

1 LAURENCE D. HAVESON, Counsel (SBN 152631)
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
7 Fax: (213) 576-6917
8 *Attorney for Complainant*

FILED

JUN 17 2020

DEPT. OF REAL ESTATE
By *John Aguirre*

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-05104 SD
DISTINCTIVE PROPERTIES, INC.,)	<u>ACCUSATION</u>
and ROBERT MANSOUR HAMZEY,)	
individually and as designated officer)	
of Distinctive Properties, Inc.,)	
Respondents.)	

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the Department of Real Estate ("Department" or "DRE") of the State of California, for cause of Accusation against DISTINCTIVE PROPERTIES, INC. ("DPI"), and ROBERT MANSOUR HAMZEY ("HAMZEY") (collectively "Respondents"), alleges as follows:

1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a Supervising Special Investigator, makes this Accusation against Respondents.
2. All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

LICENSE HISTORY

3. Respondent DPI has been licensed by the Department as a real estate corporation, License ID 01526986, from on or about July 18, 2013 through the present, with DPI's license scheduled to expire on July 17, 2021 unless renewed. DPI's current license status is "Licensed NBA" (No Broker Affiliation), which means that DPI cannot conduct licensed activities unless and

1 until it designates a licensed real estate broker as the designated officer. DPI was most recently
2 licensed through HAMZEY's real estate broker license, ID 01727402, and he was also the
3 designated officer ("D.O."), however, HAMZEY canceled his affiliation with DPI effective
4 January 1, 2018, and DPI's officer was canceled as of January 2, 2018. According to Department
5 records as of October 20, 2017:

6 a. DPI had maintained two (2) branch offices located at:

7 (1) 1917 Palomar Oaks Way, Suite 300, Carlsbad, CA; and

8 (2) 27349 Jefferson Avenue, Suite 205, Temecula, CA

9 b. DPI had employed 19 licensed real estate salespersons.

10 4. According to Department records as of October 24, 2018 and currently, DPI had no
11 main office on file, no branch offices, and no longer employed any salespeople.

12 5. According to Department records to date, DPI has the following four (4) fictitious
13 business names that are currently active and licensed to DPI:

14 a. "The Best Homes San Diego," effective from July 18, 2013;

15 b. "Distinctive Properties," effective from July 18, 2013;

16 c. "PacShore Escrow Services, A Non-Independent Broker Escrow,"
17 ("PacShore Escrow") effective from November 9, 2015; and

18 d. "WEICHERT REALTORS Distinctive Properties," effective from May 14,
19 2015.

20 6. Respondent HAMZEY has been licensed by the Department as a real estate broker
21 ("REB"), from on or about March 15, 2012, through the present, with HAMZEY's license
22 scheduled to expire on March 14, 2020, unless renewed. HAMZEY was previously licensed by the
23 Department as a real estate salesperson ("RES") from December 31, 2005 until March 14, 2012.
24 According to Department records to date, HAMZEY has no fictitious business names licensed with
25 the Department and no branch offices. Besides being the former D.O. for DPI, HAMZEY was the
26 D.O. for PacShore Inc., a real estate corporation, license ID 01885628, from August 17, 2014
27 through August 16, 2018. HAMZEY is currently listed as a broker associate for PacShore Inc.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12

BROKERAGE: DPI

7. At all times mentioned, in the County of San Diego, DPI acted as a real estate broker, conducting licensed activities within the meaning of Code sections 10131(a) and 10131(b): selling or offering to sell, buying or offering to buy, real property for others; and leasing or renting, offering to lease or rent, or collecting rents from real property for others. In addition, DPI conducted broker-controlled escrows under the exemption set forth in California Financial Code section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required. At all times mentioned, DPI was acting by and through HAMZEY as its designated officer pursuant to Code section 10159.2 who was responsible for ensuring compliance with the Real Estate Law.

13
14
15
16
17
18
19
20
21
22

DPI BANKRUPTCY PROCEEDINGS

8. On or about October 12, 2017, DPI filed a Voluntary Petition for Bankruptcy under Chapter 7 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of California in San Diego, Case No. 17-06185-CL7.

9. On or about December 21, 2017, the duly appointed and acting Chapter 7 trustee ("Trustee") for the bankruptcy estate of DPI filed a motion to dismiss DPI's bankruptcy case for cause, and also requested that the bankruptcy court order a bar to refiling within 180 days pursuant to 11 U.S.C section 109(g)(1). The Trustee's motion was based on the grounds that DPI failed to comply with its statutory duty under the Bankruptcy Code, 11 U.S.C. section 521(3), to cooperate with the Trustee by failing to disclose assets and other pertinent information, dissipating assets, refusing to testify, and failing to list all creditors.

10. The Trustee requested dismissal of the case and a 180-day refiling bar under 11 U.S.C. section 109(g)(1), which provides in part that a debtor in a case pending under the Bankruptcy Code cannot file another petition within 180 days of dismissal of the previous case if the previous case "was dismissed by the court for willful failure of the debtor to abide by orders of the court."

28 ///

1 11. In the Trustee's declaration filed in support of the motion to dismiss, referring to
2 DPI as "Debtor," the Trustee declared in part as follows:

3 Debtor failed to provide honest responses to the disclosures required by Official Form 207 –
4 Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy. Mr. HAMZEY's
5 testimony at the initial meeting of creditors confirms that Debtor did not disclose known
6 transfers to Debtor's insiders (including Pacshore, Inc.), such as a \$125,000 transfer
7 completed only hours before Debtor filed its petition but a transfer that appears to have been
8 set in motion by Mr. HAMZEY days or weeks before. In response to my examination at the
9 continued meeting of creditors on November 29, 2017, Mr. HAMZEY admitted that he
10 caused a commission payment due to Debtor in yet a different escrow to be transferred post-
petition to a non-Debtor party. [¶] Debtor's actions and inactions involving this bankruptcy
11 case reveal an utter disregard for the duties imposed on it by the Bankruptcy Code. I have
12 recovered only a paucity of the bank balances that existed as of the petition date because
13 Debtor did not disclose the existence of the bank accounts when this case commenced. . . .
14 The prospects for any distribution to unsecured creditors under the conditions that exist in
this case are quite dim. The consequence of Debtor's unreasonable delay and lack of candor
and transparency is prejudicial to creditors.

11 12. On or about January 25, 2018, upon the parties' stipulation to dismiss the case with
12 a 180-day refiling bar, the bankruptcy court granted the Trustee's motion to dismiss and ordered a
13 180-day refiling bar. The bankruptcy court's docket report contains the entry, "Debtor disposition:
14 Dismissed for Abuse." To date, DPI has not refiled a petition for voluntary bankruptcy.

15 COMPLAINTS

16 13. The Department has received multiple complaints from homeowners, tenants, and
17 potential buyers against DPI and HAMZEY, including those alleged below.

18 14. On or about October 3, 2017, the DRE received a complaint from Jeffrey H.¹¹
19 against HAMZEY, DPI, and PacShore Escrow, alleging that HAMZEY failed to release funds held
20 in escrow, after the sale of a home, to Jeffrey H. and his ex-wife upon the settlement of their
21 divorce.

22 15. On or about January 9, 2018, the DRE received a complaint from William H. against
23 PacShore Escrow, the fictitious business name licensed to DPI for its escrow activities, alleging
24 that after cancelation of William H's purchase of real property at 1825 Avocado in Oceanside, CA,
25 PacShore Escrow refused to release \$25,000 that William H. deposited in escrow unless he agreed
26 to pay a \$1,000 service fee. Thereafter, William H. discovered that DPI failed to disclose that it

27 ¹¹ First names and the first initial of the last names are used in place of an individual's full name to protect their privacy.
28 Documents containing the individual's full name will be provided during the discovery phase of this case to
Respondents and/or their attorney(s), after service of a timely and proper request for discovery on Complainant's
counsel.

1 also owned PacShore Escrow prior to his escrow deposit. William H. then signed a second escrow
2 release and apparently agreed to the service fee. After months passed without DPI releasing the
3 deposit, HAMZEY informed William H. that DPI filed for bankruptcy and escrow funds had been
4 liquidated.

5 16. Also on or about January 9, 2018, the DRE received a complaint from Patricia
6 Brown ("Brown"), a real estate salesperson, ID 02002024, alleging that HAMZEY was her REB of
7 record from November 2, 2016 until November 28, 2017, at which time she learned that HAMZEY
8 had closed DPI's office at 1237 Camino Del Mar, Suite C, Del Mar, CA. Brown then transferred
9 her license to another broker and requested that HAMZEY send the security deposits for Brown's
10 clients, totaling \$6,200, to the new broker. HAMZEY did not respond or send the deposits.

11 17. On or about January 26, 2018, the DRE received a complaint from Mary W., one of
12 the owners of a property managed by DPI. Mary W. alleged that HAMZEY failed to return security
13 deposits and unauthorized deductions totaling \$8,660 after DPI was terminated as property
14 manager and replaced by a new property manager.

15 18. On or about February 20, 2018, the DRE received a complaint from Lydia B., owner
16 of a property managed by DPI. Lydia B. alleged that DPI failed to return any portion of an \$11,000
17 security deposit paid by a tenant and held in a trust account by DPI.

18 19. Also on or about February 20, 2018, the DRE received a complaint from Roger M.
19 against DPI alleging that DPI failed to return \$45,100 deposited in escrow with PacShore Escrow
20 for a property under the jurisdiction of the San Diego County Probate Court after another party
21 successfully made a higher bid for the property.

22 20. On or about March 2, 2018, the DRE received a complaint from James D., owner of
23 a vacation rental property managed by DPI. James D. alleged that DPI failed to pay \$17,200 in
24 collected rent proceeds to James D.

25 21. On or about March 8, 2018, the DRE received a complaint from Stuart F., alleging
26 that HAMZEY and DPI failed to return a \$4,800 security deposit to Stuart F. after termination of a
27 residential lease.

28

22. On or about March 29, 2018, the DRE received a declaration from Victor K., the owner of a property managed by DPI. Victor K. alleged that when the residential lease agreement managed by DPI expired, Victor K. sent a certified letter to HAMZEY requesting return of a \$4,000 security deposit. The letter was returned unopened. Victor K. obtained a Small Claims Court judgment against HAMZEY for \$4,215.00 but has been unable to collect. In or about April 2019, Victor K. confirmed in a phone conversation that HAMZEY was not going to return his money.

23. On or about June 1, 2018, the DRE received a complaint from Weiping X., owner of a property managed by DPI. Weiping X. alleged that HAMZEY and DPI failed to return a security deposit of \$7,800 after Weiping X. terminated the property management agreement with DPI.

24. Table 1 below lists and summarizes the above complaints that DRE received from homeowners, tenants, and potential buyers who have not received their rental deposits or trust funds from HAMZEY or DPI, and includes the approximate dollar loss amount each complainant believes is owed. The case types are listed as "BE" for "broker escrow," and "PM" for "property management." Some of the amounts owed are also included in the audit shortages listed below for Audit Nos. SD170019 and SD170038.

Table 1			
Complainant	Case Type	Property Address	Loss
Jeffrey H.	BE	17455 Gibraltar Ct, San Diego CA	\$54,460
William H.	BE	1825 Avocado Road, Oceanside	\$23,500
Patricia Brown, RES (on behalf of her clients)	PM	5093 Brighton Ave, San Diego, CA and 5095 Brighton Ave, San Diego, CA	\$2,200
Mary W.	PM	328 13th St, Del Mar, CA	\$4,000
Lydia B.	PM	501 Pine Needles Dr, Del Mar, CA	\$11,000
Roger M.	BE	3071 K Street, San Diego, CA	\$45,100
James D.	PM	1750 Coast Blvd, Del Mar, CA	\$17,200
Stuart F.	PM	940 Stratford Ct, Del Mar CA	\$4,800
Victor K.	PM	5277 Cass St, San Diego, CA	\$4,000
Weiping X.	PM	1908 Paxon Way, Encinitas, CA	\$7,800
Total Dollar Loss			\$174,060

1 25. On or about May 9, 2018, the DRE received a joint complaint from representatives
2 of Residential Advance and Express Cash Flow against HAMZEY, alleging that HAMZEY
3 obtained commission advances from Residential Advance and Express Cash Flow by assigning his
4 commissions for the same pending property sales to both Residential Advance and Express Cash
5 Flow, directing PacShore Escrow to disburse his commission funds to Residential Advance and
6 Express Cash Flow upon the close of escrow for those properties. HAMZEY did not disclose that
7 he or DPI owned interest PacShore Escrow. Residential Advance and Express Cash Flow alleged
8 that upon close of escrow, HAMZEY failed to pay the commission advance companies.

9 26. In addition, Express Cash Flow alleged that one of the purchase agreements that
10 HAMZEY submitted to secure commission advances was fraudulent.

11 a. To obtain an advance of \$60,000 from Express Cash Flow, HAMZEY
12 agreed to assign his commission from the expected sale of property located at 2460 Malibu
13 Way, Del Mar, CA to Express Cash Flow. Based on a purchase agreement that HAMZEY
14 provided to Express Cash Flow, on February 13, 2017, the sellers, Brady J. and Sherri M.
15 agreed to sell this property to buyer Tecolotita 1 LLC, and HAMZEY agreed to reimburse
16 Express Cash Flow within five days of closing. However, according to Brady J. and Sherri
17 M., they did not sign the February 13, 2017 purchase agreement with Tecolotita 1 LLC, and
18 the signatures on that agreement were forged. Brady J. and Sherri M. did sign a purchase
19 agreement dated February 22, 2017, with Steven and Sabine B., however that agreement
20 was cancelled on March 27, 2017.

