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DEPARTMENT OF REAL ESTATE

By K. Contreras

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
PENINSULA BUSINESS SALES, INC.,)
13 a Corporation,)
MICHAEL ROBERT RUSSELL, and)
14 JONATHAN WILLIAM SAPP,)
15 Respondents.)
16)

NO. H-2823 FR

ACCUSATION

17 The Complainant, TRICIA SOMMERS, a Deputy Real Estate Commissioner of
18 the State of California, for cause of Accusation against PENINSULA BUSINESS SALES, INC.,
19 (herein "PENINSULA") dba Carmel Business Sales, MICHAEL ROBERT RUSSELL (herein
20 "RUSSELL"), and JONATHAN WILLIAM SAPP (herein "SAPP") (herein collectively
21 "Respondents"), is informed and alleges as follows:

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23 The Complainant makes this Accusation in her official capacity.

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

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2 At all times herein mentioned, PENINSULA was and now is licensed by the
3 State of California Department of Real Estate (herein the "Department") as a corporate real
4 estate broker by and through SAPP as designated officer-broker of PENINSULA to qualify said
5 corporation and to act for said corporation as a real estate broker.

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7 At all times herein mentioned, SAPP was and now is licensed by the Department
8 as a real estate broker, individually and as designated officer-broker of PENINSULA. As said
9 designated officer-broker, SAPP was at all times mentioned herein responsible pursuant to
10 Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real
11 estate licensees, and employees of PENINSULA for which a license is required.

12 5

13 At all times herein mentioned, RUSSELL was and now is licensed by the
14 Department as a real estate salesperson employed by PENINSULA, such license was restricted
15 on or about April 24, 2007.

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

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24 At all times herein mentioned, PENINSULA engaged in the business of, acted in
25 the capacity of, advertised, or assumed to act as a corporate real estate broker within the State of
26 California on behalf of others, for compensation or in expectation of compensation within the
27 meaning of Section 10131(a) of the Code, including the operation and conduct of a resale

1 brokerage wherein PENINSULA sold or offered to sell, bought or offered to buy, solicited
2 prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase,
3 sale or exchange of real property or a business opportunity.

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5 In so acting as real estate licensees, PENINSULA and RUSSELL accepted or
6 received funds in trust (herein "trust funds") from or on behalf of sellers, buyers or others in
7 connection with the sale of business opportunities, described in Paragraph 7, above, and
8 thereafter from time to time made disbursements of said trust funds.

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10 The aforesaid trust funds accepted or received by PENINSULA and RUSSELL,
11 described in Paragraph 8, above, were deposited or caused to be deposited by RUSSELL into one
12 or more bank accounts (herein "trust fund accounts") maintained by Respondent RUSSELL for
13 the handling of trust funds at the Carmel, California, branch of Monterey County Bank, including
14 but not necessarily limited to "Peninsula business Sales, Inc. DBA Carmel Business Sales",
15 account number xxx7729 (herein "Bank #1").

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17 PENINSULA collected fees from the following sellers listed below, which
18 RUSSELL represented as "advertising" fees, when the in fact said "advertising" fees were
19 actually advance fees:

20	<u>Seller</u>	<u>Amount</u>	<u>Date Collected</u>	<u>Date Deposited</u>
21	TL Florist & Gifts	\$500	3/27/10	4/29/10
22		\$500	unknown	5/25/10
23	Mucky D.	\$2,000	4/7/10	5/27/10
24	Dixon C.	\$1,000	1/25/10	5/25/10
25	SW Natural Foods	\$2,000	1/31/11	1/31/11
26	SC Billiards	\$100	8/15/11	9/28/11
27				

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2 Between about January 1, 2010 and October 2011, in connection with the
3 collection of said trust funds, described in Paragraph 10, Respondent(s):

- 4 (a) PENINSULA and RUSSELL collected said advance fees for listing a
5 business opportunity prior to submitting an advance fee agreement
6 for review by the Real Estate Commissioner in violation of Sections
7 10085 (advance fee materials), 10085.5 (collecting advance fees)
8 Section 2970 (advanced fee materials) of Title 10, Chapter 6 of the
9 California Code of Regulations (herein "the Regulations"), and
10 represented said advance fees as "advertising" fees, in violation of
11 10176(a) (substantial misrepresentation), (i) (dishonest dealing),
12 and/or 10177(g) (negligence) and/or 10177(j) (dishonest dealing) of
13 the Code;
- 14 (b) PENINSULA failed to place trust funds entrusted to Respondent,
15 into the hands of a principal on whose behalf the funds were
16 received, into a neutral escrow depository, or into a trust fund
17 account in the name of Respondent as trustee at a bank or other
18 financial institution, in conformance with the requirements of
19 Sections 10146 (advance fee trust account) or 10145 (trust account)
20 of the Code and Section 2832 (trust fund) of the Regulations, in that
21 said fees were deposited into Bank #1;
- 22 (c) RUSSELL failed to immediately deliver said trust funds to SAPP,
23 broker of record for PENINSULA or failed to deliver the funds into
24 the custody of the broker's principal or into a neutral escrow
25 depository or into the broker's trust fund account, in violation of
26 Section 10145(c) (salesperson duty to deliver trust funds to broker)
27 of the Code;

