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FILED
DEC 20 2011

DEPARTMENT OF REAL ESTATE
By *R. Mar*

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

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11 In the Matter of the Accusation of)
12 KENCO INVESTMENTS, INC.) No. H-2700 FR
13 and KENNETH ROBERT BOYD,) ACCUSATION
14 Respondents.)

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16 The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the
17 State of California, for cause of Accusation against KENCO INVESTMENTS, INC.,
18 ("KENCO"), individually and doing business as "The Boyd Company", and KENNETH
19 ROBERT BOYD ("BOYD"), (collectively "Respondents"), is informed and alleges as follows:

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21 The Complainant makes this Accusation in his official capacity.

22 2

23 KENCO is licensed by the Department of Real Estate ("the Department") as a
24 corporate real estate broker.

25 3

26 BOYD is licensed by the Department as a real estate broker. In addition, BOYD
27 is licensed by the Department as the designated broker/officer of KENCO. As the designated

1 broker/officer, BOYD is responsible, pursuant to Section 10159.2 of the Code (responsibility of
2 corporate broker in charge), for the supervision of the activities of the officers, agents, real
3 estate licensees and employees of KENCO for which a real estate license is required.

4 4

5 At all times relevant herein, Respondents engaged in the business of, acted in the
6 capacity of, advertised or assumed to act as a real estate broker within the State of California
7 within the meaning of Section 10131(a), including selling or offering to sell, buying or offer to
8 buy, soliciting prospective sellers or purchasers of, soliciting or obtaining lists of, or negotiating
9 the purchase, sale or exchange of real property; and Section 10131(d) of the Code, including the
10 operation and conduct of a loan brokerage business with the public, wherein, on behalf of
11 others, for compensation or in expectation of compensation, Respondents solicited lenders and
12 borrowers for loans secured directly or collaterally by liens on real property, and wherein
13 Respondents arranged, negotiated, processed and consummated such loans.

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15 Whenever reference is made in an allegation in this Accusation to an act or
16 omission of KENCO, such allegation shall be deemed to mean that the officers, directors,
17 employees, agents and real estate licensees employed by or associated with KENCO committed
18 such act or omission while engaged in furtherance of the business or operations of KENCO and
19 while acting within the course and scope of their corporate authority and employment.

20 FIRST CAUSE OF ACTION

21 6

22 In or about the period of November 17, 2010, and continuing intermittently
23 through June 16, 2011, an audit was conducted of the records of KENCO at its main office
24 located at 275 S. Madera Avenue, Suite 100, Kerman, California, and the Department's Fresno
25 District Office. The auditor herein examined the records for the period of February 1, 2008,
26 through February 1, 2011 (the audit period).

27 ///

While acting as a real estate broker as described in Paragraph 4, above, and within the audit period, Respondents accepted or received funds in trust (trust funds) from or on behalf of lenders, investors, borrowers and others in connection with the sale/resale of real estate and mortgage activities, and deposited or caused to be deposited those funds into a bank account maintained by Respondents, including, but not limited to:

Bank Account #1

Wells Fargo Bank
8420 N. Friant Road
Fresno, CA 93720

Account No.: XXXXX9705

Account Name: Kenco Investments Inc.
DBA The Boyd Company Trust Account

Signatories: Kenneth Robert Boyd
Brian Adam Ellsworth

Bank Account #2

Bank of Sierra
636 E. Shaw Avenue
Fresno, CA 93711

Account No.: XXXXXX9270

Account Name: Kenco Investments Inc. Boyd Company
Client Trust Account

Signatories: Kenneth Robert Boyd
Brian Adam Ellsworth

Thereafter, Respondents from time-to-time made disbursement of said trust funds.

The audit of KENCO disclosed that in the course of the activities described in Paragraph 4, above, in connection with providing mortgage loan and real estate sales services:

1 (a) On or about December 31, 2010, there was a \$241,767.22 shortage for Trust
2 Account #1. KENCO did not provide evidence that the owners of the trust
3 funds had given their written consent allowing it to reduce the balance of the
4 funds in Trust Account #1 to an amount less than the existing aggregate trust
5 fund liabilities. Such acts and/or omissions by KENCO violate Section
6 10145 (handling of trust funds) of the Code and Section 2832.1 (trust fund
7 handling for multiple beneficiaries) of Title 10 of the California Code of
8 Regulations ("the Regulations").

