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DEPARTMENT OF REAL ESTATE
By J. Taggart

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 BLAIN ARDEN DIERKES,) No. H-3441 FR
14 Respondent.) ACCUSATION

15 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
16 State of California, for cause of Accusation against BLAIN ARDEN DIERKES ("Respondent"),
17 is informed and alleges as follows:

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

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22 Respondent is presently licensed and/or has license rights under the Real Estate
23 Law, Part 1 of Division 4 of the Business and Professions Code ("Code").

24 LICENSE HISTORY

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26 At all times mentioned, Respondent was and is licensed by the Department as a
27 restricted real estate broker, License ID 01031551. Respondent was licensed by the Department

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1 as a real estate salesperson on or about June 8, 1989. From on or about December 11, 1998 to
2 March 20, 2021, Respondent was licensed as a real estate broker.

3 Effective March 21, 2014, in Case No. H-2764 FR before the Department, the
4 Real Estate Commissioner issued an order for Respondent's real estate broker license to be
5 revoked, but granting the right to a restricted real estate broker license, for violation of Code
6 Sections 10177(d), 10117(g), and 10177(h) of the Code.

7 At all times after March 21, 2021, Respondent was licensed by the Department as
8 a restricted real estate broker. Unless renewed, Respondent's restricted broker license will
9 expire March 20, 2026.

10 At all times mentioned, Respondent was licensed to do business under the
11 fictitious business names: "Premier Financial", "Premier Real Estate", and "Prime Properties
12 Management." At no time mentioned was Respondent licensed to do business under the
13 fictitious business name "Premier Property Management."

14 AUDIT FR21-0006

15 4

16 On or about December 17, 2021, the Department completed its audit (FR21-0006)
17 of the books and records of Respondent's property management activities described in Paragraph
18 5. The auditor herein examined the records for the period of July 1, 2020, through June 30,
19 2021.

20 5

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

1 As of the audit examination, Respondent managed approximately thirty (30) one-
2 to-four family residences with thirty-five (35) units for eighteen (18) owners. Respondent
3 collected approximately \$440,000 to \$550,000 in trust funds annually.

4 Respondent's property management services include, but not limited to, collecting
5 rents, paying expenses, and screening tenants. For such property management services,
6 Respondent charged a management fee per unit per month of rents collected.

7 6

8 While acting as a real estate broker as described in Paragraph 5, Respondent
9 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in
10 connection with the leasing, renting, and collection of rents on real property or improvements
11 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust
12 funds.

13 The trust funds accepted or received by Respondent were deposited or caused to
14 be deposited by Respondent into accounts which were maintained by Respondent for the
15 handling of trust funds, and thereafter from time-to-time Respondent made disbursements of said
16 trust funds.

17 During the audit period, as described in Paragraph 4, Respondent maintained one
18 (1) bank accounts to hold trust funds, identified as follows:

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ACCOUNT # 1	
21 Bank Name and Location:	Bank of the Sierra 22 636 E. Shaw Avenue 23 Fresno, CA 93710
24 Account No.:	XXXXXXX5829
25 Account Name:	Mark Jeffrey Lanier 26 DBA Premier Property Management 27 Property Trust Account

Description:	Account #1 was used to collect and disburse trust funds for property management activities.
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In the course of the property management activities described in Paragraph 5, and during the audit examination period described in Paragraph 4, Respondent violated the Code and Regulations described below:

Trust Account Accountability and Balances

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Based on the records provided during the audit, a bank reconciliation for Account #1 was prepared for as of June 30, 2021.

Adjusted Bank Balance	(\$6,105.76)
Accountability	<u>\$1,467.41</u>
Trust Fund Shortage	<u><u>(\$7,573.17)</u></u>

As of June 30, 2021, Account #1 contained a shortage in the amount of \$7,573.17.

The shortage was caused by a bank deficit in the amount of \$6,105.76 because the total dollar amount of uncashed checks as of June 30, 2021 exceeded the ending balance of funds posted on the bank statements for Account #1 as of June 30, 2021. The shortage was also caused by unreimbursed bank service fees paid on October 2020, November 2020, and March 2021, totaling \$30.00. The cause of the remaining shortage of \$1,437.41 was unidentified.

Respondents provided no evidence that the owners of the trust funds had given their written consent to allow Respondents to reduce the balance of the funds in Trust Account #1 to an amount less than the existing aggregate trust fund liabilities, in violation of Section 10145 of the Code and Section 2832.1 of Title 10, Chapter 6, California Code of Regulations (Regulations).

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1 Trust Account Designation

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3 During the audit period, accounts used to hold trust funds, were not designated as
4 trust accounts in the name of the broker or the broker's fictitious business name as trustee, in
5 violation of Section 10145 of the Code and Section 2832 of the Regulations. The bank signature
6 card for Account #1 did not show this account being designated under the name of the broker or
7 in the name of a licensed fictitious name. Instead, the account title was designated in the name of
8 Mark Jeffrey Lanier dba Premier Property Management.

9 Unlicensed Fictitious Business Name

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11 Respondent failed to obtain a real estate license bearing the fictitious business
12 name "Premier Property Management," while conducting activities for which a license was
13 required, in violation of Section 10159.5 of the Code and Section 2731 of the Regulations.
14 Premier Property Management was found on the Lease Agreement for 2720 Goshen Avenue, and
15 the Bank Signature Card for Account #1.

16 GROUND FOR DISCIPLINE

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18 The acts and/or omissions of Respondent as alleged above constitute grounds for
19 the suspension or revocation of all licenses and license rights of Respondent, pursuant to the
20 following provisions of the Code and Regulations:

21 As to Paragraph 8, under Sections 10177(d), and/or 10177(g) of the Code in
22 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

23 As to Paragraph 9, under Sections 10177(d) and/or 10177(g) of the Code in
24 conjunction with Section 10145 of the Code and Section 2832 of the Regulations; and

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

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COST RECOVERY

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

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Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, 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 Respondent under the Code, for the cost of investigation and enforcement as permitted by law, for the cost of the audit, and for such other and further relief as may be proper under other provisions of law.



BRENDA SMITH
Supervising Special Investigator

Dated at Fresno, California,
this 23 day of May, 2022

DISCOVERY DEMAND

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Pursuant to Sections 11507.6, *et seq.* of the *Government Code*, the Department 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 Department 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.