21 b. To obtain an advance of \$34,850 from Residential Advance, HAMZEY
22 agreed to assign a portion of his commission to Residential Advance from the expected sale
23 of the same property identified above in paragraph 26(a) as 2460 Malibu Way, Del Mar,
24 CA, Escrow #1038-TH, the commission from which HAMZEY assigned to Express Cash
25 Flow. HAMZEY instructed PacShore Escrow to deduct HAMZEY's commission proceeds
26 and remit it directly to Residential Advance. HAMZEY failed to inform Residential
27 Advance that PacShore Escrow was HAMZEY's broker controlled escrow company.
28 HAMZEY provided the same February 13, 2017 purchase agreement to Residential

1 Advance, and stated that the escrow number for this transaction was Escrow #1038-TH,
2 however this escrow number was listed on a different purchase agreement that HAMZEY
3 provided to the DRE, the February 22, 2017 agreement with Steven and Sabine B.

4 27. Table 2 below lists the amounts advanced to HAMZEY by the commission advance
5 companies. Based on information provided by Express Cash Flow, HAMZEY also agreed to pay
6 advance fees, and HAMZEY has repaid a small portion of the amounts advanced by Express Cash
7 Flow.

Table 2					
Complainant	Property Address for Assigned Commission	Amounts Advanced	Advance Fees	Repayment	Estimated Losses
Express Cash Flow	2460 Malibu Way, Del Mar, CA	\$60,000	\$8,400	\$0	\$68,400
Residential Advance	2460 Malibu Way, Del Mar, CA	\$34,800			\$34,800
Express Cash Flow	2007 Santa Fe Ave, Del Mar, CA	\$100,000	\$14,000	\$0	\$114,000
Express Cash Flow	2306 View St, Oceanside, CA	\$28,000	\$3,920	\$0	\$31,920
Residential Advance	2306 View St, Oceanside, CA	\$19,000			\$19,000
Residential Advance	605 Saltgrass Ave, Carlsbad, CA	\$26,000			\$26,000
Express Cash Flow	605 Saltgrass Ave, Carlsbad, CA	\$18,000	\$2,520	\$20,520	\$0
Express Cash Flow	374 Bonair St, La Jolla, CA	\$50,000	\$8,000	\$3,868	\$54,132
Estimated Total Losses					\$348,252

17 **AUDIT OF DPI: AUDIT NO. SD170019**

18 28. On December 31, 2018, the Department completed one of two concurrent audit
19 examinations of the books and records of DPI's real estate activities that require a corporate real
20 estate broker license under Code section 10131. The first audit examination, SD170019, covered
21 the time period January 1, 2016 to October 31, 2017 ("audit period") and was limited to DPI's
22 broker escrow activities. A second and concurrent audit covering the same audit period as Audit
23 No. SD170019, was performed on DPI's property management activities in Audit No. SD170038,
24 was completed on June 27, 2019, and is addressed below beginning at paragraph 76.

25 29. The purpose of the audit examinations was to determine whether DPI conducted its
26 real estate activities and handled and accounted for trust funds, and other compliance issues, in
27 accordance with the Real Estate Law and the Regulations.

28 ///

30. Based on discussions between the Department's auditor and HAMZEY, DPI's corporate structure as of October 31, 2017 was as follows:

<u>Name</u>	<u>Title</u>	<u>License</u>	<u>Shareholder %</u>
HAMZEY	President	01727402 (D.O./REB)	100%
Marie A. Hamzey	Secretary	Non-licensee	0%

31. According to HAMZEY, DPI represents buyers and sellers in residential real estate sales activities, and DPI had closed 12 listing transactions and four sales transactions during 2018.

32. According to HAMZEY and records examined, DPI provided broker escrow services to its own clients, closing 37 broker escrow transactions during the audit period, handling approximately \$10,371,300 of trust funds in connection with broker escrow activities from November 2016 to October 2017. Also according to HAMZEY and records examined, DPI was involved in property management activities, managing approximately 20 properties.

33. During the audit period, DPI maintained three (3) bank accounts for multiple beneficiaries for its broker escrow activities. All three bank accounts were used for handling receipts and disbursements of trust funds in connection with DPI's broker escrow activity. In addition, DPI maintained several other accounts, including property management accounts and general accounts, and made numerous online fund transfers between its various accounts.

34. DPI's bank accounts for broker escrow activities are as follows:

a. **Bank Account ending in 0694 ("BA0694")**

Bank: BBVA Compass Bank
Account Name: Distinctive Properties Inc.
DBA PacShore Escrow Services, A Non-Independent Broker Escrow

Account #: XXXXXXXX0694

Signatories: HAMZEY (REB), President/Owner
Marie A. Hamzey (Non-licensee), Secretary
Toni Hasty (Non-licensee), DPI's Escrow Officer

Signatures required: One (1) signature

Description: Account for multiple beneficiaries for receipts and disbursements related to DPI's broker escrow activities. BA0694's signature card showed account was opened on 6/30/17, and was not designated as a trust account in the name of DPI or its licensed fictitious name, as trustee. HAMZEY stated that BA0694 was not used for any real estate transactions after DPI filed for bankruptcy in October 2017.

///

b. **Bank Account ending in 4771 ("BA4771")**

Bank: BBVA Compass Bank
Account Name: Distinctive Properties Inc
DBA PacShore Escrow Services, A Non-Independent Broker Escrow
Account #: XXXXXXXX4771
Signatories: HAMZEY (REB), President/Owner
Marie A. Hamzey (Non-licensee), Secretary
Signatures required: One (1) signature
Description: Account for multiple beneficiaries for receipts and disbursements related to DPI's broker escrow activities. BA4771's signature card showed account was opened on 10/7/16, and that it was not designated as a trust account in the name of DPI or its licensed fictitious name, as trustee. BA4771 was closed as of September 27, 2017. HAMZEY stated DPI had filed for bankruptcy in October 2017.

c. **Trust Account ending in 9747 ("TA9747")**

Bank: Citizens Business Bank
Account Name: Distinctive Properties Inc
Dba PacShore Escrow Services, A Non-Independent Broker Escrow
Account #: XXXXXXXX9747
Signatories: HAMZEY (REB), President/Owner
Marie A. Hamzey (Non-licensee), Secretary
Toni Hasty (Non-licensee)/DPI's Escrow Officer
Signatures required: One (1) signature
Description: Account for multiple beneficiaries for receipts and disbursements related to DPI's broker escrow activities. TA9747's signature card showed account was opened on 10/28/15. TA9747 was designated as a trust account. TA9747's bank account balance was \$0.00 as of 1/31/17. According to HAMZEY, TA9747 was already closed on 1/31/2017. An examination of TA9747's bank statements showed that some trust funds deposited into TA9747 were to GA9836 during the audit period.

35. DPI also maintained bank accounts related to DPI's property management activities and approximately six (6) general accounts during the audit period, as follows:

a. **Bank Account ending in 6803 ("BA6803")**

Bank: First Republic Bank
Account Name: Distinctive Properties Inc
Dba Weichert Realtors
Dba PacShore Escrow Services, A Non-Independent Broker Escrow
Account #: XXXXXXXX6803
Signatories: HAMZEY (REB), President/Owner
Marie A. Hamzey (Non-licensee), Secretary
Signatures required: One (1) signature
Description: Account for multiple beneficiaries for receipts and disbursements related to DPI's property management activities. Trust funds were transferred from BA0694 and BA4771 into BA6803.

///

b. **Bank Account ending in 1668 ("BA1668")**

Bank: Wells Fargo Bank
Account Name: Distinctive Properties Inc
Account #: XXXXXXXX1668
Signatories: HAMZEY (REB), President/Owner
Signatures required: One (1) signature
Description: Account for multiple beneficiaries for receipts and disbursements related to DPI's property management activities. DPI transferred trust funds from BA0694 and BA4771 into BA1668.

c. **General Account ending in 4364 ("GA4364")**

Bank: BBVA Compass Bank
Account Name: Distinctive Properties Inc
Account #: XXXXXXXX4364
Signatories: HAMZEY (REB), President/Owner
Marie A. Hamzey (Non-licensee), Secretary
Signatures required: One (1) signature
Description: DPI's general account/operating account. DPI made numerous fund transfers between BA0694, GA4364, and BA4771.

d. **General Account ending in 4165 ("GA4165")**

Bank: BBVA Compass Bank
Account Name: Distinctive Properties Inc
Account #: XXXXXXXX4165
Signatories: HAMZEY (REB), President/Owner
Marie A. Hamzey (Non-licensee), Secretary
Signatures required: One (1) signature
Description: DPI's general account for receipts and disbursements for operations. DPI made numerous fund transfers between BA0694, GA4364, and BA4771.

e. **General Account ending in 8480 ("GA8480")**

Bank: BBVA Compass Bank
Account Name: PacShore Inc
Account #: XXXXXXXX8480
Description: General account used to reimburse funds transferred into DPI's general accounts, GA4364 and GA4165 from BA0694. GA8480's signature card and bank statements were not provided for the audit examination. Numerous fund transfers were made from GA8480 to BA0694.

f. **General Account ending in 9836 ("GA9836")**

Bank: BBVA Compass Bank
Account #: XXXXXXXX9836
Description: GA9836 was DPI's general account. GA9836's bank signature card and bank statements were not provided for the audit examination. There were numerous fund transfers between TA9747 and GA9836.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3

4
5

6

7

7
8

Q

10

11

11
12

13
14
15

16

17
18
19

20
21
22

23

24

25
26
27
28

the audit for BA0694, BA4771 and TA9747, and records that the DRE subpoenaed from the banks where DPI maintained its accounts. The DRE's auditor prepared the following summary table:

BA0694, Audit Cut-Off Date of 10/31/2017:

Minimum Adjusted Bank Balance, 10/31/17			<\$5,216.31>
Minimum Accountability:			
Minimum Identified Accountability, 10/31/17	\$292,852.64 ^u		
Minimum DPI Funds, 10/31/17	<u>9,669.57</u>	<u>302,522.21</u>	
Minimum Shortage, 10/31/17			<\$307,738.52>
<u>The Minimum Shortage was caused by the following:</u>			
1. Minimum Negative Escrow Balance, 10/31/17			
Refund for Escrow 1045-TH			<12,000.00>
2. Minimum Unauthorized Disbursements/			
Over-disbursed Commission/unearned fees, 10/31/17			<1,050.00>
3. Minimum Unauthorized Disbursements/			
Funds Transferred to other Bank Accounts, 10/31/17			<65,500.00>
4. Minimum Unidentified Cause(s), 10/31/17			<229,188.52>
Minimum Shortage, 10/31/17			<u><\$307,738.52></u>

^u The minimum accountability of \$292,852.64 as of 10/31/2017 was based on an examination of records. DPI did not maintain BA0694's control records and separate records for all online transfers/withdrawals of trust funds into DPI's other bank accounts and Pacshore, Inc.'s trust account ending in 8157 ("OTA8157") and discussed below in paragraph 80. HAMZEY was the D.O. for PacShore, Inc. from 8/17/2014 to 8/16/2018.

BA4771's bank account was already closed in September 2017 and the remaining minimum trust fund accountability totaling \$102,461.14 was forwarded to BA0694.

DPI made several trust fund transfers totaling \$60,126.12 from BA4771 into BA0694, from 7/7/2017 to 8/28/2017.

On 8/21/2017, during the audit, DPI made an online transfer of \$27,000 from BA0694 to OTA8157. DPI also deposited trust funds totaling \$60,000 (\$30,000 on 9/29/2017 and \$30,000.00 on 10/12/2017) into BA0694. As of 10/31/2017, BA0694 had remaining trust funds of \$33,000. Trust funds transferred from OTA0857 did not identify the escrow number or related escrow transactions.

The minimum accountability also included the remaining escrow balance of \$73,265.38 for Escrow #1023-TH (Jeffrey & Toni H.). BA4771's remaining balance of \$33,000 had been forwarded from BA4771 as of cutoff date, 9/27/2017. The remaining minimum accountability balance of \$40,265.38 was forwarded from BA0694 as of audit cutoff date, 10/31/2017.

In addition, BA0694's minimum accountability included the earnest money deposit from buyer William H. (Escrow No. 1050-TH) amounting to \$24,000, as of 10/31/2017.

The "minimum identified accountability" of \$292,852.64 as of 10/31/2017, listed in the summary table above for BA0694, was detailed by the DRE's auditor as follows:

	<u>Amount</u>
Balance forwarded from BA4771	\$102,461.14
Online transfer from BA4771	60,126.12
Transfer from First Republic Bank	33,000.00
Escrow #1023-TH	73,265.38
Escrow #1050-TH	24,000.00
Total Minimum Accountability	<u>\$292,852.64</u>

BA0694 had a minimum shortage of \$307,738.52 as of 10/31/2017. The minimum shortage was caused by: a minimum negative escrow balance of \$12,000.00, minimum unauthorized disbursements/unearned fees of \$1,050.00, minimum unauthorized disbursements/fund transfers to DPI's property management bank accounts (BA6803 and BA1668) of \$65,500.00, and an unidentified shortage of \$229,188.52 as of 10/31/2017.

DPI provided no evidence that the owners of the trust funds gave written authorization for DPI to reduce the balance of the funds in BA0694 to an amount less than the existing aggregate trust fund liabilities.

During the audit period, DPI did not provide a control record and complete and accurate separate records of the receipt and disposition of all trust funds deposited into BA0694. (See Issues 6 and 7).

DPI also failed to provide an accurate monthly reconciliation comparing the balance of all separate beneficiary or transaction records (separate records) to the balance of the record of all trust funds received and disbursed (control record) for BA0694. (See Issue 8).

a. Details regarding the causes of BA0694's minimum shortages listed above are as follows:

(1) <\$12,000.00>/Minimum Negative Escrow Balance: The minimum negative escrow balance of <\$12,000.00> was a refund of cancelled escrow #1045-TH and was paid out of BA0694. Based on an examination of the check register (separate record) for escrow #1045-TH, and BA0694's bank statement, a refund of <\$12,000.00> was paid to the buyer, Tyler L., on July 12, 2017 with check # 2002 without any trust funds deposited into BA0694.

