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FILED

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BUREAU OF REAL ESTATE

By *John Guib*

8 **BEFORE THE BUREAU OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of)

No. H-04942 SD

12 TD HOLDINGS I INC. and)
13 RICHARD C. JOY,)
14 individually and as former designated officer)
15 of TD Holdings I Inc,)

ACCUSATION

16 Respondents.)

17 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
18 State of California, for cause of Accusation against TD HOLDINGS I INC. and RICHARD C.
19 JOY, individually and as former designated officer of TD HOLDINGS I INC. alleges as follows:

20 1.

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

23 2.

24 All references to the "Code" are to the California Business and Professions Code
25 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

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1 BRE LICENSE HISTORY

2 3.

3 RICHARD C JOY

4 A. Respondent RICHARD C. JOY ("JOY") is presently licensed and/or has
5 license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate broker
6 ("REB"), Bureau of Real Estate ("BRE" or "Bureau") license ID 01468389.

7 B. JOY was originally licensed by the Bureau as a real estate salesperson ("RES")
8 on or about December 13, 2004, and as a REB on or about December 14, 2005.

9 C. JOY's BRE mailing address of record is 100 Ridge Road, Apt. 2114, Lahaina,
10 Hawaii 96761. JOY's BRE main office and branch office address of record is 13400 Sabre
11 Springs Pkwy, Suite 100, San Diego, California 92128 ("Sabre Springs address").

12 D. According to BRE records to date, JOY has no current DBAs under his BRE
13 license and JOY was the designated officer ("D.O.") for TD HOLDINGS I INC. until his officer
14 license affiliation was cancelled as of November 15, 2016.

15 E. JOY's BRE license will expire on December 13, 2017.

16 4.

17 TD HOLDINGS I INC.

18 A. Respondent TD HOLDINGS I INC. ("TDHII") is presently licensed and/or has
19 license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate
20 corporation ("REC"), BRE license ID 01870514.

21 B. TDHII was originally licensed by the Bureau on or about December 7, 2009.

22 C. TDHII's mailing and main office address of record are the same as Respondent
23 JOY's Sabre Springs address.

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1 D. According to BRE records to date: TDHII's designated officer of record is
2 REB Kevin T. Hugli, BRE license ID 01186439 (until his license affiliation expiration on June 5,
3 2020) and TDHII has two hundred thirty-four (234) RES affiliated with its BRE license.

4 E. According to BRE records to date, TDHII maintains fifteen (15) current DBAs:

- 5 1. Betyar Real Estate Group (active as of May 28, 2014);
- 6 2. The Breziner Group (active as of May 28, 2014);
- 7 3. Christensen Realty Group (active as of May 28, 2014);
- 8 4. The Herndon Team (active as of August 26, 2014);
- 9 5. Kathy Rolfo & Associates (active as of August 26, 2014);
- 10 6. Keller Williams Realty (active as of June 21, 2011);
- 11 7. Keller Williams Realty San Diego North Inland (active as of June 21,
12 2011);
- 13 8. The Lopez Group (active as of May 28, 2014);
- 14 9. Mack Real Estate Group (active as of May 28, 2014);
- 15 10. The Miller Team (active as of May 28, 2014);
- 16 11. Misha & Associates (active as of August 26, 2014);
- 17 12. North Inland Escrow, a non-independent broker escrow (active as of
18 January 31, 2013);
- 19 13. North Inland TC (active as of May 28, 2014);
- 20 14. Robert Colello & Associates (active as of May 28, 2014); and
- 21 15. Thompson Real Estate Group (active as of May 28, 2014).

22 Previously, TDHII maintained three other DBAs under its BRE license: The Edwards Real Estate
23 Group (active from May 28, 2014 to August 29, 2016); The Ferreira Group (active from May 28,
24 2014 to August 29, 2016); and Rose O' Reilly & Associates (active from May 28, 2014 to
25 August 25, 2014).

5.

Tessa Marie Arguello Sims (not licensed by the BRE)

Tessa Marie Arguello Sims (“Sims”) is not, and never has been, licensed by the Bureau in any capacity. On or about June 30, 2008, Sims submitted an application to the DRE¹ for a real estate salesperson license. Within her June 30, 2008 BRE application, Sims disclosed that the California Department of Corporations (“DBO”²) had revoked her escrow agent license in Case No. 963-1934. Included in the license revocation settlement agreement between Sims and DBO (“DBO settlement agreement”) was Sims’ admission to violations by her wholly owned escrow, Asset Escrow Services Inc., of: Financial Code Sections 17210; 17404; 1741; 1732.2; 1732.3; and 1738.1. Pursuant to the terms of the DBO settlement agreement the DBO Commissioner issued an order barring Sims from any position of “employment, management, or control of any escrow agent.” The DBO settlement agreement became effective August 20, 2007. On March 4, 2011, in DRE Case No. H-4139 SD, the DRE denied Sims’ RES application pursuant to Code Sections 480(a)(3)(A)³ and 10177(f)⁴.

