 (Trust Fund records), 2831.1 (Trust Fund Multiple
15 Beneficiary records), 2831.2 (Trust Fund reconciliation) and 2832 (Trust Fund handling) of the
16 Commissioner's Regulations;

17 (d) NEWTON failed to maintain an accurate record of trust funds received
18 and disbursed for Trust Account #1 in violation of Section 2831 of the Commissioner's
19 Regulations;

20 (e) NEWTON did not present the auditor with evidence that the beneficiaries
21 of the trust funds held on deposit in Trust Account #1 had given their written consent to allow
22 NEWTON to reduce the funds in the trust account to an amount less than the existing trust fund
23 liability in violation of Section 2832.1 of the Commissioner's Regulations (Multiple Beneficiary
24 Trust Fund handling);

25 (f) A bank account reconciliation was performed for Trust Account #2, an
26 account which purportedly replaced a former trust account due to fraudulent activity in the
27

1 former account, and as of May 31, 2010 there was a shortage of \$4,257.76 in violation of
2 Section 10145 of the Code and Section 2831.2 of the Commissioner's Regulations;

3 (g) NEWTON did not present the auditor with evidence that the beneficiaries
4 of the trust funds held on deposit in Trust Account #2 had given their written consent to allow
5 NEWTON to reduce the funds in the trust account to an amount less than the existing trust fund
6 liability in violation of Section 2832.1 of the Commissioner's Regulations;

7 (h) NEWTON failed to maintain an accurate record of trust funds received
8 and disbursed for Trust Account #2 in violation of Section 2831 of the Commissioner's
9 Regulations;

10 (i) NEWTON failed to maintain accurate separate beneficiary records of
11 Trust Account #2 in violation of Section 2831.1 of the Commissioner's Regulations;

12 (j) NEWTON failed to reconcile the balance of all separate beneficiary
13 records with records of all trust funds received and disbursed in violation of Section 2831.2 of
14 the Commissioner's Regulations;

15 (k) Gerald L. Purcell, an individual who at all times relevant herein was not a
16 licensee of the Department had signatory authority on both Trust Account #1 and Trust Account
17 #2. NEWTON was required to maintain a fidelity bond in an amount at least equal to the
18 maximum amount of the trust funds to which the unlicensed Gerald L. Purcell had access.
19 However, NEWTON failed to obtain a fidelity bond in an amount at least equal to the maximum
20 amount of the trust funds to which the unlicensed Gerald L. Purcell had access or in any amount
21 at all in violation of Section 2834 of the Commissioner's Regulations (Fidelity Bond
22 requirement for Trust Fund withdrawals);

23 (l) NEWTON failed to provide the auditor with a written Broker/Salesperson
24 Agreement between NEWTON and Arvilla Bayless, a real estate broker, then an officer of
25 NPM, but not employed by NPM in violation of Section 2726 of the Commissioner's
26 Regulations. In addition, as Bayless was a signatory on at least Trust Account #1, NPM, by not
27 having a written employment agreement with Bayless, violated Section 2834 (a) (2) (Employee

1 broker not permitted as signatory on trust account absent compliance with Section 2726 of the
2 Commissioner's Regulations) or, in the alternative, Section 2834(b) (1) of the Commissioner's
3 Regulations (Officer through whom the corporation is licensed pursuant to Section 10158
4 (Additional corporate broker license)) or Section 10211 of the Code (Fee for additional
5 corporate broker license);

6 (m) NEWTON Failed to register the fictitious business names Purcell Trust
7 Account and Newton Property Management Company d.b.a. Newton Property Apt. Rentals with
8 the Department in violation of Section 2731 of the Commissioner's Regulations.

9 13

10 NEWTON's acts and/or omissions as alleged in Paragraphs 12(a) through 12(m),
11 above, violate Sections 10085; 10185.5; 10145; 10146; and 10160 of the Code; and Sections
12 2753; 2831.2; 2832; 2832.1; 2834; and 2970 of the Commissioner's Regulations, each of which
13 jointly and severally constitutes grounds for discipline of NEWTON under Section 10177(d) of
14 the Code.