(2) <\$1,050.00> / Minimum Unauthorized Disbursements/Over-Disbursed Commissions/Unearned Fees: The minimum unauthorized disbursements of \$1,050.00 caused by over-disbursements of commissions/unearned fees were verified based on the check register (separate records), bank statements provided for examination, and bank records obtained, and were as follows:

<u>Date</u>	<u>Escrow #</u>	<u>Commission per Escrow Ledger</u>	<u>Amount Disbursed</u>	<u>Over- Disbursement</u>
9/28/16	1052-TH	\$1,575.00	<\$2,000.00>	<\$425.00>
9/28/16	1053-TH	\$6,000.00	<\$6,500.00>	<\$500.00>
9/28/16	1053-TH	\$2,875.00	<\$3,000.00>	<\$125.00>
Total Minimum Over-Disbursed Commissions*				<u><\$1,050.00></u>

*Minimum Unauthorized Disbursement

(3) <\$65,500.00> / Minimum Unauthorized Disbursements/Fund Transfers: The minimum unauthorized disbursements/online fund transfers of \$65,500.00 involved transfers from BA0694 to DPI's property management activity bank accounts, including \$48,000.00 transferred to BA6803 and \$17,500.00 transferred to BA1668, as of October 31, 2017. DPI transferred a total of \$42,000.00 (\$17,000.00 on 9/29/17, \$20,000.00 on 10/2/17, and \$5,000.00 on 10/4/17) from BA6803 into BA0694 from September 29, 2017 and October 4, 2017. DPI made online transfers/dispensed a total of \$90,000.00 from August 8, 2017 and September 26, 2017. The online transfer resulted in unauthorized disbursements in the net amount of \$48,000.00 into BA0694 as of October 31, 2017. DPI did not provide identifiable escrow numbers or properties related to escrow transactions. The

Department's auditor summarized the minimum unauthorized disbursements/online fund transfers involving BA0694 and BA6803 as follows:

<u>Date</u>	<u>Description</u>	<u>Deposited into BA0694</u>	<u>Withdrawals from BA0694</u>	<u>Balance</u>
08/08/17	Fund transfer to BA6803		\$10,000.00	<\$10,000.00>
08/09/17	Fund transfer to BA6803		15,000.00	<25,000.00>
08/10/17	Fund transfer to BA6803		5,000.00	<30,000.00>
08/14/17	Fund transfer to BA6803		3,000.00	<33,000.00>
08/14/17	Fund transfer to BA6803		3,000.00	<36,000.00>
08/21/17	Fund transfer to BA6803		13,000.00	<49,000.00>
09/11/17	Fund transfer to BA6803		8,000.00	<57,000.00>
09/18/17	Fund transfer to BA6803		12,000.00	<69,000.00>
09/19/17	Fund transfer to BA6803		3,000.00	<72,000.00>
09/26/17	Fund transfer to BA6803		18,000.00	<90,000.00>
09/29/17	Fund transfer from BA6803	17,000.00		<73,000.00>
10/02/17	Fund transfer from BA6803	20,000.00		<53,000.00>
10/04/17	Fund transfer from BA6803	5,000.00		<48,000.00>
	Total	<u>\$42,000.00</u>	<u>\$90,000.00</u>	

DPI deposited into BA0694 a total of \$16,500.00 (\$9,000.00 on 8/14/17, \$2,500.00 on 9/18/17, and \$5,000.00 on 10/1/17) from BA1668 and BA6803 from August 14, 2017 (online transfers) to October 1, 2017. DPI made online transfers from BA0694 to BA6803 disbursing a total of \$34,000.00 from August 31, 2017 to September 20, 2017. The online transfers made from August 2017 to October 2017 resulted in net unauthorized disbursements to BA6803 of \$17,500.00 as of October 31, 2017. DPI did not provide identifiable escrow numbers or properties related to escrow transactions. The Department's auditor summarized these unauthorized disbursements/online fund transfers involving BA0694, BA6803, and BA1668 as follows:

<u>Date</u>	<u>Description</u>	<u>Deposited into BA0694</u>	<u>Withdrawal from BA0694</u>	<u>Balance</u>
8/14/17	Fund transfer from BA1668	\$9,000.00		\$9,000.00
8/31/17	Fund transfer to BA6803		\$28,000.00	<19,000.00>
9/18/17	Fund transfer from BA1668	2,500.00		<16,500.00>
9/19/17	Fund transfer to BA6803		3,000.00	<19,500.00>
9/20/17	Fund transfer to BA6803		3,000.00	<22,500.00>
10/1/17	Fund transfer from BA6803	5,000.00		<\$17,500.00>
	Total	<u>\$16,500.00</u>	<u>\$34,000.00</u>	

The \$65,500.00 minimum unauthorized disbursements/trust fund transfers as of October 31, 2017 from BA0691 to other bank accounts did not identify the escrow numbers or property addresses related to the escrow transaction files. The

1 unauthorized disbursements were disbursed without written authorization from the
2 party or parties paying the money into the escrow.

3 (4) <\$229,188.52> / Minimum Unidentified Causes: The Department's
4 auditor could not identify the remaining causes of the minimum shortage due to
5 DPI's poor record keeping.

6 ///

7 ///

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

BA4771, Audit Cut-Off Date of 9/27/2017:

Minimum Adjusted Bank Balance, 9/27/17		<\$3,980.0>
Minimum Accountability:		
Minimum Identified Accountability, 9/27/17	\$102,461.14 ^{3/}	
Minimum Unidentified/Unaccounted for Funds, 9/27/17	<u>4,867.36</u>	
Minimum Shortage, 9/27/17		<111,308.50>
<u>The Minimum Shortage was caused by the following:</u>		
1. Minimum Bank Charges, 9/27/17		<1,233.50>
2. Minimum Over-Disbursed Commission/Unearned Fees, 9/27/17		<6,375.00>
3. Minimum Fund Transfers/Commingling of Funds, 9/27/17		<103,700.00>
Minimum Shortage, 9/27/17		<u><\$111,308.50></u>

^{3/} The minimum accountability of \$102,461.14 as of 9/27/2017 was based on an examination of records provided and subpoenaed for BA4771, as well as limited separate records and escrow transaction files. The record of all trust fund receipts and disbursements (control record) maintained for BA4771 was not provided for the audit examination. DPI did not maintain BA4771's separate records for all online transfers/withdrawals of trust funds into DPI's other bank accounts.

The minimum accountability included minimum fund transfers from BA4771 into BA6803 (one of DPI's property management accounts) of \$8,000.00 and trust funds deposited from BA6803 into BA4771 of \$95,000.00. The minimum trust fund transfers and adjustments made amount to a net total of \$65,000.00 from May to June 2017. The DRE's auditor detailed these activities in the following table:

<u>Date</u>	<u>Description</u>	<u>Deposits into BA4771</u>	<u>Withdrawals from BA4771</u>	<u>Balance</u>
05/03/17	Online transfer to BA6803		\$8,000.00	
05/25/17	Deposit from BA6803	35,000.00		
05/31/17	Deposit from BA6803	50,000.00		
06/13/17	Deposit from BA6803	10,000.00		
<u>Adjustments made on 9/27/17</u>				
04/16/16	Wrong deposit into BA6803 (Escrow #1008-TH)		10,000.00	
06/06/16	Wrong deposit into BA6803 (Escrow #1017-TH)		10,000.00	
09/14/16	Wrong deposit into BA6803 (Escrow #1024-TH)		2,000.00	
	<u>Totals</u>	<u>\$95,000.00</u>	<u>\$30,000.00</u>	<u>\$65,000.00</u>

The minimum accountability also included fund transfers totaling \$30,461.14 from BA1668 (another DPI property management account) into BA4771 from May to June 2017, as detailed below:

<u>Date</u>	<u>Description</u>	<u>Deposits into BA4771</u>	<u>Withdrawals from BA4771</u>	<u>Balance</u>
05/02/17	Online transfer from BA1668	\$16,000.00		
05/25/17	Deposit from BA1668	15,000.00		
05/31/17	Deposit	9,000.00		
09/27/17	Adjustment: replacement of TA9747 check with BA4771 check		9,538.86	
	<u>Totals</u>	<u>\$40,000.00</u>	<u>\$9,538.86</u>	<u>\$30,461.14</u>

On 4/3/2017, DPI deposited into BA4771 \$7,000.00 in rent received from Dennis D. (530 Zuni), which amount was not identified with any escrow number, and was part of the minimum accountability for BA4771 as of 9/27/2017.

BA4771 had a minimum shortage of \$111,308.50 as of audit cutoff date 9/27/2017, caused by minimum bank charges of \$1,233.50, minimum unauthorized disbursements/over disbursed commissions/unearned fees of \$6,375.00, and minimum unauthorized disbursements/commingling of funds/fund transfers into other bank accounts of \$103,700.00. DPI also had unidentified/unaccounted for funds of \$4,867.36 as of audit cutoff date 9/27/2017. DPI closed BA4771 as of 9/27/2017.

DPI provided no evidence that the owners of the trust funds authorized reducing the balance of the funds in BA4771 to an amount less than the existing aggregate trust fund liabilities.

DPI did not provide BA4771's control record and did not maintain complete and accurate separate records of the receipt and disposition of all trust funds deposited into BA4771. (See Issue 6 and 7).

DPI failed to provide a complete monthly reconciliation comparing the balance of all separate beneficiary or transaction records (separate records) to the balance of the record of all trust funds received and disbursed (control record) for BA4771. (See Issue 8).

b. Details regarding the causes of BA4771's minimum shortages listed above are as follows:

(1) <\$1,233.50>/ Minimum Bank Charges: BA4771 incurred \$1,233.50 in bank charges that were not reimbursed by DPI as of audit cutoff date September 27, 2017. An examination of BA4771's bank statement covering the period November 2016 to July 2017 showed a total of \$1,233.50 in bank charges incurred, as follows:

<u>Date</u>	<u>Bank Charges</u>
November 2016	\$15.00
December 2016	227.50
January 2017	157.00
February 2017	310.00
March 2017	86.00
April 2017	216.00
May 2017	98.00
June 2017	78.00
July 2017	46.00
Total Minimum Bank Charges	<u>\$1,233.50</u>

(2) <\$6,375.00>/Minimum Unauthorized Disbursements/Over-Disbursed Commission/Unearned Fees: The minimum unauthorized disbursements were caused by over-disbursed commission/unearned fees of \$6,375.00 for Escrow 1031-TH based on the check registers (separate record), and bank statements provided for examination, as detailed below:

<u>Date</u>	<u>Escrow #</u>	<u>Commission per Escrow Ledger</u>	<u>Amount Disbursed</u>	<u>Over-Disbursement</u>
12/17/16	1031-TH	\$11,675.00	<\$18,000.00>	<u><\$6,375.00></u>

(3) <\$103,700.00>/ Minimum Unauthorized Disbursements/Fund Transfers/Commingling of Fund: The minimum unauthorized disbursements of \$103,700.00 were transferred from BA4771 to various DPI bank accounts including GA4364, DPI bank accounts ending in 0827 and 1391, and other unidentified bank accounts from April 2017 to June 2017. DPI did not identify the escrow numbers or properties related to the escrow transactions. DPI transferred a total of \$115,000.00 into BA4771, and disbursed \$218,700.00 from BA4771.

The \$103,700.00 minimum unauthorized disbursements/trust fund transfers as of September 27, 2017 from BA4771 to DPI's general accounts did not identify the escrow numbers or properties related to the escrow transaction files. DPI made these disbursements without written authorization from any owner of the trust funds. DPI transferred trust funds to its general accounts and commingled them with DPI's own funds.

TA9747, Audit Cut-Off Date of 1/31/2017:

Minimum Adjusted Bank Balance, 1/31/17	<\$9,538.86>
Minimum Accountability, 1/31/17	40,265.38 ^{4/}
Escrow 1023-TH: Jeffrey H.	

Minimum Shortage, 1/31/17	< <u>\$49,804.24</u> >
---------------------------	------------------------

The Minimum Shortage was caused by the following:

1. Minimum Negative Balances, 1/31/17	<\$22,000.00>
2. Minimum Unauthorized Disbursements/ Commingling of Funds/Fund Transfers into DPI's general accounts, 1/31/17	<13,729.24>
3. Minimum Unauthorized Disbursements/Over-Disbursed Commissions/Unearned Fees, 1/31/17	<5,000.00>
4. Unidentified Shortage, 1/31/17	<9,075.00>

Minimum Shortage, 1/31/17	< <u>\$49,804.24</u> >
---------------------------	------------------------

c. Details regarding the causes of TA9747's minimum shortages listed above are as follows:

^{4/} During the audit period, DPI transferred \$33,000.00 from TA9747 to BA4771. The fund transfer of \$33,000.00 was part of the \$72,265.38 received in escrow # 1023-TH leaving \$40,265.38 as the minimum accountability.

TA9747 had a minimum shortage of \$49,804.24 as of the audit cutoff date, 1/31/17. The shortage of \$49,804.24 was caused by: negative escrow balances totaling \$22,000.00; minimum unauthorized disbursements/commingling of funds/fund transfers into DPI's general account GA9836 of \$13,729.24; minimum unauthorized disbursement/unearned fees/over-disbursed commissions of \$5,000.00; and a minimum unidentified shortage of \$9,075.00.

DPI provided no evidence that the owners of the trust funds provided written authorization for reducing the balance of the trust funds in TA9747 to an amount less than the existing aggregate trust fund liabilities.

