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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

ACTION ONE PROPERTY MANAGEMENT, INC.
and CARL GENE GWALTNEY,

Respondents.

No. H-3028 FR

ACCUSATION

The Complainant, BRENDA SMITH, a Supervising Special Investigator of the State of California, for cause of Accusation against ACTION ONE PROPERTY MANAGEMENT, INC. and CARL GENE GWALTNEY (Respondents), is informed and alleges as follows:

PRELIMINARY ALLEGATIONS

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The Complainant, BRENDA SMITH, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

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

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4 At all times mentioned, ACTION ONE PROPERTY MANAGEMENT, INC.
5 (ACTION) was and is licensed by the State of California Bureau of Real Estate (Bureau) as a real
6 estate broker corporation.

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8 At all times mentioned, Respondent CARL GENE GWALTNEY (GWALTNEY)
9 was and is licensed by the Bureau individually as a real estate broker, and as the designated
10 broker officer of ACTION. As said designated officer-broker, GWALTNEY was responsible
11 pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers,
12 agents, real estate licensees, and employees of ACTION for which a license is required.

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

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

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1 FIRST CAUSE OF ACTION

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3 Each and every allegation in Paragraphs 1 through 6, inclusive, is incorporated by
4 this reference as if fully set forth herein.

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6 On or about February 25, 2016, and continuing intermittently through May 23,
7 2016, an audit was conducted of the records of ACTION. The auditor herein examined the
8 records for the period of January 1, 2014, through December 31, 2015.

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10 While acting as a real estate broker as described in Paragraph 6, Respondents
11 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in
12 connection with the leasing, renting, and collection of rents on real property or improvements
13 thereon, as alleged herein, and thereafter from time to time made disbursements of said trust
14 funds.

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16 The trust funds accepted or received by Respondents as described in Paragraph 9
17 were deposited or caused to be deposited by Respondents into trust accounts which were
18 maintained by Respondents for the handling of trust funds, and thereafter from time-to-time
19 Respondents made disbursements of said trust funds, identified as follows:

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| ACCOUNT # 1 | |
|----------------------------|---|
| 21 Bank Name and Location: | US Bank 1120 11 th Street 22 Modesto, CA 95354 |
| 23 Account No.: | XXXXXXXXX5069 |
| 24 Entitled: | Action One Property Management, Inc. |

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| ACCOUNT # 2 | |
|-------------------------|--|
| Bank Name and Location: | US Bank 1120 11 th Street Modesto, CA 95354 |
| Account No.: | XXXXXXXX6225 |
| Entitled: | Action One Property Management, Inc. |

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In the course of the activities described in Paragraph 6, Respondents:

- (a) failed to deposit trust funds into one or more trust funds accounts in the name of Respondent as trustee at a bank or other financial institution, in conformance with Section 10145 of the Code and Section 2832 of Title 10 of the California Code of Regulations (Regulations);
- (b) commingled with its own money or property, the money or property of others which was received or held by Respondents in trust in violation of Section 10176(e) of the Code;
- (c) caused, permitted, and/or allowed, the possible withdrawal of trust funds from Account #1 and 2 by a person, Jackeline Price, who was not licensed to the broker and not covered by a fidelity bond in violation of Section 2834 of the Regulations;
- (d) failed to keep accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into Account #'s 1 and 2, containing all of the information required by Section 2831.1 of the Regulations;
- (e) failed to reconcile, for Account #'s 1 and 2, the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for each account as required by Section 2831.2 of the Regulations; and
- (f) failed to maintain a written control record, for Account #1 and 2, of all trust funds received and disbursed, containing all information required by Section 2831 of the Regulations.

The facts alleged in the First Cause of Action are grounds for the suspension or revocation of Respondents' licenses and license rights under the following sections of the Code and Regulations:

As to Paragraph 11(a), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

As to Paragraph 11(b), under Section 10176(e) of the Code;

As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction with Section 2834 of the Regulations;

As to Paragraph 11(d), under Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations;

As to Paragraph 11(e), under Section 10177(d) of the Code in conjunction with Section 2831.2 of the Regulations; and

As to Paragraph 11(f), under Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations.

SECOND CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 12, inclusive, above, are incorporated by this reference as if fully set forth herein.

Respondent GWALTNEY failed to exercise reasonable supervision over the acts of ACTION in such a manner as to allow the acts and events described above to occur.

The acts and/or omissions of GWALTNEY described in Paragraph 14 constitute failure on the part of GWALTNEY, as designated broker-officer for ACTION, to exercise reasonable supervision and control over the licensed activities of ACTION as required by Section 10159.2 of the Code.

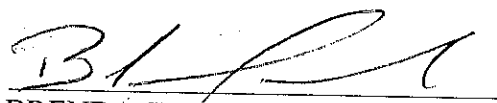
The facts described above as to the Second Cause of Action constitute cause for the suspension or revocation of the licenses and license rights of Respondent GWALTNEY under Section 10177(g) and/or Section 10177(h) of the Code, and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

COST RECOVERY

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

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

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


BRENDA SMITH
Supervising Special Investigator

Dated at Fresno, California,
this 26 day of July, 2016

DISCOVERY DEMAND

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

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