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RAYMOND is presently licensed and/or has license rights under the Code as a real estate broker, and is licensed by the Department as the designated broker/officer of SPIRIT. As the designated broker/officer, RAYMOND 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 SPIRIT for which a real estate license is required.

3

ANDERSON is presently licensed and/or has license rights under the Code as a real estate salesperson. At all times relevant herein, ANDERSON was an employee of SPIRIT.

4

At no time has Boutique Rentals been licensed by the Department to conduct real estate activities in the State of California.

5

At all times relevant, 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.

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

FIRST CAUSE OF ACTION

On or about May 3, 2011, an audit was conducted of SPIRIT at its main office located at 7880 Exchange Plaza, La Jolla, California, where the auditor examined the records for the period of October 1, 2008, through March 31, 2011 (“the audit period”).

While acting as a real estate broker as described in Paragraph 5, above, and within the audit period, SPIRIT accepted or received funds in trust (“trust funds”) in the course of the property management activities described in Paragraph 5, above, and deposited or caused the funds to be deposited into a bank accounts maintained by SPIRIT, including:

Trust Account #1

Wells Fargo Bank
P.O. Box 6995
Portland, Oregon 97228-6995

Account No.: XXXXXX2456

Account Name: Spirit International Inc.
 dba Exclusive Properties Trust

Signatories: Sally Ann Raymond, D.O.

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The acts and/or omissions of SPIRIT and ANDERSON, as set forth in Paragraph 9, above, were done with the awareness and approval of RAYMOND.

11

The acts and/or omissions as set forth in Paragraphs 9 and 10, above, violate Sections 10145, 10146, and 10176(e) of the Code, and Sections 2831, 2832 and 2835 of the Regulations, and are grounds for discipline under Sections 10177(d) (willful disregard or violation of real estate law) and/or 10177(g) (negligence or incompetence) of the Code. In addition, the Department is entitled to reimbursement for the costs of its audit pursuant to Section 10148(b) (cost of audit in final decision following disciplinary hearing) of the Code.

SECOND CAUSE OF ACTION

12

On or about April 21, 2009, ANDERSON, while licensed as a salesperson for and while representing SPIRIT, entered into a lease agreement with tenants for Lee S.'s real property located at 719 Nantasket, San Diego, California.

13

On or about April 22, 2009, Lee S. signed a property management agreement retaining Exclusive Properties/Boutique Rentals and ANDERSON to provide property management services for the Nantasket property.

14

On or about May 4, 2009, ANDERSON obtained the tenants' signatures on lease agreement forms provided by Lee S. and collected \$5,200 from the tenants of the Nantasket property. ANDERSON failed to give those funds to SPIRIT or RAYMOND. Instead, ANDERSON deposited the \$5,200 into Bank Account #1, a non-trust account.

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On or about May 16, 2009, ANDERSON sent a check for \$2365 to Lee S. along with a letter indicating she was keeping \$2835 of the \$5,200 for her commission on the Nantasket property lease agreement.

16

The acts and/or omissions of ANDERSON, as set forth in Paragraphs 12 through 15, above, were done with the awareness and approval of RAYMOND.

17

The acts and/or omissions of ANDERSON as set forth in Paragraphs 12 through 16, above, violate Sections 10137 (employment or acceptance of compensation from someone other than employing broker), 10145, 10146, and 10176(e) of the Code, and Section 2832 of the Regulations, and are grounds for discipline under Sections 10177(d) and/or 10177(g) of the Code.

THIRD CAUSE OF ACTION

18

After collecting \$5,200 from the tenants residing in the Nantasket property, as discussed in the Second Cause of Action, above, SPIRIT and ANDERSON retained \$2,835 of those funds as an advance for property management services that commenced on September 1, 2009.

19

SPIRIT and RAYMOND failed to submit the advance fee materials used in its property management activities to the Department for review and approval prior to their use.

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The acts and/or omissions as set forth in Paragraphs 18 and 19, above, were done with the awareness and approval of RAYMOND.

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2 The acts and/or omissions of SPIRIT and RAYMOND as alleged in Paragraphs
3 18 through 20, above, violate Section 10085 (advance fee agreements and materials) of the Code,
4 and Section 2970 (advance fee materials) of the Regulations, and are grounds for discipline under
5 Sections 10177(d) (willful disregard or violation of real estate law) and/or 10177(g) (negligence
6 or incompetence) of the Code.

7 FOURTH CAUSE OF ACTION

8 22

9 ANDERSON, while licensed in the employ of and acting as a representative of
10 SPIRIT, used the fictitious business name of "Boutique Rentals" in conducting real estate
11 activities without first obtaining a license bearing that fictitious business name from the
12 Department.

13 23

14 The acts and/or omissions of ANDERSON, as set forth in Paragraph 22, above,
15 were done with the awareness and approval of RAYMOND.

16 24

17 The acts and/or omissions of ANDERSON as alleged in Paragraph 22 and 23,
18 above, violate Section 10159.5 (fictitious business name) of the Code and Section 2731 (use of
19 false or fictitious business name) of the Regulations, are grounds for the suspension or revocation
20 of Respondents' licenses and license rights under Sections 10177(d) and/or 10177(g) of the
21 Code.

22 FIFTH CAUSE OF ACTION

23 25

24 As the designated broker officer for SPIRIT, RAYMOND was responsible for the
25 supervision and control of the activities conducted on behalf of SPIRIT by its officers and
26 employees. RAYMOND failed to exercise reasonable supervision and control over the property
27 management activities of SPIRIT. In particular, RAYMOND permitted, ratified and/or caused

1 the conduct described in the First through Fourth Causes of Action, above, to occur, and failed to
2 take reasonable steps, including, but not limited to, the handling of trust funds, supervision of
3 employees and the implementation of policies, rules, procedures and systems to ensure the
4 compliance of the corporation with the Real Estate Law and the Regulations.

5 26

6 The acts and/or omissions as set forth in Paragraph 25, above, violate Section
7 10159.2 of the Code and Section 2725 (broker supervision) of the Regulations, and are grounds
8 for disciplinary action under Sections 10177(d) and/or 10177(g), and 10177(h) (reasonable
9 broker supervision) of the Code.

10 COST RECOVERY

11 27

12 Section 10106 of the Code provides, in pertinent part, that in any order issued in
13 resolution of a disciplinary proceeding before the department, the commissioner may request the
14 administrative law judge to direct a licensee found to have committed a violation of this part to
15 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

16 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
17 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
18 action against all licenses and license rights of Respondents under the Code, and for such other
19 and further relief as may be proper under the provisions of law.

20 
21 TRICIA D. SOMMERS
22 Deputy Real Estate Commissioner

23 Dated at Sacramento, California,

24 This 20th day of April, 2012.