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DEPARTMENT OF REAL ESTATE

By *L. Jones*

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9 BEFORE THE DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 SCOT ANTHONY LEVESQUE, and ) No. H-2710 FR  
14 RUSSEL CHARLES MCGARRY JR., ) ACCUSATION  
15 Respondents. )

16 The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the  
17 State of California, for cause of Accusation against SCOT ANTHONY LEVESQUE, and  
18 RUSSEL CHARLES MCGARRY JR., (hereinafter "Respondents"), is informed and alleges as  
19 follows:

20 PRELIMINARY ALLEGATIONS

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22 The Complainant, Luke Martin, a Deputy Real Estate Commissioner of the State  
23 of California, makes this Accusation in his official capacity.

24 2

25 Respondents are presently licensed and/or have license rights under the Real  
26 Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").

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2 At all times mentioned, Respondent SCOT ANTHONY LEVESQUE (hereinafter  
3 "LEVESQUE") was and is licensed by the Department individually as a real estate broker. At all  
4 time after November 3, 2010, LEVESQUE was and is licensed to do business under the fictitious  
5 business name "Action Real Estate & Propertie Management."

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7 At all times after June 23, 2011, Respondent RUSSEL CHARLES MCGARRY JR.  
8 (hereinafter "MCGARRY"), was and is licensed by the Department as a real estate salesperson.  
9 At no time prior to June 23, 2001, was MCGARRY licensed by the Department in any capacity.

10 5

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

19 FIRST CAUSE OF ACTION

20 6

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

23 7

24 Beginning about January 2009, MCGARRY willfully caused, suffered,  
25 permitted, and/or disregarded the real estate law by performing the acts and conduct of the real  
26 estate activities described in Paragraph 5, above, including but not limited to the activities  
27 described in Paragraphs 8 and 9, below.

1 8

2 Beginning about November 7, 2009, MCGARRY, using the fictitious business  
3 name Russ McGarry Rental Property Management, solicited prospective tenants for, negotiated  
4 rental agreements for, and/or collected rents from real properties owned by another or others,  
5 including but not limited to the property located at 185 Paso Robles Avenue, Los Altos,  
6 California.

7 9

8 On or about June 29, 2010, in the course of the employment and activities  
9 described in Paragraph 7, above, Nellie McGarry, on behalf of Russ McGarry Rental Property  
10 Management, solicited Special Investigator Nely L. using the alias Natali L. for property  
11 management services including collecting of rents and negotiating contracts for rents/leases.

12 10

13 In acting as described in paragraphs 7 through 9, MCGARRY willfully  
14 disregarded Section 10130 of the Code.

15 11

16 The facts described in the First Cause of Action constitute cause to suspend or  
17 revoke all licenses and license rights of MCGARRY pursuant to the provisions of Section  
18 10130 of the Code in conjunction with Section 10177(d) of the Code.

19 SECOND CAUSE OF ACTION

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21 Each and every allegation in Paragraphs 1 through 11, are incorporated by this  
22 reference as if fully set forth herein.

23 13

24 Between, on, or about October 14, 2010, and June 22, 2011, LEVESQUE  
25 employed and compensated MCGARRY while MCGARRY was unlicensed to perform the acts  
26 and conduct the real estate activities described in Paragraph 5, above, including but not limited to  
27 the activities described in Paragraph 14.

1 14

2 Between, on, or about October 14, 2010, and June 22, 2011, in the course of the  
3 employment and activities described in Paragraph 13, MCGARRY solicited prospective tenants  
4 for, negotiated rental agreements for, and/or collected rents from real properties owned by  
5 another or others, including but not limited to the property located at 588 St. Teresa Street,  
6 Merced, California.

7 15

8 In acting as described in Paragraphs 12 through 14, LEVESQUE and MCGARRY  
9 violated and/or willfully disregarded the provisions of Sections 10130 and 10137 of the Code.

10 16

11 The facts described above as to the Second Cause of Action constitutes cause to  
12 suspend or revoke all licenses and license rights of Respondents LEVESQUE and MCGARRY  
13 pursuant to the provisions of Sections 10130 and 10137 of the Code in conjunction with Section  
14 10177(d) of the Code.

15 THIRD CAUSE OF ACTION

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17 Each and every allegation in Paragraphs 1 through 16, inclusive, are incorporated  
18 by this reference as if fully set forth herein.

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20 While acting as a real estate broker as described in Paragraph 5, LEVESQUE  
21 accepted or received funds in trust (hereinafter "trust funds") from or on behalf of owners and  
22 tenants in connection with the leasing, renting, and collection of rents on real property or  
23 improvements thereon, as alleged herein, and thereafter from time to time made disbursements of  
24 said trust funds.

