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DEPT. OF REAL ESTATE

By John Aguil

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-03275 FR
12	WATSON REALTY SERVICES INC.,)	<u>ACCUSATION</u>
13	and KENNETH PAUL CARTER,)	
14	individually and as designated officer)	
15	of Watson Realty Services Inc.,)	
	Respondents.)	

16 The Complainant, Brenda Smith, a Supervising Special Investigator for the
17 Department of Real Estate ("Department" or "DRE") of the State of California, for cause of
18 Accusation against WATSON REALTY SERVICES INC. ("WRS"), and KENNETH PAUL
19 CARTER ("CARTER") (collectively "Respondents"), alleges as follows:

20 1. The Complainant, Brenda Smith, acting in her official capacity as a Supervising
21 Special Investigator, makes this Accusation against Respondents.

22 2. All references to the "Code" are to the California Business and Professions Code
23 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

24 **LICENSE HISTORY**

25 3. Respondent WRS has been licensed by the Department as a real estate corporation,
26 License ID 00782354, from on or about May 2, 1980¹ through the present, with WRS's license

27
28 ¹ WRS was formerly licensed under the corporate names: Thomas A Payne Investment Inc from May 2, 1980 to July 14, 1980; The Watson Realty Company from July 15, 1980 to May 8, 1991; and Watson Corporation from May 9, 1991 to June 8, 2003. WRS was licensed under its current name on June 9, 2003.

1 scheduled to expire on August 11, 2021 unless renewed. WRS is licensed through CARTER's
2 real estate broker ("REB") license, ID 01159684, and CARTER is the designated officer ("D.O.").
3 As of August 2019, WRS has two (2) branch offices located at 4045 Tournament Dr, Palmdale,
4 CA 93551 and 4605 Seedling Way, Bakersfield, CA 93306. The following twelve (12) fictitious
5 business names are currently active and licensed to WRS with the Department:

- 6 a. "Touchstone Real Estate Group," effective from September 27, 2007;
- 7 b. "Watson Property Management," effective from October 25, 2010;
- 8 c. "Watson Realty," effective from May 12, 2008;
- 9 d. "Watson Realty Company," effective from April 16, 1993;
- 10 e. "Watson Realty ERA," effective from March 11, 2004;
- 11 f. "Watson Referral Services," effective from January 26, 2007;
- 12 g. "Watson Relocation Services," effective from April 16, 1993;
- 13 h. "Watson Touchstone," effective from September 27, 2007;
- 14 i. "Watson Touchstone ERA," effective from May 12, 2008;
- 15 j. "Watson Touchstone Property Management," effective from September 27,
16 2007;
- 17 k. "Watson Touchstone Real Estate," effective from September 27, 2007; and
- 18 l. "Watson Touchstone Referral Services," effective from September 27,
19 2007.

20 4. Respondent CARTER has been licensed by the Department as a real estate broker,
21 from on or about March 7, 2000 through the present, with CARTER's license scheduled to expire
22 on March 6, 2020, unless renewed. CARTER has no fictitious business names licensed with the
23 Department.

24 **BROKERAGE: WRS**

25 5. At all times mentioned, in the City of Bakersfield, County of Kern, WRS acted as a
26 real estate broker, conducting licensed activities within the meaning of Code section 10131(b):
27 leasing or renting, or soliciting prospective tenants, or collecting rents on behalf of another or
28 others. At all times mentioned, WRS was acting by and through CARTER as its designated

1 officer pursuant to Code section 10159.2, and CARTER was thus responsible for ensuring
2 compliance with the Real Estate Law.

3 **AUDIT: WRS FR 17-0093**

4 6. On June 29, 2018, the Department completed an audit examination of the books
5 and records of WRS's real estate activities that require a corporate real estate broker license under
6 Code section 10131. The audit examination covered the time period January 1, 2016 to February
7 28, 2018 ("audit period") and was limited to WRS's property management activities.

8 7. The purpose of the audit examination was to determine whether WRS handled and
9 accounted for trust funds, and other compliance issues, in accordance with the Real Estate Law
10 and the Regulations.

