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DEPARTMENT OF REAL ESTATE
By R. Mar

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
LAWRENCE EVAN MASSA,) NO. H-5436 SAC
Respondent.) OAH NO. 2010080963

DECISION

The Proposed Decision dated March 15, 2011, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on

MAY - 4 2011

IT IS SO ORDERED 9/12/2011

JEFF DAVI
Real Estate Commissioner

Real Estate Commissioner

Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. H-5436 SAC

LAWRENCE EVAN MASSA,
d.b.a. L.E. MASSA AND ASSOCIATES,

OAH No. 2010080963

Respondent.

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearing, State of California, on March 7, 2011, in Sacramento, California.

Catalina Serbu, Certified Legal Intern, under the supervision of Richard K. Uno, Counsel, represented complainant, Tricia D. Sommers, a Deputy Real Estate Commissioner with the California Department of Real Estate (department).

Robert J. Binns, Attorney at Law, represented respondent, Lawrence Evan Massa, d.b.a. L.E. Massa and Associates, who was present throughout the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on March 7, 2011.

FACTUAL FINDINGS

1. At all times relevant herein, respondent held real estate broker license number B01174145 with the department. Respondent's license will expire on May 22, 2012, unless renewed.

2. As a real estate broker, respondent, by and through his company, L.E. Massa and Associates, conducts a property management business, in which he, on behalf of others, for compensation, leases real property and collects rents. As part of his property management business, respondent receives and accepts funds in trust from or on behalf of owners, tenants, and others in connection with the leasing, renting, and collection of rents on real property, and makes disbursements of those funds. The trust funds that respondent

receives and accepts are deposited into a Wells Fargo Bank account (WFB account) maintained by respondent. In addition to his property management activities, respondent also engages in sales activities.

3. On July 27, 2010, complainant filed the Accusation in her official capacity. Complainant seeks to discipline respondent's license on the grounds that respondent failed to (1) maintain accurate records of trust funds received and paid out, or separate beneficiary records to determine trust fund accountability and balances; (2) maintain accurate control records; (3) maintain accurate separate beneficiary records; (4) reconcile the record of trust funds received and paid out with the control records with separate beneficiary records on a monthly basis; (5) designate his WFB account as a trust account; and (6) maintain a copy of a broker-salesperson agreement.

4. Respondent timely filed a Notice of Defense to the Accusation, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Audit: February 22, 2010 – March 17, 2010

5. From February 22, 2010 to March 17, 2010, Nada Dagher, an Auditor with the department, conducted an audit of respondent's business. During the audit, Ms. Dagher examined respondent's accounting and other records covering the period from January 1, 2009 to January 31, 2010, and interviewed respondent, to determine whether respondent had handled and accounted for trust funds in accordance with the Real Estate Law and the Commissioner's Regulations.¹ Respondent provided to Ms. Dagher the records for review. During the audit, respondent informed Ms. Dagher that he manages 37 properties for 26 owners, for which respondent charges a flat fee of \$65, and that he had five residential resales during the audit period.

Trust Fund Accountability and Balances

6. During the audit, Ms. Dagher was unable to determine the trust fund accountability and balances for respondent's WFB account. According to Ms. Dagher, respondent did not maintain accurate records of trust funds received and paid out, or separate beneficiary records, in order to enable her to determine the trust fund accountability and balances.

7. At hearing, respondent asserted that he maintained records of trust funds received and paid out, and separate beneficiary records, but that his records were not maintained in a format acceptable to the department.

¹ California Code of Regulations, title 10, chapter 6.

Control Records

8. Ms. Dagher's audit found that respondent did not maintain accurate control records. According to Ms. Dagher, respondent was required to but did not maintain a trust account log for sales activities as of January 31, 2010, or an accurate record of trust funds received and paid out for property management activities.

9. At hearing, respondent asserted that he maintained accurate control records, but that his records were not maintained in a format acceptable to the department.

