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FILED

DEC - 9 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of)
12) No. H-4157 SD
13 KM REALTY, INC.,)
14 CAROLYN MARIE CERWONKA) ACCUSATION
15 and KEVIN J. MILHOAN,)
16 Respondents.)

17 The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the
18 State of California, for cause of Accusation against KM REALTY, INC. (hereafter "KMR"),
19 CAROLYN MARIE CERWONKA (hereafter "CERWONKA") and KEVIN J. MILHOAN
20 (hereafter "MILHOAN"), (hereafter collectively "Respondents"), is informed and alleges as
21 follows:

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23 The Complainant makes this Accusation in his official capacity.

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25 KMR is presently licensed and/or has license rights under the Real Estate Law,
26 Part 1 of Division 4 of the Business and Professions Code (hereafter "the Code"), as a corporate
27 real estate broker.

CERWONKA is presently licensed under the Code as a real estate broker. During the period from June 20, 2009 to November 22, 2009, CERWONKA was licensed by the Department as the designated broker/officer of KMR. As the designated broker/officer, CERWONKA was responsible, pursuant to Section 10159.2 (responsibility of corporate officer in charge) of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of KMR for which a real estate license is required.

MILHOAN is presently licensed under the Code as a real estate broker. Since November 23, 2009, MILHOAN has been licensed by the Department as the designated broker/officer of KMR. As the designated broker/officer, MILHOAN is 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 KMR for which a real estate license is required.

At all times herein mentioned, 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 (broker defined – property management/collection of rent), 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.

Whenever reference is made in an allegation in this Accusation to an act or omission of KMR, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with KMR committed

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1 such act or omission while engaged in furtherance of the business or operations of KMR and
2 while acting within the course and scope of their corporate authority and employment.

3 FIRST CAUSE OF ACTION

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5 On or about August 13, 2010 and continuing intermittently through September
6 23, 2010, an audit was conducted at Respondents' main office located at 3530 Camino Del Rio
7 North, #101, San Diego, California, where the auditor examined the records for the period of
8 July 1, 2008 through June 30, 2010 (the audit period).

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10 While acting as a real estate broker as described in Paragraph 5, above, and
11 within the audit period, KMR accepted or received funds in trust (trust funds) in the course of
12 the property management brokerage activities described in Paragraph 5, above, and deposited or
13 caused the funds to be deposited into a bank account maintained by KMR, including:

14 Trust Account #1:

15 Union Bank
16 1858 Cable Street
17 San Diego, California 92107

18 Account No.: 0180025804

19 Account Name: KM Realty Inc
20 DBA KM Commercial
21 DBA KM Property Management
22 DBA Property Management of San Diego

23 Signatories: Kevin J. Milhoan (REB)

24 Thereafter, from time-to-time, Respondents made disbursements of said trust funds.

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26 In the course of the activities described in Paragraph 5, above, in connection with
27 the collection and disbursement of trust funds:

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1 (a) As of June 30, 2010, there was a shortage in KMR's Trust Account #1 of
2 at least \$169,307.30. KMR failed to obtain the prior written consent of every principal who is
3 an owner of the funds in Trust Account #1 prior to any disbursement which would reduce the
4 balance of the funds in Trust Account #1 to an amount less than the existing aggregate account
5 liability of KMR to all owners and/or principals of those funds. Such acts and/or omissions by
6 KMR violate Section 10145 (handling of trust funds) of the Code and Section 2832.1 (trust fund
7 handling for multiple beneficiaries) of Title 10 of the California Code of Regulations (hereafter
8 "the Regulations").

9 (b) KMR failed to maintain an accurate and complete record of trust funds it
10 received and disbursed, including:

- 11 -failing to maintain a control record for Trust Account #1;
- 12 -failing to use reference numbers for bank deposits to identify the
- 13 properties for which funds were deposited;
- 14 -failing to use reference numbers for electronic debits;
- 15 -failing to maintain a Deposit Journal;
- 16 -failing to maintain a Disbursement/Check Journal; and
- 17 -failing to included security deposits and maintenance reserves received
- 18 and held in Trust Account #1.

19
20 Such acts and/or omissions by KMR violate Section 10145 of the Code and Section 2831
21 (maintenance of trust fund records) of the Regulations.

22 (c) KMR failed to maintain a separate record for each beneficiary. In
23 addition, security deposits and maintenance reserves held by KMR were not included in the
24 separate records or owner statements. Such acts and/or omissions by KMR violate Section
25 10145 of the Code and Section 2831.1 (maintenance of separate records for each beneficiary
26 or transaction) of the Regulations.

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(d) KMR failed to reconcile the total of the separate records with the control records on a monthly basis. Such acts and/or omissions by KMR violate Section 10145 of the Code and Section 2831.2 (trust account reconciliation) of the Regulations.

(e) KMR failed to designate Trust Account #1 as a trust account and KMR was not named as a trustee of Trust Account #1. Such acts and/or omissions by KMR violate Section 10145 of the Code and Section 2832 (trust fund handling) of the Regulations.