25 19

26 The trust funds accepted or received by LEVESQUE as described in Paragraph  
27 18, were deposited or caused to be deposited by LEVESQUE into trust accounts which were

1 maintained by LEVESQUE for the handling of trust funds, and thereafter from time-to-time  
2 LEVESQUE made disbursements of said trust funds, identified as follows:

TRUST ACCOUNT # 1	
3 Bank Name and Location:	Westamerica Bank, 550 W. Main Street, Merced, CA 95340
4 Account No.:	xxx-xx741-8
5 Entitled:	Russell C McGarry Jr Nellie McGarry Rental Trust Account

TRUST ACCOUNT # 2	
6 Bank Name and Location:	Westamerica Bank, 550 W. Main Street, Merced, CA 95340
7 Account No.:	xxxx-xx685-2
8 Entitled:	Russell C McGarry Jr Rental Trust Account Deposit Account

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16 In the course of the activities described in Paragraph 5, LEVESQUE:

17 (a) failed to keep accurate separate records for each beneficiary or transaction,  
18 accounting therein for all funds which were deposited into the trust accounts, containing all of  
19 the information required by Section 2831.1 of the Regulations;

20 (b) failed to reconcile the balance of separate beneficiary or transaction  
21 records with the control record of trust funds received and disbursed at least once a month, and/or  
22 failed to maintain a record of such reconciliations for each account as required by Section 2831.2  
23 of the Regulations;

24 (c) failed to deposit trust funds into one or more trust funds accounts in the  
25 name of LEVESQUE as trustee at a bank or other financial institution, in conformance with  
26 Section 10145 of the Code and Section 2832 of the Regulations;

27 (d) caused, permitted, and/or allowed, the possible withdrawal of trust funds

1 from the trust accounts by a person who was not licensed by the Department and not covered by  
2 a fidelity bond in violation of Section 2834 of the Regulations;

3 (e) deposited trust funds of multiple beneficiaries into Trust Account #2, an  
4 interest bearing checking account, failing to comply with the requirements of Section 10145(d)  
5 of the Code;

6 (f) commingled with its own money or property, the money or property of  
7 others which was received or held by LEVESQUE in trust in violation of Section 10176(e) of the  
8 Code; and

9 (g) operated his real estate business, under the fictitious business names of  
10 "Russ McGarry Rental Property Management" without obtaining a license bearing said fictitious  
11 business name in violation of Section 2731 of the Regulations.

12 21

13 The facts alleged in the Third Cause of Action are grounds for the suspension or  
14 revocation of DREC's licenses and license rights under the following sections of the Code and  
15 Regulations:

16 (1) As to Paragraph 20(a), under Section 10177(d) of the Code in conjunction  
17 with Section 2831.1 of the Regulations;

18 (2) As to Paragraph 20(b), under Section 10177(d) of the Code in  
19 conjunction with Section 2831.2 of the Regulations;

20 (3) As to Paragraph 20(c), under Section 10177(d) of the Code in conjunction  
21 with Section 2832 of the Regulations and Section 10145 of the Code;

22 (4) As to Paragraph 20(d), under Section 10177(d) of the Code in  
23 conjunction with Section 2834 of the Regulations;

24 (5) As to Paragraph 20(e), under Section 10177(d) of the Code in conjunction  
25 with Section 10145(d) of the Code;

26 (6) As to Paragraph 20(f), under Section 10176(e) of the Code; and

27 ///

1 (7) As to Paragraph 20(g), under Section 10177(d) of the Code in  
2 conjunction with Section 2731 of the Regulations and Section 10159.5 of the Code.

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4 The acts and/or omissions of LEVESQUE as alleged the Third Cause of Action,  
5 entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148  
6 (Reimbursement for Cost of Audit for Trust Fund Handling Violation) of the Code.

7 FOURTH CAUSE OF ACTION

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9 Each and every allegation in Paragraphs 1 through 22, inclusive, are incorporated  
10 by this reference as if fully set forth herein.

11 24

12 At all times mentioned herein, LEVESQUE failed to exercise reasonable  
13 supervision over the activities of his salespersons, and permitted, ratified and/or caused the  
14 conduct described above. LEVESQUE failed to reasonably or adequately review, oversee,  
15 inspect and manage the salespersons under his employ, and/or to establish reasonable policies,  
16 rules, procedures and systems for such review, oversight, inspection and management.

17 25

18 The facts described above as to the Fourth Cause of Action constitute cause for  
19 the suspension or revocation of the licenses and license rights of LEVESQUE under Section  
20 10177(g) and/or Section 10177(h) of the Code.

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

6                      
7 LUKE MARTIN  
8 Deputy Real Estate Commissioner

8 Dated at Fresno, California,  
9 this 9<sup>th</sup> day of January, 2012

10                    DISCOVERY DEMAND

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