


1 MICHELLE NIJM, Counsel (SBN 297168)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105
5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6911

FILED
SEP 10 2018
DEPARTMENT OF REAL ESTATE
By 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation against) No. H-05020 SD
12 SAN DIEGO REALTY AND APPRAISAL INC)
13 and TINA MARIE ETUE, individually, and as)
14 designated officer of SDRAI INVESTMENT)
CORPORATION,)
15 Respondents.)

16 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
17 State of California, for cause of Accusation against SAN DIEGO REALTY AND APPRAISAL
18 INC ("SDRAI") and TINA MARIE ETUE ("ETUE"), individually, and as designated officer of
19 SDRAI, 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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27

1 LICENSE HISTORY

2 3.

3 TINA MARIE ETUE

4 A. ETUE is presently licensed and/or has license rights under the Real Estate Law
5 (part 1 of division 4 of the Code) as a real estate broker ("REB") under license ID 01151432.

6 B. ETUE was originally licensed by the Department of Real Estate¹
7 ("Department") as a REB on or about February 2, 2006. ETUE's REB is set to expire on
8 February 1, 2022.

9 C. ETUE is the designated officer for SDRAI until her officer license expiration
10 date of July 15, 2020.

11 4.

12 SAN DIEGO REALTY AND APPRAISAL INC

13 A. Respondent SDRAI is presently licensed and/or has license rights under the
14 Real Estate Law (part 1 of division 4 of the Code) as a corporate REB under license ID
15 01843272.

16 B. SDRAI was originally licensed by the Department on or about April 29, 2008.
17 SDRAI's corporate REB is set to expire on July 15, 2020.

18 C. SDRAI maintains the following DBAs under its corporate REB license: E2
19 Realty and TriStar Property Management.

20 D. SDRAI employs multiple salespersons under its corporate REB, including real
21 estate salesperson Gypsy Eve Washburn ("RES Washburn"), License ID 01247933, and real
22 estate salesperson Matthew P Etue ("RES Etue"), License ID 01774085.

23
24
25 ¹ Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under
26 the Department of Consumer Affairs.

1 BROKERAGE

2 5.

3 At all times relevant herein, SDRAI was engaged in the business of, acted in the
4 capacity of, advertised or assumed to act as a real estate broker in the State of California, within
5 the meaning of Code section 10131, subdivision (b), wherein SDRAI engaged in property
6 management activities, and leased or rented or offered to lease or rent, or placed for rent, or
7 solicited listings of places for rent, or solicited for prospective tenants, or negotiated the sale,
8 purchase or exchanges of leases on real property, or on a business opportunity, or collected rent
9 from real property, or improvements thereon, or from business opportunities (“property
10 management”).

11 AUDIT VIOLATIONS

12 (BRE Audit SD160052)

13 6.

14 On January 31, 2018, the Department completed an audit examination of the
15 books and records of SDRAI pertaining to the real estate activities described in Paragraph 5
16 above. The audit examination covered a period of time beginning on September 1, 2016 and
17 ending on August 31, 2017 (“audit period”). The final report of January 31, 2018 revealed
18 violations of the Code and the Regulations as set forth in the following paragraphs, and as more
19 fully discussed in Audit Report SD160052.

20 Bank Account

21 7.

22 During the audit period, SDRAI accepted or received funds in trust from or on
23 behalf of actual or prospective parties (“trust funds”) and thereafter made deposits or
24 disbursements of such funds. The Department examined the following account used by SDRAI
25 for the deposit and/or maintenance of trust funds relating to its real estate activities:

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1 Trust Account 1 ("TA1" in Audit SD160052)

2 * Account Number: xxxxx-3319

3 * Bank: Wells Fargo Bank, Portland, OR

4 8.

5 Violations of the Real Estate Law

6 In the course of the activities described in Paragraph 5, and during the audit period
7 described in Paragraph 6, SDRAI acted in violation of the Code and the Regulations, as
8 described below:

9 **A. Trust Fund Handling for Multiple Beneficiaries (Code section 10145 and
10 Regulation 2832.1)**

11 Without the prior written consent of the owners of the trust funds in Trust
12 Account 1, SDRAI caused, permitted, and/or allowed the withdrawal or disbursement of trust
13 funds from Trust Account 1 such that the total of aggregate funds remaining in the account was
14 less than the existing aggregate trust fund liability of SDRAI to every principal who was an
15 owner of said funds. As of August 31, 2017, Trust Account 1 had a minimum shortage of
16 <\$16,044.40>. Said shortage was attributable to:

17 Negative Property Owner Account Balances <\$ 3,754.92>

18 Minimum Conversion/Unauthorized Distributions <\$11,817.18>

19 Minimum Unidentified Shortage <\$ 472.30>

20 Minimum Trust Fund Shortage as of 8/31/17 <\$16,044.40>

21 SDRAI'S conduct violates Code section 10145 and Regulation 2832.1.

22 **B. Trust Fund Handling – Failure to Maintain Accurate Control Record of
23 All Trust Funds Received and Disbursed (Code section 10145 and Regulation 2831)**

24 During the audit period, SDRAI failed to maintain a complete and accurate
25 control record of all trust funds received and disbursed in connection with its property
26 management activities. SDRAI's conduct violates Code section 10145 and Regulation 2831.