(f) KMR failed to disclose mark-up fees in its management agreements or in writing related to the property management services it provided to Virginia Kelly for property located at 16416 Avenida Venusto, #D, San Diego, California, including:

<u>Date</u>	<u>Vendor</u>	<u>Amount of Vendor Invoice</u>	<u>Amount Charged to Owner</u>	<u>Difference</u>
11/02/09	JK General Property Services	\$ 80.00	\$ 95.00	\$ 15.00
04/20/10	Lighthouse Maintenance	2,150.00	2,250.00	100.00
05/13/10	JK General Property Services	483.00	513.50	30.50
06/10/10	JK General Property Services	950.00	1,017.50	67.50
06/17/10	JK General Property Services	128.00	135.00	7.00
06/17/10	JK General Property Services	210.00	232.50	22.50

Such acts and/or omissions by KMR violate Sections 10176(g) (taking of undisclosed amount of compensation), 10176(i) (other conduct which constitutes fraud or dishonest dealing) and 10177(j) (other conduct which constitutes fraud or dishonest dealing) of the Code.

(g) KMR failed to record transfer withdrawals from Trust Account #1 to KMR's general bank account. Specifically, between January 1, 2010 and June 30, 2010, KMR

1 transferred approximately \$159,000 more than the management fees it earned with no
2 documentation to show why excess funds were transferred from Trust Account #1 to KMR's
3 general bank account. Such acts and/or omissions by KMR violate Section 10145 of the Code.

4 (h) KMR failed to retain copies of cancelled checks for Trust Account #1.
5 Such acts and/or omissions by KMR violate Section 10148(a) (retention of records) of the Code.

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7 The acts and/or omissions of KMR as alleged in Paragraph 9, above, violate
8 Sections 10145, 10148, 10176(g), 10176(i) and 10177(j) of the Code, and Sections 2831, 2831.1,
9 2831.2, 2832 and 2832.1 of the Regulations.

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11 The acts and/or omissions of KMR, as alleged in Paragraphs 9 and 10, above, are
12 grounds for discipline under Sections 10176(g), 10176(i), 10177(d) (willful disregard/violation
13 of real estate law), 10177(g) (demonstrated negligence or incompetence performing act required
14 to hold license) and 10177(j) of the Code. In addition, the Department is entitled to
15 reimbursement for the costs of its audit pursuant to Section 10148(b) (cost of audit in final
16 decision following disciplinary hearing) of the Code.

17 SECOND CAUSE OF ACTION

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19 Complainant refers to Paragraphs 1 through 11, above, and incorporates them
20 herein by reference.

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22 For the period of June 20, 2009 through November 22, 2009, CERWONKA was
23 responsible, as the designated broker officer for KMR, for the supervision and control of the
24 activities conducted on behalf of the corporation by its officers and employees. CERWONKA
25 failed to exercise reasonable supervision and control over the property mortgage loan brokering
26 activities of KMR. In particular, CERWONKA permitted, ratified and/or caused the conduct
27 described in the First Cause of Action, above, to occur, and failed to take reasonable steps,

1 including, but not limited to, the handling of trust funds, supervision of employees and the
2 implementation of policies, rules, procedures and systems to ensure the compliance of the
3 corporation with the Real Estate Law and the Regulations.

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5 The acts and/or omissions of CERWONKA set forth in Paragraph 13, above,
6 violate Section 10159.2 of the Code and Section 2725 (broker supervision) of the Regulations,
7 and constitute grounds for disciplinary action under Section 10177(d), 10177(g) and 10177(h)
8 (further grounds for disciplinary action – supervision responsibility of broker) of the Code.

9 THIRD CAUSE OF ACTION

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11 Complainant refers to Paragraphs 1 through 11, above, and incorporates them
12 herein by reference.

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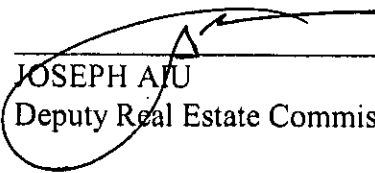
14 For the period of November 20, 2009 through the present, MILHOAN was
15 responsible, as the designated broker officer for KMR, for the supervision and control of the
16 activities conducted on behalf of the corporation by its officers and employees. MILHOAN
17 failed to exercise reasonable supervision and control over the property mortgage loan brokering
18 activities of KMR. In particular, MILHOAN permitted, ratified and/or caused the conduct
19 described in the First Cause of Action, above, to occur, and failed to take reasonable steps,
20 including, but not limited to, the handling of trust funds, supervision of employees and the
21 implementation of policies, rules, procedures and systems to ensure the compliance of the
22 corporation with the Real Estate Law and the Regulations.

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24 The acts and/or omissions of MILHOAN set forth in Paragraph 16, above, violate
25 Section 10159.2 of the Code and Section 2725 of the Regulations, and constitute grounds for
26 disciplinary action under Sections 10177(d), 10177(g) and 10177(h) of the Code.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondents under the Code, and for such other
4 and further relief as may be proper under the provisions of law.
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8 JOSEPH ATU
Deputy Real Estate Commissioner

9 Dated at San Diego, California,
10 this 8 day of December 2010.
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