

1 CHERYL D. KEILY, SBN# 94008
2 Bureau of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6905

7 **FILED**

8 NOV 17 2016

9 BUREAU OF REAL ESTATE

10 By *[Signature]*

11 BUREAU OF REAL ESTATE

12 STATE OF CALIFORNIA

13 * * *

14 In the Matter of the Accusation)

15 No. H-04849 SD

16 RADIX REALTY CORPORATION;)
17 and CAROLYN MARIE CERWONKA,)
18 individually, and as designated officer)
19 for Radix Realty Corporation,)

20 A C C U S A T I O N

21 Respondents.)
22 _____)

23 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator, for
24 cause of Accusation against RADIX REALTY CORPORATION ("RADIX") and CAROLYN
25 MARIE CERWONKA ("CERWONKA"), individually, and as designated officer for RADIX, is
26 informed and alleges as follows:

27 1.

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator, makes
this Accusation in her official capacity.

///

- 1 -

ACCUSATION RE: RADIX REALTY CORPORATION
CAROLYN MARIE CERWONKA;

1 2.

2 Respondent RADIX is presently licensed and/or has license rights under the Real
3 Estate Law (Part 1 of Division 4 of the Business and Professions Code, "Code") as a real estate
4 corporation.

5 3.

6 Respondent CERWONKA is presently licensed and/or has license rights under
7 the Real Estate Law as a real estate broker, and has been the designated broker-officer of
8 Respondent RADIX since July 13, 2015.

9 4.

10 During the period alleged in Paragraph 3, above, CERWONKA, as the officer
11 designated by RADIX pursuant to Section 10211 of the Code, was responsible for the
12 supervision and control of the activities conducted on behalf of RADIX by its officers and
13 employees as necessary to secure full compliance with the Real Estate Law as set forth in
14 Section 10159.2 of the Code.

15 5.

16 At all times relevant herein each Respondent was engaged in the business of,
17 acted in the capacity of, advertised or assumed to act as a real estate broker, within the meaning
18 of Code Section 10131(b). Said activities included offering to negotiate and negotiating leases
19 and rental agreements on behalf of prospective real property tenants, and offering to perform and
20 performing the rental and collection of rents and security deposits for real property on behalf of
21 others for compensation or in expectation of compensation.

22 FIRST CAUSE OF ACCUSATION

23 (Audit Violations by RADIX)

24 6.

25 Complainant hereby incorporates by reference the allegations set forth in

Paragraphs 1 through 5, above.

7.

On or about April 29, 2016, the Bureau completed an audit examination of the books and records of RADIX pertaining to the real estate activities described in Paragraph 5, above; covering a period from April 1, 2015, to September 30, 2015.

8.

At all times mentioned herein, and in connection with the property management activities described in Paragraph 5, above, RADIX accepted or received funds, including funds in trust (hereafter "trust funds") from or on behalf of owners of the real property managed by Respondent RADIX, 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 accounts maintained by Respondent RADIX as follows:

"Trust Account #1"

T/A 1

Bank: Union Bank

P.O. Box 512380

Los Angeles, California 90051-0380

Account Name: Radix Realty Corporation; All Mountain Property Management;
Escrow/Trust Account

Account No.: xxxxxx0447

Signatories: CERWONKA

Signatures Required: One (1) Signatory

Purpose: Receipt and disbursement of trust funds received for multiple beneficiaries in connection with RADIX' property management for All Mountain Property Management for the Big Bear Lake Office. T/A 1 was opened on April 15, 2015, to replace CERWONKA's T/A 5.

1
2 "Trust Account #2"

T/A 2

3 Bank: Union Bank

4 P.O. Box 512380

5 Los Angeles, California 90051-0380

6 Account Name: Radix Realty Corporation; All Mountain Property Management;
7 Security/Trust Account

8 Account No.: xxxxxx0285

9 Signatories: CERWONKA

10 Signatures Required: One (1) Signatory

11 Purpose: Receipt and disbursement of security deposit trust funds received for
12 multiple beneficiaries in connection with RADIX' property management
13 activity for All Mountain Property Management for the Big Bear Lake
14 office. T/A 2 was opened on April 1, 2015 to replace CERWONKA's T/A
15 6. T/A 6 was closed on April 1, 2015.

