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FILED

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DEPARTMENT OF REAL ESTATE
By SK Slupp

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H- 3353 FR

12 NIKOLAS TROY BOONE and)

ACCUSATION

13 ASCEND PROPERTY MANAGEMENT, INC.,)

14 Respondents.)

15 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
16 State of California, for Accusation against NIKOLAS TROY BOONE (BOONE) and ASCEND
17 PROPERTY MANAGEMENT, INC. (APM), collectively RESPONDENTS, is informed and
18 alleges as follows:

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20 The Complainant makes this Accusation against RESPONDENTS in her official
21 capacity.

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23 BOONE is presently licensed and/or has license rights by the Department of Real
24 Estate (Department), under the California Business and Professions Code (Code) as a real estate
25 broker.

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APM is presently licensed by the Department as a corporate real estate broker, but was unlicensed between July 21, 2019, when its license expired, and December 14, 2019, when its license was renewed. BOONE is the designated officer of APM.

At all times herein mentioned, RESPONDENTS engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, RESPONDENTS leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent or solicited for prospective tenants, or negotiated the sale, purchase or exchange of leases on real property, or on a business opportunity, or collected rents from tenants.

On January 23, 2020, an audit was conducted at APM'S main office located on 4801 Calloway Drive #101, Bakersfield, California, here the auditor examined records for the period of January 1, 2018, through December 31, 2019 (the audit period).

While acting as a real estate broker as described in Paragraph 4, above, and within the audit period, RESPONDENTS accepted or received funds in trust (trust funds) from or on behalf of property owners, lessees and others in connection with property management activities, deposited or caused to be deposited those funds into bank accounts maintained by RESPONDENTS at Rabobank, 5151 Stockdale Hwy, Bakersfield CA 93309, as described below:

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TRUST ACCOUNT #1	
Account No.:	XXXXXX5953
Entitled:	Ascend Property Management Inc Rent Trust Account

TRUST ACCOUNT #2	
Account No.:	XXXXXX8406
Entitled:	Ascend Property Management Inc Security Deposit Trust Account

BANK ACCOUNT #1	
Account No.:	XXXXXX8784
Entitled:	Ascend Property Management Inc

and thereafter from time to time made disbursement of said trust funds.

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FIRST CAUSE OF ACTION

Complainant refers to Paragraphs 1 through 6, above, and incorporates the same herein.

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In the course of the activities described in Paragraph 4, in connection with the collection and disbursement of trust funds, it was determined that:

- (a) RESPONDENTS failed to designate Bank Account #1 as a Trust Account, As required by Section 2832 of the Regulations and 10145 of the Code
- (b) During an accountability performed on Trust Account #1, and as of October 31, 2019, a shortage of \$13,629.89 was revealed, in violation of Section 10145 of the Code;
- (c) During an accountability performed on Trust Account #2, and as of October 31, 2019, a shortage of \$1,148.58 was revealed, in violation of Section 10145 of the Code;

- 1 (d) RESPONDENTS failed to obtain written permission from owners of trust
2 funds in Trust Account #1 to allow the balance to drop below
3 accountability, in violation of Section 2832.1 of the Regulations;
4 (e) RESPONDENTS failed to maintain separate beneficiary records for Bank
5 Account #1, as required by Section 2831.1 of the Regulations;
6 (f) RESPONDENTS failed to perform monthly reconciliations of the
7 separate beneficiary records and control records for Trust Account #1, as
8 required by Section 2831.2 of the Regulations;
9 (g) Between July 21, 2019, and December 14, 2019, when APM's corporate
10 broker license was expired, BOONE continued to conduct real estate
11 activities under APM's expired license.

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13 The acts and/or omissions described above constitute violations of Sections 2831
14 (control records), 2831.1 (separate beneficiary records), 2831.2 (monthly reconciliations), 2832
15 (trust fund designation), and 2832.1 (written permission balance below accountability) of the
16 Regulations and of Section 10145 (trust fund handling) of the Code, and are grounds for
17 discipline under Section 10177(d) (willful disregard of real estate laws) and 10177(g)
18 (negligence/incompetence licensee) of the Code.

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20 SECOND CAUSE OF ACTION

21 Complainant refers to Paragraphs 1 through 9, above, and incorporates the same
22 herein.

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24 At all times herein above mentioned, BOONE was responsible, as the
25 supervising designated broker/officer for APM, for the supervision and control of the activities
26 conducted on behalf of APM's business by its employees to ensure its compliance with the Real
27 Estate Law and Regulations. BOONE failed to exercise reasonable supervision and control over

1 the property management activities of APM. In particular, BOONE permitted, ratified and/or
2 caused the conduct described above to occur, and failed to take reasonable steps, including but
3 not limited to, the handling of trust funds, supervision of employees, and the implementation of
4 policies, rules, and systems to ensure the compliance of the business with the Real Estate Law
5 and the Regulations.

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7 The above acts and/or omissions of BOONE violate Section 2725 (broker
8 supervision) of the Regulations and Section 10159.2 (responsibility/designated officer) of the
9 Code and constitute grounds for disciplinary action under the provisions of Sections 10177(d),
10 10177(g) and 10177(h) (broker supervision) of the Code.

11 13

12 Audit Costs

13 The acts and/or omissions of RESPONDENTS as alleged above, entitle the
14 Department to reimbursement of the costs of its audits pursuant to Section 10148(b) (audit costs
15 for trust fund handling violations) of the Code.

16 14

17 Costs of Investigation and Enforcement

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


22 WHEREFORE, Complainant prays that a hearing be conducted on the
23 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
24 disciplinary action against all licenses and license rights of Respondents under the Real Estate

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1 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
2 relief as may be proper under other provisions of law.

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5 BREND A SMITH
6 Supervising Special Investigator

7 Dated at Fresno, California,
8 this 23 day of October, 2020.

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10 DISCOVERY DEMAND

11 The Department of Real Estate hereby requests discovery pursuant to Section
12 11507.6 of the California Government Code. Failure to provide discovery to the Department
13 may result in the exclusion of witnesses and/or documents at the hearing and other sanctions as
14 the Administrative Law Judge deems appropriate.