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**FILED**

JUL 08 2015

BUREAU OF REAL ESTATE

By 

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of

No. H-04734 SD

12 ARMANDO LIWANAG DEMESA,  
13 doing business as IMS Executives,  
14 and as Mesalvi Realty,

15 Respondent.

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ACCUSATION

18 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the  
19 State of California, for cause of Accusation against ARMANDO LIWANAG DEMESA  
20 ("Respondent"), doing business as IMS Executives and as Mesalvi Realty (Properties and  
21 Investment), is informed and alleges as follows:

22 1.

23 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the  
24 State of California, makes this Accusation in her official capacity.

25 2.

26 Respondent is presently licensed and/or has license rights under the Real Estate  
27 Law (Part 1 of Division 4 of the Business and Professions Code, hereafter "Code"), as a

1 restricted real estate broker. Respondent is authorized to use the fictitious business names IMS  
2 Executives and Mesalvi Realty (Properties and Investment).

3 3.

4 At all times relevant herein Respondent was engaged in the business of, acted in  
5 the capacity of, advertised or assumed to act as a real estate broker, within the meaning of Code  
6 Sections 10131(a) and 10131(b). Said activities included soliciting sellers and buyers for the  
7 listing, sale and purchase of real property, negotiating the purchase and sale of real property on  
8 behalf of buyers and sellers and offering to negotiate and negotiating leases and rental  
9 agreements on behalf of prospective real property tenants, and offering to perform and  
10 performing the rental and collection of rents and security deposits for real property on behalf of  
11 others for compensation or in expectation of compensation.

12 4.

13 At all times relevant herein Respondent, as a broker licensee, was obligated  
14 pursuant to the provisions of Code Section 10177(h) and Section 2725, Title 10, Chapter 6,  
15 Code of Regulations ("Regulations") to exercise reasonable supervision and control over the  
16 activities of licensees and employees working under his real estate broker license as necessary  
17 to secure full compliance with the Real Estate Law.

18 5.

19 Prior Discipline

20 On or about April 23, 2002, in Case No. H-2632 SD, the Commissioner of the  
21 Bureau of Real Estate revoked Respondent's broker license which was subject to his right to  
22 apply for and be issued a restricted real estate broker license on the terms and conditions  
23 specified in the Decision. On April 23, 2002, Respondent was issued a restricted real estate  
24 broker license.

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1 6.

2 On or about July 14, 2008, Respondent's petition to reinstate his broker license  
3 was denied.

4 FIRST CAUSE OF ACCUSATION

5 (Audit Violations – Real Estate Sales Activity)

6 7.

7 On or about September 30, 2014, the Bureau completed its audit examination of  
8 the books and records of Respondent pertaining to the real estate sales activities described in  
9 Paragraph 3, above, covering a period from July 1, 2011, to June 30, 2014.

10 8.

11 The audit examination revealed violations of the Code and the Regulations, as  
12 set forth in the following paragraphs, and more fully discussed in Audit Report No. SD 140005  
13 along with the exhibits and work papers attached to the audit report:

14 (a) Failed to maintain a control record in the form of a columnar record of trust  
15 funds consisting of earnest money deposits received and disbursed in violation of Code Section  
16 10145 and Section 2831 of the Regulations.

17 (b) In one of the sampled transactions, Respondent held the earnest money  
18 deposit beyond three (3) business days following the acceptance of the offer without written  
19 authorization from the principal in violation of Code Section 10145 and Section 2832 of the  
20 Regulations.

21 (c) Based on the examination of sales files provided for the audit, in one (1) of  
22 the five (5) sampled sales transactions Respondent presented offers to the sellers where he  
23 falsely represented that an earnest money deposit was received from the buyer in violation of  
24 Code Section 10176(a) [substantial misrepresentation].

25 (d) Respondent did not exercise reasonable control and supervision over the  
26 activities conducted by his employees and/or licensees under his individual broker license as  
27

1 necessary to secure full compliance with the Real Estate Laws in violation of Code Section  
2 10177(h) and Section 2725 of the Regulations. Respondent failed to establish policies, rules,  
3 procedures and systems to review, oversee and inspect the handling of trust funds by his  
4 licensees or employees.

5 DISCIPLINARY STATUTES AND REGULATIONS

6 9.

7 The conduct of Respondent described in Paragraph 8, above, violated the Code  
8 and the Regulations as set forth below:

9 PARAGRAPH

PROVISIONS VIOLATED

10 8(a)

Code Section 10145; Section 2831 of the  
11 Regulations

12 8(b)

Code Section 10145; Section 2832 of the  
13 Regulations

14 8(c)

Code Section 10176(a)

15 8(d)

10177(h); Section 2725 of the Regulations

16 10.

17 The foregoing violations constitute cause for the suspension or revocation of the  
18 real estate licenses and license rights of Respondent under the provisions of Code Sections  
19 10177(d) for violation of the Real Estate Law and/or 10177(g) for negligence or incompetence.

20 SECOND CAUSE OF ACCUSATION

21 (Audit Violations – Property Management Activity)

22 11.

23 Complainant hereby incorporates by reference the allegations set forth in  
24 Paragraphs 1 through 10, above.

25 ///

26 ///

12.