16 "Trust Account #3"

T/A 3

17 Bank: Union Bank

18 P.O. Box 512380

19 Los Angeles, California 90051-0380

20 Account Name: Radix Realty Corporation; Property Management of San Diego
21 Escrow/Trust Account

22 Account No.: xxxxxx0722

23 Signatories: CERWONKA

24 Signatures Required: One (1) Signatory

25 Purpose: T/A 3 was maintained for the receipt and disbursement of trust funds

received for multiple beneficiaries in connection with RADIX' property management activity for Property Management of San Diego for the San Diego office. T/A 3 was opened on April 1, 2015 to replace CERWONKA's T/A 7. T/A 7 was closed on July 9, 2015.

"Trust Account #4"

T/A 4

Bank: Union Bank

P.O. Box 512380

Los Angeles, California 90051-0380

Account Name: Radix Realty Corporation; Property Management of San Diego
Security/Trust Account

Account No.: xxxxxx0234

Signatories: CERWONKA

Signatures Required: One (1) Signatory

Purpose: T/A 4 was maintained for the receipt and disbursement of security deposit trust funds received for multiple beneficiaries in connection with RADIX' property management activity for Property Management of San Diego for the San Diego office. T/A 4 was opened on April 1, 2015 to replace CERWONKA's T/A 8. T/A 8 was closed on April 1, 2015.

"Bank Account #9"

B/A 9

Bank: Union Bank

P.O. Box 512380

Los Angeles, California 90051-0380

Account Name: Radix Realty Corporation; All Mountain Property Management;
Property Management of San Diego

Account No.: xxxxxx0730

1 Signatories: CERWONKA

2 Signatures Required: One (1) Signatory

3 Purpose: B/A 9 was opened on April 1, 2015 to deposit the trust funds from the old
4 outstanding checks of CERWONKA's trust accounts: T/A 5 and T/A 7.

5 9.

6 The audit examination revealed violations of the Code and the Regulations, as set
7 forth in the following paragraphs, and more fully discussed in Audit Report No. SD 150038 and
8 the exhibits and work papers attached to the audit report:

9 (a)

10 (i) As of September 30, 2015, there was a trust fund shortage of <\$1,180.00> in
11 T/A 1 due to a transfer of \$1,180.00 to RADIX' general account on May 15, 2015. There were
12 unidentified/unaccounted for funds of \$1,080 in T/A 1 as of September 30, 2015.

13 (ii) As of September 30, 2105, there was a trust fund shortage of <\$50.00> in T/A
14 2 due to \$50 being transferred to RADIX' general account on May 15, 2015. There were
15 unidentified/unaccounted for funds of \$50 in T/A 2 as of September 30, 2015.

16 (iii) As of September 30, 2015, there was a trust fund shortage of <2,154.51> in
17 T/A 3. The shortage was caused by negative property balances of <\$1,929.12>, unreimbursed
18 bank service charges of <\$225.39> transferred from CERWONKA's T/A 7 into T/A 3 on April
19 28, 2015.

20 (iv) As of September 30, 2105, there was a trust fund shortage o <\$200.00> in
21 B/A 9. The cause of the shortage was due to the transfer of \$7,333.61 from CERWONKA's old
22 outstanding checks to RADIX' B/A 9 on July 9, 205, which should have been \$7,533.61.

23 RADIX provided no evidence that the owners of the trust funds in T/A1, T/A 2,
24 T/A 3, and B/A 9 had given their written consent to allow RADIX/CERWONKA to reduce the
25 balance of the funds in the trust fund bank account to an amount less than the existing aggregate

1 trust fund liabilities. The foregoing is in violation of Code Section 10145(a) and Section 2832.1
2 2831, Title 10, Chapter 6, Code of Regulations ("Regulations")

3 (b) RADIX failed to disburse trust funds from T/A 1, T/A 2, T/A 3 and T/A 4 in
4 accordance with instructions from the persons entitled to the funds. During April 1, 2015, to
5 April 28, 2015, RADIX received trust funds from the trust accounts of CERWONKA totaling
6 \$430,563.27 from T/A 5, T/A 6, T/A 7 and T/A 8.