15 SECOND CAUSE OF ACTION

16 Unlicensed Activity
17 As to Purcell only

18 14

19 Complainant incorporates by reference each and every allegation contained in
20 Paragraphs 1 through 13, above, as if fully set forth herein.

21 15

22 At no time has PURCELL held a real estate broker license issued by the
23 Department. PURCELL has never been employed under NEWTON's personal license. At no
24 time relevant herein did PURCELL qualify for the licensing exceptions set forth in Section
25 10131.1 of the Code. PURCELL having obtained the assets of NPM in 2002; was instrumental
26 in not only incorporating NPM but was instrumental in its dissolution. Therefore, PURCELL
27 was aware that NEWTON dissolved NPM on May 18, 2005; PURCELL knew or should have

1 known that NPM was no longer in good standing with the California Secretary of State; and
2 PURCELL knew or should have know that as of May 18, 2005 she was no longer employed by
3 NPM with NEWTON as NPM's Designated Officer/Broker as her supervising broker. At no
4 time since May of 2005 has PURCELL been employed by a new supervising broker and
5 therefore, since 2005 has been conducting unlicensed property management activities. Further,
6 on June 1, 2010 PURCELL's real estate salesperson license expired and to date has not been
7 renewed. Despite PURCELL's expired license status and lacking a supervising broker
8 PURCELL continues to operate Newton Property Management and/or Newton Property
9 Management Company d.b.a. Newton Property Apt. Rentals in violation of Sections 10130
10 (License Required) and 10131 (Broker Defined) of the Code, which constitutes separate cause for
11 the suspension or revocation of the license and license rights of PURCELL.

12 THIRD CAUSE OF ACTION

13 Misrepresentation

14 16

15 Complainant incorporates by reference each and every allegation contained in
16 Paragraphs 1 through 15, above, as if fully set forth herein.

17 17

18 PURCELL's actions as set forth in Paragraphs 14 and 15 above, were willful,
19 deceptive, dishonest and a breach of her fiduciary duties to PURCELL's clients in that
20 PURCELL, NEWTON and/or NPM: (1) failed to disclose to clients, potential tenants and
21 tenants that PURCELL was not a licensed real estate broker; (2) failed to disclose to clients,
22 potential tenants, tenants and the Department that at the direction of PURCELL, in 2005 NPM
23 had dissolved and was no longer a corporation in good standing with the California Secretary of
24 State, and therefore was not authorized to act as a licensed corporate real estate broker in
25 violation of Section 2742 of the Commissioner's Regulations (Corporate broker must be in good
26 standing with the California Secretary of State) and due to its lack of good standing, NPM could
27 not employ PURCELL; (3) PURCELL, as an unlicensed property manager continued to operate

1 a property management business using the unlicensed fictitious business names Newton
2 Property Management and/or Newton Property Management Company d.b.a. Newton Property
3 Apt. Management; (4) PURCELL made available to the public flyers advertizing for rent certain
4 residential and commercial rent properties; and (5) that as of June 10, 2010 PURCELL's real
5 estate salesperson license had expired and PURCELL was no longer qualified to conduct any
6 real estate related activities which required a valid real estate license.

7 18

8 At no time until May 2010 did NEWTON or PURCELL confirm to the
9 Department that NPM had dissolved in 2005. In fact, in furtherance of the fraudulent scheme
10 designed to mislead clients of NPM, the public and the Department, and thereby make it appear
11 that PURCELL was employed by NEWTON as the supervising corporate broker for NPM in
12 May 2006, some one year after NPM had dissolved, NEWTON prepared and executed under
13 penalty of perjury an *Officer Renewal Application* seeking to renew his Officer/Broker license
14 for NPM. In reliance on the misrepresentations contained in the renewal application, the
15 Department renewed NEWTON's Corporate Officer/Broker license with an effective date of
16 May 18, 2006. PURCELL, by directing the dissolution of NPM in 2005, ratified, consented to
17 and/or otherwise agreed to the fraudulent and misleading conduct of NEWTON in his
18 preparation and presentation of his May 2006 *Officer Renewal Application* to the Department.
19 PURCELL continued to perpetuate this fraud and misrepresentation to the Department until
20 May 17, 2010, the date the broker officer license fraudulently obtained by NEWTON expired.
21 To date, no new application for a NPM corporate officer license has been received by the
22 Department, nor has NPM sought to undue its dissolution and return to good standing with the
23 California Secretary of State.

