

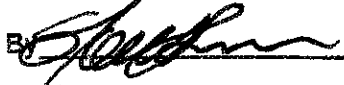
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FILED

JAN 12 2017

BUREAU OF REAL ESTATE

By 

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation

No. H-04849 SD

RADIX REALTY CORPORATION;
and CAROLYN MARIE CERWONKA,
individually, and as designated officer
for Radix Realty Corporation,

FIRST AMENDED ACCUSATION

Respondents.

This First Amended Accusation amends the Accusation filed on November 17, 2016.

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

1.

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator, makes

- 1 -

ACCUSATION RE: RADIX REALTY CORPORATION
CAROLYN MARIE CERWONKA;

1 this Accusation in her official capacity.

2 2.

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

6 3.

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

10 PRIOR DISCIPLINE OF CERWONKA

11 4.

12 On or about May 5, 2014, in consolidated Case Nos. H-38930 LA and H-04457
13 SD, the Commissioner of the Bureau of Real Estate suspended the license of CERWONKA for a
14 period of ninety days pursuant to the provisions of Code sections 10177(d) and 10177(h) for
15 violation of Code sections 10145 and 10159.2 and Sections 2832.1, 2831, 2831.1, 2834 of
16 Chapter 10, Title 6, Code of Regulations ("Regulations").

17 5.

18 During the period alleged in Paragraph 3, above, CERWONKA, as the officer
19 designated by RADIX pursuant to Section 10211 of the Code, was responsible for the
20 supervision and control of the activities conducted on behalf of RADIX by its officers and
21 employees as necessary to secure full compliance with the Real Estate Law as set forth in Section
22 10159.2 of the Code.

23 6.

24 At all times relevant herein each Respondent was engaged in the business of,
25 acted in the capacity of, advertised or assumed to act as a real estate broker, within the meaning

1 of Code Section 10131(b). Said activities included offering to negotiate and negotiating leases
2 and rental agreements on behalf of prospective real property tenants, and offering to perform and
3 performing the rental and collection of rents and security deposits for real property on behalf of
4 others for compensation or in expectation of compensation.

5 FIRST CAUSE OF ACCUSATION

6 (Audit Violations by RADIX)

7 7.

8 Complainant hereby incorporates by reference the allegations set forth in
9 Paragraphs 1 through 6, above.

10 8.

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

14 9.

15 At all times mentioned herein, and in connection with the property management
16 activities described in Paragraph 5, above, RADIX accepted or received funds, including funds in
17 trust (hereafter "trust funds") from or on behalf of owners of the real property managed by
18 Respondent RADIX, and thereafter made deposits and/or disbursements of such funds. From
19 time-to-time herein mentioned during the audit period, said trust funds were deposited into
20 accounts maintained by Respondent RADIX as follows:

21 "Trust Account #1"

T/A 1

22 Bank: Union Bank

23 P.O. Box 512380

24 Los Angeles, California 90051-0380

25 Account Name: Radix Realty Corporation; All Mountain Property Management;
26

1 Escrow/Trust Account
2 Account No.: xxxxxx0447
3 Signatories: CERWONKA
4 Signatures Required: One (1) Signatory
5 Purpose: Receipt and disbursement of trust funds received for multiple beneficiaries
6 in connection with RADIX' property management for All Mountain
7 Property Management for the Big Bear Lake Office. T/A 1 was opened on
8 April 15, 2015, to replace CERWONKA's T/A 5.

9
10 "Trust Account #2" T/A 2

11 Bank: Union Bank
12 P.O. Box 512380
13 Los Angeles, California 90051-0380
14 Account Name: Radix Realty Corporation; All Mountain Property Management;
15 Security/Trust Account

16 Account No.: xxxxxx0285
17 Signatories: CERWONKA
18 Signatures Required: One (1) Signatory
19 Purpose: Receipt and disbursement of security deposit trust funds received for
20 multiple beneficiaries in connection with RADIX' property management
21 activity for All Mountain Property Management for the Big Bear Lake
22 office. T/A 2 was opened on April 1, 2015 to replace CERWONKA's T/A
23 6. T/A 6 was closed on April 1, 2015.