7 During the audit period RADIX disbursed trust funds from CERWONKA's T/A
8 7 to RADIX' bank account B/A 9 in the amount of \$9,028.61 and B/A 9 to RADIX' general
9 account in the amount of \$6,811.06 for property management activity without authorization from
10 the principals of those funds. This occurred during the period May, 2015 to July, 2015.

11 The foregoing is in violation of Code Section 10145(a).

12 According to CERWONKA, and based on an examination of documents
13 provided, RADIX did not maintain a management agreement with each property owner for
14 property management services.

15 (c) RADIX failed to maintain a control record for B/A 9. RADIX failed to
16 maintain accurate control records for T/A 1, T/A 2, T/A 3 and T/A 4. There were incorrect dates
17 and amounts of trust funds received; and there were deposits, checks, withdrawals and bank
18 adjustments that were not recorded on the control records. This is in violation of Code Section
19 10145 and Section 2831 of the Regulations.

20 (d) RADIX failed to maintain separate records for each beneficiary or transaction
21 for B/A 9. RADIX failed to maintain accurate separate records for T/A 1, T/A 2, T/A 3 and T/A
22 4. There were incorrect dates and amounts of trust funds received, and there were deposits,
23 checks, withdrawals and bank adjustments that were not recorded on the separate records.
24 RADIX failed to maintain a separate record for the unidentified/unaccounted for funds of
25 \$1,080.00 to T/A 1 and \$50 for T/A 2 during the audit period. The foregoing is in violation of

1 Code Section 10145 and Section 2831.1 of the Regulations.

2 (e) RADIX failed to perform a monthly reconciliation for B/A 9. RADIX failed to
3 maintain accurate monthly reconciliation for T/A 1, T/A 3 and T/A 4. The differences between
4 the balance of all the separate records to the month-end bank balance were not reconciled on a
5 timely basis. RADIX failed to reconcile the unidentified/unaccounted for funds of \$1,080 for
6 T/A 1 and \$50 for T/A 2 during the audit period. The foregoing is in violation of Code Section
7 10145 and Section 2831.2 of the Regulations.

8 (f) Though B/A 9 was used to hold trust funds it was not designated as a trust
9 account which is in violation of Code Section 10145 and Section 2832 of the Regulations.

10 (g) RADIX deposited trust funds received from tenants in T/A 1, T/A 2, and T/A
11 5 totaling \$6,811.06 into RADIX' general account resulting in the commingling of trust funds
12 with broker's funds during the period May 15, 2015, and July 31, 2015. In addition, a broker's
13 commission for \$5,875.00 was deposited into B/A 9 on June 26, 2015, and commingled with
14 trust funds. The foregoing is in violation of Code Sections 10145 and 10176(e) and Section 2835
15 of the Regulations.

16 (h) An examination of RADIX' property management records revealed that
17 during the period April 1, 2015, to July 12, 2015, RADIX conducted licensed activities without a
18 real estate license. RADIX was not licensed as a broker until July 13, 2015. The foregoing is in
19 violation of Code Section 10130.

20 (i) RADIX' failed to disclose its license number on websites when using
21 authorized fictitious business name "Property Management of San Diego" and "All Mountain
22 Property Management." The foregoing is in violation of Code Section 10140.6 and Section 2773
23 of the Regulations.

24 (j) CERWONKA did not exercise reasonable control and supervision over the
25 activities conducted on behalf of RADIX by its licensees and/or employees as necessary to
26

1 ensure full compliance with the Real Estate Law. CERWONKA failed to establish policies,
2 rules, procedures and systems to review, oversee and inspect the handling of trust fund by
3 RADIX' licensees and/or employees. The foregoing is in violation of Code Sections 10159.2 and
4 10177(h) and Section 2725 of the Regulations.