DPI did not provide TA9747's control record nor its complete and accurate separate records of the receipt and disposition of all trust funds deposited into TA9747. (See Issue 5 and 6).

DPI failed to provide an accurate monthly reconciliation comparing the balance of all separate beneficiary or transaction records (separate records) to the balance of the record of all trust funds received and disbursed (control record) for TA9747. (See Issue 7).

(1) <\$22,000.00>/Minimum Negative Balances: The minimum negative balances of \$22,000.00 were caused by disbursements related to escrow transactions when there were insufficient funds to do so. The minimum negative escrows totaling \$22,000.00 were incorrectly deposited into BA6803, one of DPI's property management bank accounts, from April 15 to September 14, 2016, as detailed below:

<u>Date</u>	<u>Buyer</u>	<u>Escrow #</u>	<u>Amount</u>
04/15/16	John G.	1008-TH	<\$10,000.00>
06/04/16	Benjamin R.	1017-TH	<\$10,000.00>
09/14/16	Ivan V.	1024-TH	<2,000.00>
Total			<u><\$22,000.00></u>

The \$22,000 negative balance was offset as of the audit cut-off date of September 27, 2017.

(2) <\$13,729.24>/ Minimum Unauthorized Disbursements/ Commingling of Funds/ Fund Transfers: Based on an examination of records, DRE's auditor identified minimum unauthorized disbursements via transfers between TA9747 and GA9836 from January 2016 to January 2017 totaling \$13,729.24. DPI transferred a total of \$41,350.00 into TA9747 and disbursed \$55,079.24 from TA9747. The fund transfers from TA9747 to GA9836 did not identify the escrow numbers or property addresses related to the escrow transaction files. Trust funds were disbursed and transferred without written authorization from the owners of the funds, and were commingled with DPI's own funds.

(3) <\$5,000.00>/Minimum Unauthorized Disbursements/Over-Disbursed Commissions/Unearned Fees: DRE's auditor verified the minimum over-disbursed commissions of \$5,000.00 based on an examination of DPI's check register for escrow # 1021-TH (separate record) and bank statements, as detailed below:

<u>Date</u>	<u>Escrow #</u>	<u>Commission per Escrow Ledger</u>	<u>Amount Disbursed</u>	<u>Over-Disbursement</u>
8/9/16	1021-TH	\$8,120.00	<\$13,120.00>	<u><\$5,000.00></u>

(4) <\$9,075.00> / Minimum Unidentified Causes: Remaining causes of the minimum unidentified shortage could not be identified due to poor record keeping.

40. DPI's failure to obtain the written authorization of the owners of the trust funds to reduce the balance of funds in BA0694, BA4771, and TA9747 to an amount less than the existing aggregate trust fund liability, and its failure to maintain complete and accurate records of all trust funds received and disbursed, was in violation of Code section 10145 and Regulations 2832.1, 2950(d) and (g), and 2951.

Issue Three (3).^{5/} Code sections 10145, 10176(i), 10177(j), and Regulation 2950(g):

Unauthorized Disbursements; When Broker Handles Escrow

41. Based on an examination of records, DPI made several unauthorized disbursements/online trust fund transfers from BA4771 and TA9747 to various DPI general bank accounts and property management bank accounts during the audit period. The online transfers did not have identifiable escrow numbers or property addresses related to escrow transactions.

a. Unauthorized Disbursements from BA4771: Unauthorized disbursements of trust funds were made via online and wire transfers from BA4771 into GA4364, GA4165, GA3, and unidentified DPI general accounts ending in 7717 ("GA 7717"), 1391 ("GA 1391"), and 0827 ("GA 0827") from April 6, 2017 to June 21, 2017. DPI transferred a total of \$115,100.00 and disbursed \$218,700.00 from BA4771. DPI had minimum unauthorized disbursements amounting to a net of \$103,700.00 as of September 27, 2017, the audit cutoff date. DPI transferred trust funds without written authorization of the owner or owners who deposited the funds in escrow. The transfers are detailed below:

<u>Date</u>	<u>Description</u>	<u>Deposit into BA4771</u>	<u>Disbursements from BA4771</u>	<u>Balance</u>
04/06/17	Transfer to GA (Unknown)		10,000.00	<\$10,000.00>
04/17/17	Transfer to GA (Unknown)		1,500.00	<\$11,500.00>
04/19/17	Transfer to GA (Unknown)		1,000.00	<\$12,500.00>
04/20/17	Transfer to GA (Unknown)		13,000.00	<\$25,500.00>
04/20/17	Transfer from GA (Unknown)	1,000.00		<\$24,500.00>
04/24/17	Transfer to GA (Unknown)		65,000.00	<\$89,500.00>
04/24/17	Transfer to GA (Unknown)		20,000.00	<\$109,500.00>
05/08/17	Transfer to GA (Unknown)		10,000.00	<\$119,500.00>
05/09/17	Transfer to GA (Unknown)		15,000.00	<\$134,500.00>
05/10/17	Transfer to GA (Unknown)		20,000.00	<\$154,500.00>
05/22/17	Transfer to GA (Unknown)		25,000.00	<\$179,500.00>
05/25/17	Wire Transfer from GA 1391	72,000.00		<\$107,500.00>
06/02/17	Transfer from GA (Unknown)	5,000.00		<\$102,500.00>

^{5/} Issue Two (2) was skipped intentionally. In the audit report for SD170019, the DRE's auditor addresses Issue Two without citing any violations of the Code or Regulations. Complainant reserves the right to amend the Accusation to allege Issue Two, as well as potential causes of accusation not alleged in this Accusation at the time of filing.

06/08/17	Online transfer to GA 4364		5,000.00	<\$107,500.00>
06/12/17	Online transfer to GA 4364		25,000.00	<\$132,500.00>
06/13/17	Deposit from GA 0827	10,000.00		<\$122,500.00>
06/13/17	Deposit from GA 0827	15,000.00		<\$107,500.00>
06/13/17	Loan - Hamzey Family Trust	5,000.00		<\$102,500.00>
06/14/17	Deposit from GA 4364	4,000.00		<\$98,500.00>
06/16/17	Online transfer to GA 4364		8,200.00	<\$106,700.00>
06/21/17	Deposit from GA 4364	3,000.00		<\$103,700.00>
Total		<u>\$115,000.00</u>	<u>\$218,700.00</u>	

b. Unauthorized Disbursements from TA9747: DPI made unauthorized disbursements/online trust fund transfers from TA9747 into GA9836 from January 26, 2016 to January 3, 2017. DPI transferred a total of \$41,350.00 into TA9747 and disbursed \$55,079.24 to GA9836 via online transfer. DPI made unauthorized disbursements from TA9747 in the net amount of \$13,729.24, as of January 31, 2017, without written authorization from the owner or owners of the trust funds. Details of the unauthorized disbursements are below:

<u>Date</u>	<u>Description</u>	<u>Deposit into TA9747</u>	<u>Disbursements from TA9747</u>	<u>Balance</u>
01/26/16	Deposit from NFCU -HAMZEY	\$14,000.00		\$14,000.00
01/27/16	Online transfer to GA9836		14,000.00	\$0.00
04/22/16	Online transfer to GA9836		150.00	<\$150.00>
05/25/16	Online transfer to GA9836		300.00	<\$450.00>
06/05/16	DPI's commission (1008-TH)	12,500.00		\$12,050.00
06/24/16	Online transfer to GA9836		300.00	\$11,750.00
08/12/16	Online transfer to GA9836		10,000.00	\$1,750.00
08/23/16	Online transfer to GA9836		100.00	\$1,650.00
08/26/16	Online transfer from GA9836	4,000.00		\$5,650.00
09/13/16	Online transfer to GA9836		5,000.00	\$650.00
09/13/16	Online transfer from GA9836	850.00		\$1,500.00
10/13/16	Online transfer to GA9836		20,000.00	<\$18,500.00>
10/14/16	Loan - Ocwen	10,000.00		<\$8,500.00>
12/14/16	Online transfer from GA9836		4,000.00	<\$12,500.00>
01/03/17	Closing Withdrawal		1,229.24	<\$13,729.24>
Total		<u>\$41,350.00</u>	<u>\$55,079.24</u>	

c. Over-Disbursement of DPI Commissions: The DRE's auditor identified instances where DPI over-disbursed its commissions from BA0694, BA4771, and TA9747 totaling \$12,245.00 from August 2016 to December 2016, as detailed below:

<u>Date</u>	<u>Escrow No.</u>	<u>Commission per Escrow Ledger</u>	<u>Amount Disbursed</u>	<u>Over-Disbursement</u>
09/28/16	1052-TH	\$1,575.00	<\$2,000.00>	<\$425.00>
09/28/16	1053-TH	\$6,000.00	<\$6,500.00>	<\$500.00>
09/28/16	1053-TH	\$2,875.00	<\$3,000.00>	<\$125.00>
12/17/16	1031-TH	11,675.00	<18,000.00>	<6,375.00>
08/09/16	1021-TH	8,120.00	<13,120.00>	<5,000.00>
		<u>\$30,245.00</u>	<u><\$42,620.00></u>	
Total Minimum Unauthorized Disbursements				<u>\$12,425.00</u>

1 DPI made numerous unauthorized disbursements (fund transfers and
2 withdrawals) between trust fund bank accounts (BA0694, BA4771, and TA9747) and DPI's
3 various general accounts (GA4364, GA4165, GA8480, and GA9836) and other unidentified
4 bank accounts GA7177, GA0827, and GA1391 totaling \$117,429.24 (\$103,700.00 from
5 BA4771, and \$13,729.24 from TA9747) and disbursed commissions in excess of what DPI
6 had earned during the period, totaling \$12,425.00, without written authorization of the
7 owner or owners of the trust funds disbursed.

8 The total minimum unauthorized disbursements/funds transfers (net) made
9 by DPI during the audit period was \$195,354.24 (consisting of minimum unauthorized
10 disbursements/funds transfers of \$117,429.24 into various DPI general accounts, minimum
11 unauthorized disbursements/over-disbursed commissions/unearned fees of \$12,425.00, and
12 minimum unauthorized disbursements/funds transfers of \$65,500.00 to property
13 management trust fund bank accounts).

14 42. DPI's unauthorized disbursements from BA0694, BA4771, and TA9747 without
15 written authorization from the owners of the trust funds were in violation of Code sections 10145,
16 10176(i), and 10177(j), and Regulation 2950(g).

17 **Issue Four (4). Code sections 10145 and 10176(e), and Regulations 2832, 2950(g), and 2951:**
18 **Trust Fund Handling; Commingling of Funds; When Broker Handles Escrow**

19 43. DPI made several unauthorized trust fund transfers from BA0694 into DPI's general
20 accounts maintained at BBVA Compass Bank (GA4364, GA4165, and GA8480), and Wells Fargo
21 Bank (GA9836), and an unidentified bank account GA7717 during the audit period from August
22 2017 to October 2017 without written authorization from the owner or owners of the trust funds
23 transferred. The trust funds transferred to DPI's general accounts were commingled with DPI's
24 own funds.

25 44. DPI transferred a total of \$243,160.00 into BA0694 and disbursed \$233,490.43 from
26 BA0694 from August 2017 to October 2017, as detailed below:

27 ///

28 ///

Unauthorized Transfers of Trust Funds from BA0694

<u>Date</u>	<u>Description</u>	<u>Deposit into BA0694</u>	<u>Disbursements from BA0694</u>	<u>Balance</u>
08/14/17	Online banking transfer to GA4364		1,500.00	<\$1,500.00>
08/21/17	Online banking transfer to GA4165		10,000.00	<\$11,500.00>
08/24/17	Online mobile wire transfer to GA4364		30,000.00	<\$41,500.00>
09/08/17	Counter withdrawal		138,000.00	<\$179,500.00>
09/08/17	Deposit from GA1853	22,000.00		<\$157,500.00>
09/11/17	Online mobile wire transfer from GA4364	5,000.00		<\$152,500.00>
09/11/17	Deposit from HAMZEY	138,000.00		<\$14,500.00>
09/11/17	Online mobile wire transfer to GA4364		8,000.00	<\$22,500.00>
09/14/17	Online mobile wire transfer to GA4364	4,000.00		<\$18,500.00>
09/15/17	Deposit from HAMZEY	10,000.00		<\$8,500.00>
09/15/17	Online Transfer from GA 7717	2,000.00		<\$6,500.00>
09/15/17	Deposit from HAMZEY (NFCU)	10,000.00		\$3,500.00
09/20/17	Online Transfer to GA 7717		3,000.00	\$500.00
09/20/17	Online mobile wire transfer to GA4364		5,000.00	<\$4,500.00>
09/21/17	Online mobile wire transfer to GA4364		12,000.00	<\$16,500.00>
09/21/17	Online mobile wire transfer to GA4364		5,000.00	<\$21,500.00>
09/26/17	Online mobile wire transfer to GA4364		100.00	<\$21,600.00>
09/29/17	Online mobile wire transfer to GA4364		1,500.00	<\$23,100.00>
10/02/17	Online mobile wire transfer to GA4165		2,100.00	<\$25,200.00>
10/03/17	Online mobile wire transfer from GA4364	2,000.00		<\$23,200.00>
10/03/17	Online mobile wire transfer from GA4364	1,500.00		<\$21,700.00>
10/04/17	Online mobile wire transfer from GA4364	1,000.00		<\$20,700.00>
10/04/17	Online mobile wire transfer to GA4364		2,000.00	<\$22,700.00>
10/04/17	Online mobile wire transfer from GA4364	4,000.00		<\$18,700.00>
10/05/17	Online mobile wire transfer from GA4364	1,000.00		<\$17,700.00>
10/06/17	Online mobile wire transfer from GA4364	2,000.00		<\$15,700.00>
10/12/17	Online mobile wire transfer to GA4364		2,000.00	<\$17,700.00>
10/12/17	Online mobile wire transfer to GA4165		1,000.00	<\$18,700.00>
10/12/17	Online mobile wire transfer to GA4364		11,000.00	<\$29,700.00>
10/12/17	DPI's Commission (other)	10,375.00		<\$19,325.00>
10/13/17	Online mobile wire transfer from GA4364	9,000.00		<\$10,325.00>
10/13/17	Online mobile wire transfer from GA3	9,000.00		<\$1,325.00>
10/13/17	Online mobile wire transfer from GA4364	1,500.00		\$175.00
10/16/17	Online mobile wire transfer from GA3	9,000.00		\$9,175.00
10/16/17	Online mobile wire transfer from GA3	850.00		\$10,025.00
10/18/17	Online mobile wire transfer from GA4165	400.00		\$10,425.00
10/30/17	Online mobile wire transfer from GA3	500.00		\$10,925.00
10/31/17	Online mobile wire transfer from GA4364	35.00		\$10,960.00
10/31/17	Bank service charges		1,290.43	\$9,669.57
Total		<u>\$243,160.00</u>	<u>\$233,490.43</u>	

45. DPI made several unauthorized trust fund transfers from BA4771 into DPI's general accounts maintained at BBVA Compass Bank (GA4364, GA4165, and GA3) and unidentified accounts GA 7717, GA4364391, and GA 0827 from April 2017 to September 2017 without written authorization from the owner or owners of the trust funds transferred. BA4771 bank statements showed minimum unauthorized disbursements/online transfers amounting to a net of \$103,700.00

1 into various DPI general accounts (one or more of which is an unknown account ("Unknown")) as
2 of September 27, 2017. DPI transferred trust funds transferred into its general accounts and
3 commingled them with its own funds.

