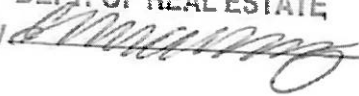


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FILED

AUG 19 2021

DEPT. OF REAL ESTATE
By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation against
12
13 MERCER INVESTMENTS, INC. and
OLEN WOODSON MERCER, as designated
officer for Mercer Investments, Inc.,
14 Respondents.

DRE No. H-05225 SD

ACCUSATION

15
16 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the
17 Department of Real Estate¹ ("Department") of the State of California, makes this Accusation in
18 her official capacity for cause of Accusation against MERCER INVESTMENTS, INC. and
19 OLEN WOODSON MERCER, as designated officer for Mercer Investments, Inc., (collectively
20 "Respondents"), is informed and alleges as follows:

21 1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a
22 Supervising Special Investigator, makes this Accusation against Respondents.

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

1 2. Unless otherwise noted, all references to the "Code" are to the California
2 Business and Professions Code, all references to the "Real Estate Law" are to Part 1 of Division
3 4 of the Code, and all references to "Regulations" are to the Regulations of the Real Estate
4 Commissioner, Title 10, Chapter 6, California Code of Regulations.

5 3. Respondents are presently licensed and/or have license rights under the Real
6 Estate Law (Part 1 of Division 4 of the Code).

7 4. On November 20, 2002, the Department issued a real estate corporation license to
8 Respondent MERCER INVESTMENTS, INC. ("MII"), License ID 01359752.

9 5. On or about November 18, 1983, the Department issued a real estate broker
10 license to Respondent OLEN WOODSON MERCER ("O. MERCER"), License ID 00763754.
11 Respondent O. MERCER's broker license expired on November 17, 2003. Respondent O.
12 MERCER is currently licensed as the Officer for MII.

13 6. From November 20, 2002 through the present, Respondent O. MERCER has
14 been the designated officer for Respondent MII, pursuant to Code section 10211. As the
15 designated officer for MII, Respondent O. MERCER, is responsible for the supervision and
16 control of the activities conducted on behalf of MII by its officers, agents, real estate licensees,
17 and employees, as necessary to secure full compliance with the provisions of the Real Estate
18 Law, pursuant to Code section 10159.2.

19 7. Whenever reference is made in an allegation in this Accusation to an act or
20 omission of Respondent MII, such allegation shall be deemed to mean that the officers,
21 directors, employees, agents and/or real estate licensees employed by or associated with
22 Respondent MII, committed such act or omission while engaged in the furtherance of the
23 business or operations of such corporate respondent and while acting within the course and
24 scope of their authority and employment.

1 8. On June 2, 2017, the Department issued a real estate salesperson license to
2 Barbara Ann Mercer. ("B. Mercer"), License ID 02036190. At all times relevant herein, B.
3 Mercer was licensed under responsible broker, Respondent MII.

4 9. At all times relevant herein, in the State of California, Respondents engaged in
5 activities that require a real estate broker license within the meaning of Code section 10131,
6 subdivision (b). Respondents' activities included soliciting or offering to negotiate the sale,
7 purchase or exchange of leases for real property and the collection of rents or security deposits
8 on real property or on a business opportunity for others, for compensation or in expectation of
9 compensation.

10 Causes of Accusation

11 Audit SD 190053

12 10. On or about February 5, 2021, the Department completed an audit examination of
13 the books and records of Respondent MII's property management activities, which require a real
14 estate license pursuant to Code section 10131, subdivision (b).

15 11. The audit examination covered the period from January 1, 2019 through June 30,
16 2020 ("audit period").

17 12. The audit examination revealed violations of the Code and the Regulations as set
18 forth in the following paragraphs, and more fully discussed in Audit Report SD 190053 and the
19 exhibits and work papers attached to said audit report.

20 13. According to Respondents, O. MERCER and B. Mercer are each 50%
21 shareholders of MII. O. MERCER is the President and B. Mercer is the Vice-President for MII.
22 During the audit period, Respondent MII managed approximately 153 units for 141 properties
23 including 139 one-to-four family residences and two apartment complexes, for approximately 64
24

1 property owners. MII collected rents, paid expenses, and screened tenants for compensation.
2 MII charged a management fee of six to ten percent (6% - 10%) of monthly collected rents.

3 14. According to Respondents, MII maintained one trust account to hold and collect
4 trust funds for multiple beneficiaries in connection with MII's property management activities
5 during the audit period:

6 15. Trust Account 1 (TA 1)

7 Bank: California Bank and Trust

8 Account #: xxxxx5421

9 Account Name: Mercer Investments Inc. DBA Mercer Properties Real Estate
10 Trust Account

11 Violations

12 16. In the course of its property management activities during the audit period,
13 Respondent MII acted in violation of the Code and the Regulations as follows:

14 Code section 10145(a) and Regulation 2832.1. Trust fund handling for multiple beneficiaries.

15 17. A bank reconciliation for TA 1 was prepared with the audit cutoff date of June 30,
16 2020. The adjusted bank balance was compared to the total balance of MII's Owner
17 Statements/Trust Account Balance (separate records) (accountability).