24 "Trust Account #3" T/A 3

25 Bank: Union Bank
26

1 P.O. Box 512380
2 Los Angeles, California 90051-0380
3 Account Name: Radix Realty Corporation; Property Management of San Diego
4 Escrow/Trust Account
5 Account No.: xxxxxx0722
6 Signatories: CERWONKA
7 Signatures Required: One (1) Signatory
8 Purpose: T/A 3 was maintained for the receipt and disbursement of trust funds
9 received for multiple beneficiaries in connection with RADIX' property
10 management activity for Property Management of San Diego for the San
11 Diego office. T/A 3 was opened on April 1, 2015 to replace
12 CERWONKA's T/A 7. T/A 7 was closed on July 9, 2015.

13 "Trust Account #4" T/A 4

14 Bank: Union Bank
15 P.O. Box 512380
16 Los Angeles, California 90051-0380
17 Account Name: Radix Realty Corporation; Property Management of San Diego
18 Security/Trust Account
19 Account No.: xxxxxx0234
20 Signatories: CERWONKA
21 Signatures Required: One (1) Signatory
22 Purpose: T/A 4 was maintained for the receipt and disbursement of security deposit
23 trust funds received for multiple beneficiaries in connection with RADIX'
24 property management activity for Property Management of San Diego for
25 the San Diego office. T/A 4 was opened on April 1, 2015 to replace

1 CERWONKA's T/A 8. T/A 8 was closed on April 1, 2015.

2 "Bank Account #9" B/A 9

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 Property Management of San Diego

8 Account No.: xxxxxx0730

9 Signatories: CERWONKA

10 Signatures Required: One (1) Signatory

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

13 10.

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 150038 and
16 the exhibits and work papers attached to the audit report:

17 (a)

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

21 (ii) As of September 30, 2105, there was a trust fund shortage of <\$50.00> in T/A
22 2 due to \$50 being transferred to RADIX' general account on May 15, 2015. There were
23 unidentified/unaccounted for funds of \$50 in T/A 2 as of September 30, 2015.

24 (iii) As of September 30, 2015, there was a trust fund shortage of <2,154.51> in
25 T/A 3. The shortage was caused by negative property balances of <\$1,929.12>, unreimbursed

26 - 6 -

27 ACCUSATION RE: RADIX REALTY CORPORATION
CAROLYN MARIE CERWONKA;

1 bank service charges of <\$225.39> transferred from CERWONKA's T/A 7 into T/A 3 on April
2 28, 2015.

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

6 RADIX provided no evidence that the owners of the trust funds in T/A1, T/A 2,
7 T/A 3, and B/A 9 had given their written consent to allow RADIX/CERWONKA to reduce the
8 balance of the funds in the trust fund bank account to an amount less than the existing aggregate
9 trust fund liabilities. The foregoing is in violation of Code Section 10145(a) and Sections 2832.1
10 and 2831of the Regulations.

11 (b) RADIX failed to disburse trust funds from T/A 1, T/A 2, T/A 3 and T/A 4 in
12 accordance with instructions from the persons entitled to the funds. During April 1, 2015, to
13 April 28, 2015, RADIX received trust funds from the trust accounts of CERWONKA totaling
14 \$430,563.27 from T/A 5, T/A 6, T/A 7 and T/A 8.

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

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

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

23 (c) RADIX failed to maintain a control record for B/A 9. RADIX failed to
24 maintain accurate control records for T/A 1, T/A 2, T/A 3 and T/A 4. There were incorrect dates
25 and amounts of trust funds received; and there were deposits, checks, withdrawals and bank
26

1 adjustments that were not recorded on the control records. This is in violation of Code Section
2 10145 and Section 2831 of the Regulations.

3 (d) RADIX failed to maintain separate records for each beneficiary or transaction
4 for B/A 9. RADIX failed to maintain accurate separate records for T/A 1, T/A 2, T/A 3 and T/A
5 4. There were incorrect dates and amounts of trust funds received, and there were deposits,
6 checks, withdrawals and bank adjustments that were not recorded on the separate records.
7 RADIX failed to maintain a separate record for the unidentified/unaccounted for funds of
8 \$1,080.00 to T/A 1 and \$50 for T/A 2 during the audit period. The foregoing is in violation of
9 Code Section 10145 and Section 2831.1 of the Regulations.