4 46. DPI transferred a total of \$115,000.00 into BA4771 and disbursed \$218,700.00 from
5 BA4771, as detailed below:

6 Unauthorized Transfers of Trust Funds from BA4771

<u>Date</u>	<u>Description</u>	<u>Deposit into BA4771</u>	<u>Disbursements from BA4771</u>	<u>Balance</u>
04/06/17	Online transfer to GA (Unknown)		10,000.00	<\$10,000.00>
04/17/17	Online transfer to GA (Unknown)		1,500.00	<\$11,500.00>
04/19/17	Online transfer to GA (Unknown)		1,000.00	<\$12,500.00>
04/20/17	Online transfer to GA (Unknown)		13,000.00	<\$25,500.00>
04/20/17	Online transfer from GA (Unknown)	1,000.00		<\$24,500.00>
04/24/17	Online transfer to GA (Unknown)		65,000.00	<\$89,500.00>
04/24/17	Online transfer to GA (Unknown)		20,000.00	<\$109,500.00>
05/08/17	Online transfer to GA (Unknown)		10,000.00	<\$119,500.00>
05/08/17	Online transfer to GA (Unknown)		8,000.00	<\$134,500.00>
05/09/17	Online transfer to GA (Unknown)		15,000.00	<\$154,500.00>
05/09/17	Online transfer to GA (Unknown)		20,000.00	<\$53,000.00>
05/22/17	Online transfer to GA (Unknown)		25,000.00	<\$179,500.00>
05/25/17	Wire Transfer from GA 1391	72,000.00		<\$107,500.00>
06/02/17	Online transfer from Unknown	5,000.00		<\$102,500.00>
06/08/17	Online transfer to GA4364		5,000.00	<\$107,500.00>
06/12/17	Online transfer to GA4364		25,000.00	<\$132,500.00>
06/13/17	Deposit from GA 0827	10,000.00		<\$122,500.00>
06/13/17	Deposit from GA 0827	15,000.00		<\$107,500.00>
06/13/17	Loan - Hamzey Family Trust	5,000.00		<\$102,500.00>
06/14/17	Deposit from GA4364	4,000.00		<\$98,500.00>
06/16/17	Online transfer to GA4364		8,200.00	<\$106,500.00>
06/21/17	Deposit from GA4364	3,000.00		<\$103,700.00>
Total		<u>\$115,000.00</u>	<u>\$218,700.00</u>	

20 47. DPI made several unauthorized trust fund transfers from TA9747 into GA9836 from
21 January 2016 to January 2017 without written authorization from the owner or owners of the trust
22 funds. TA9747 bank statements showed unauthorized disbursements/online transfers totaling a net
23 amount of \$13,729.24 into GA9836 as of January 31, 2017. DPI transferred trust funds into its
24 general accounts and commingled them with its own funds.

25 48. DPI transferred a total of \$41,350.00 into TA9747 and disbursed \$55,079.24 from
26 TA9747, as detailed below:

27 ///

28 ///

Unauthorized Transfers of Trust Funds from TA9747

<u>Date</u>	<u>Description</u>	<u>Deposit into TA9747</u>	<u>Disbursements from TA9747</u>	<u>Balance</u>
01/26/16	Deposit from NFCU -HAMZEY	\$14,000.00		\$14,000.00
01/27/16	Online banking transfer to # 9836		14,000.00	\$0.00
04/22/16	Online banking transfer to # 9836		150.00	<\$150.00>
05/25/16	Online banking transfer to # 9836		300.00	<\$450.00>
06/05/16	Commission from Escrow # 1008-TH	12,500.00		\$12,050.00
06/24/16	Online banking transfer to # 9836		300.00	\$11,750.00
08/12/16	Online banking transfer to # 9836		10,000.00	\$1,750.00
08/23/16	Online banking transfer to # 9836		100.00	\$1,650.00
08/26/16	Online banking transfer from # 9836	4,000.00		\$5,650.00
09/13/16	Online banking transfer to # 9836		5,000.00	\$650.00
09/13/16	Online banking transfer from # 9836	850.00		<\$1,500.00>
10/13/16	Online banking transfer to # 9836		20,000.00	<\$18,500.00>
10/14/16	Loan - Ocwen	\$10,000.00		<\$8,500.00>
12/14/16	Online banking transfer from # 9836		4,000.00	<\$12,500.00>
01/03/17	Closing Withdrawal		1,229.24	<\$13,729.24>
Total		<u>\$41,350.00</u>	<u>\$55,079.24</u>	

49. In addition, DPI collected Earnest Money Deposits from buyers totaling \$22,000.00 and deposited these funds into BA6803, an account used for handling DPI's property management activities, detailed below:

Earnest Money Deposits deposited into BA6803 Property Management Account

<u>Date</u>	<u>Buyer</u>	<u>Escrow No.</u>	<u>Amount</u>
04/15/16	John G.	1008-TH	10,000.00
06/04/16	Benjamin R.	1017-TH	10,000.00
09/14/16	Ivan V.	1024-TH	2,000.00
			<u>\$22,000.00</u>

50. Moreover, DPI made numerous unauthorized deposits and disbursements (fund transfers and withdrawals) between trust fund bank accounts (BA0694, BA4771, and TA9747) and DPI's general accounts maintained (GA4364, GA4165, GA8480, GA9836, and GA0827) as well as unidentified accounts ending in 1391 and 7177, without written authorization from the principal owners of the trust funds.

51. Based on an examination of records for BA0694, BA4771, and TA9747, the total minimum unauthorized net disbursements/funds transfers made by DPI during the audit period was \$195,354.24, consisting of:

a. Minimum unauthorized disbursements/funds transfers of \$117,429.24 to and/or from BA4771 (\$103,700.00) and TA9747 (\$13,729.24);

1 b. Minimum unauthorized disbursements/over-disbursed commissions of
2 \$12,425.00; and

3 c. Minimum unauthorized disbursements/funds transfers to other property
4 management bank accounts of \$65,500.00 to and/or from BA6803 (\$48,000.00) and
5 BA1668 (\$17,500.00).

6 52. DPI's commingling of escrow trust funds with its own funds in its general accounts,
7 GA4364, GA4165, GA8480, GA9836, and GA7717 was in violation of **Code sections 10145 and**
8 **10176(e), and Regulations 2832, 2950(g), and 2951.**

9 **Issue Five (5). Code section 10145, and Regulations 2832 and 2951: Trust Fund Handling;**
10 **When Broker Handles Escrow**

11 53. BA0694 and BA4771 were used for handling receipts and disbursements of trust
12 funds in connection with DPI's broker escrow activities. Based on an examination of the bank
13 signature cards for BA0694 and BA4771, neither account was designated as a trust account, and
14 neither account had designated DPI or one of its licensed fictitious business names as trustee.

15 54. DPI's failure to designate BA0694 and BA4771 as trust accounts violated **Code**
16 **section 10145, and Regulations 2832 and 2951.**

17 **Issue Six (6). Code section 10145, and Regulations 2832 and 2951: Trust Fund Records to be**
18 **Maintained; When Broker Handles Escrow**

19 55. Based on discussions between the DRE's auditor and HAMZEY, DPI's escrow
20 officer, Toni Hasty ("Hasty," Non-licensee), who was responsible for printing DPI's control
21 records, was on disability leave. According to HAMZEY, he already contacted a consultant who
22 would help him prepare the requested records for examination, however, as of the audit cutoff date,
23 HAMZEY failed to provide records of all trust fund receipts and disbursements (control records)
24 for BA0694, BA4771, and TA9747.

25 56. DPI's failure to provide complete and accurate records of all trust fund receipts and
26 disbursements (control records) for BA0694, BA4771, and TA9747 violated **Code section 10145,**
27 **and Regulations 2832 and 2951.**

28 ///

Issue Seven (7). Code section 10145 and Regulation 2831.1, and Regulations 2950(d) and 2951: Separate Records for Each Beneficiary or Transaction; When Broker Handles Escrow

57. Based on an examination of records provided for the audit, DPI's separate records maintained for BA0694, BA4771, and TA9747 were inaccurate. In some instances, the records did not reflect the correct date and amount of trust funds disbursed. The DRE's auditor made adjustments to show the correct escrow balances. Examples of inaccurate and incomplete recording of trust fund disbursements on separate records are detailed below by bank account and escrow transaction.

BA0694's Inaccurate Separate Records

<u>Date</u>	<u>Escrow #</u>	<u>Description</u>	<u>Recorded As</u>	<u>Actual Disbursement</u>	<u>Adjusted Balance</u>
09/13/17	1048-TH	Seller's proceeds	\$38,352.00		\$38,352.00
09/14/17	1048-TH	Wire transfer		(\$8,352.00)	30,000.00
09/18/17	1048-TH	Wire transfer		(15,000.00)	15,000.00
09/18/17	1048-TH	Cashier's Check*		(15,000.00)	\$0.00
*Paid from DPI account ending in 1669, with excess of \$30.00					
09/06/17	1052-TH	Sellers Proceeds	\$34,031.50		\$34,031.50
09/21/17	1052-TH	Wire transfer		(\$14,031.5)	(10,000.00)
10/13/17	1052-TH	Wire transfer		(20,000.00)	\$0.00
8/22/17	1051-TH	Wire transfer	Not recorded	(\$7,000.00)	

BA4771's Inaccurate Separate Records

<u>Date</u>	<u>Escrow #</u>	<u>Description</u>	<u>Recorded As</u>	<u>Actual Disbursement</u>	<u>Adjusted Balance</u>
11/23/16	1027-TH	Listing Commission	\$22,125.00		
11/23/16	1027-TH	Released commission		(\$21,500.00)	\$625.00
12/08/16	1031-TH	Listing Commission	\$11,625.00		\$0.00
12/08/16	1031-TH	Released commission		(\$18,000.00)	(\$6,375.00)

TA9747's Inaccurate Separate Records

<u>Date</u>	<u>Escrow #</u>	<u>Description</u>	<u>Balance</u>	<u>Adjustments</u>	<u>Adjusted Balance</u>
04/15/16	1008-TH	Escrow ledger balance	\$0.00		\$0.00
01/31/17	1008-TH	Earnest Money Deposit: deposited into BA6803		(\$10,000.00)	(\$10,000.00)
06/14/16	1017-TH	Escrow ledger balance	\$0.00		\$0.00
01/31/17	1017-TH	Earnest Money Deposit: deposited into BA6803		(\$10,000.00)	(\$10,000.00)
09/22/16	1023-TH	Unadjusted balance	82,765.38		\$82,765.38
09/22/16	1023-TH	Unrecorded commission		(\$9,500.00)	73,265.38

<u>Date</u>	<u>Escrow #</u>	<u>Description</u>	<u>Recorded As</u>	<u>Actual Disbursement</u>	<u>Adjusted Balance</u>
07/22/16	1021-TH	Escrow ledger balance			\$0.00
08/04/16	1021-TH	Express Cash Flow: Listing commission	\$8,120.00	(\$13,120.00)	(\$5,000.00)

58. Based on an examination of the escrow ledgers (separate records), the ending balances for BA0694, BA4771, and TA9747 were inaccurate and records were incomplete. The DRE's auditor had to reconstruct DPI's separate records based on DPI's bank records.

59. DPI's failure to maintain complete and accurate separate records for BA0694, BA4771, and TA9747 during the audit period violated Code section 10145 and Regulation 2831.1, and Regulations 2950(d) and 2951.

Issue Eight (8). Code section 10145 and Regulation 2831.2, and Regulation 2951: Trust Account Reconciliation; When Broker Handles Escrow

60. During the audit period, DPI failed to provide the monthly reconciliation comparing the balance of all separate beneficiary or transaction records (separate records) to the balance of the record of all trust funds received and disbursed (control records for BA0694, BA4771, and TA9747), in violation of Code section 10145 and Regulation 2831.2, as well as Regulation 2951.