18 18. As of June 30, 2020, TA 1 had a minimum shortage totaling <\$17,883.82>. As of
19 June 30, 2020, the total balance for TA 1 was \$67.05. The cause of the <\$17,883.82> shortage
20 was unidentified.

21 19. Respondents failed to provide any evidence that the owners of the trust funds in
22 TA 1 had given their written consent to allow MII to reduce the balance of the funds in TA 1 to
23 an amount less than the existing aggregate trust fund liabilities, in violation of Code section
24 10145 and Regulation 2832.1.

1 Code section 10145 and Regulation 2831. Trust fund records to be maintained.

2 20. During the audit period, Respondent MII failed to maintain accurate and/or
3 complete records of trust funds received and disbursed (general ledger /control record) for TA 1,
4 in violation of Code section 10145 and Regulation 2381. MII's records reflected a balance of
5 \$729,991.36 as of June 30, 2020.

6 Code section 10145 and Regulation 2831.1. Separate records for each beneficiary or transaction

7 21. During the audit period, Respondent MII failed to maintain accurate and complete
8 separate records for each beneficiary or property related to its property management activities
9 (owner statements / separate records) for TA 1, in violation of Code section 10145(g) and
10 Regulation 2831.1.

11 22. Some of the separate records were corrected by Respondents only after the
12 Department's auditor brought the mistakes to their attention. Examples include the following,
13 without limitation:

<u>Property</u>	<u>Date</u>	<u>Balance</u>	<u>Corrected Balance</u>
4374-4374 Middlesex Dr.	06/30/2020	<\$9,277.83>	\$1,495.00
4612 Georgia St.	06/30/2020	<\$1,000.00>	\$1,495.00

17 Code section 10145 and Regulation 2831.2. Trust account reconciliation

18 23. During the audit period, MII failed to maintain complete and accurate monthly
19 reconciliations comparing the balance of all separate beneficiary or transaction records (separate
20 records) to the balance of all trust funds received and disbursed (control record) for TA 1, in
21 violation of Code section 10145 and Regulation 2831.2.

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1 24. The reconciliation performed by MII for June 30, 2020, showed that there were a
2 minimum of four (4) unreconciled journal entries, the earliest dating back to October 31, 2012,
3 that were still outstanding as of June 30, 2020. As a result, the reconciliation balances noted on
4 the MII reconciliations were not accurate.

5 Code section 10159.2 and Regulation 2725. Responsibility of Corporate Officer in
6 Charge/Broker supervision.

7 25. Respondent O. MERCER failed to adequately supervise the activities of MII's
8 salespersons, employees, or agents and failed to establish policies, rules, procedures, and systems
9 to review, oversee, inspect, and manage transactions requiring a real estate license and the
10 handling of trust funds to ensure compliance with the Real Estate Law, in violation of Code
11 section 10159.2 and Regulation 2725.

12 26. The conduct of Respondent MII as described above in Paragraphs 17 through 24,
13 violated the Code and the Regulations as set forth below:

<u>Paragraph(s)</u>	<u>Violations</u>
17-19	Code section 10145 and Regulation 2832.1
20	Code section 10145 and Regulation 2831
21 & 22	Code section 10145 and Regulation 2831.1
23 & 24	Code section 10145 and Regulation 2831.2

19 27. The foregoing violations, as described above in Paragraphs 17 through 24,
20 constitute cause for the suspension or revocation of the real estate licenses and license rights of
21 Respondent MII under the provisions of Code section 10177, subdivisions (d) and/or (g) for
22 violation of Code section 10145 and Regulations 2832.1, 2831, 2831.1, and 2831.2.

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1 Respondent O. MERCER— Officer - Broker Supervision

2 Code sections 10159.2, 10177(h), and Regulation 2725. Broker supervision.

3 28. The conduct, acts and/or omissions of Respondent O. MERCER constitutes a
4 failure to exercise the supervision and control over the activities of MII to ensure compliance
5 with the Real Estate Law and Regulations, as required by Code section 10159.2 and Regulation
6 2725. Said conduct, acts, or omissions constitute cause to suspend or revoke the real estate
7 licenses and license rights of Respondent O. MERCER pursuant to Code section 10177,
8 subdivisions (h), (d), and/or (g).

9 Audit Costs

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

14 Investigation/Enforcement Costs

15 30. Code section 10106 provides, in pertinent part, that in any order issued in
16 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner
17 may request the administrative law judge to direct a licensee found to have committed a violation
18 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement
19 of the case.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the costs of the audit, investigation, and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law.

Dated at San Diego, California this 12 day of August, 2021.

Veronica Kilpatrick

VERONICA KILPATRICK
Supervising Special Investigator

cc: Mercer Investments, Inc.
Olen Woodson Mercer
Veronica Kilpatrick
Sacto
Audits/Godswill Keraoru