5 DISCIPLINE STATUTES AND REGULATIONS

6 10.

7 The conduct of Respondent CALIFORNIA REALTY described in Paragraph 10,
8 above, violated the Code and the Regulations as set forth below:

9 PARAGRAPH

PROVISIONS VIOLATED

10 9(a)

Code Section 10145; Section 2832.1 of the
11 Regulations

12 9(b)

Code Section 10145(a)

13 9(c)

Code Section 10145; Section 2831 of the
14 Regulations

15 9(d)

Code Section 10145; Section 2831.1 of the
16 Regulations

17 9(e)

Code Section 10145; Section 2831.2 of the
18 Regulations

19 9(f)

Code Sections 10145; Section 2832 of the
20 Regulations

21 9(g)

Code Sections 10145 and 10176(e); Section
22 2835 of the Regulations

23 9(h)

Code Section 10130

1 9(i) 10140.6 and Section 2773 of the
2 Regulations

3 9(j) 10159.2 and 10177(h); Section 2725 of the
4 Regulations

5 11.

6
7 The foregoing violations constitute cause for the suspension or revocation of the
8 real estate licenses and license rights of Respondents RADIX and CERWONKA under the
9 provisions of Code Sections 10177(d) for violation of the Real Estate Law, 10177(g) for
10 negligence or incompetence and 10176(e) for commingling.

11 SECOND CAUSE OF ACCUSATION

12 (Audit Violations by CERWONKA

13 12.

14 Complainant hereby incorporates by reference the allegations set forth in
15 Paragraphs 1 through 11, above.

16 13.

17 On or about April 29, 2016, the Bureau completed an audit examination of the
18 books and records of CERWONKA pertaining to the real estate activities described in Paragraph
19 5, above, covering a period from May 5, 2014, to September 30, 2015.

20 14.

21 At all times mentioned herein, and in connection with the property management
22 activities described in Paragraph 5, above, CERWONKA accepted or received funds, including
23 funds in trust (hereafter "trust funds") from or on behalf of owners of the real property managed
24 by CERWONKA, and thereafter made deposits and/or disbursements of such funds. From time-
25 to-time herein mentioned during the audit period, said trust funds were deposited into accounts
26 maintained by CERWONKA as follows:

27 - 10 -

ACCUSATION RE:RADIX REALTY CORPORATION
CAROLYN MARIE CERWONKA;

1 "Trust Account #5"

T/A 5

2 Bank: Union Bank

3 P.O. Box 512380

4 Los Angeles, California 90051-0380

5 Account Name: Carolyn M. Cerwonka; All Mountain Property Management;
6 Escrow/Trust Account

7 Account No.: xxxxxx6315

8 Signatories: CERWONKA

9 Signatures Required: One (1) Signatory

10 Purpose: Maintained for the receipt and disbursement of trust funds received for
11 multiple beneficiaries in connection with CERWONKA's property
12 management for All Mountain Property Management for the Big Bear
13 Lake Office. T/A 5 was opened on March 29, 2013.
14 A new trust account for RADIX was opened on April 1, 2015, to replace
15 CERWONKA's T/A 5. T/A 5 was still open as of the audit cutoff date,
16 September 30, 2015, due to Section 8 continuing to deposit one tenant's
17 funds into T/A 5.

18 "Trust Account #6"

T/A 6

19 Bank: Union Bank

20 P.O. Box 512380

21 Los Angeles, California 90051-0380

22 Account Name: Carolyn M. Cerwonka; All Mountain Property Management;
23 Security/Trust Account

24 Account No.: xxxxxx6307

25 Signatories: CERWONKA

1 Signatures Required: One (1) Signatory

2 Purpose: Maintained for the receipt and disbursement of security deposit trust funds
3 received for multiple beneficiaries in connection with CERWONKA's
4 property management activity for All Mountain Property Management for
5 the Big Bear Lake office. T/A 6 was opened on March 29, 2013.
6 A new trust account, T/A 2, was opened for RADIX on April 1, 2015, to
7 replace CERWONKA's T/A 6. T/A 6 was closed on April 1, 2015.

