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FILED
JUL 22 2022
DEPARTMENT OF REAL ESTATE
By B. Richardson

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of:) NO. H-3429 FR
12)
13 MASTRO PROPERTY MANAGEMENT, INC.,) ACCUSATION
14 and MISTY ANN MASTRO,)
15 Respondents.)

16 The Complainant, BRENDA SMITH, acting in her official capacity as a
17 Supervising Special Investigator of the State of California, for cause of Accusation against
18 MASTRO PROPERTY MANAGEMENT, INC. (“MASTRO INC.”) and MISTY ANN
19 MASTRO (“MASTRO”) (collectively referred to herein as “Respondents”), is informed and
20 alleges as follows:

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22 Respondent MASTRO INC. is presently licensed by the California Department
23 of Real Estate (“the Department”) and/or has license rights under the Real Estate Law, Part 1 of
24 Division 4 of the California Business and Professions Code (“the Code”), as a real estate broker
25 corporation.

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Respondent MASTRO is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code (“The Real Estate Law”), as a real estate broker. At all relevant times, MASTRO served as the designated broker-officer of MASTRO INC. As the designated officer, MASTRO 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 MASTRO INC. for which a real estate license is required.

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

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At all times mentioned herein, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker 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 and offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

FIRST CAUSE OF ACTION

AUDIT VIOLATIONS

(As to Respondents MASTRO INC. and MASTRO)

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

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Beginning on or about July 8, 2021, and continuing intermittently through September 9, 2021, an audit was conducted of Respondents' records. The auditor examined the records for the period of April 1, 2020, through May 31, 2021.

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While acting as real estate licensees, as described above in Paragraph 4, Respondents accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

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The trust funds accepted or received by Respondents, as described above in Paragraph 7, were deposited or caused to be deposited by Respondents into bank accounts maintained by Respondents for the handling of trust funds, and thereafter from time-to-time Respondents made disbursements of said trust funds, from the following accounts:

TRUST ACCOUNT #1	
Bank:	Fresno First Bank 7690 N. Palm Avenue Fresno, CA 93711
Account No.:	XXXXXX3796
Entitled:	Mastro Property Management, Inc. Trust Account
Signatories:	Eric Dickey (Licensed but not under MASTRO INC.) Kayla Michelle Pulmano (Licensed but not under MASTRO INC.)
Purpose:	Holding handling trust funds for property rental activities. Deposits consisted of rents and security deposits collected from tenants. Disbursements consisted of payments for expenses related to properties managed, remittances to owners, and payment of management fees to MASTRO INC.

In the course of the activities described in Paragraph 4, Respondents:

(a) caused, suffered or permitted the balance of funds in the Trust Account #1 to contain a shortage of \$237,565.96 without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of Chapter 6, Title 10, California Code of Regulations (“the Regulations”);

(b) allowed an unlicensed individual without fidelity bond coverage, Eric Dickey, to be a signatory on the trust account, in violation of Section 10145 of the Code and Section 2834 of the Regulations; and

(c) allowed an unlicensed individual without fidelity bond coverage, Kayla Michelle Pulmano, to be a signatory on the trust account, in violation of Section 10145 of the Code and Section 2834 of the Regulations.

The acts and/or omissions of Respondents, as alleged above in Paragraph 9, constitute grounds for the suspension or revocation of Respondent’s real estate licenses and license rights pursuant to the following provisions of the Code and Regulations:

As to Paragraph 9(a), under Section 10177(d) of the Code, in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

As to Paragraph 9(b), under Section 10177(d) of the Code, in conjunction with Section 10145 of the Code and Section 2834 of the Regulations; and

As to Paragraph 9(c), under Section 10177(d) of the Code, in conjunction with Section 10145 of the Code and Section 2834 of the Regulations.

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SECOND CAUSE OF ACTION

FAILURE TO SUPERVISE

(As to Respondent MASTRO only)

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Each and every allegation in Paragraphs 1 through 10, inclusive, above, is incorporated by this reference as if fully set forth herein.

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MASTRO, as the designated officer of MASTRO INC., was required to exercise reasonable supervision and control over the activities of MASTRO INC., its employees, and the real estate activities conducted by MASTRO INC.

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MASTRO failed to exercise reasonable supervision over the acts and/or omissions of MASTRO INC. and its employees, in such a manner as to allow the acts and/or omissions as described above to occur, which constitutes cause for the suspension or revocation of the license(s) and license rights of MASTRO under Sections 10177(d), 10177(g), and/or 10177(h) and 10159.2 of the Code, in conjunction with Section 2725 of the Regulations.

THIRD CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

(As to Respondents MASTRO and MASTRO INC.)

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

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At all relevant times, while acting as a real estate agent, Respondents owed its clients and/or beneficiaries those fiduciary duties that are inherit in a position of trust as created by the agent/principal relationship, including, but not limited to the following duties: the duty of

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1 reasonable care and skill, the duty of honesty, the duty of good faith and fair dealings, the duty of
2 loyalty, and duty of diligence.

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4 Respondents MASTRO and MASTRO INC. breached their fiduciary duties by
5 engaging in the acts and/or omissions described above in the FIRST CAUSE OF ACTION.

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7 MASTRO breached her fiduciary duties by engaging in the acts and/or omissions
8 described above in the SECOND CAUSE OF ACTION.

9 COST RECOVERY

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11 The acts and/or omissions of Respondents, as alleged above in First Cause of
12 Action entitle the Department to reimbursement of the costs of its audit pursuant to Section
13 10148(b) of the Code.

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

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

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8 BREND A SMITH
Supervising Special Investigator

9 Dated at Fresno, California,
10 this 15 day of July, 2022

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22 DISCOVERY DEMAND

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