

**FILED**

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MAR 15 2016  
BUREAU OF REAL ESTATE

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8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 )  
13 ADVANCED MARKET REALTY, INC. and )  
14 DANA EARL HOWELL, )  
15 Respondents. )

NO. H-2998 FR

ACCUSATION

16 The Complainant, BRENDA SMITH, a Supervising Special Investigator of  
17 the State of California, makes this Accusation in her official capacity against ADVANCED  
18 MARKET REALTY, INC. (herein "AMRI") and DANA EARL HOWELL (herein  
19 "HOWELL"), (herein collectively "Respondents"), is informed and alleges as follows:

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

24 2

25 At all times herein mentioned, AMRI was and now is licensed by the State of  
26 California Bureau of Real Estate (herein "the Bureau") as a corporate real estate broker by and  
27 through HOWELL from about January 1, 2013, to about December 4, 2014, as designated

1 officer-broker of AMRI, to qualify said corporation and to act for said corporation as a real estate  
2 broker. AMRI has been without a designated officer-broker since December 5, 2014, when  
3 HOWELL cancelled.

4 3

5 At all times herein mentioned, HOWELL was and now is licensed or has license  
6 rights by the Bureau as a real estate broker individually and as designated officer-broker of  
7 AMRI from about January 1, 2013, to about December 4, 2014. As said designated officer-  
8 broker, HOWELL was at all times mentioned herein responsible pursuant to Section 10159.2 of  
9 the Code for the supervision of the activities of the officers, agents, real estate licensees and  
10 employees of AMRI, for which a license is required.

11 4

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

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18 At all times herein mentioned, Respondents engaged in the business of, acted in  
19 the capacity of, advertised, or assumed to act for another or others as real estate brokers within  
20 the State of California within the meaning of Sections:

21 (a) 10131(a) of the Code, resale activities, where Respondents sold or offered to  
22 sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained  
23 listings of, or negotiated the purchase, sale or exchange of real property or a business  
24 opportunity; and

25 (b) 10131(b) of the Code, property management activities, wherein Respondents  
26 leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for  
27 rent, or solicited for prospective tenants, or negotiated the sale, purchase or exchange of leases on

1 real property, or on a business opportunity or collected rents from real property, or improvements  
2 thereon, or from business opportunities.

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4 In so acting, as described in Paragraph 5, above, Respondents accepted or  
5 received funds in trust (herein "trust funds") from or on behalf of buyers, sellers, owners, tenants,  
6 and others in connection with the purchase, sale, lease, rent, and collection of rents on real  
7 property or improvements thereon, as alleged herein, and thereafter from time to time made, or  
8 caused to be made, disbursements of said funds.

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10 The aforesaid trust funds accepted or received by Respondents were deposited  
11 or caused to be deposited by Respondents into one or more bank accounts (herein "trust fund  
12 accounts") maintained by Respondents for the handling of trust funds at the Los Banos,  
13 California branch of Rabobank, under account name "Advanced Market Realty Inc," account  
14 number xxxxxx1416 (herein "Bank Account #1").

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16 Between about April 10, 2015, and about April 29, 2015, an audit was conducted  
17 of the records of Respondents in connection with the activities described in Paragraphs 5, 6 and  
18 7, above. The auditor herein examined the records for the period between about January 1, 2013,  
19 and about March 31, 2015, and found Respondents:

- 20 (a) caused, suffered or permitted the balance of funds in Bank Account  
21 #1 to be reduced to amounts, which as of March 31, 2015, were  
22 approximately \$731.03, less than the aggregate liability of AMRI to  
23 all owners of such funds, without the prior written consent of the  
24 owners of such funds, in violation of Section 10145 of the Code and  
25 Section 2832.1 of Chapter 6, Title 10, of the California Code of  
26 Regulations (herein "the Regulations");  
27 (b) failed to place the trust funds entrusted to Respondents into the

1 hands of a principal on whose behalf the funds were received, into a  
2 neutral escrow depository, or into a trust fund account in the name of  
3 Respondents as trustees at a bank or other financial institution for  
4 Bank Account #1, in conformance with the requirements of Section  
5 10145 of the Code and Section 2832 the Regulations;

6 (c) failed to maintain an accurate columnar record in chronological  
7 sequence of all trust funds received and disbursed from Bank  
8 Account#1 containing all required information, in violation of  
9 Section 2831 of the Regulations;

10 (d) failed to keep a separate record for each beneficiary or transaction for  
11 Bank Account #1 containing all required information, in violation of  
12 Section 10145 of the Code and Section 2831.1 of the Regulations;