9 (b) KENCO failed to maintain separate records of each beneficiary of funds held
10 in its trust accounts. Such acts and/or omissions by KENCO violate Section
11 10145 of the Code and Section 2831.1 (requirement of separate records for
12 each beneficiary or transaction) of the Regulations.

13 (c) KENCO failed to reconcile the total of separate beneficiary/property records
14 with a control record on a monthly basis. Such acts and/or omissions by
15 KENCO violate Section 10145 of the Code and Section 2831.2 (trust fund
16 reconciliation requirement) of the Regulations.

17 9

18 The acts and/or omissions of KENCO, as alleged in Paragraph 8, above, are
19 grounds for discipline under Sections 10177(d) (willful disregard of real estate law) and
20 10177(g) (demonstrated negligence or incompetence involving acts for which license is
21 required) of the Code.

22 SECOND CAUSE OF ACTION

23 10

24 On or about June 6, 2007, Ray Skochko loaned \$500,000 to JKM Development
25 for a construction project located at 4563 N. Bendel Avenue, Fresno, California. The
26 Settlement Statement was created on The Boyd Company (dba of KENCO) Realtors letterhead.

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1 On or about June 8, 2007, Ray Skochko signed a Lender/Purchaser Disclosure Statement
2 agreeing to the \$500,000 loan related to the Bendel Avenue project.

3 11

4 The audit conducted of KENCO, as discussed above, disclosed that KENCO
5 used \$241,767.22 worth of funds from the Bendel Avenue project, without the knowledge or
6 consent of Ray Skochko, to cover disbursements on a different project named "Cornelia". The
7 audit determined that both the Bendel Avenue and Cornelia projects had the same borrower.

8 12

9 In or about February 2009, Ray Skochko stopped receiving interest payments
10 from JKM Development related to his loan.

11 13

12 The Bendel Avenue project is unfinished and needs more than \$200,000 to
13 complete.

14 14

15 The acts and or omissions of Respondents, as set forth in Paragraphs 10 through
16 13 above, constitute fraud or dishonest dealing and are grounds for discipline under Sections
17 10177(g) (demonstrated negligence or incompetence) and 10177(j) (other conduct which
18 constitutes fraud or dishonest dealing).

19 THIRD CAUSE OF ACTION

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21 At all times relevant herein, BOYD was responsible, as the designated
22 broker/officer for KENCO, for the supervision and control of the activities conducted on behalf
23 of the corporation by its officers and employees. BOYD failed to exercise reasonable
24 supervision and control over the mortgage loan and real estate sales activities of KENCO. In
25 particular, BOYD permitted, ratified and/or caused the conduct described in the First and
26 Second Causes of Action, above, to occur, and failed to take reasonable steps, including, but not
27 limited to, the handling of trust funds, supervision of employees and the implementation of

1 policies, rules, procedures and systems to ensure the compliance of the corporation with the
2 Real Estate Law and the Regulations. Such acts and/or omissions of BOYD violate Section
3 10159.2 of the Code (supervision responsibility of corporate officer in charge) and Section 2725
4 of the Regulations (broker supervision requirement).

5 16

6 The acts and/or omissions of BOYD, as set forth in Paragraph 10, above,
7 constitute grounds for disciplinary action under Sections 10177(d) and 10177(h) (reasonable
8 broker supervision) of the Code.

9 WHEREFORE, Complainant prays that a hearing be conducted on the
10 allegations of this Accusation, and that upon proof thereof, a decision be rendered imposing
11 disciplinary action against all licenses and license rights of Respondents under the Code, and for
12 such other and further relief as may be proper under applicable provisions of law.

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15 LUKE MARTIN
16 Deputy Real Estate Commissioner

17 Dated at Fresno, California,
18 this 16th day of December, 2011.