

1 RICHARD K. UNO, Counsel III (SBN 98275)
2 Department of Real Estate
3 P. O. Box 137007
4 Sacramento, CA 95813-7007

5 Telephone: (916) 576-8700
6 (916) 576-7848
7 Email: Richard.Uno@dre.ca.gov



8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
)	No. H-3500 FR
12 MOTU PROPERTIES, INC., and)	
13 JASON JOSHUA BYRON MOYES,)	<u>ACCUSATION</u>
)	
14 Respondents.)	

15 The Complainant, BRENDA SMITH, a Supervising Special Investigator
16 of the State of California, for cause of Accusation against Respondents MOTU PROPERTIES,
17 INC. (MOTU) and JASON JOSHUA BYRON MOYES (MOYES), collectively Respondents,
18 is informed and alleges as follows:

19 1

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

22 2

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

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MOYES is currently licensed and/or has license rights as a real estate broker and was the designated officer of MOTU until July 18, 2022.

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At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as 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 in expectation of compensation. Respondents leased or rented or offered to lease or rent, or places 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.

FIRST CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 4, above, and incorporates the same herein, by reference.

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Beginning on February 24, 2022, and continuing intermittently through May 9, 2022, an audit was conducted at MOTU's main office located on 484 N. Prospect Street, Portola, California and the Department's office at Mariposa Mall, Fresno, California, where the auditor examined records for the period of August 1, 2020, through January 31, 2022 (the audit period).

7

While acting as a real estate broker as described in Paragraph 4, above, and within the audit period, MOTU 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 MOTU, at Suncrest Bank, 65 W. Olive Avenue, Porterville, CA 93257, California, as described

below:

TRUST ACCOUNT #1	
Account No.:	XXX8735
Entitled:	MOTU Properties, Inc. dba Blue Sky Property Management Client Trust 1

BANK ACCOUNT #1	
Account No.:	XXX8743
Entitled:	MOTU Properties, Inc. dba Blue Sky Property Management Client Trust 2

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

8

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

- (a) During an accountability performed on Trust Account #1, and as of December 31, 2021, a shortage of \$49,604.36 was revealed, in violation of Section 10145 of the Code;
- (b) MOTU failed to obtain written permission from owners of trust funds in trust Account #1 to allow the balance to drop below accountability, in violation of Section 2832.1 of the Regulations; and
- (c) MOTU used an unlicensed name, "Blue Sky Property Management," until October 25, 2021, when it was licensed, in violation of Section 2731 of the Regulations and Section 10159.5 of the Code.

9

The acts and/or omissions described above constitute violations of Sections 2731 (fictitious names) and 2832.1 (written permission balance below accountability) of the Regulations and of Sections 10145 (trust fund handling) and 10159.5 (fictitious names) of the

1 Code, and are grounds for discipline under Sections 10177(d) (willful disregard of real estate
2 laws) and 10177(g) (negligence/incompetence licensee) of the Code.

3 SECOND CAUSE OF ACTION

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5 Complainant refers to Paragraphs 1 through 9, above, and incorporates the same,
6 herein.

7 11

8 At no time mentioned herein, was Kenneth Andrew Turner (Turner) licensed by
9 the Department, his real estate broker license having been revoked, with right to apply for a
10 restricted real estate broker license, on October 8, 2016. Since Turner did not make application
11 for a restricted license, his real estate broker license was revoked on that day.

12 12

13 In Department case Number H-3345 FR, a Desist and Refrain Order was issued
14 to Turner on June 3, 2021, to cease unlicensed activities.

15 13

16 On or about August 11 2021, Turner performed property management activities
17 for owner, Timothy K, including but not limited to the management of a property located at 267
18 Belleview, Porterville, California.

19 14

20 Turner solicited landlords, collected rent, forwarded rent to landlords and
21 handled tenant complaints on behalf of owners for those properties that he managed, including
22 those mentioned in Paragraph 13, above.

23 15

24 The acts of MOYES and MOTU described above, constitute violations of Section
25 10137 (Employing/Compensating Unlicensed Persons) of the Code, and are grounds for
26 discipline under Sections 10137, 10177(d) (Willful/Disregard of Real Estate Law), and 10177(g)
27 (Negligence/Incompetence Real Estate Licensee) of the Code.

1 THIRD CAUSE OF ACTION

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3 Complainant refers to Paragraphs 1 through 15, above, and incorporates the same,
4 herein.

5 17

6 At all times until July 18, 2022, herein above mentioned, MOYES, was responsible
7 as the supervising broker for MOTU and Turner, for the supervision and control of the activities
8 conducted on behalf of MOTU's business by its employees. MOYES failed to exercise
9 reasonable supervision and control over the property management activities of MOTU. In
10 particular, MOYES permitted, ratified and/or caused the conduct described above to occur and
11 failed to take reasonable steps, including but not limited to handling of trust funds, supervision of
12 employees, and the implementation of policies, rules, and systems to ensure the compliance of
13 the business with the Real Estate Law and the Regulations.

14 18

15 The above acts and/or omission of MOYES violate Section 2725 (broker
16 supervision) of the Regulations and Section 10177(h) (broker supervision) of the Code and
17 constitute grounds for disciplinary action under the provisions of Sections 10177(d), 10177(g)
18 and 10177(h) of the Code.

19 19

20 Audit Costs

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

24 20

25 Costs of Investigation and Enforcement

26 Section 10106 of the Code provides, in pertinent part, that in any order issued in
27 resolution of a disciplinary proceeding before the Department, the Commissioner may request the

1 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
2 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

3 WHEREFORE, Complainant prays that a hearing be conducted on the
4 allegations of this Accusation and that, upon proof thereof, a decision be rendered imposing
5 disciplinary action against all licenses and license rights of Respondents under the Real Estate
6 Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further
7 relief as may be proper under other provisions of law.

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10 BREND A SMITH
11 Supervising Special Investigator

12 Dated at Fresno California,
13 this 30 day of May, 2023.

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15 DISCOVERY DEMAND

16 The Department of Real Estate hereby requests discovery pursuant to Section
17 11507.6 of the California Government Code. Failure to provide discovery to the Department
18 may result in the exclusion of witnesses and/or documents at the hearing, and other sanctions as
19 the Administrative Law Judge deems appropriate.