8 "Trust Account #7"

T/A 7

9 Bank: Union Bank
10 P.O. Box 512380
11 Los Angeles, California 90051-0380

12 Account Name: Carolyn M. Cerwonka; Property Management of San Diego
13 Escrow/Trust Account

14 Account No.: xxxxxx5742

15 Signatories: CERWONKA

16 Signatures Required: One (1) Signatory

17 Purpose: Maintained for the receipt and disbursement of trust funds
18 received for multiple beneficiaries in connection with CERWONKA's
19 property management activity for Property Management of San Diego for
20 the San Diego office. T/A 7 was opened on February 21, 2013.
21 A new trust account, T/A 3, was opened for RADIX on April 1, 2015 to
22 replace CERWONKA's T/A 7. T/A 7 was closed on July 9, 2015.

23 "Trust Account #8"

T/A 8

24 Bank: Union Bank
25 P.O. Box 512380
26

1 Los Angeles, California 90051-0380
2 Account Name: Carolyn M. Cerwonka; Property Management of San Diego
3 Security/Trust Account
4 Account No.: xxxxxx5750
5 Signatories: CERWONKA
6 Signatures Required: One (1) Signatory
7 Purpose: Maintained for the receipt and disbursement of security deposit trust funds
8 received for multiple beneficiaries in connection with CERWONKA's
9 property management activity for Property Management of San Diego for
10 the San Diego office. T/A 8 was opened on February 21, 2013.
11 A new trust account, T/A 4, was opened for RADIX on April 1, 2015, to
12 replace CERWONKA's T/A 8. T/A 8 was closed on April 1, 2015.

13 15.
14 The audit examination revealed violations of the Code and the Regulations, as set
15 forth in the following paragraphs, and more fully discussed in Audit Report No. SD 150016 and
16 the exhibits and work papers attached to the audit report:

17 (a) CERWONKA failed to disburse trust funds from her trust accounts T/A 5,
18 T/A 6, T/A 7 and T/A 8 to RADIX's T/A 1, T/A 2, T/A 3, AND T/A 4, respectively, in
19 accordance with instructions from the persons entitled to the funds.

20 There were no authorizations from the owners of such funds maintained in
21 CERWONKA's T/A 5, T/A 6, T/A 7 and T/A 8 to allow CERWONKA to disburse the trust
22 funds totaling \$430,563.27 to the bank accounts in RADIX' name.

23 During the audit report CERWONKA also disbursed trust funds from
24 CERWONKA's T/A 7 to RADIX' bank account B/A 9 for \$9,028.61 and from T/A 5 to
25 RADIX' general account for \$5,581.06 for the property management activity without
26

1 authorization from the principals of those funds.

2 The foregoing is in violation of Code Section 10145(a).

3 (b) CERWONKA failed to maintain accurate control records for T/A 5, TA 6,
4 T/A 7, and T/A 8. There were incorrect dates and amounts of trust funds received; and there
5 were deposits, checks and withdrawals that were not recorded on the control records. The
6 foregoing is in violation of Code Section 10145 and Section 2831 of the Regulations.

7 (c) CERWONKA failed to maintain accurate separate records for T/A 5, T/A 6,
8 T/A 7 and T/A 8. There were incorrect dates and amounts of trust funds received; and there were
9 deposits, checks and withdrawals not recorded on the separate records.

10 CERWONKA failed to maintain separate records for the
11 unidentified/unaccounted for funds of \$10 in T/A 5 as of September 30, 2015; and \$50 in T/A 5
12 and \$694.44 in T/A 6 as of March 31, 2015.

13 The foregoing is in violation of Code Section 10145 and Section 2831.1 of the
14 Regulations.

15 (d) CERWONKA failed to maintain accurate monthly reconciliations for T/A 5,
16 T/A 6, T/A 7 and T/A 8. The differences between the balance of all the separate records to the
17 month-end bank balance were not reconciled on a timely basis.