11 8. Based on discussions between the Department's auditor and CARTER, WRS's
12 corporate structure as of March 19, 2018 was as follows:

<u>Name</u>	<u>Title</u>	<u>License Status</u>	<u>Shareholder %</u>
CARTER	President	D.O./REB	49.5%
Belenda Carter	N/A	Unlicensed	49.5%
William Redmond	Vice President	REB (ID No. 01223840)	1%

16 9. As of March 19, 2018, WRS had 117 real estate salespersons, and two broker
17 associates under its license, and had one branch office located at 4045 Tournament Dr, Palmdale,
18 CA 93551.

19 10. As of March 19, 2018, according to CARTER, WRS engaged in property
20 management activities, managing 834 one-to-four unit family residences with 887 units and three
21 apartment complexes with 31 units for 309 owners.

22 11. WRS collected rents, paid expenses, and screened tenants, in exchange for
23 compensation. There was a total monthly collection of approximately \$502,000 of which 5%
24 consisted of cash. WRS charged a monthly management fee that ranged from \$37 to \$200 per unit
25 or 6% to 10% of collected rents for the properties managed. WRS also charged a tenant placement
26 fee of 30% of the first month's rent for new owners and 25% of the first month's rent for renewing
27 owners, a late fee of 6% of the monthly rent balance which was included in broker's management
28 fee, and a NSF fee of \$25, also included in the broker's management fee.

1 12. During the audit period, WRS maintained two (2) bank accounts to deposit and
2 hold real estate trust funds in the form of rents and security deposits from tenants. The information
3 for WRS's bank accounts is as follows:

4 **Trust Account #1 ("TA1")**

5 Bank: Citizens Business Bank
6 5060 California Ave., Suite 100
7 Bakersfield, CA 93309

8 Account Name: Watson Realty Services, Inc.,
9 DBA Watson Property Management
10 Kenneth Carter Broker/Trustee OP Trust

11 Account #: XXXXXXXXXXX774

12 Signatories: CARTER (REB)
13 William Redmond (REB)
14 Dawn Webb (Unlicensed Employee)

15 Description: TA1 was a Business Checking account used for deposits and
16 disbursements related to the management of properties.
17 Deposits consisted of rents and security deposits collected
18 from tenants. Disbursements were payments for expenses
19 related to the properties managed, remittances to owners, and
20 payment of management fees to WRS.

21 **Trust Account #2 ("TA2")**

22 Bank: Citizens Business Bank
23 5060 California Ave., Suite 100
24 Bakersfield, CA 93309

25 Account Name: Watson Realty Services, Inc.,
26 DBA Watson Property Management
27 Kenneth Carter Broker/Trustee Dep Trust

28 Account #: XXXXXXXXXXX782

Signatories: CARTER (REB)
William Redmond (REB)

Description: TA2 was a Business Checking account used for deposits and
disbursements related to the management of properties.
Deposits consisted of security deposits collected from
tenants. Disbursements were remittances to owners. TA2 was
closed on April 24, 2018 and all funds were transferred to
TA1.

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1 13. The audit examination in Audit No. FR 17-0093 revealed violations of the Code
2 and the Regulations as set forth in the following paragraphs, and as more fully discussed in Audit
3 Report FR 17-0093 and the exhibits and work papers attached to the audit report.

4 **AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW**

5 14. In the course of their real estate activities during the audit period, Respondents
6 WRS and CARTER acted in violation of the Code and the Regulations as follows:

7 **Issue One (1). Code section 10145(a) and Regulation 2832.1; Code section 10145 and**
8 **Regulations 2831.1 and 2831: Trust Fund Balances and Accountability, Separate Beneficiary**
9 **Records, and Record of Trust Funds Received and Disbursed**

10 15. As of January 31, 2018, there was a combined shortage of \$42,272.57 for TA1 and
11 TA2. The shortage was caused by negative balances in 42 property accounts. The Department's
12 auditor prepared a combined bank reconciliation as of January 31, 2018 for TA1 and TA2,
13 compared the adjusted bank account balances to the total balance of the corresponding beneficiary
14 records (accountability), and provided the following summary:

15 a. TA1 and TA2 as of January 31, 2018

Adjusted Bank Balance, 1/31/2018	\$435,759.64
Accountability, 1/31/2018	
Identified Accountability	\$478,032.21
Total Accountability, 1/31/2018	<u>\$478,032.21</u>
Shortage as of 1/31/2018	<u><\$42,272.57></u>

21 16. As of April 23, 2018, \$14,722.00 had been re-paid by multiple owners and, on
22 April 26, 2018, CARTER deposited \$27,550.57, the remaining shortage, to TA1 from WRS's
23 operating account.