Separate Beneficiary Records

10. Ms. Dagher's audit found that respondent did not maintain accurate separate beneficiary records for each beneficiary account as of January 31, 2010. According to Ms. Dagher the separate beneficiary records are important to establish the accountability and liability of each homeowner.

11. At hearing, respondent asserted that he maintained a separate beneficiary record for each beneficiary account, but that his records were not maintained in a format acceptable to the department. According to respondent, upon receipt of a tenant's check, he: (1) noted on a Worksheet that he received the tenant's check; (2) entered into a log the date paid, amount of rent, security deposit, pet deposit, contract term, and name of landlord; and (3) entered on a ledger the date, amount and number of the check. Respondent submitted a Deposit Ticket itemizing eight tenant checks and a Wells Fargo Bank Transaction Record confirming deposit of those tenant checks on February 9, 2009. Respondent contends that he cross-references the Deposit Tickets with his Wells Fargo on-line Account Activity printout, which lists transactions, including credits and debits, and ending balances, to determine the name of the tenant, and cross-references that information with his Wells Fargo on-line Direct Pay list to ascertain the name of the property owner to whom payment should be made. Respondent then handwrites the amount to be paid to the property owner, minus his management fees, on his on-line Direct Pay list, and obtains Payment Confirmations through his Wells Fargo on-line banking service to verify payment to the property owners. Respondent continues to maintain these records in these formats.

Trust Fund Reconciliation

12. Ms. Dagher's audit found that respondent did not reconcile the record of trust funds received and paid out with the separate beneficiary records on a monthly basis. According to Ms. Dagher, respondent is required to maintain monthly reconciliations, and the ending balance of the records for all trust funds received and paid out should match the ending balance for the separate records; however, respondent failed to maintain such records. At hearing, Ms. Dagher asserted that that it is her responsibility to audit only those documents provided to her by the licensee.

13. At hearing, respondent asserted that he reconciles his accounts on a monthly basis. He submitted a Wells Fargo on-line Payment History for the period November 3, 2008 through March 3, 2010, itemizing the dates, names of payees, amount of payments, and status of payments made from respondent's business checking and broker trust accounts. Respondent contends that he is aware, at all times, how much money is in the accounts, and how much money belongs to the property owners.

Trust Account Designation

14. Respondent's WFB account was established on December 15, 2000 to deposit rental payments and security deposits from his property management activities, and to disburse management fees, maintenance costs, and proceeds to property owners. This account was designated as L E Massa and Associates, and respondent was listed as the sole signatory on the account. Ms. Dagher's audit found that respondent did not designate the account as a "trust account." According to Ms. Dagher, a "trust account" designation indicates to the public that respondent is the trustee of the account, the funds deposited do not belong to respondent, and liens cannot be placed on the account to satisfy respondent's own financial obligations.

15. At hearing, respondent asserted that when he established the account, he explained his needs to the bank representative, and it was explained to him that the account was a "trust account." Respondent submitted a letter from Wells Fargo Bank Business Banking Specialist, Julio E. Valenzuela, indicating that respondent opened a business account on December 15, 2000, and that "the account is titled and used as a Real Estate Trust Account (RETA)." However, evidence submitted at hearing establishes that respondent's application indicated the account was opened on December 15, 2000 as a "Basic Bus Ckg." Thereafter, on October 31, 2007, respondent submitted a Customer/Account Information Change Request requesting to add a "DBA or Alias" to his account. The new account was designated "L.E. Massa and Associates RETA, Lawrence E. Massa." On March 19, 2010, respondent submitted a second Change Request to the bank requesting that the account be designated as a "trust account." Respondent provided a copy of this Change Request to Ms. Dagher on March 19, 2010.

Broker-Salesperson Agreement

16. Ms. Dagher's audit found that respondent did not maintain a copy of the broker-salesperson agreement between himself and his sole employee, Renzo Morante. According to Ms. Dagher, respondent was required to obtain the agreement at the time he hired his salesperson; however, respondent created and provided her with a copy of the agreement during the audit.