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¹ Prior to July 1, 2013, the California Bureau of Real Estate was the Department of Real Estate (“DRE”).

² Effective July 1, 2013, the California Department of Corporations (“DOC”) and the California Department of Financial Institutions (“DFI”) merged to form the Department of Business Oversight (“DBO”), which reports to the California Business, Consumer Services & Housing Agency. The former DOC and DFI now operate as divisions within the DBO.

³ According to Business and Professions Code 480(a): “A board may deny a license regulated by this code on the grounds that the applicant has one of the following:...(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.”

⁴ According to Business and Professions Code 10177: The commissioner may suspend or revoke...or deny the issuance of a license to an applicant who has done any of the following...(f)Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act...and only upon an express finding of a violation of law by the agency or entity.”

1 BRE AUDIT OF TD HOLDINGS I INC

2 (SD 160001)

3 6.

4 On December 30 2016, the Bureau completed an audit examination of the books
5 and records of Respondent TDHII pertaining to the broker escrow activities described in
6 Paragraph 7, below, which require a real estate license. The audit examination covered a period
7 of time beginning on August 1, 2013 and ending on May 31, 2016 (“audit examination period” or
8 “audit period”), and was performed between July 26, 2016 and December 19, 2016 (“field work
9 period”), during which the D.O. of TDHII was JOY. The final report of December 30, 2016
10 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and
11 more fully discussed in Audit Report SD 160001.

12 7.

13 TDHII’s Business Activities & Corporate Structure

14 At all times mentioned in San Diego, California, Respondent TDHII acted as a
15 real estate broker, and ordered, caused, authorized or participated in licensed activities within the
16 exception of California Financial Code Section 17006(a)(4), by performing acts in the course of
17 or incidental to a real estate transaction in which the broker is an agent or a party to the
18 transaction and in which the broker is performing an act for which a real estate license is required
19 (“broker escrow activities” or “broker-controlled escrow activities”).

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According to the Organization Chart of Keller Williams Realty San Diego North Inland (one of TDHII's fifteen (15) active DBAs) provided by JOY and TDHII for the BRE audit:

A. The "Operating Principal Vision Broker Officer" role belonged to JOY⁵ and Sims.

B. The "Team Leader" role belonged to Sims and listed beneath Sims' name: "Execute Vision, Recruiting, Coaching, Training and Marketing, Growth, Finance, Productivity, Culture, Education/Technology."

C. The Broker Officer role belonged to Kevin Hugli Broker Manager, and listed beneath Hugli's name: "Connie Joy⁶, Gary Strohmenger Risk Management, Agreements, Broker Compliance."

9.

According to the Keller Williams Realty San Diego North Inland website, Sims introduces herself as the Team Leader on the video that resides on the homepage:

<http://www.kwsandiegonorthernland.com/>.

10.

According to the books and records provided by TDHII for the BRE audit, TDHII performed broker escrow activities during the audit period, and between June 1, 2015 and May 31, 2016, it closed two hundred and five (205) escrow transactions, collected approximately \$68,937,870.22, and maintained one trust account used for handling the receipts and disbursements of trust funds for multiple beneficiaries in connection with its broker escrow activities.

⁵ Adjacent to Respondent RICHARD JOY's name is the notation "RET." without further explanation

⁶ Adjacent to Connie Joy's name is the notation "RET." without further explanation.

11.

The BRE's audit findings and methods of correction were discussed with D.O. JOY (via telephone) and Team Leader Sims during the audit exit conference on December 29, 2016. Corrective measures were made by D.O. JOY subsequent to the close of the audit examination.

Bank Accounts

12.

According to books and records provided by TDHII, it maintained one (1) trust account for the receipts and disbursements of trust funds in connection with its broker escrow activities; this trust account was sampled for the BRE audit:

Trust Account 1 ("T/A1")

- * Account Name: TD HOLDINGS I INC dba North Inland Escrow Trust Account
- * Bank: California Republic Bank, Newport Beach, CA
- * Account # xxxxxx4137
- * Signatories: JOY, Kimberly Nichols, Micaela Frenes, and Felicia Nigh-Fordahl

TDHII maintained T/A 1 for multiple beneficiaries for handling the receipts and disbursements of trust funds received in connection with its broker escrow activities.

Audit Findings: Violations of the Real Estate Law

13.