On or about September 30, 2014, the Bureau completed its audit examination of the books and records of Respondent pertaining to the property management activities described in Paragraph 3, above, covering a period from July 1, 2011, to June 30, 2014.

13.

At all times mentioned herein, and in connection with the property management activities described in Paragraph 3, above, Respondent accepted or received funds, including funds in trust (hereafter "trust funds") from or on behalf of owners of the real property managed by Respondent, and thereafter made deposits and/or disbursements of such funds. From time-to-time herein mentioned during the audit period, said trust funds were deposited into an account maintained by Respondent in a bank account as follows:

"Bank Account #1"

BA 1

Chase Bank/Washington Mutual

4500 Bonita Road

Bonita, CA 91902

Account Name: Armando L. Demesa

DBA Mesalvi Realty

Account Number: 100424xxxx

Signatories: Armando L. Demesa

Elsie V. Demesa (Non-licensee/Respondent's wife)

Signatures Required: One (1)

14.

The audit examination revealed violations of the Code and the Regulations by Respondent, as set forth in the following paragraphs, and more fully discussed in Audit Report No. SD 130033 and the exhibits and work papers attached to the audit report:

(a) Permitted, allowed or caused the withdrawal or disbursement of trust funds from Bank Account #1 so that as of June 30, 2014, the account had a minimum trust fund shortage of <\$14,004.33> in BA 1. Respondent caused, permitted and/or allowed said

1 withdrawal or disbursement of trust funds from this account so that the total of aggregate funds  
2 remaining in the bank account was less than the existing aggregate trust fund liability of  
3 Respondent to every principal who was an owner of said funds without first obtaining the prior  
4 written consent of the owners of said funds as is required by Code Section 10145 and Section  
5 2832.1 of the Regulations. The minimum shortage was caused by a minimum negative property  
6 balance totaling \$<8,492.50> and bank charges of \$<46.26>. There was \$<5,465.57> as a  
7 minimum unidentified shortage as of June 30, 2014.

8 (b) Respondent failed to maintain a control record in the form of a columnar  
9 record in chronological order of all trust funds received, deposited and disbursed for BA 1  
10 related to his property management activity in violation of Code Section 10145 and Section  
11 2831 of the Regulations.

12 (c) Respondent failed to maintain a separate record for each beneficiary or  
13 property for BA 1 in violation of Code Section 10145 and Regulation 2831.1.

14 (d) Respondent failed to maintain a monthly reconciliation comparing the  
15 balance of all the separate records to the balance of the record of all trust funds received and  
16 disbursed for BA 1 as required by Code Section 10145 and Section 2831.2 of the Regulations.

17 (e) Respondent failed to designate BA 1 as a trust account in violation of Code  
18 Section 10145 and Section 2832 of the Regulations.

19 (f) Respondent allowed his unbonded, non-licensee wife, Elsie V. Demesa, to  
20 make withdrawals from BA 1 in violation of Code Section 10145 and Section 2834 of the  
21 Regulations.

22 (g) Respondent failed to provide for examination all the books and records  
23 related to BA 1, including trust fund records, canceled checks, deposit tickets, deposit slips,  
24 invoices, and property management agreements for the audit period ending June 30, 2014, in  
25 violation of Code Section 10148.

1 (h) Respondent did not exercise reasonable control and supervision over the  
2 activities conduct by his employees and/or licensees under his individual broker license as  
3 necessary to secure full compliance with the Real Estate Laws in violation of Code Section  
4 10177(h) and Section 2725 of the Regulations. Respondent failed to establish policies, rules,  
5 procedures and systems to review, oversee and inspect the handling of trust funds by his  
6 licensees or employees.

7 DISCIPLINARY STATUTES AND REGULATIONS

8 15.

9 The conduct of Respondent described in Paragraph 14, above, violated the Code  
10 and the Regulations as set forth below:

11 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
12 14(a)	Code Section 10145; Section 2832.1 of the
13	Regulations
14 14(b)	Code Section 10145; Section 2831 of the
15	Regulations
16 14(c)	Code Section 10145; Section 2831.1 of the
17	Regulations
18 14(d)	Code Section 10145; Section 2831.2 of the
19	Regulations
20 14(e)	Code Section 10145; Section 2832 of the
21	Regulations
22 14(f)	Code Section 10145; Section 2834 of the
23	Regulations
24 14(g)	Code Section 10148
25 14(h)	Code Section 10177(h); Section 2725 of the
26	Regulations

16.

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent under the provisions of Code Sections 10177(d) for violation of the Real Estate Law and/or 10177(g) for negligence or incompetence.

Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, 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 investigation and enforcement of the case.

Code Section 10148(b) provides, in pertinent part, that in the event that respondent has violated Code Section 10145, or a regulation interpreting said section, the respondent shall pay the Commissioner's reasonable costs for (a) the audit which led to the disciplinary action, and (b) a subsequent audit to determine if the respondent has corrected the violations found in the original audit.

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 the licenses and license rights of Respondent ARMANDO LIWANAG DEMESA under the Real Estate Law, for the cost of investigation and enforcement as permitted by Code Section 10106, for audit costs pursuant to Code Section 10148(b) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at San Diego, California

this 26 day of June, 2015.

  
Veronica Kilpatrick  
Supervising Special Investigator

cc: ARMANDO LIWANAG DEMESA  
Veronica Kilpatrick  
Sacto.