24 19

25 NEWTON, by presenting his May 2006 *Officer Renewal Application* for NPM
26 and the Department renewing NEWTON's officer/broker license constitutes the procurement of

27 ///

1 a real estate license by fraud, misrepresentation, deceit, or by making a material misstatement of
2 fact.

3 20

4 Therefore, the conduct of NEWTON and PURCELL as set forth in this *Third*
5 *Cause of Action* violated Sections 10140 (False Advertising); 10176(a) (Making a substantial
6 misrepresentation); 10176(b) (Making any false promise of a character likely to influence,
7 persuade or induce); 10176(c) (Continued and flagrant course of misrepresentation or the
8 making of false promises); 10177(i) (Fraud or dishonest dealing); and 10177(a) (the
9 procurement of a license by fraud, misrepresentation or deceit) of the Code or, in the alternative,
10 Section 10177(g) of the Code (Negligence or incompetence in licensed activities); each
11 violation constitutes separate cause for the suspension or revocation of the licenses and license
12 rights of NEWTON and PURCELL under Section 10177(d) of the Code.

13 FOURTH CAUSE OF ACTION

14 Failure to Supervise
15 As to NEWTON only

16 21

17 Complainant incorporates by reference each and every allegation contained in
18 Paragraphs 1 through 20, above, as if fully set forth herein.

19 22

20 NEWTON, as the designated officer/broker of NPM was required to exercise
21 reasonable supervision and control over the activities of NPM and PURCELL. NEWTON failed
22 to exercise reasonable supervision over the acts of NPM and/or PURCELL thereby allowing,
23 permitting and/or ratifying the acts and omissions as described in the paragraphs above to occur,
24 all in violation of Section 10159.2 of the Code (Corporate Officer supervision), which constitutes
25 cause for suspension or revocation of all licenses and license rights of Respondent NEWTON
26 under Sections 10177(d) and 10177(h) of the Code (Failure to exercise reasonable supervision
27 over the activities of the corporation, salespersons and employees).

FIFTH CAUSE OF ACTION
Fraud on the Department

23

Complainant incorporates by reference each and every allegation contained in Paragraphs 1 through 22, above, as if fully set forth herein.

24

The foregoing acts, omissions, misrepresentations and fraud evidence an ongoing course of conduct that from at least 2002 to the present was designed to and did create the appearance of a properly licensed property management company, and that NEWTON and PURCELL held the appropriate licenses under relevant real estate law. In reality, since at least 2002 and despite corporate filings to the contrary, PURCELL was the actual owner of NPM and NEWTON was PURCELL's supervisor in name only with PURCELL operating NPM as she saw fit. This ongoing course of conduct violates Sections 10176(a) (Making a substantial misrepresentation); 10176(b) (Making any false promise of a character likely to influence, persuade or induce); 10176(c) (Continued and flagrant course of misrepresentation or the making of false promises); 10177(i) (Fraud or dishonest dealing); and 10177(a) (the procurement of a license by fraud, misrepresentation or deceit) of the Code. Each such violation constitutes a separate cause for the suspension or revocation of the licenses and license rights of NEWTON and PURCELL under Section 10177(d) 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

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1 Division 4 of the Business and Professions Code) and for such other and further relief as may
2 be proper under other applicable provisions of law.

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4 

5 LUKE MARTIN,
6 Deputy Real Estate Commissioner

7 Dated at Fresno, California

8 this 21st day of April, 2011.

9
10 **DISCOVERY DEMAND:**

11 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedures Act*, the Department
12 of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in
13 the *Administrative Procedures Act*. Failure to provide Discovery to the Department of Real
14 Estate may result in the exclusion of witnesses and documents at the hearing on this
15 Accusation and for other sanctions that the Office of Administrative Hearings deems
16 appropriate.