In the course of activities as described in Paragraphs 7 and 8, above, and during the audit examination period described in Paragraph 6, Respondent TDHII acted in violation of the Code and the Regulations, as described below:

A. Trust Fund Handling for Multiple Beneficiaries (Code Section 10145 and Regulations 2832.1; 2950(d); 2950(g); and 2951)

Based on the records provided, T/A 1 had a shortage of <\$670.91> as of May 31, 2016 caused by <\$670.91> negative balances. There was no evidence in the files examined that the trust fund owners had given TDHII written consent to allow TDHII to reduce the balance of

1 trust funds in T/A 1 to an amount less than the aggregate trust fund liabilities of TDHII to all
2 owners of the funds, in violation of **Code Section 10145 and Regulations 2832.1; 2950(d);**
3 **2950(g); and 2951.**

4 **B. Trust Fund Handling – Trust Fund Records to be Maintained When**
5 **Broker Handles Escrow (Code Section 10145 and Regulations 2831 and 2950(d))**

6 The control record maintained for T/A 1 which was used for the receipts and
7 disbursement of trust funds in connection with TDHII's broker escrow activity was inaccurate
8 and incomplete, in violation of **Code Section 10145 and Regulations 2831 and 2950(d).** The
9 BRE auditor discovered that:

10 1. Check number 4270 cleared the bank on May 29, 2015; however, a stop
11 payment on check number 4270 was recorded on September 10, 2015, and check number 5320
12 was issued on September 17, 2015 to replace check number 4270, resulting in a duplicate
13 payment.

14 2. There was an April 1, 2016 deposit in the amount of \$200.00 on the
15 bank statement that was not recorded on the control record.

16 3. There were two deposits recorded in the control record in which the
17 recorded date of receipt is a date subsequent to the deposit date.

18 **C. Trust Fund Handling – Separate Record For Each Beneficiary or**
19 **Transaction/When Broker Handles Escrow (Code Section 10145 and Regulations 2831.1,**
20 **2950(d), and 2951)**

21 The separate records of trust funds received and disbursed in T/A 1 while
22 conducting broker escrow were inaccurate, in violation of **Code Section 10145 and Regulations**
23 **2831.1, 2950(d), and 2951.** (See Paragraph 13B., above for the BRE auditor's findings.)

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D. Trust Fund Handling – Trust Account Reconciliation/ When Broker Handles Escrow (Code Section 10145 and Regulations 2831.2, 2950(d), and 2951)

During the audit period, TDHII failed to perform and maintain a monthly reconciliation comparing the balance of all separate records to the balance of the record of all trust funds received and disbursed (control record) for T/A 1 in connection with its broker escrow activity, in violation of Code Section 10145 and Regulations 2831.2, 2950(d), and 2951.

E. Trust Fund Handling – Trust Funds Deposited By Next Business Day/ Failure to Deposit Escrow Funds Within the Next Business Day/ When Broker Handles Escrow (Code Section 10145 and Regulations 2832(e), 2950(f), and 2951)

The trust funds received for escrow numbers 1442-MF, 1455-MF, 1508-MF, and 1544-MF were not deposited by the next business day, in violation of Code Section 10145 and Regulations 2832(e), 2950(f), and 2951. The BRE auditor discovered the following dates of receipt and deposit dates:

Escrow #	Date Received	Amount Received	Date Deposited
1455-MF	4/14/16	\$ 218.16	7/25/16
1442-MF	5/13/16	\$ 75.00	7/25/16
1508-MF	5/31/16	\$ 177.75	7/25/16
1544-MF	5/26/16	\$10,000.00	6/8/16

F. Trust Fund Handling – Trust Account Withdrawals/ When Broker Handles Escrow (Code Section 10145 and Regulations 2834 and 2951)

According to the signature card provided by D.O. JOY, for T/A 1, Kimberly Nichols, Micaela Frenes, and Felicia Nigh-Fordahl, none of whom are licensed by the BRE, were authorized to sign on T/A 1, without sufficient fidelity bond coverage, in violation of Code Section 10145 and Regulations 2834 and 2951.