18 CERWONKA failed to reconcile the unidentified/unaccounted for funds of \$10 in
19 T/A 5 as of September 30, 2015, and \$50 in T/A 5 and \$694.44 in T/A 6 as of March 31, 2015.

20 The foregoing is in violation of Code Section 10145 and Section 2831.2 of the
21 Regulations.

22 (e) CERWONKA commingled trust funds from T/A 5 with RADIX' funds in its
23 general account. Trust funds from T/A 5 totaling \$5,581.06 were deposited into the general
24 account and commingled with RADIX' funds in violation of Code Section 10145 and 10176(e)
25 and Section 2832 of the Regulations.

1 (f) CERWONKA's websites for "Property Management of San Diego" and "All
2 Mountain Property Management" did not disclose CERWONKA'S Bureau license number
3 which is in violation of Code Section 10140.6 and Section 2773 of the Regulations.

4 (g) Based on the above findings, CERWONKA did not exercise reasonable
5 control and supervision over the activities conducted by her licensees and/or employees as
6 necessary to secure full compliance with the Real Estate Law.

7 CERWONKA failed to establish policies, rules, procedures and systems to
8 review, oversee and inspect the handling of trust funds by CERWONKA's licensees and/or
9 employees.

10 The foregoing is in violation of Code Sections 10177(h) and Section 2725 of the
11 Regulations.

12 DISCIPLINE STATUTES AND REGULATIONS

13 16.

14 The conduct of Respondent CALIFORNIA REALTY described in Paragraph 15,
15 above, violated the Code and the Regulations as set forth below:

16 PARAGRAPH

PROVISIONS VIOLATED

17 15(a)

Code Section 10145(a)

18 15(b)

Code Section 10145; Section 2831 of the
Regulations

19 15(c)

Code Section 10145; Section 2831.1 of the
Regulations

20 15(d)

Code Section 10145; Section 2831.2 of the
Regulations

1 15(e) Code Sections 10145 and 10176(e); Section
2 2832 of the Regulations

3 15(f) Code Sections 10140.6; Section 2773 of the
4 Regulations

5 15(g) 10177(h); Section 2725 of the Regulations
6

7 17.

8 The foregoing violations constitute cause for the suspension or revocation of the
9 real estate licenses and license rights of Respondent CERWONKA under the provisions of Code
10 Sections 10177(d) for violation of the Real Estate Law, 10177(g) for negligence or incompetence
11 and 10176(e) for commingling.

12 THIRD CAUSE OF ACCUSATION

13 (Failure to Supervise - CERWONKA)

14 18.

15 Complainant hereby incorporates by reference the allegations set forth in
16 Paragraphs 1 through 17, above.

17 19.

18 Respondent CERWONKA ordered, caused, authorized or participated in the
19 conduct of RADIX during the period alleged in Paragraph 3, above.

20 20.

21 The conduct, acts and/or omissions CERWONKA in allowing RADIX to violate
22 the Real Estate Law, as set forth above, constitutes a failure by CERWONKA, as the officer
23 designated by a corporate broker licensee, to exercise the supervision and control over the
24 activities of RADIX, as required by Code Section 10159.2, and is cause to suspend or revoke the
25

1 real estate licenses and license rights of CERWONKA under Code Sections 10177(d), 10177(g)
2 and/or 10177(h).

3 Code Section 10106 provides, in pertinent part, that in any order issued in
4 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the
5 administrative law judge to direct a licensee found to have committed a violation of this part to
6 pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

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

12 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
13 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
14 action against all the licenses and license rights of Respondents RADIX REALTY
15 CORPORATION and CAROLYN MARIE CERWONKA under the Real Estate Law, for the
16 cost of investigation and enforcement as permitted by Code Section 10106, for audit costs
17 pursuant to Code Section 10148(b) and for such other and further relief as may be proper under
18 other applicable provisions of law.

19 Dated at San Diego, California

20 this 8 day of November, 2016.

21 
22 Veronica Kilpatrick
Supervising Special Investigator

23 cc: RADIX REALTY CORPORATION
24 CAROLYN MARIE CERWONKA
25 Veronica Kilpatrick
26 Sacto.