Issue Nine (9). Regulation 2950(h): When Broker Handles Escrow

61. DPI failed to notify all parties in writing that HAMZEY has a financial interest as a stockholder, officer or owner of the agency handling the escrow in violation of Regulation 2950(h). The following are examples of escrow transactions in which DPI failed to so notify the parties:

<u>Date of Escrow Instruction</u>	<u>Escrow No.</u>	<u>Buyer</u>	<u>Property Address</u>
04/19/17	1043-TH	David and Irene L.	242 Vista Montana Way
07/26/17	1049-TH	Steven P.	4539 Kittiwake Way
06/11/16	1018-TH	Jesse and Valerie Y.	4520-4522 Louisiana St.

Issue Ten (10). Code section 10159.5 and Regulation 2731: Use of False or Fictitious Name

62. During the audit period, DPI used the unlicensed fictitious business name "PacShore Escrow Services" to conduct real estate activities without first obtaining a license bearing such fictitious name. DRE licensing records to date do not show that DPI obtained a license for such fictitious business name.

1 63. In addition, DPI used the unlicensed fictitious business names, "Weichert Realtors,
2 Distinctive Properties Real Estate Inc.," and "PacShore Inc." on the broker-agent independent
3 contractor agreements with DPI's employees.

4 64. The fictitious business names "PacShore Escrow Services," "Weichert Realtors,
5 Distinctive Properties Real Estate, Inc.," and "Pacshore, Inc." were used on the following
6 documents and records:

7 a. Final Settlement Statements: The use of "Pacshore Escrow Services" was
8 evident on final settlement statements in seven (7) closed broker escrow files examined by
9 the DRE's auditor.

10 b. Independent Contractor Agreements: The use of names "Weichert Realtors,"
11 "Distinctive Properties Real Estate, Inc.," and "Pacshore, Inc." were evident on Independent
12 Contractor Agreements files examined by the DRE's auditor.

13 65. DPI's use of unlicensed fictitious business names was in violation of **Code section**
14 **10159.5 and Regulation 2731.**

15 **Issue Eleven (11). Code section 10148 and Regulation 2950(e): Retention of Records; When**
16 **Broker Handles Escrow**

17 66. The DRE's auditor contacted HAMZEY at DPI's main office phone number,
18 760-765-7466 to conduct an audit examination of DPI's real estate broker escrow activities. The
19 appointment date was sent to DPI's main office address located at 1237 Camino Del Mar Ste C, in
20 Del Mar, CA via fax, certified mail, and regular mail advising DPI of an audit scheduled on
21 November 15, 2017 at 10:00 a.m. The appointment letter also requested DPI to produce its books
22 and records for the audit examination as stated on the letter, pursuant to Code section 10148.

23 67. A subpoena duces tecum ("subpoena") dated March 14, 2018 was served on
24 HAMZEY and DPI on March 15, 2018 at the Encinitas Public Library by Special Investigator Jesse
25 Hafen. The subpoena required DPI to produce records related to its real estate activities, for
26 examination on March 30, 2018 at 10:30 a.m. at DRE's San Diego District Office.

27 68. Based on the auditor's discussion with HAMZEY, DPI's escrow officer, Hasty,
28 who was responsible for printing records of all trust fund receipts and disbursements (control

1 records), was on disability leave. According to HAMZEY, he had contacted a consultant who
2 would help him prepare the requested records for examination, however, as of the audit cutoff date,
3 DPI did not provide the control records for the audit examination.

4 69. DPI did not provide the control records of all trust funds received and disbursed in
5 connection with its broker escrow activities for BA0694, BA4771, and TA9747 for examination.

6 70. Not all check registers (separate records) were made available for the audit
7 examination.

8 71. As of the audit report date, DRE's auditor did not receive all records requested from
9 DPI. DPI did not make available the records all trust funds receipts and disbursements, general
10 accounts, cancelled checks, records of receipts and deposits, bank deposit receipts, and records of
11 monthly reconciliation for all trust fund accounts related to DPI's broker escrow activities.

12 72. DPI's failure to make available the records all trust funds receipts and
13 disbursements, general accounts, cancelled checks, records of receipts and deposits, bank deposit
14 receipts, and records of monthly reconciliation for all trust fund accounts related to DPI's broker
15 escrow activities was in violation of Code section 10148 and Regulation 2950(e).

16 **Issue Twelve (12). Code sections 10159.2 and 10177(h) and Regulation 2725: Responsibility of**
17 **Corporate Officer in Charge; Broker Supervision**

18 73. The Complainant realleges and incorporates by reference all of the allegations
19 contained in paragraphs 38 through 72 above, with the same force and effect as though fully set
20 forth herein.

21 74. Based on the above audit findings of Audit No. SD170019 in Issues 1 through 11
22 above, as alleged in paragraphs 39 through 72 above, as the broker and designated officer of DPI,
23 HAMZEY did not exercise adequate supervision and control over the broker escrow activities
24 conducted on behalf of DPI by its employees and licensees to ensure compliance with the Real
25 Estate Laws and Regulations. HAMZEY failed to establish policies, rules and systems to review,
26 oversee, inspect, and manage transactions requiring a real estate license and the handling of trust
27 funds.

28 ///

1 75. HAMZEY's acts and/or omissions, as alleged above in paragraphs 39 through 72
2 above were in violation of **Code sections 10159.2 and 10177(h), and Regulation 2725.**

3 **AUDIT OF DPI: AUDIT NO. SD170038**

4 76. The Complainant realleges and incorporates by reference all of the allegations
5 contained in paragraphs 1 through 75 above, with the same force and effect as though fully set forth
6 herein.

7 77. As alleged in paragraph 28 above, on June 27, 2019, the DRE completed the second
8 of two concurrent audit examinations of the books and records of DPI's real estate activities that
9 require a corporate real estate broker license under Code section 10131. This second audit
10 examination, Audit No SD170038, covers the same time period as Audit No. SD170019, January 1,
11 2016 to October 31, 2017 ("audit period"). The second audit examination, Audit No. SD170038,
12 was limited to DPI's property management activities.

13 78. The purpose of Audit No. SD170038, as with Audit No. SD170019, was to
14 determine whether DPI conducted its real estate activities and handled and accounted for trust
15 funds, and other compliance issues, in accordance with the Real Estate Law and the Regulations.

16 79. According to HAMZEY and records examined, DPI was involved in property
17 management activities, managing approximately 20 properties for compensation. DPI received
18 management fees ranging from 10% to 15% of collected rents. DPI handled approximately \$1.6
19 million of trust funds in connection with DPI's property management activity from November 2016
20 to October 2017.

21 80. DPI's bank accounts that DPI used for property management activities—regardless
22 of whether DPI designated such accounts for property management activities—are as follows:

23 a. BA0694, maintained at BBVA Compass Bank, as alleged more fully in
24 paragraph 34(a), above.

25 b. BA4771, maintained at BBVA Compass Bank, as alleged more fully in
26 paragraph 34(b), above.

27 c. BA6803, maintained at First Republic Bank, as alleged more fully in
28 paragraph 35(a), above.

1 d. BA1668, maintained at Wells Fargo Bank, as alleged more fully in
2 paragraph 35(b), above.

3 e. GA4364, maintained at BBVA Compass Bank, as alleged more fully in
4 paragraph 35(c), above.

5 f. GA1853, maintained at First Republic Bank, as alleged more fully in
6 paragraph 35(h), above.

7 g. **Pacshore, Inc.'s Trust Account ending in 8157 ("OTA8157")**

8 Bank: First Republic Bank

9 Account Name: Pacshore, Inc.
DBA Pacshore Escrow Services, A Non-Ind Broker Owned Escrow
10 DBA Pacshore Real Estate Services DBA The Best Homes
Trust Account

11 Account #: XXXXXXXX8157

12 Signatories: HAMZEY (REB)
Marie A. Hamzey (Non-licensee), President

13 Signatures required: One (1) signature

14 Description: According to HAMZEY, OTA8157 was Pacshore Inc's operating account.
Deposits were made into OTA8157 in connection with DPI's property
management activities.

15 **Audit Violations in Audit No. SD170038**

16 81. The Complainant realleges and incorporates by reference all of the allegations
17 contained in paragraphs 1 through 80 above, with the same force and effect as though fully set forth
18 herein.

19 82. The audit examination revealed violations of the Code and the Regulations, as set
20 forth in the following paragraphs, and more fully discussed in Audit No. SD170038 and the
21 exhibits and work papers attached to the audit report:

22 **Issue One (1). Code section 10145 and Regulation 2832.1: Trust Fund Handling for Multiple**
23 **Beneficiaries**

24 83. A bank reconciliation was prepared for BA6803 as of audit cutoff date October 31,
25 2017. The reconciliation was based on limited documents provided by DPI for the audit, and DPI
26 did not provide the control records for BA6803. DPI's separate property ledgers (separate records)
27 were inaccurate and incomplete. DRE's auditor reconstructed seven (7) months of minimum
28 accountability as of October 31, 2017 based on the limited records provided.

84. BA6803 had had a minimum shortage of \$121,718.12 as of October 31, 2017. The minimum shortage was caused by minimum bank service charges of \$297.00, minimum negative property balances totaling \$38,489.52, minimum unauthorized disbursements/fund transfers from BA6803 to BA0694 and BA1668 of \$71,954.95, and minimum unauthorized disbursements/fund transfers from BA6803 and GA1853 of \$10,976.65 as of October 31, 2017. DPI provided no evidence that the owners of the trust funds had given their written consent to allow DPI to reduce the balance of the trust funds in BA6803 to an amount less than the existing aggregate trust fund liabilities. The DRE's auditor prepared the following summary table about the shortage in BA6803:

BA6803, Audit Cut-Off Date of 10/31/2017:

Minimum Adjusted Bank Balance, 10/31/17		\$0.00
Minimum Identified Accountability:		
Minimum Rent/Security Deposits in BA6803	\$37,171.43	
Minimum Funds Transferred from BA0694	56,000.00	
Minimum Funds Transferred from OTA8157	<u>25,107.89</u>	
Minimum Identified Accountability, 10/31/17	\$118,279.32	
Minimum Unidentified/Unaccounted For Funds	<u>3,438.80</u>	<u>121,718.12</u>
Minimum Shortage, 10/31/17		<\$121,718.12>
<u>The Minimum Shortage was caused by the following:</u>		
1. Minimum Bank Service Charges		<297.00>
2. Minimum Negative Property Balances		<38,489.52>
3. Minimum Unauthorized Disbursements / Funds Transferred to BA0694 and BA1668 as of 10/31/17		<71,954.95>
4. Minimum Unauthorized Disbursements / Funds Transferred to GA1853 as of 10/31/17		<10,976.65>
Minimum Shortage, 10/31/17		<u><\$121,718.12></u>

a. Details regarding the causes of BA6803's minimum shortages listed above are as follows:

(1) <\$297.00>/Minimum Bank Service Charges: BA6803 incurred a total of \$297 in bank charges, which DPI did not reimburse as of audit cutoff date October 31, 2017, as follows:

<u>Month/Year</u>	<u>Amount</u>
August 2017	<\$8.00>
September 2017	<133.00>
October 2017	<156.00>
	<u><\$297.00></u>

1 (2) <\$38,489.52>/Minimum Negative Property Balances: Based on an
2 examination of records, there were funds recorded on the separate records, however,
3 no deposits were made into BA6803, which caused the negative property balances
4 totaling \$38,489.52 as of October 31, 2017. There were some missing deposits
5 which were deposited into BA0694, BA4771, BA1668, and GA1853. The DRE's
6 auditor made adjustments accordingly on amounts traced from different DPI bank
7 accounts.

8 (3) <\$71,954.95> / Minimum Unauthorized Disbursements/Fund
9 Transfers to BA4771 and BA1668: The minimum unauthorized
10 disbursements/online fund transfers of \$71,954.95 involved transfers from BA6803
11 to BA4771 and BA1668, as of October 31, 2017, as detailed below:

12 (a) Net minimum unauthorized disbursements/fund transfers
13 from BA6803 to BA4771 of \$50,650.00 as of October 31, 2017: DPI
14 transferred \$8,000.00 from BA4771 to BA6803 on May 18, 2017. DPI also
15 made transfers totaling \$95,000.00 from BA6803 to BA4771 during the
16 period from May 25, 2017 to June 13, 2017. Online transfers/check
17 disbursements resulted in unauthorized disbursements of \$87,000.00 from
18 BA6803. However, the DRE's auditor made adjustments for previous
19 erroneous buyer deposits into BA6803 related to broker escrow transactions
20 totaling \$22,000.00 (\$10,000.00 on April 16, 2016; \$10,000.00 on June 6,
21 2016; and \$2,000.00 on September 14, 2016) and rent deposited into
22 BA4771 totaling \$14,350.00 (\$7,000.00 on April 3, 2017; and \$7,350.00 on
23 June 1, 2017), which resulted in a net minimum unauthorized disbursements
24 balance of \$50,650.00, and caused the shortage in BA6803 as of October 31,
25 2107. DPI did not provide identifiable properties related to each transaction.
26 The DRE's auditor summarized these net minimum unauthorized
27 disbursements/online fund transfers involving BA6803 and BA4771 as
28 follows:

<u>Date</u>	<u>Description</u>	<u>Deposited into BA6803</u>	<u>Withdrawal from BA6803</u>	<u>Balance</u>
05/08/17	Online transfer from BA4771	\$8,000.00		\$8,000.00
05/25/17	Check deposit into BA4771		\$35,000.00	<27,000.00>
05/31/17	Check deposit into BA4771		50,000.00	<77,000.00>
06/13/17	Fund transfer to BA4771		10,000.00	<87,000.00>
	Total	<u>\$8,000.00</u>	<u>\$95,000.00</u>	
	<i>Less Adjustments (previous buyer deposits)</i>			
04/16/16	J.G.	\$10,000.00		
06/06/16	B.R.	10,000.00		
09/14/16	I.V.	2,000.00		
	<i>(previous tenant deposits into BA4771)</i>			
07/03/17	D.D. (530 Zuni rent)	\$7,000.00		
06/01/17	B.W. (1929 Sand Bar rent)	7,350.00		
	Net Minimum Unauthorized Fund Transfers to BA4771 as of 10/31/17			<u><\$50,650.00></u>