10 (e) RADIX failed to perform a monthly reconciliation for B/A 9. RADIX failed to
11 maintain accurate monthly reconciliation for T/A 1, T/A 3 and T/A 4. The differences between
12 the balance of all the separate records to the month-end bank balance were not reconciled on a
13 timely basis. RADIX failed to reconcile the unidentified/unaccounted for funds of \$1,080 for T/A
14 1 and \$50 for T/A 2 during the audit period. The foregoing is in violation of Code Section 10145
15 and Section 2831.2 of the Regulations.

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

18 (g) RADIX deposited trust funds received from tenants in T/A 1, T/A 2, and T/A
19 5 totaling \$6,811.06 into RADIX' general account resulting in the commingling of trust funds
20 with broker's funds during the period May 15, 2015, and July 31, 2015. In addition, a broker's
21 commission for \$5,875.00 was deposited into B/A 9 on June 26, 2015, and commingled with
22 trust funds. The foregoing is in violation of Code Sections 10145 and 10176(e) and Section 2835
23 of the Regulations.

24 (h) An examination of RADIX' property management records revealed that during
25 the period April 1, 2015, to July 12, 2015, RADIX conducted licensed activities without a real
26

1 estate license. RADIX was not licensed as a broker until July 13, 2015. The foregoing is in
2 violation of Code Section 10130.

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

7 (j) CERWONKA did not exercise reasonable control and supervision over the
8 activities conducted on behalf of RADIX by its licensees and/or employees as necessary to
9 ensure full compliance with the Real Estate Law. CERWONKA failed to establish policies, rules,
10 procedures and systems to review, oversee and inspect the handling of trust fund by RADIX'
11 licensees and/or employees. The foregoing is in violation of Code Sections 10159.2 and 10177(h)
12 and Section 2725 of the Regulations.

13 DISCIPLINE STATUTES AND REGULATIONS

14 11.

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

17 PARAGRAPH

PROVISIONS VIOLATED

18 10(a)

Code Section 10145; Section 2832.1 of the
19 Regulations

20 10(b)

Code Section 10145(a)

21 10(c)

Code Section 10145; Section 2831 of the
22 Regulations

23 10(d)

Code Section 10145; Section 2831.1 of the
24 Regulations

1 10(e) Code Section 10145; Section 2831.2 of the
2 Regulations
3 10(f) Code Sections 10145; Section 2832 of the
4 Regulations
5 10(g) Code Sections 10145 and 10176(e); Section
6 2835 of the Regulations
7
8 10(h) Code Section 10130
9 10(i) 10140.6 and Section 2773 of the
10 Regulations
11 10(j) 10159.2 and 10177(h); Section 2725 of the
12 Regulations

13 12.

14
15 The foregoing violations constitute cause for the suspension or revocation of the
16 real estate licenses and license rights of Respondents RADIX and CERWONKA under the
17 provisions of Code Sections 10177(d) for violation of the Real Estate Law, 10177(g) for
18 negligence or incompetence and 10176(e) for commingling.

19 SECOND CAUSE OF ACCUSATION

20 (Audit Violations by CERWONKA

21 13.

22 Complainant hereby incorporates by reference the allegations set forth in
23 Paragraphs 1 through 12, above.

24 14.

25 On or about April 29, 2016, the Bureau completed an audit examination of the
26 books and records of CERWONKA pertaining to the real estate activities described in Paragraph

5, above, covering a period from May 5, 2014, to September 30, 2015.

15.

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

"Trust Account #5"

T/A 5

Bank: Union Bank

P.O. Box 512380

Los Angeles, California 90051-0380

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

Account No.: xxxxxx6315

Signatories: CERWONKA

Signatures Required: One (1) Signatory

Purpose: Maintained for the receipt and disbursement of trust funds received for multiple beneficiaries in connection with CERWONKA's property management for All Mountain Property Management for the Big Bear Lake Office. T/A 5 was opened on March 29, 2013.

A new trust account for RADIX was opened on April 1, 2015, to replace CERWONKA's T/A 5. T/A 5 was still open as of the audit cutoff date, September 30, 2015, due to Section 8 continuing to deposit one tenant's funds into T/A 5.