17. At hearing, respondent submitted an original Independent Contractor Agreement between L.E. Massa and Associates and Renzo Morante. The agreement was dated February 16, 2010. Respondent contends that he had an agreement with Mr. Morante prior to this date, however, the prior agreement was not as complete as the one dated February 16, 2010.

Exit Conference – March 17, 2010

18. On March 17, 2010, Ms. Dagher discussed her findings with respondent during an exit conference.

Factors in Mitigation, Aggravation and Rehabilitation

19. At hearing, respondent asserted that during the audit he provided the auditor with a twelve-column spreadsheet to review. He contends that while the documents he submitted at hearing represent only a snapshot of a particular time period, they are representative of his record keeping practices. According to respondent, he sent his actual records to a bookkeeper in Klamath Falls, Oregon, approximately “60 days ago.” The bookkeeper is “helping [him] put them on Excel.” All of the documents submitted by respondent at hearing were for dates outside the audit period, and did not establish that respondent maintained adequate records prior to or during the audit. Respondent admitted that as of January 2011, he has maintained his records “on DRE forms.” No evidence was presented to establish that respondent misappropriated or commingled funds from his clients. However, the records were insufficient to ascertain if funds had been misappropriated or commingled. No complaints have been filed against respondent, and no injuries have been reported by tenants or owners.

LEGAL CONCLUSIONS

Applicable Case Law and Statutes

1. The burden of proof in this matter is on complainant to show by clear and convincing evidence to a reasonable certainty that respondent’s license should be disciplined. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-56.)

2. Business and Professions Code section 10145, subdivision (a)(1), requires a broker to hold real estate transaction funds belonging to others in trust.²

² Business and Professions Code section 10145, subdivision (a)(1), provides, in pertinent part, as follows:

3. Business and Professions Code section 10177, subdivision (d), authorizes the suspension or revocation of the license of a real estate licensee for "willfully" disregarding or violating the Real Estate Laws or the Commissioner's Regulations.³ The term "willfully," as used in this subdivision, means "done deliberately: not accidental or without purpose." (*Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639. See also *Manning v. Fox* (1984) 151 Cal.App.3d 531, 542 ["Section 10177, subdivision (d), is designed 'to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman.'"].)

Cause for Discipline

4. California Code of Regulations, title 10, section 2831, describes the trust fund records that a broker must maintain, in pertinent part, as follows:

- (a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under

A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

³ Business and Professions Code section 10177, provides, in pertinent part, as follows:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[¶]...[¶]

- (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

- (1) Date trust funds received.
- (2) From whom trust funds received.
- (3) Amount received.
- (4) With respect to funds deposited in an account, date of said deposit.
- (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
- (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
- (7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

As set forth in Factual Findings 6 through 9, 12 and 13, respondent failed to maintain a record of trust funds received and paid out that included all the information required by section 2831. Therefore, cause exists to discipline respondent's license pursuant to Business and Professions Code sections 10145 and 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2831.

5. California Code of Regulations, title 10, section 2831.1, provides that:

(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

- (1) Date of deposit.
- (2) Amount of deposit.
- (3) Date of each related disbursement.
- (4) Check number of each related disbursement.
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account.
- (7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

As set forth in Factual Findings 10 through 13, respondent failed to maintain separate beneficiary records that included all the information required by section 2831.1. Therefore, cause exists to discipline respondent's license pursuant to Business and Professions Code sections 10145 and 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2831.1.

6. California Code of Regulations, title 10, section 2831.2, provides, in pertinent part, that the balance of all separate beneficiary or transaction records must be reconciled with the record of all trust funds received and disbursed, at least once a month. In addition, a record of the reconciliation must be maintained, and must identify the bank account name and number, the date of the reconciliation; the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

As set forth in Factual Findings 12 and 13, respondent failed to reconcile the record of trust funds on a monthly basis. Therefore, cause exists to discipline respondent's license pursuant to Business and Professions Code section 10145 and 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2831.2.