(b) Net minimum unauthorized disbursements/fund transfers from BA6803 to BA1668 of \$21,304.95 as of October 31, 2017: DPI transferred a total of \$143,500.00 from BA1668 to BA6803 during the audit period from April 3, 2017 to September 8, 2017. However, DRE's auditor made adjustments because DPI made numerous rent deposits into BA1668 totaling \$177,904.95 from April 3, 2017 to September 7, 2017. DPI paid the owners \$13,100.00 (\$6,550.00 on July 1, 2017 and \$6,550.00 on August 9, 2017) out of the collected rents which were deposited into BA1668. The net minimum unauthorized funds transferred were \$21,304.95, which caused a shortage in BA6803 as of October 31, 2017. DRE's auditor summarized these net minimum unauthorized disbursements/online fund transfers involving BA6803 and BA1668 as follows:

<u>Date</u>	<u>Description</u>	<u>Deposited into BA6803</u>	<u>Withdrawal from BA6803</u>	<u>Balance</u>
04/03/17	Deposit – Check # 1407	\$5,000.00		\$5,000.00
04/06/17	Deposit – Check # 1408	5,000.00		10,000.00
04/19/17	Deposit – Check # 1418	2,000.00		12,000.00
04/24/17	Deposit – Check # 1419	10,000.00		22,000.00
05/03/17	Deposit – Check # 1422	10,000.00		32,000.00
05/16/17	Deposit – Check # 1425	15,000.00		47,000.00
06/05/17	Deposit – Check # 1426	15,000.00		62,000.00
06/08/17	Deposit – Check # 1429	10,000.00		72,000.00
06/14/17	Deposit – Check # 1432	10,000.00		82,000.00
07/10/17	Deposit – Check # 1433	12,500.00		94,500.00
08/01/17	Deposit – Check # 1437	20,000.00		114,500.00
08/08/17	Deposit – Check # 1438	7,000.00		121,500.00

08/11/17	Deposit – Check # 1439	8,000.00	129,500.00
08/17/17	Deposit – Check # 1443	2,000.00	131,500.00
09/07/17	Deposit – Check # 1445	12,000.00	143,500.00
Grand Total Deposits into BA6803		<u>\$143,500.00</u>	
Less: Adjustments (Rent collected, deposited into BA1668)			
Identified Properties & Tenants (based on separate records)			
04/03/17-09/01/17	501 Pine Needles	<\$61,000.00>	
07/03/17	1565 Meadow Bay	<2,250.00>	
07/07/17	328 13 th Street	<8,000.00>	
07/10/17	1327 Maiden Lane Studio	<4,500.00>	
Subtotal		<\$75,750.00>	
Identified Property/Tenant (No separate record provided)			
04/03/17	Renee H.	<\$1,062.50>	
04/03/17 & 05/01/17	Linda V.	<2,375.00>	
05/26/17-08/28/17	5095 Brighton Ave.	<7,317.45>	
08/04/17-09/01/17	P.K.	<5,800.00>	
04/03/17-09/01/17	Victoria W.	<9,000.00>	
07/03/17-09/01/17	MN E.	<10,500.00>	
06/30/17-07/03/17	M.T.	<4,000.00>	
05/16/17-09/01/17	Paxton W.	<31,600.00>	
Subtotal		<\$71,654.95>	
Unidentified property/tenant (No separate record provided)			
04/03/17-08/31/17	Unknown (\$3,100 /mo)	<\$15,500.00>	
04/03/17-08/31/17	Unknown (\$3,000 /mo)	<15,000.00>	
Subtotal		<\$30,500.00>	
Grand Total – Deposits into BA1668		<u><\$177,904.95></u>	
Expenses paid to unidentified property owner			
07/07/17	Unknown Owner's proceeds	\$6,550.00	
08/09/17	Unknown Owner's proceeds	\$6,550.00	
Total expenses paid from BA1668		\$13,100.00	
Net Minimum Unauthorized Fund Transfers to BA1668 as of 10/31/17			<u><\$21,304.95></u>

(4) <\$10,976.65> / Minimum Unauthorized Disbursements/Fund

Transfers Into DPI's General Accounts: The minimum unauthorized disbursements/online fund transfers of \$10,976.65 involved transfers between BA6803, GA4364, and GA1853, as of October 31, 2017, as detailed below:

<u>Date</u>	<u>Description</u>	<u>Deposits into BA6803</u>	<u>Withdrawals from BA6803</u>	<u>Balance</u>
08/07/17	Online transfer to GA1853		\$5,500.00	<\$5,500.00>
08/09/17	Online transfer to GA1853		4,000.00	<9,500.00>
08/10/17	Online transfer to GA1853		2,200.00	<11,700.00>
08/11/17	Online transfer to GA1853		1,000.00	<12,700.00>
08/15/17	Online transfer to GA1853		1,000.00	<13,700.00>
08/16/17	Online transfer to GA1853		1,100.00	<14,800.00>
08/16/17	Online transfer to GA1853		300.00	<15,100.00>
08/17/17	Online transfer to GA1853		1,000.00	<16,100.00>
08/17/17	Wire transfer from GA4364	6,000.00		<10,100.00>
08/24/17	Wire transfer from GA4364	20,000.00		9,900.00
08/28/17	Online transfer to GA1853		1,500.00	8,400.00
08/28/17	Wire transfer from GA4364	5,000.00		13,400.00
09/05/17	Online transfer to GA1853		2,000.00	11,400.00

1	09/12/17	Wire transfer from GA4364	10,000.00		21,400.00
	09/18/17	OD transfer from GA1853	329.74		21,729.74
2	09/18/17	Online transfer to GA1853		12,000.00	9,729.74
	09/18/17	Online transfer to GA1853		500.00	9,229.74
3	09/19/17	Online transfer to GA1853		4,000.00	5,229.74
	09/19/17	Online transfer to GA1853		4,000.00	1,229.74
4	09/19/17	Check deposit from GA4364	10,000.00		11,229.74
	09/25/17	Online transfer to GA1853		6,000.00	5,229.74
5	09/29/17	Online transfer to GA1853		2,000.00	3,229.74
	10/02/17	Online transfer to GA1853		15,000.00	<11,770.26>
6	10/03/17	Online transfer to GA1853		2,000.00	<13,770.26>
	10/06/17	OD transfer from GA1853	343.71		<13,426.55>
7	10/07/17	Online transfer from GA1853	200.00		<13,226.55>
	10/10/17	Wire transfer from GA4364	3,000.00		<10,226.55>
8	10/11/17	Wire transfer from GA4364	2,000.00		<8,226.55>
	10/12/17	Online transfer to GA1853		4,000.00	<12,226.55>
9	10/16/17	OD transfer from GA1853	1,328.96		<10,897.59>
	10/24/17	Online transfer to GA1853		79.06	<10,976.65>
10			<u>\$58,202.41</u>	<u>\$69,179.06</u>	

85. The minimum identified accountability of \$118,279.12 as of October 31, 2017 (identified in the table under paragraph 81 above), was based on BA6803's bank statements, limited property ledgers (separate records), and bank records. DPI did not maintain control records for BA6803, nor did it maintain separate records for all online transfers and withdrawals of trust funds involving BA0694, GA4364, and OTA8157.

86. DPI provided no evidence that the owners of the trust funds gave their written consent to allow DPI to reduce the balance of the trust funds in BA6803 to an amount less than the existing aggregate trust fund liabilities. DPI's failure to obtain the written consent of the owners of the trust funds to reduce the balance of the funds in BA6803 to an amount less than the existing aggregate trust fund liability was in violation of **Code section 10145 and Regulation 2832.1.**

Issue Three (3).^{6/} Code sections 10145(a) and 10176(e): Unauthorized Disbursements / Commingling / Handling of Trust Funds

87. DPI made minimum trust fund transfers between BA6803 and various DPI bank accounts, including BA4771, BA1668 (from April to September 2017), GA4364, and GA1853

///

^{6/} Issue Two (2) was skipped intentionally. In the audit report for SD170038, the DRE's auditor addresses Issue Two without citing any violations of the Code or Regulations. Complainant reserves the right to conduct further investigation and to amend the Accusation should further evidence be acquired in support of Issue Two, as well as potential causes of accusation not alleged in this Accusation at the time of filing.

(from August to October 2017) without written authorization from the principal owners of the trust funds.

88. Based on an examination of records for BA6803, DPI's net minimum unauthorized disbursements/fund transfers to BA6803 and BA1668 during the audit period from April 2017 to September 2017 was \$71,954.95 (\$50,650.00 from BA6803 to BA4771, and \$21,304.95 from BA6803 to BA1668), which became part of the minimum discrepancy in BA6803 as of October 31, 2017.

89. The net minimum unauthorized disbursements/trust fund transfers between BA6803 and BA4771 from May to June 2017 were as follows:

<u>Date</u>	<u>Description</u>	<u>Deposited into BA6803</u>	<u>Withdrawals from BA6803</u>	<u>Balance</u>
05/08/17	Online transfer from BA4771	\$8,000.00		\$8,000.00
05/25/17	Check deposit into BA4771		\$35,000.00	<27,000.00>
05/31/17	Check deposit into BA4771		50,000.00	<77,000.00>
06/13/17	Fund transfer to BA4771		10,000.00	<87,000.00>
	Total	\$8,000.00	\$95,000.00	
	Less: Adjustments (previous deposits into BA6803)			
04/15/16	J.G. (Escrow # 1008-TH)	\$10,000.00		
06/06/16	B.R. (Escrow # 1017-TH)	10,000.00		
09/14/16	I.V. (Escrow # 1008-TH)	2,000.00		
06/01/17	B.W. (1929 Sand Bar – Rent)	7,350.00		
07/03/17	D.D. (530 Zuni – Rent)	7,000.00		
	Total Adjustments	\$36,350.00		
	Minimum Unauthorized Disbursements/Fund Transfers into BA4771, as of 10/31/17			<\$50,650.00>

90. The net minimum unauthorized disbursements/trust fund transfers between BA6803 and BA1668 from April to September 2017 were as follows:

<u>Date</u>	<u>Description</u>	<u>Deposited into BA6803</u>	<u>Withdrawals from BA6803</u>	<u>Balance</u>
04/02/17	Fund transfer from BA1668	\$5,000.00		\$5,000.00
04/05/17	Fund transfer from BA1668	5,000.00		10,000.00
04/18/17	Fund transfer from BA1668	2,000.00		12,000.00
04/23/17	Fund transfer from BA1668	10,000.00		22,000.00
05/02/17	Fund transfer from BA1668	10,000.00		32,000.00
05/15/17	Fund transfer from BA1668	15,000.00		47,000.00
06/04/17	Fund transfer from BA1668	15,000.00		62,000.00
06/07/17	Fund transfer from BA1668	10,000.00		72,000.00
06/13/17	Fund transfer from BA1668	10,000.00		82,000.00
07/09/17	Fund transfer from BA1668	12,500.00		94,500.00
07/31/17	Fund transfer from BA1668	20,000.00		114,500.00
08/07/17	Fund transfer from BA1668	7,000.00		121,500.00
08/10/17	Fund transfer from BA1668	8,000.00		129,500.00
08/16/17	Fund transfer from BA1668	2,000.00		131,500.00
09/07/17	Fund transfer from BA1668	12,000.00		143,500.00
	Less Adjustments			
	Rent collections deposited into BA1668	<\$177,904.95>		
	Owner's Proceeds from BA1668	13,100.00		
	Total Adjustments	<\$164,804.95>		
	Net Minimum Unauthorized Disbursements/Fund Transfers Into BA1668			<\$21,304.95>

91. Based on an examination of records, DPI made minimum unauthorized disbursements/online and wire trust fund transfers between BA6803, GA4364, and GA1853 from August to October 2017. DPI transferred a total of \$58,202.41 from GA4364 and GA4165 to BA6803, and transferred a total of \$69,179.06 from BA6803 to GA4165 without written authorization from the principal owners of the trust funds. The net minimum unauthorized disbursements/funds transferred from BA6803 to GA4165 from August 7 to October 24, 2017 were approximately \$10,976.65 as of October 31, 2017, as detailed below:

<u>Date</u>	<u>Description</u>	<u>Deposited in BA6803</u>	<u>Withdrawals from BA6803</u>	<u>Balance</u>
08/07/17	Transfer to GA1853		\$5,500.00	<\$5,500.00>
08/09/17	Transfer to GA1853		4,000.00	<9,500.00>
08/10/17	Transfer to GA1853		2,200.00	<11,700.00>
08/11/17	Transfer to GA1853		1,000.00	<12,700.00>
08/15/17	Transfer to GA1853		1,000.00	<13,700.00>
08/16/17	Transfer to GA1853		1,100.00	<14,800.00>
08/16/17	Transfer to GA1853		300.00	<15,100.00>
08/17/17	Transfer to GA1853		1,000.00	<16,100.00>
08/17/17	Wire transfer from GA4364	\$6,000.00		<10,100.00>
08/24/17	Wire transfer from GA4364	20,000.00		9,900.00
08/28/17	Transfer to GA1853		1,500.00	8,400.00
08/28/17	Wire transfer from GA4364	5,000.00		13,400.00
09/05/17	Transfer to GA1853		2,000.00	11,400.00
09/12/17	Wire transfer from GA4364	10,000.00		21,400.00
09/18/17	OD transfer from GA1853	329.74		21,729.74
09/18/17	Internet transfer to GA1853		12,000.00	9,729.74
09/18/17	Internet transfer to GA1853		500.00	9,229.74
09/19/17	Internet transfer to GA1853		4,000.00	5,229.74
09/19/17	Internet transfer to GA1853		4,000.00	1,229.74
09/19/17	Check deposit from GA4364	10,000.00		11,229.74
09/25/17	Internet transfer to GA1853		6,000.00	5,229.74
09/29/17	Internet transfer to GA1853		2,000.00	3,229.74
10/02/17	Internet transfer to GA1853		15,000.00	<11,770.26>
10/03/17	Internet transfer to GA1853		2,000.00	<13,770.26>
10/06/17	OD transfer to GA1853	343.71		<13,426.55>
10/07/17	Internet transfer to GA1853	200.00		<13,226.55>
10/10/17	Wire transfer from GA4364	3,000.00		<10,226.55>
10/11/17	Wire transfer from GA4364	2,000.00		<8,226.55>
10/12/17	Internet transfer to GA1853		4,000.00	<12,226.55>
10/16/17	OD transfer to GA1853	1,328.96		<10,897.59>
10/24/17	Internet transfer to GA1853		79.06	<10,976.65>
	Totals	\$58,202.41	\$69,179.06	
	Net Minimum Unauthorized Disbursements/Fund Transfers from BA6803 to GA1853			<10,976.65>

92. DPI did not provide GA1853's bank statements for the audit and the DRE's auditor was not able to verify the account balance of GA1853 as of October 31, 2017.