"Trust Account #6"

T/A 6

Bank: Union Bank

P.O. Box 512380

Los Angeles, California 90051-0380

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

Account No.: xxxxxx6307

Signatories: CERWONKA

Signatures Required: One (1) Signatory

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

"Trust Account #7"

T/A 7

Bank: Union Bank

P.O. Box 512380

Los Angeles, California 90051-0380

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

Account No.: xxxxxx5742

Signatories: CERWONKA

Signatures Required: One (1) Signatory

Purpose: Maintained for the receipt and disbursement of trust funds

received for multiple beneficiaries in connection with CERWONKA's property management activity for Property Management of San Diego for the San Diego office. T/A 7 was opened on February 21, 2013.

A new trust account, T/A 3, was opened for RADIX on April 1, 2015 to replace CERWONKA's T/A 7. T/A 7 was closed on July 9, 2015.

"Trust Account #8"

T/A 8

Bank: Union Bank

P.O. Box 512380

Los Angeles, California 90051-0380

Account Name: Carolyn M. Cerwonka; Property Management of San Diego
Security/Trust Account

Account No.: xxxxxx5750

Signatories: CERWONKA

Signatures Required: One (1) Signatory

Purpose: Maintained for the receipt and disbursement of security deposit trust funds received for multiple beneficiaries in connection with CERWONKA's property management activity for Property Management of San Diego for the San Diego office. T/A 8 was opened on February 21, 2013.
A new trust account, T/A 4, was opened for RADIX on April 1, 2015, to replace CERWONKA's T/A 8. T/A 8 was closed on April 1, 2015.

16.

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

(a) CERWONKA failed to disburse trust funds from her trust accounts T/A 5, T/A

1 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 accordance
2 with instructions from the persons entitled to the funds.

3 There were no authorizations from the owners of such funds maintained in
4 CERWONKA's T/A 5, T/A 6, T/A7 and T/A 8 to allow CERWONKA to disburse the trust funds
5 totaling \$430,563.27 to the bank accounts in RADIX' name.

6 During the audit report CERWONKA also disbursed trust funds from
7 CERWONKA's T/A 7 to RADIX' bank account B/A 9 for \$9,028.61 and from T/A 5 to RADIX'
8 general account for \$5,581.06 for the property management activity without authorization from
9 the principals of those funds.

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

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

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

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

21 The foregoing is in violation of Code Section 10145 and Section 2831.1 of the
22 Regulations.

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

1 CERWONKA failed to reconcile the unidentified/unaccounted for funds of \$10 in
2 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.

3 The foregoing is in violation of Code Section 10145 and Section 2831.2 of the
4 Regulations.

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

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

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

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

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

20 DISCIPLINE STATUTES AND REGULATIONS

21 17.

22 The conduct of Respondent CALIFORNIA REALTY described in Paragraph 16,
23 above, violated the Code and the Regulations as set forth below:

24 PARAGRAPH

PROVISIONS VIOLATED

25 16(a)

Code Section 10145(a)

1 16(b) Code Section 10145; Section 2831 of the
2 Regulations
3 16(c) Code Section 10145; Section 2831.1 of the
4 Regulations
5 16(d) Code Section 10145; Section 2831.2 of the
6 Regulations
7 16(e) Code Sections 10145 and 10176(e); Section
8 2832 of the Regulations
9 16(f) Code Sections 10140.6; Section 2773 of the
10 Regulations
11 16(g) 10177(h); Section 2725 of the Regulations
12
13

14 18.

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

19 THIRD CAUSE OF ACCUSATION

20 (Failure to Supervise - CERWONKA)

21 19.

22 Complainant hereby incorporates by reference the allegations set forth in
23 Paragraphs 1 through 18, above.

24 ///

25 ///

20.

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

21.

The conduct, acts and/or omissions CERWONKA in allowing RADIX to violate the Real Estate Law, as set forth above, constitutes a failure by CERWONKA, as the officer designated by a corporate broker licensee, to exercise the supervision and control over the activities of RADIX, as required by Code Section 10159.2, and is cause to suspend or revoke the real estate licenses and license rights of CERWONKA under Code Sections 10177(d), 10177(g) and/or 10177(h).

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.

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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 the licenses and license rights of Respondents RADIX REALTY
4 CORPORATION and CAROLYN MARIE CERWONKA under the Real Estate Law, for the
5 cost of investigation and enforcement as permitted by Code Section 10106, for audit costs
6 pursuant to Code Section 10148(b) and for such other and further relief as may be proper under
7 other applicable provisions of law.

8 Dated at San Diego, California

9 this 27 day of December, 2016.


Veronica Kilpatrick
Supervising Special Investigator

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