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BUREAU OF REAL ESTATE

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BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	
	)	
CONWAY & CONWAY INC., and	)	NO. H-2953 FR
IRENE J. CONWAY,	)	
	)	<u>ACCUSATION</u>
Respondents.	)	
	)	

The Complainant, BRENDA SMITH, in her official capacity as a Supervising Special Investigator for the Bureau of Real Estate, State of California, for cause of Accusation against CONWAY & CONWAY INC., individually and doing business as "Classic Real Estate & Property Management" ("C&C"), and IRENE J. CONWAY ("CONWAY"), (collectively "Respondents"), is informed and alleges as follows:

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At all times relevant herein, C&C was and is licensed by the Bureau of Real Estate ("the Bureau") as a corporate real estate broker.

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At all times relevant herein, CONWAY was and is licensed by the Bureau as a real estate broker, and was and is licensed by the Bureau as the designated broker/officer of

1 C&C. As the designated broker/officer, CONWAY is responsible, pursuant to Section 10159.2
2 (supervision responsibility of corporate officer in charge) of the California Business and
3 Professions Code ("the Code"), for the supervision of the activities of the officers, agents, real
4 estate licensees and employees of C&C for which a real estate license is required.

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6 At all times relevant herein, Respondents engaged in the business of, acted in
7 the capacity of, advertised, or assumed to act as a real estate broker within the State of
8 California within the meaning of Section 10131(b) of the Code (broker defined – property
9 management/collection of rent), including the operation and conduct of a property management
10 business with the public, wherein, on behalf of others, for compensation or in expectation of
11 compensation, Respondents leased or rented and offered to lease or rent, and solicited for
12 prospective tenants of real property or improvements thereon, and collected rents from tenants.

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

19 FIRST CAUSE OF ACTION

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21 In or about the period of May 21, 2014, and continuing intermittently through
22 June 12, 2014, an audit was conducted of the records of C&C at its main office located at
23 5160 Pentecost Drive, #D, Modesto, California. The auditor examined the records for the
24 period of July 1, 2013, through April 30, 2014 (the audit period).

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26 While acting as a real estate broker as described in Paragraph 3, above, and within
27 the audit period, Respondents accepted or received funds in trust (trust funds) from or on behalf

1 of tenants, property owners and others in connection with property management activities, and
2 deposited or caused to be deposited those funds into a bank account maintained by Respondents,
3 including:

4 Trust Account #1

5 RaboBank
6 1400 Standiford Avenue
7 Modesto, CA 95350

8 Account No. XXXXX0085

9 Account Name: Conway & Conway Inc Classic Real
10 Estate & Property Mgmt Trust Account

11 Signatories: Irene Conway, REB

12 Thereafter, from time to time, Respondents made disbursements of said trust funds.

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14 In the course of the activities described in Paragraph 3, above, in connection with
15 the collection and disbursement of trust funds:

16 (a) On or about March 31, 2014, there was a \$18,403.53 shortage for Trust
17 Account #1. Respondents did not provide evidence that the owners of the trust funds had given
18 their written consent allowing Respondents to reduce the balance of the funds in Trust Account
19 #1 to an amount less than the existing aggregate trust fund liabilities. Such acts and/or omissions
20 by Respondents violate Section 10145 (handling of trust funds) of the Code and Section 2832.1
21 (trust fund handling for multiple beneficiaries) of Title 10 of the California Code of Regulations
22 (“the Regulations”).

23 (b) Respondents failed to maintain accurate and correct control records for trust
24 funds maintained in Trust Account #1. Such acts and/or omissions violate Section 10145 of the
25 Code and Section 2831 (maintenance of control records) of the Regulations.

26 (c) Respondents failed to maintain a separate record for security deposits
27 maintained in Trust Account #1. Such acts and/or omissions by Respondents violate Section
10145 of the Code and Section 2831.1 (maintenance of trust fund records) of the Regulations.

1 (d) Respondents failed to reconcile the total of separate beneficiary/property
2 records with a control record on a monthly basis for Trust Account #1. Such acts and/or
3 omissions by Respondents violate Section 10145 of the Code and Section 2831.2 (trust fund
4 reconciliation requirement) of the Regulations.

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6 The acts and/or omissions of Respondents, as alleged in Paragraph 7, above, are
7 grounds for the discipline of Respondents' licenses and license rights under Sections 10177(d)
8 (willful disregard or violation of real estate law) and/or 10177(g) (negligence or incompetence)
9 of the Code. In addition, the Bureau is entitled to reimbursement from Respondents for the costs
10 of its audit pursuant to Section 10148(b) (cost of audit in final decision following disciplinary
11 hearing) of the Code.

12 SECOND CAUSE OF ACTION

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14 At all times relevant herein, CONWAY was responsible, as the designated
15 broker/officer for C&C, for the supervision and control of the activities conducted on behalf of
16 the corporation by its officers and employees. CONWAY failed to exercise reasonable
17 supervision and control over the property management brokering activities of C&C. In particular,
18 CONWAY permitted, ratified and/or caused the conduct described Paragraph 7, above, to occur,
19 and failed to take reasonable steps, including, but not limited to, the handling of trust funds,
20 supervision of employees and the implementation of policies, rules, procedures and systems to
21 ensure the compliance of the corporation with the Real Estate Law and the Regulations. Such
22 acts and/or omissions of CONWAY violate Section 10159.2 of the Code and Section 2725 of the
23 Regulations (broker supervision requirement).

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25 The acts and/or omissions of CONWAY, as set forth in Paragraph 9, above,
26 constitute grounds for disciplinary action under Sections 10177(d) and/or 10177(g), and
27 10177(h) (reasonable supervision responsibility of broker) of the Code.

1 PRIOR ADMINISTRATIVE PROCEEDING

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3 Effective June 19, 2013, in Case No. H-2608 FR, C&C's corporate real estate
4 broker license was suspended for a period of sixty (60) days, with that period of suspension
5 stayed for two (2) years if no cause for disciplinary action occurred against C&C during that two
6 (2) year period; and the real estate broker license of CONWAY was suspended for sixty (60)
7 days, with thirty (30) days of that suspension stayed upon the condition that CONWAY pay a
8 monetary penalty at a rate of \$50.00 per day for each day of the stayed suspension, with the
9 remaining thirty (30) days of the suspension stayed for two (2) years if no cause for disciplinary
10 action occurred against CONWAY during that two (2) year period. CONWAY was also ordered
11 to take and pass the Professional Responsibility Examination and the trust fund handling course.
12 Respondents were jointly and severally ordered to pay the costs of the Bureau's audit and a
13 follow-up audit.

14 COST RECOVERY

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

20 WHEREFORE, Complainant prays that a hearing be conducted on the
21 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
22 disciplinary action against all licenses and license rights of Respondents under the Code, for
23 the reasonable cost of the investigation and prosecution of this case, for the reasonable costs of
24 the audit and for such other and further relief as may be proper under other provisions of law.

25
26 Dated at Fresno, California,
27 This 12 day of July, 2015.


BRENDA SMITH
Supervising Special Investigator