7. California Code of Regulations, title 10, section 2832, subdivision (a), provides that:

Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

As set forth in Factual Findings 14 and 15, respondent failed to designate his account as a "trust fund." Therefore, cause exists to discipline respondent's license pursuant to Business and Professions Code section 10145 and 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2832.

8. California Code of Regulations, title 10, section 2726, provides that:

Every real estate broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties, including supervision of licensed activities, duties and compensation.

As set forth in Factual Findings 16 and 17, respondent maintained a broker-salesperson agreement between himself and his sole employee, Renzo Morante. However, this agreement was created during the audit and signed subsequent to the audit period. Therefore, cause exists to discipline respondent's license pursuant to Business and Professions Code section 10145 and 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2726.

Fitness for Continued Licensure

9. The determination whether a person is fit for continued licensure should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, aggravation or mitigation. "The licensee, of course, should be permitted to introduce evidence of extenuative circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (Arneson v. Fox (1980) 28 Cal. 3d 440, 449; Brandt v. Fox (1979) 90 Cal.App.3d 737, 747). Respondent cobbled together his on-line banking records to substantiate his contention that he maintained adequate trust funds records on behalf of property owners. He did not establish, however, that his record keeping met generally accepted accounting principles, or that he could readily trace or reconcile his records at the request of a property owner or the department's auditor. In addition, he continued his record keeping methods even after the audit was complete. At hearing, respondent admitted that he began to comply with the real estate laws for record keeping in January 2011. "When a licensee makes repeated and constant flagrant violations of the statutes and rules designed to protect the public in real estate transactions, the privilege to act as a real estate broker must be revoked." (Apollo Estates, *supra*, 174 Cal.App. 3d 625, 642.) Respondent did not accept any responsibility or show any remorse for his wrongdoing. However, no complaints have been filed against respondent, and no injuries have been reported by tenants or property owners. When all the facts are considered and weighed, it would not be contrary to the public interest to allow respondent to obtain a restricted real estate broker license, subject to terms and conditions designed to protect the public and monitor his activities.

ORDER

All licenses and license rights of respondent Lawrence Evan Massa, d.b.a. L.E. Massa and Associates, under the Real Estate Law are REVOKED; provided, however, the revocation is stayed, and a restricted real estate broker license is issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application thereof and pays to the department the appropriate fees for the restricted license within 90 days from the effective date of this Decision. The restricted real estate broker license issued to respondent pursuant to this Decision shall be suspended for sixty (60) days from the date of issuance of said restricted license.

1. Suspension

All licenses and licensing rights of respondent Lawrence Evan Massa, d.b.a. L.E. Massa and Associates, under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Decision; provided, however, that if respondent petitions said suspension (or a portion thereof) shall be stayed upon condition that:

- a. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$100 for each day of the suspension.
- b. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.
- c. No further cause for disciplinary action against the real estate license of respondent occurs within one year from the effective date of the Decision in this matter.
- d. If respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.
- e. If respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

2. Restriction

Upon completion of the suspension period, respondent's real estate broker license shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

- a. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
- b. The restricted license issued to respondent may be suspended prior to hearing by Order of the real estate commissioner on evidence satisfactory to the commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the real estate commissioner or conditions attaching to the restricted licenses.
- c. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the renewal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

d. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the real estate commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate broker's license. If respondent fails to satisfy this condition, the commissioner may order the suspension of the restricted license until respondent presents such evidence. The commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

e. Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

f. Respondent shall report in writing to the department as the real estate commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the commissioner shall deem appropriate to protect the public interest. Such report may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transactions in which respondent engaged during the period covered by the report.

g. Pursuant to Section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable cost for: (a) the audit which led to this disciplinary action, and, (b) a subsequent audit to determine if respondent has corrected the trust fund violations in Factual Findings 6 through 17. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such cost within sixty (60) days of receiving an invoice from the Commissioner detailing the activities performed during audit and the amount of time spent performing those activities. The Commissioner may, in her discretion, vacate and set aside the stay order, if payment is not timely made as provided herein, or as provided for in a

subsequent agreement between respondent and the Commissioner. The vacation and set aside of the stay shall remain in effect until payment is made in full, or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be issued, either in accordance with this condition, the stay imposed herein shall become permanent.