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1 **C. Trust Fund Handling – Failure to Maintain Accurate Separate Records**
2 **for Each Beneficiary or Transaction (Code section 10145 and Regulation 2831.1)**

3 During the audit period, SDRAI failed to maintain complete and accurate separate
4 records for each beneficiary or transaction of all trust funds received and disbursed in connection
5 with its property management activities. SDRAI's conduct violates Code section 10145 and
6 Regulation 2831.1.

7 **D. Trust Fund Reconciliation (Code section 10145 and Regulation 2831.2)**

8 During the audit period, SDRAI failed to perform and maintain a monthly
9 reconciliation comparing the balance of all separate beneficiary or transaction records to the
10 balance of the record of all trust funds received and disbursed (control record) for Trust Account
11 1. SDRAI's conduct violates Code section 10145 and Regulation 2831.2.

12 **E. Trust Fund Handling – Deposit of Trust Funds (Code section 10145 and**
13 **Regulation 2832)**

14 During the audit period, SDRAI failed to deposit trust funds received in
15 connection with its property management activities into a trust account within three (3) business
16 days of receipt. SDRAI's conduct violates Code section 10145 and Regulation 2832.

17 **F. Trust Fund Handling - Trust Account Withdrawals (Code section 10145**
18 **and Regulation 2834)**

19 During the audit period, RES Etue was permitted to sign for and make
20 withdrawals from Trust Account 1 but did not have specific written authorization as required by
21 Regulation 2834. SDRAI's conduct violates Code section 10145 and Regulation 2834.

22 **G. Trust Fund Handling –Unauthorized Distributions/Conversion and**
23 **Commingling (Code sections 10145, 10176(e), 10176(i), and 10177(i))**

24 During the audit period, SDRAI permitted, allowed, and/or caused the
25 disbursement of at least \$11,817.18 in trust funds from Trust Account 1 for its own benefit
26

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1 without authorization from the owners of the funds. Based on the records provided by SDRAI,
2 converted funds were used to make payments to RES Washburn and were also transferred to
3 SDRAI's general bank account. The funds transferred to SDRAI's general bank account were
4 then used to pay SDRAI's bank charges. SDRAI's conduct violates Code sections 10145, 10176,
5 subdivisions (e) and (i), and 10177, subdivision (j).

6 ADDITIONAL VIOLATIONS

7 9.

8 **A. Willful Disregard of the Real Estate Law (Code section 10177(d))**

9 The overall conduct of SDRAI violates the Real Estate Law and constitutes cause
10 for the suspension or revocation of the real estate licenses and license rights of SDRAI under the
11 provisions of Code section 10177, subdivision (d), for willful disregard of the Real Estate Law.

12 **B. Dishonest Dealing (Code sections 10176(i) and 10177(i))**

13 The overall conduct of SDRAI violates the Real Estate Law and constitutes cause
14 for the suspension or revocation of the real estate licenses and license rights of SDRAI under the
15 provisions of Code sections 10176, subdivision (i), and 10177, subdivision (j), for dishonest
16 dealing.

17 **C. Negligence and/or Incompetence (Code section 10177(g))**

18 The overall conduct of SDRAI violates the Real Estate Law and constitutes cause
19 for the suspension or revocation of the real estate licenses and license rights of SDRAI under the
20 provisions of Code section 10177, subdivision (g), for negligence and/or incompetence.

21 **D. Failure to Supervise (Code sections 10159.2 and 10177(d), 10177(g),**
22 **10177(h), and/or 10177(i))**

23 The conduct, acts, and/or omissions of ETUE in allowing SDRAI to violate the
24 Real Estate Law as set forth above constitutes a failure by ETUE, as the officer designated by a
25 corporate broker licensee, to exercise supervision and control over the activities of SDRAI, as

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1 required by Code section 10159.2, and constitutes cause to suspend or revoke ETUE's real estate
2 licenses and license rights under Code section 10177, subdivisions (d), (g), (h), and/or (j).

3 COSTS

4 Investigation and Enforcement Costs

5 10.

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

10 Audit Costs

11 11.


12 Code section 10148, subdivision (b), provides, in pertinent part, the
13 Commissioner shall charge a real estate broker for the cost of any audit, if the Commissioner has
14 found in a final decision following a disciplinary hearing that the broker has violated Code
15 section 10145 or a regulation or rule of the Commissioner interpreting said section.

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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 the licenses and license rights of Respondents under the Real Estate Law (Part 1 of division 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law, and for costs of audit.

Dated at San Diego, California
this 31 day of August, 2018.


Veronica Kilpatrick
Supervising Special Investigator

cc: SAN DIEGO REALTY AND APPRAISAL INC
TINA MARIE ETUE
Sacto.
Audits – Dorcas Cheng