24 17. The Department's auditor could not prepare a separate bank reconciliation for TA2
25 because WRS failed to maintain separate records for each beneficiary and a record of all trust
26 funds received and disbursed in chronological sequence for TA2.

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28 ///

1 18. CARTER provided no evidence that the owners of the trust funds had given their
2 written consent to allow WRS to reduce the balance of the funds in the trust accounts to an amount
3 less than the existing aggregate trust fund liabilities.

4 19. WRS's failure to obtain the written consent of the owners of the trust funds to
5 reduce the balance of the funds to an amount less than the existing aggregate trust fund liability
6 was in violation of **Code section 10145(a) and Regulation 2832.1.**

7 20. WRS's failure to maintain accurate separate records for each beneficiary and a
8 complete and accurate record of all trust funds received and disbursed in chronological sequence
9 for TA2 was in violation of **Code section 10145 and Regulations 2831 and 2831.1.**

10 **Issue Two (2). Code section 10145 and Regulation 2834: Withdrawals from Bank Account**

11 **Holding Trust Funds**

12 21. Based on an examination of records, the bank signature card for TA1, current
13 during the audit period, listed Dawn Webb ("Webb"), an unlicensed individual without fidelity
14 bond coverage, as a signer. On or about April 18, 2018, CARTER revoked the signing authority of
15 Webb and removed her as an authorized signer for TA1.

16 22. The authorization of Webb, an unlicensed individual without a fidelity bond, to
17 make withdrawals on TA1 during the audit period is in violation of **Code Section 10145 and**
18 **Regulation 2834.**

19 **ADDITIONAL VIOLATIONS OF THE REAL ESTATE LAW**

20 **Cause of Accusation: Code sections 10159.2 and 10177(h) and Regulation 2725: Responsibility of**

21 **Corporate Officer in Charge / Broker Supervision**

22 23. The Complainant realleges and incorporates by reference all of the allegations
23 contained in paragraphs 1 through 22 above, with the same force and effect as though fully set
24 forth herein.

25 23. Based on the above audit findings in Issues 1 and 2 above, as alleged in paragraphs
26 15 through 22 above, as the broker and designated officer of WRS, CARTER failed to adequately
27 supervise WRS's real estate activities conducted by WRS's broker associates, salespersons, and
28 employees, and failed to establish policies, rules, procedures, and systems to review, oversee,

1 inspect, and manage transactions requiring a real estate license and the handling of trust funds, in
2 violation of **Code sections 10159.2 and 10177(h), and Regulation 2725.**

3 **INVESTIGATION AND ENFORCEMENT COSTS**

4 24. Code section 10106 provides that in any order issued in resolution of a disciplinary
5 proceeding before the Department of Real Estate, the Commissioner may request the
6 administrative law judge to direct a licensee found to have committed a violation of this part to
7 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

8 **AUDIT COSTS**

9 25. Code section 10148(b) provides, in pertinent part, the Commissioner shall charge a
10 real estate broker for the cost of any audit, if the Commissioner has found in a final decision
11 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation or
12 rule of the Commissioner interpreting said section.

13 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
14 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
15 against all the licenses and license rights of WATSON REALTY SERVICES INC., and
16 KENNETH PAUL CARTER under the Real Estate Law, for the costs of investigation and
17 enforcement, and audit as permitted by law, and for such other and further relief as may be proper
18 under other applicable provisions of law, and for costs of audit.

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20 Dated at Fresno, California this 17 day of December, 2019.

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23 
24 Brenda Smith
25 Supervising Special Investigator

26 cc: WATSON REALTY SERVICES INC.,
27 KENNETH PAUL CARTER
28 Brenda Smith
Sacto.