- 1 (d) PENINSULA failed to keep a columnar record in chronological
2 order of all trust funds received and disbursed from Bank #1
3 containing all of the information required by Section 2831
4 (columnar records) of the Regulations;
- 5 (e) PENINSULA failed to keep a separate record for each beneficiary
6 or transaction for Bank #1 containing all the information required
7 by Section 10145(g) (separate records) of the Code and Section
8 2831.1 (separate records) of the Regulations;
- 9 (f) PENINSULA failed to reconcile at least once a month, the balance
10 of all separate beneficiary or transaction records with Bank #1, as
11 required by Section 2831.2 (monthly reconciliation) of the
12 Regulations;
- 13 (g) PENINSULA failed to furnish to the principals a verified
14 accounting report at the end of each calendar quarter, in violation
15 of Section 2972 (quarterly reports) of the Regulations; and
- 16 (h) PENINSULA caused, suffered or permitted money of others which
17 was collected and held by PENINSULA in Bank #1 to be
18 commingled with PENINSULA's own money, in violation of
19 Section 10176(e) (commingling) of the Code and Section 2835
20 (commingling) of the Regulations.

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22 At all times mentioned herein, Respondent SAPP failed to exercise reasonable
23 supervision over the acts of Respondents PENINSULA and RUSSELL and its agents and
24 employees in such a manner as to allow the acts and omissions on the part of PENINSULA and
25 RUSSELL, described above, to occur in violation of Sections 10159.2 (broker supervision,
26 corporation), 10177(g) (negligence) and (h) (broker supervision) of the Code and Section 2725
27 (reasonable supervision) of the Regulations.

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2 The facts alleged above are grounds for the suspension or revocation of the
3 license and license rights of Respondents under the following provisions of the Code and/or the
4 Regulations:

- 5 (a) as to Paragraph 11(a) and PENINSULA and RUSSELL under Sections 10085,
6 10085.5, 10176(a) and (i), and/or 10177(g) and/or 10177(j) of the Code and
7 Section 2970 of the Regulations in conjunction with Section 10177(d) of the Code;
8 (b) as to Paragraph 11(b) and PENINSULA under Sections 10146 or 10145 of the
9 Code and/or Section 2832 of the Regulations in conjunction with Section 10177(d)
10 of the Code;
11 (c) as to Paragraph 11(c) and RUSSELL under Section 10145(c) of the Code in
12 conjunction with Section 10177(d) of the Code;
13 (d) as to Paragraph 11(d) and PENINSULA under Section 2831 of the Regulations in
14 conjunction with Section 10177(d) of the Code;
15 (e) as to Paragraph 11(e) and PENINSULA under Section 10145(g) of the Code and
16 Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the
17 Code;
18 (f) as to Paragraph 11(f) and PENINSULA under Section 2831.2 of the Regulations in
19 conjunction with Section 10177(d) of the Code;
20 (g) as to Paragraph 11(g) and PENINSULA under Section 2972 of the Regulations in
21 conjunction with Section 10177(d) of the Code;
22 (h) as to Paragraph 11(h) and PENINSULA under Section 10176(e) of the Code and
23 Section 2835 of the Regulations in conjunction with Section 10177(d) of the Code;
24 and
25 (i) as to Paragraph 12 and Respondent SAPP under Sections 10159.2 and 10177(g)
26 and (h) of the Code and Section 2725 of the Regulations in conjunction with
27 Section 10177(d) of the Code.

1 PRIOR DISCIPLINE

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3 Effective April 24, 2007, in Case No. H-2016 FRESNO, the Real Estate
4 Commissioner denied Respondent MICHAEL ROBERT RUSSELL's application for a real estate
5 salesperson license for violation of Section 10177(d) of the Code in conjunction with Sections
6 10130, 10131(a) and 10177(f) of the Code, but granted him a restricted real estate salesperson
7 license.

8 COST RECOVERY

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10 Audit Costs

11 The acts and/or omissions of Respondents as alleged above, entitle the
12 Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

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14 Investigation and Enforcement Costs

15 Section 10106 of the Code provides, in pertinent part, that in any order issued in
16 resolution of a disciplinary proceeding before the Department, the Commissioner may request the
17 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
18 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

19 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
20 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
21 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of
22 Division 4 of the Business and Professions Code), for the cost of the investigation and
23 enforcement as permitted by law, and for such other and further relief as may be proper under
24 other applicable provisions of law.

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26 Dated at Sacramento, California
27 this 24th day of April, 2013.



TRICIA SOMMERS
Deputy Real Estate Commissioner