13 (e) failed to reconcile, at least once a month, the balance of all separate  
14 beneficiary or transaction records with Bank Account #1, in violation  
15 of Section 10145 of the Code and Section 2831.2 of the Regulations;

16 (f) failed to include HOWELL as a signatory on Bank Account #1, in  
17 violation of Section 10145(a)(2) of the Code;

18 (g) authorized Rhett S. and Stefanie H., unlicensed employees without  
19 fidelity bond coverage, to make withdrawals from Bank Account #1  
20 in violation of Section 10145(a)(2) of the Code and Section 2834 of  
21 the Regulations;

22 (h) caused, suffered or permitted funds of others which were received  
23 and held by Respondents in Bank Account #1 to be commingled with  
24 AMRI's own funds, in violation of Section 10176(e) of the Code and  
25 Section 2835 of the Regulations;

26 (i) failed to disclose license identification numbers on AMRI's website,  
27 <http://www.advancedmarketrealty.com>, in violation of Section

1 10140.6(b) of the Code and Section 2773 of the Regulations; and  
2 (j) allowed and compensated Corinne R., Charizma M. and Eugenia C.,  
3 to perform licensed activities during the time they did not have a  
4 license and/or were not affiliated with an employing broker, in  
5 violation of Sections 10130 and 10137 of the Code.

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7 Between about January 1, 2013, and about December 4, 2014, HOWELL failed to  
8 exercise reasonable supervision over the acts of AMRI, and their agents and employees in such a  
9 manner as to allow the acts and omissions on the part of AMRI, described above, to occur, in  
10 violation of Sections 10177(h) and (g) and 10159.2 of the Code and Section 2725 of the  
11 Regulations.

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13 The facts alleged above are grounds for the suspension or revocation of the  
14 licenses and license rights of Respondents under the following provisions of the Code and  
15 Regulations:

- 16 (a) as to Paragraph 8(a) under Section 10145 of the Code and Section  
17 2832.1 of the Regulations, in conjunction with Section 10177(d) of  
18 the Code;
- 19 (b) as to Paragraph 8(b) under Section 10145 of the Code and Section  
20 2832 of the Regulations, in conjunction with Section 10177(d) of the  
21 Code;
- 22 (c) as to Paragraph 8(c) under Section 2831 of the Regulations, in  
23 conjunction with Section 10177(d) of the Code;
- 24 (d) as to Paragraph 8(d) under Section 10145 of the Code and Section  
25 2831.1 of the Regulations, in conjunction with Section 10177(d) of the  
26 Code;
- 27 (e) as to Paragraph 8(e) under Section 10145 of the Code and Section

1 2831.2 of the Regulations, in conjunction with Section 10177(d) of  
2 the Code;

3 (f) as to Paragraph 8(f) and HOWELL, under Section 10145(a)(2) of the  
4 Code, in conjunction with Section 10177(d) of the Code;

5 (g) as to Paragraph 8(g) under Section 10145(a)(2) of the Code and  
6 Section 2834 of the Regulations, in conjunction with Section  
7 10177(d) of the Code;

8 (h) as to Paragraph 8(h) under Section 10176(e) of the Code and Section  
9 2835 of the Regulations, in conjunction with Section 10177(d) of the  
10 Code;

11 (i) as to Paragraph 8(i) under Section 10140.6(b) of the Code and  
12 Section 2773 of the Regulations, in conjunction with  
13 Section 10177(d) of the Code;

14 (j) as to Paragraph 8(j) under Sections 10130 and 10137 of the Code, in  
15 conjunction with Section 10177(d) of the Code; and

16 (k) as to Paragraph 9, Respondent HOWELL, under Sections and  
17 10159.2 and 10177(g) and (h) of the Code and Section 2725 of the  
18 Regulations, in conjunction with Section 10177(d) of the Code.

19 COST RECOVERY

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21 Audit Costs

22 The acts and/or omissions of Respondents as alleged above entitle the Bureau to  
23 reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

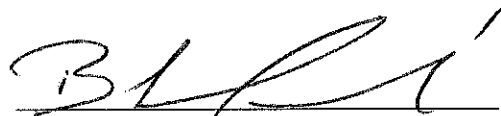
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25 Investigation and Enforcement Costs

26 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
27 resolution of a disciplinary proceeding before the Bureau, the Real Estate Commissioner may

1 request the Administrative Law Judge to direct a licensee found to have committed a violation of  
2 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of  
3 the case.

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

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12  
13 BRENDA SMITH  
14 Supervising Special Investigator

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16 Dated at Fresno, California

17 this 10 day of March, 2016.

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