///

93. DPI also collected security deposits and rent from tenants totaling \$177,904.95 that DPI deposited into BA1668 from April to September 2017, and totaling \$71,082.11 that DPI deposited into OTA8157 from August to October 2017. The DRE's auditor provided the following examples of these transactions.

<u>Date Collected</u>	<u>Property/Tenant</u>	<u>Amount</u>	<u>Date of Deposit</u>	<u>Account Deposited Into</u>
07/03/17	Bay Meadows (Patty K.)	\$2,250.00	07/03/17	BA1668
07/07/17	13 th Street (Greython Construction)	8,000.00	07/07/17	BA1668
07/07/17	Maiden Lane Studio (Dan L.)	4,500.00	07/07/17	BA1668
09/08/17	13 th Street (Greython Construction)	4,000.00	09/08/17	OTA8157
10/01/17	Maiden Lane Lower (Unknown)	2,900.00	10/01/17	OTA8157
10/01/17	Pine Needles (Jason K.)	4,000.00	10/01/17	BA1668

94. The DRE's auditor determined that DPI and HAMZEY made numerous unauthorized trust fund deposits and disbursements between BA6803, BA1668, GA4364, GA1853, and OTA8157 during the audit period without the authorization from the owners of the properties managed by DPI. DPI transferred trust funds to its general accounts and commingled the trust funds with DPI's own funds. Moreover, not all rent and security deposits were deposited into BA6803.

95. DPI's unauthorized trust fund transfers without the authorization from owners of the properties managed by DPI and its commingling of trust funds with its own funds were in violation of Code sections 10145(a) and 10176(e).

Issue Four (4). Code section 10145 and Regulation 2832: Trust Fund Handling

96. Based on an examination of the signature card for BA6803, DPI's account used to maintain trust funds in connection with property management activities, this account was not designated as a trust account in the name of DPI or any of its licensed fictitious business names as trustee.

97. Based on an examination of BA6803's records, DPI failed to deposit trust funds collected into the trust fund bank account within three (3) business days following the receipt of funds. DPI recorded numerous rent deposits on its property ledgers (separate records), however, the DRE's auditor found no actual deposits on the bank statements for BA6803, BA0694, BA4771, and BA1668. The DRE's auditor provided the following examples of rent deposits on DPI's

1 separate records kept for properties, but the bank statements examined showed no corresponding
2 deposits:

<u>Date Collected</u>	<u>Property/Tenant</u>	<u>Amount</u>	<u>Deposit Date on Statement</u>
04/01/17	13 th Street (Greython Construction)	\$16,000.00	None
04/01/17	Maiden Lane Studio (Dan L.)	3,000.00	None
04/01/17	Maiden Lane Lower (Unknown)	2,900.00	None
04/01/17	Gingerwood Cove (Nina D.)	5,800.00	None
05/01/17	Maiden Lane Lower (Unknown)	2,900.00	None
06/01/17	Gingerwood Cove (Nina D.)	5,800.00	None
06/03/17	Maiden Lane Studio (Dan L.)	3,000.00	None
07/01/17	Maiden Lane Lower (Unknown)	2,900.00	None
07/03/17	Bay Meadows (Patty K.)	2,250.00	None
08/01/17	Gingerwood Cove (Nina D.)	5,800.00	None
09/10/17	Maiden Lane Studio (Dan L.)	3,000.00	None
10/01/17	13 th Street (Greython Construction)	16,000.00	None
10/01/17	Pine Needles (Jason K.)	4,000.00	None
10/01/17	Maiden Lane Studio (Dan L.)	3,000.00	None

11 98. In addition, on October 16, 2017, DPI collected a security deposit in the amount of
12 \$8,700.00 from Kaaran T. for the property located at 1750 Coast Blvd., however, no deposit was
13 made in this amount in BA6803 as of October 31, 2017. The DRE's auditor determined that this
14 security deposit was deposited on November 2, 2017 into OTA8157.

15 99. DPI's failure to set up BA6803 as a trust account and its failure to deposit trust
16 funds collected into the trust fund bank account within three business days following the receipt of
17 funds was in violation of **Code section 10145 and Regulation 2832.**

18 **Issue Five (5). Code section 10145 and Regulation 2831: Trust Fund Records to be**
19 **Maintained**

20 100. DPI handled trust funds related to its property management activities but failed to
21 provide the control record for all trust funds received and disbursed for BA6803 for the audit
22 examination in violation of **Code section 10145 and Regulation 2831.**

23 **Issue Six (6). Code section 10145 and Regulation 2831.1: Separate Record of Each Beneficiary**
24 **or Transaction**

25 101. Based on an examination of the property ledgers (separate records) provided for the
26 audit, DPI's separate records maintained for BA6803 were incomplete and inaccurate. The separate
27 records did not show the check numbers for each disbursement made on a property, in some
28 instances the name of the payor/tenant was not identified, and the ending balances were inaccurate

because there were numerous deposit records that were not reflected/verified with the bank statements. DRE's auditor had to reconstruct DPI's separate records to determine the minimum accountability of BA6803 as of October 31, 2017, and made adjustments to reflect the correct balance. The following are examples of inaccurate separate records for BA6803 identified by property address:

501 Pine Needles, Del Mar, CA

<u>Date on Record</u>	<u>Description</u>	<u>Recorded Amount</u>	<u>Actual Date of Deposit</u>	<u>Date Deposited in BA6803</u>	<u>Amount Deposited In Other Account</u>	<u>Adjustments/ Balance</u>
10/04/17	Unadjusted Balance					\$12,337.43
04/28/17	Security dep & rent	\$21,666.00	04/24/17	None	\$21,000.00*	<666.00>
07/01/17	Rent	10,000.00	07/01/17	None	10,000.00*	0.00
08/01/17	Rent	10,000.00	08/01/17	None	10,000.00*	0.00
09/01/17	Rent	10,000.00	09/01/17	None	10,000.00*	0.00
10/01/17	Rent	4,000.00	None	None	0.00**	<4,000.00>
10/31/17	Adjusted balance					<u>\$7,671.43</u>
	*Deposited into BA1668					
	**No deposit found					

328 13th Street, Del Mar, CA

<u>Date on Record</u>	<u>Description</u>	<u>Recorded Amount</u>	<u>Actual Date of Deposit</u>	<u>Date Deposited in BA6803</u>	<u>Amount Deposited In Other Account</u>	<u>Adjustments/ Balance</u>
10/05/17	Unadjusted Balance					\$4,000.00
04/28/17	Security dep & rent	\$16,000.00	None	None	0.00***	<16,000.00>
07/07/17	July & Aug rent	8,000.00	07/07/17	None	8,000.00**	0.00
09/08/17	Rent	4,000.00	09/08/17	None	4,000.00**	0.00
10/01/17	Rent	4,000.00	None	None	0.00***	<4,000.00>
10/12/17	Expenses pd from GA4364					3,818.99
10/31/17	Adjusted balance					<u><\$12,181.01></u>
	**Deposited into OTA8157					
	***No deposit found					

1327 Maiden Lane (Studio), Del Mar, CA

<u>Date on Record</u>	<u>Description</u>	<u>Recorded Amount</u>	<u>Actual Date of Deposit</u>	<u>Date Deposited in BA6803</u>	<u>Amount Deposited In Other Account</u>	<u>Adjustments/ Balance</u>
10/05/17	Unadjusted Balance					\$3,000.00
04/01/17	Security deposit	\$3,000.00	None	None	0.00***	<3,000.00>
06/03/17	May 15 -- June 30 rent	4,500.00	None	None	0.00***	<4,500.00>
07/05/17	July -- Aug 15 rent	4,500.00	07/07/17	None	4,500.00**	0.00
09/10/17	Rent	3,000.00	None	None	0.00***	<3,000.00>
10/01/17	Rent	3,000.00	None	None	0.00***	<3,000.00>
10/31/17	Adjusted balance					<u><\$10,500.00></u>
	**Deposited into OTA8157					
	***No deposit found					

102. DPI failed to maintain complete and accurate separate records for BA6803 during the audit period in violation of Code section 10145 and Regulation 2831.1.

1 **Issue Seven (7). Code section 10145 and Regulation 2831.2: Trust Account Reconciliation**

2 103. During the audit period, DPI failed to provide the monthly reconciliation comparing
3 the balance of all separate beneficiary or transaction records (separate records) to the balance of the
4 record of all trust funds received and disbursed (control records) for BA6803, in violation of **Code**
5 **section 10145 and Regulation 2831.2.**

6 **Issue Eight (8). Code section 10148: Retention of Records**

7 104. The DRE's auditor contacted DPI through HAMZEY at DPI's main office phone
8 number to conduct an audit examination of DPI's property management activities. The DRE's
9 auditor sent an audit appointment letter via email, and via certified and regular U.S. Mail to DPI's
10 main office address advising DPI of an audit scheduled on March 15, 2018 at 10:00 a.m. The
11 appointment letter also requested DPI to produce its books and records for the audit examination
12 pursuant to Code section 10148.

13 105. The DRE's special investigator served a subpoena duces tecum on DPI on March
14 15, 2018 to produce records related to DPI's real estate activities, from January 1, 2016 to the
15 present for examination on March 20, 2018 at the DRE's San Diego office.

16 106. To date, DPI has not provided: the control records of all trust funds received and
17 disbursed for BA6803 in connection with its property management activities; monthly records of
18 reconciliation comparing the balance of all separate beneficiary or transaction records (separate
19 records) to the balance of the record of all trust funds received and disbursed (control records) for
20 BA6803 as required.

21 107. DPI did not provide complete records for its property management activities for the
22 audit period from January 1, 2016 to October 31, 2017 as requested by the DRE. As of the date of
23 the audit report, June 27, 2019, DPI did not make the following requested records for BA6803
24 related to property management activities available for the audit examination: records of all trust
25 fund receipts and disbursements (control records); all property ledgers (separate records); general
26 accounts; canceled checks; records of receipts and deposits; bank deposit receipts; and records of
27 monthly reconciliation. DPI's failure to provide complete records for its property management
28 activities was in violation of **Code section 10148.**

Issue Nine (9). Code sections 10159.2 and 10177(h) and Regulation 2725: Responsibility of Corporate Officer in Charge; Broker Supervision

108. The Complainant realleges and incorporates by reference all of the allegations contained in paragraphs 79 through 107 above, with the same force and effect as though fully set forth herein.

109. Based on the above audit findings of Audit No. SD170038 in Issues 1 through 8 above, as alleged in paragraphs 83 through 107 above, as the broker and designated officer of DPI, HAMZEY did not exercise adequate supervision and control over the property management activities conducted on behalf of DPI by its employees and licensees to ensure compliance with the Real Estate Laws and Regulations. HAMZEY failed to establish policies, rules and systems to review, oversee, inspect, and manage transactions requiring a real estate license and the handling of trust funds.

110. HAMZEY's acts and/or omissions, as alleged above in paragraphs 83 through 107 above were in violation of **Code sections 10159.2 and 10177(h), and Regulation 2725.**

ADDITIONAL VIOLATIONS OF THE REAL ESTATE LAW

NEGLIGENCE AND WILLFUL DISREGARD OF THE REAL ESTATE LAW

111. The Complainant realleges and incorporates by reference all of the allegations contained in paragraphs 1 through 110 above, with the same force and effect as though fully set forth herein.

112. The overall conduct of DPI and HAMZEY is violative of the Real Estate Law and constitutes cause for the suspension or revocation of the real estate licenses and license rights of DPI and HAMZEY under the provisions of Code sections 10177(g) for negligence and 10177(d) for willful disregard of the Real Estate Law.

INVESTIGATION AND ENFORCEMENT COSTS

113. Code section 10106 provides that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, 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 the investigation and enforcement of the case.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

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 DISTINCTIVE PROPERTIES, INC., and ROBERT MANSOUR HAMZEY under the Real Estate Law, for the costs of investigation and enforcement, and audit as permitted by law, and for such other and further relief as may be proper under other applicable provisions of law, and for costs of audit.

V. Kilpatrick
Veronica Kilpatrick
Supervising Special Investigator

- 46 - ACCUSATION