DATED: March 15, 2011


REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE

By R. Mar

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
LAWRENCE EVAN MASSA,) NO. H-5436 SAC
Respondent.) ACCUSATION

)

The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner of the State of California, for Accusation against Respondent LAWRENCE EVAN MASSA (MASSA), is informed and alleges as follows:

1

The Complainant makes this Accusation against Respondent in her official capacity.

2

MASSA is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (the Code) as a real estate broker dba L. E. Massa and Associates.

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At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California, within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business wherein Respondent leased, rented, or offered to lease or rent, solicited listings for lease or rent, collected rents from tenants or lessees, or performed other services for real property owners and tenants or lessees, and also within the meaning of Section 10131(a) of the Code, including the operation and conduct of a residential resale brokerage wherein Respondent bought, sold, or offered to buy or sell, solicited or obtained listings of, and negotiated the purchase, sale or exchange of real property or business opportunities, all for or in expectation of compensation.

Beginning on February 22, 2010, and continuing intermittently through March 17, 2010, an audit was conducted at MASSA's main office located at 3207 Saint Matthew Drive in Sacramento, California, where the auditor examined records for the period of January 1, 2009 through January 31, 2010 (the audit period).

While acting as a real estate broker as described in Paragraph 3, above, and within the audit period, MASSA accepted or received funds in trust (trust funds) from or on behalf of owners, lessees and others in connection with the property management activities, deposited or caused to be deposited those funds into a bank account maintained by MASSA, including Wells Fargo Bank, P. O. Box 6995, Portland, Oregon, Account No. 39933643, designated "L. E. Massa and Associates", (Bank Account #1), and thereafter from time to time made disbursement of said trust funds.

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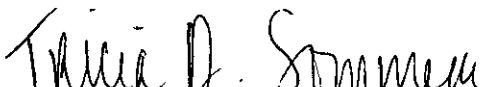
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In the course of the activities described in Paragraph 3, in connection with the collection and disbursement of trust funds, MASSA:

- (a) Failed to designate Bank Account #1 as a trust account as required by Section 2832 of Chapter 6, Title 10, California Code of Regulations (Regulations);
- (b) Failed to maintain control records for Bank Account #1 as required by Section 2831 of the Regulations;
- (c) Failed to maintain separate records for Bank Account #1 as required by Section 2831.1 of the Regulations;
- (d) Failed to reconcile the control records with the separate beneficiary records for Bank Account #1 at least once each month, as required under Section 2831.2 of the Regulations;
- (e) Trust Fund Accountability could not be performed because MASSA failed to maintain accurate control records and failed to maintain accurate separate beneficiary records, in violation of Section 10145 of the Code and;
- (f) Failed to maintain a copy of the broker-salesperson agreement as required by Section 2726 of the Regulations.

The acts and/or omissions of MASSA as alleged above violate Sections 2726 (Broker/Salesperson Agreement), 2831 (Control Records), 2831.1 (Separate Beneficiary Records), 2831.2 (Monthly Reconciliations), and 2832 (Designation of Trust Account) of the Regulations and of Section 10145 (Trust Fund Handling), of the Code and are grounds for discipline under Section 10177(d) (Willful Disregard/Violation of Real Estate Law) and 10177(g) (Negligence) of Code.

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

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11 TRICIA D. SOMMERS
12 Deputy Real Estate Commissioner
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10 Dated at Sacramento, California,
11 this 23rd day of July, 2010.