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**FILED**

SEP 02 2020

DEPARTMENT OF REAL ESTATE

By B. Nicholas

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

12 DS REALTY INC., and DARCY RENEE )  
13 STABERG, )

14 Respondents. )

No. H-3335 FR

ACCUSATION

15 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the  
16 State of California, for cause of Accusation against DS REALTY INC., and DARCY RENEE  
17 STABERG (collectively "Respondents"), are informed and allege as follows:

18 PRELIMINARY ALLEGATIONS

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

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

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At all times mentioned, Respondent DS REALTY INC. (DS) was and is licensed by the State of California Department of Real Estate (Department) as a real estate broker corporation.

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From on or about December 3, 2018 to April 16, 2020, the corporate powers, rights and privileges of DS were forfeited pursuant to the provisions of the Revenue and Taxation Code.

5

At all times mentioned, Respondent DARCY RENEE STABERG (STABERG) was and is licensed by the Department individually as a real estate broker, and as the designated broker officer of DS. As said designated broker officer, STABERG was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of DS for which a license is required.

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

7

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of:

Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents sold and offered to sell, bought and offered to buy,

1 solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated  
2 the purchase and resale of real property; and

3 Section 10131(b) of the Code in the operation and conduct of a property  
4 management business with the public wherein, on behalf of others, for compensation or in  
5 expectation of compensation, Respondent leased or rented and offered to lease or rent, and  
6 placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of  
7 real property or improvements thereon, and collected rents from real property or improvements  
8 thereon.

9 FIRST CAUSE OF ACTION

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11 Each and every allegation in Paragraphs 1 through 7, inclusive, is incorporated by  
12 this reference as if fully set forth herein.

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14 On or about September 3, 2019, through September 16, 2019, an audit was  
15 conducted of the records of STABERG. The auditor herein examined the records for the period  
16 of August 1, 2017, through July 31, 2019.

17 10

18 While acting as a real estate broker as described in Paragraph 7, STABERG  
19 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in  
20 connection with the leasing, renting, and collection of rents on real property or improvements  
21 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust  
22 funds.

23 11

24 The trust funds accepted or received by Respondents as described in Paragraph 10  
25 were deposited or caused to be deposited by STABERG into trust accounts which were  
26 maintained by STABERG for the handling of trust funds, and thereafter from time-to-time  
27 STABERG made disbursements of said trust funds, identified as follows:

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ACCOUNT # 1	
Bank Name and Location:	Bank of Sierra 1103 West Visalia Road Exeter, CA 93221
Account No.:	XXXXX8870
Entitled:	D&S Investments & Property Management LLC

ACCOUNT # 2	
Bank Name and Location:	Bank of Sierra 1103 West Visalia Road Exeter, CA 93221
Account No.:	XXXXXX8830
Entitled:	D&S Investments & Property Management LLC

12

In the course of the activities described in Paragraph 7, STABERG:

(a) caused, suffered, or permitted the balance of funds in Account #1 to be reduced to an amount which, as of June 30, 2019, was approximately \$19,892.79 less than the aggregate liability of Account #1 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of Title 10, Chapter 6, of the California Code of Regulations (Regulations);

(b) caused, suffered, or permitted the balance of funds in Account #2 to be reduced to an amount which, as of June 30, 2019, was approximately \$16,181.86 less than the aggregate liability of Account #2 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

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1 (c) failed to deposit trust funds into a trust fund account in the name of  
2 STABERG as trustee at a bank or other financial institution, in conformance with Section 10145  
3 of the Code and Section 2832 of the Regulations;

4 (d) failed to maintain an accurate columnar record in chronological sequence  
5 of all trust funds received and disbursed from Account #1 and 2 containing all required  
6 information, in violation of Section 2831 of the Regulations;

7 (e) failed to keep accurate separate records for each beneficiary or transaction,  
8 accounting therein for all funds which were deposited into Account #1 and 2 containing all of the  
9 information required by Section 2831.1 of the Regulations;

10 (f) failed to reconcile the balance of separate beneficiary or transaction  
11 records with the control record of trust funds received and disbursed at least once a month,  
12 and/or failed to maintain a record of such reconciliations for Account #1 and 2 as required by  
13 Section 2831.2 of the Regulations;

14 (g) deposited trust funds into an interest bearing account for Account  
15 #2, in violation of Section 10145(d) of the Code; and

16 (h) conducted real estate activities using the fictitious business name "DS  
17 Investments" and "DS Investments & Property Management", without first registering this  
18 fictitious business name with the Bureau as required by Section 10159.5 of the Code and Section  
19 2731 of the Regulations.