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G. Disclosure of Licensed Status in Advertising/ Disclosure of License

Identification Number on Solicitation Materials (Code Section 10140.6 and Regulation 2773)

TDHII's BRE license number was not disclosed on first point of contact materials, including its website and on business cards, in violation of **Code Section 10140.6 and Regulation 2773.**

H. Secret Profit or Undisclosed Compensation/Broker Placement of Trust Funds with Financial Institutions (Code Section 10176(g) and Regulation 2830)

TDHII maintained an earnings credit relationship with California Republic Bank without providing disclosure of the earnings credit to all of the owners of the trust funds, in violation of **Code Section 10176(g) and Regulation 2830.** The auditor discovered the following amounts of credit earned by TDHII during the audit period:

<u>Month/Year</u>	<u>Earnings Credit Earned</u>	<u>Cumulative Credit</u>
December 2015	\$ 737.31	\$ 737.31
January 2016	\$ 560.32	\$ 1,297.63
February 2016	\$ 471.27	\$ 1,768.90
March 2016	\$ 892.84	\$ 2,661.74
April 2016	\$ 1,114.35	\$ 3,776.09
May 2016	\$ 1,588.62	\$ 5,364.71

I. Responsibility of Corporate Officer in Charge/Broker Supervision – D.O. JOY (Code Sections 10159.2 and 10177(h) and Regulation 2725)

The acts and/or omissions of D.O. JOY as described in Paragraphs 13A. through 13H. above, demonstrate a failure to adequately supervise the real estate activities of TDHII, its salespersons, and its employees to ensure compliance with the Real Estate laws and regulations. D.O. JOY failed to maintain complete and accurate control record, separate records, and failed to

1 maintain trust account reconciliations for TDHII's broker activity, and allowed non-BRE
2 licensed, unbonded employees to be authorized signators to the trust account T/A 1. Under D.O.
3 JOY's supervision, TDHII reduced the balance of trust funds in T/A 1 to an amount less than the
4 aggregate trust fund liabilities of TDHII to all the owners of the trust funds without their written
5 consent. Under D.O. JOY's supervision, TDHII failed to submit on time to the BRE the Annual
6 Report of a Review of Trust Fund Financial Statements and failed to disclose to the trust fund
7 owners the earnings credit relationship maintained at California Republic Bank. The violations
8 cited in Audit SD 160001 are indicative of Respondent JOY's failure to establish policies, rules,
9 procedures and systems to review, oversee, inspect and manage: transactions requiring a real
10 estate license, the handling of trust funds in TDHII's activities, and the proper reporting of trust
11 fund activity to the trust fund owners. These acts and/or failures to act constitute grounds for the
12 suspension or revocation of the license and license rights of Respondent JOY under the
13 provisions of **Code Sections 10159.2 and 10177(h) and Regulation 2725.**

14 Additional Violations of the Real Estate Law

15 14.

16 Pursuant to the terms of the August 20, 2007 DBO settlement agreement, the
17 DBO Commissioner barred Sims from any position of "employment, management, or control of
18 any escrow agent." JOY's appointment of non-BRE licensee Sims as both TDHII's "Operating
19 Principal Vision Broker Officer" alongside D.O. JOY and as a "Team Leader" tasked with:
20 "Execute Vision, Recruiting, Coaching, Training and Marketing, Growth, Finance, Productivity,
21 Culture, Education/Technology," is a violation of **Financial Code Section 17423** and constitutes
22 cause for the suspension or revocation of the real estate licenses and license rights of TDHII and
23 JOY under the provisions of **Code Section 10176(m)** for violating the licensing law of the DBO,
24 **Code Section 10177(g)** for negligence and **Code Section 10177(d)** for willful violation of the
25 Real Estate Law.

1 15.

2 The overall conduct of Respondents TDHII and JOY is violative of the Real
3 Estate Law and constitutes cause for the suspension or revocation of the real estate licenses and
4 license rights of TDHII and JOY under the provisions of **Code Section 10177(g)** for negligence
5 and **Code Section 10177(d)** for willful disregard of the Real Estate Law.

6 COSTS

7 Investigation and Enforcement Costs

8 16.

9 **Code Section 10106** provides, in pertinent part, that in any order issued in
10 resolution of a disciplinary proceeding before the Bureau of Real Estate, the Commissioner may
11 request the administrative law judge to direct a licensee found to have committed a violation of
12 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
13 the case.

14 Audit Costs

15 12.

16 **Code Section 10148(b)** provides, in pertinent part, the Commissioner shall charge
17 a real estate broker for the cost of any audit, if the Commissioner has found in a final decision
18 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation
19 or rule of the Commissioner interpreting said section.

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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 the licenses and license rights of Respondents TD HOLDINGS I INC and
4 RICHARD C JOY under the Real Estate Law (Part 1 of vision 4 of the Business and Professions
5 Code), for the cost of investigation and enforcement as permitted by law, and for such other and
6 further relief as may be proper under other provisions of law, and for costs of audit.

7 Dated at San Diego, California

8 this 21 day of August, 2017.

9
10 V. Kilpatrick
11 Veronica Kilpatrick
12 Supervising Special Investigator
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21 cc: TD HOLDINGS I INC
22 RICHARD C JOY
23 V. Kilpatrick
24 Sacto.
Audits – L. Davies
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