20 13

21 The facts alleged in the First Cause of Action are grounds for the suspension or  
22 revocation of STABERG's licenses and license rights under the following Sections of the Code  
23 and Regulations:

24 As to Paragraphs 11(a) 11(b), under Sections 10177(d) and/or 10177(g) of the  
25 Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

26 As to Paragraph 11(c), under Sections 10177(d) and/or 10177(g) of the Code in  
27 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

1 As to Paragraph 11(d), under Sections 10177(d) and/or 10177(g) of the Code in  
2 conjunction with Section 10145 of the Code and Section 2831 of the Regulations;

3 As to Paragraph 11(e), under Sections 10177(d) and/or 10177(g) of the Code in  
4 conjunction with Section 10145 of the Code and Section 2831.1 of the Regulations;

5 As to Paragraph 11(f), under Sections 10177(d) and/or 10177(g) of the Code in  
6 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

7 As to Paragraph 11(g), under Sections 10177(d) and/or 10177(g) of the Code in  
8 conjunction with Section 10145(d) of the Code; and

9 As to Paragraph 11(h), under Sections 10177(d) and/or 10177(g) of the Code in  
10 conjunction with Section 10159.5 of the Code and Section 2731 of the Regulations.

11 SECOND CAUSE OF ACTION

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13 Each and every allegation in Paragraphs 1 through 13, inclusive, above are  
14 incorporated by this reference as if fully set forth herein.

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16 Beginning on or about December 30, 2018, through April 16, 2020, DS, while suspended  
17 by the Secretary of State, in course of the real estate resale brokerage activities described in  
18 Paragraph 7, negotiated and arranged the purchase and sale of real property, including but not  
19 necessarily limited to:.

20 Property Owner

PROPERTY ADDRESS

21 Ken and Yuko H.

413 E. Maple Street, Exeter

22 Andrew A.

1539 S. Burke, Visalia

23 Martin B.

331 E. Washington Avenue, Tulare

24 Kathleen J.

5416 W. Orchard, Visalia

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The facts alleged in Paragraph 15 are grounds for the suspension or revocation of the licenses of DS under Section 2742(c) of the Regulations in conjunction with 10177(d) of the Code.

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

18

The acts and/or omissions of STABERG described in Paragraph 17, constitute failure on the part of STABERG, as designated broker-officer for DS, to exercise reasonable supervision and control over the licensed activities of DS as required by Section 10159.2 of the Code.

19

The facts described in Paragraphs 17 and 18 constitute cause for the suspension or revocation of the licenses and license rights of STABERG 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.

THIRD CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 19, inclusive, above are incorporated by this reference as if fully set forth herein.

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2 On or about October 2017 STABERG, acting on behalf of DS, represented buyer  
3 Kendall N. (buyer) in the purchase of the two unit duplex located at 718 and 720 S. Jacob in  
4 Visalia (property). During the purchase both STABERG and buyer were informed that the  
5 tenant residing at 720 S Jacob was in a one year lease at the rental rate of \$775 a month and was  
6 only four months into the lease. STABERG falsely represented to the buyer that she could  
7 increase the tenant's rent after buyer purchased the property.

8 22

9 On or about November 1, 2017, STABERG agreed to manage 720 S. Jacob for  
10 buyer.

11 23

12 On or about January 2017, STABERG, acting on behalf of buyer, attempted to  
13 improperly increase the rent by sending a notice that rent was going to increase from \$775 to  
14 \$900 a month.

15 24

16 The acts and/or omissions of Respondent as alleged in the Third Cause of Action  
17 constitute grounds for the suspension or revocation of the licenses and license rights of  
18 Respondent under Sections 10176(a) and/or 10177(g) of the Code.

19 COST RECOVERY

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21 The acts and/or omissions of STABERG as alleged above, entitle the Department  
22 to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund  
23 handling violation) of the Code.

24 26

25 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
26 resolution of a disciplinary proceeding before the Department, the Commissioner may request  
27 the Administrative Law Judge to direct a licensee found to have committed a violation of this



1 part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
2 case.

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

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11 BREANDA SMITH  
12 Supervising Special Investigator

13 Dated at Fresno, California,  
14 this 24 day of August, 2020

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21 DISCOVERY DEMAND

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