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DEPARTMENT OF REAL ESTATE
By R. Mas

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
CARL WHITE FAIR,
Respondent.

No. H-5817 SAC
ACCUSATION

The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy
Real Estate Commissioner of the State of California, for cause of Accusation against CARL
WHITE FAIR, is informed and alleges as follows:

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Respondent CARL WHITE FAIR, (hereinafter "Respondent"), is presently
licensed by the Department of Real Estate (hereinafter "the Department") and/or has license
rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code
(hereafter "the Code"), as a real estate broker.

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At all times herein mentioned, Respondent conducted business under his own licensed name and the following fictitious business names registered with the Department: "Century 21 At Tahoe Paradise", "Century 21 Yank's Realty" and "Buckingham Properties Lake Tahoe."

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Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent, such allegation shall be deemed to mean that the employees, agents, real estate licensees, and others employed by or associated with Respondent committed such act or omission while engaged in furtherance of the business or operations of Respondent and while acting within the course and scope of their authority and employment.

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At all times mentioned herein, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(b) of the Code, including the leasing or renting or offer to lease or rent, or placing for rent, or solicitation of listings of places for rent, or solicitation of prospective tenants, or negotiation of the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collection of rents from real property, or improvements thereon, or from business opportunities.

FIRST CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 4, inclusive, above, is incorporated by this reference as if fully set forth herein.

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Beginning on or about September 14, 2011, and continuing intermittently until October 28, 2011, an audit was conducted at Respondent's main office location on Highway 50 in Lake Tahoe, California, wherein the Auditor examined Respondent's records for the period of January 1, 2009 through August 31, 2011 (hereinafter "the audit period").

While acting as a real estate broker as described in Paragraph 4, above, and within the audit period, Respondent accepted or received funds in trust (hereinafter "trust funds") from or on behalf of owners, tenants and others in connection with the rental or lease of residential property, for or in expectation of compensation, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

The trust funds accepted or received by Respondent as described in Paragraph 7, above, were deposited or caused to be deposited by Respondent into bank accounts which were maintained by Respondent for the handling of trust funds, and thereafter from time-to-time Respondent made disbursements of said trust funds, identified as follows:

TRUST ACCOUNT # 1	
Bank Name and Location:	U.S. Bank, 2850 South Lake Tahoe Blvd., South Lake Tahoe, CA 96150
Account No.:	Last 4 Digits: 3603
Entitled:	"Carl W Fair DBA Century 21 At Tahoe Paradise Property Management Trust"
Signatories:	Carl White Fair (REB/D.O.) Bonnie Gaines Fair (REB)
Withdrawal Requirements:	One signature.

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BANK ACCOUNT # 2	
Bank Name and Location:	U.S. Bank, 2850 South Lake Tahoe Blvd., South Lake Tahoe, CA 96150
Account No.:	Last 4 Digits: 3611
Entitled:	“Carl W Fair DBA Century 21 At Tahoe Paradise Property Management”
Signatories:	Carl White Fair (REB/D.O.) Bonnie Gaines Fair (REB)
Withdrawal Requirements:	One signature.

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In the course of the activities described in Paragraph 4, above, and within the audit period, Respondent:

(a) failed to properly designate Bank Account #2 as a trust account in the name of Respondent or its fictitious business name, as trustee, in violation of Section 10145 of the Code and Section 2832 of Title 10 of the California Code of Regulations (hereafter “the Regulations”);

(b) caused, suffered, or permitted the balance of funds in Bank Account #2 to be reduced to an amount which, as of August 31, 2011, was approximately \$5,788.06 less than the aggregate liability of Bank Account #2 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

(c) failed to maintain accurate separate records for each beneficiary or property of trust funds accepted or received for Trust Account #1 and Bank Account #2, in violation of Section 10145(g) of the Code and Section 2831.1 of the Regulations;

(d) failed to reconcile the total of separate beneficiary records with a control record on a monthly basis for Trust Account #1 and Bank Account #2, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;

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1 (e) caused, suffered or permitted money of others which was received and
2 held by Respondent in Bank Account #2 to be commingled with Respondent's own money
3 totaling approximately \$4,142.63 as of August 31, 2011, in violation of Sections 10145 and
4 10176(e) of the Code, and Section 2835 of the Regulations; and

5 (f) failed to record the collection and disbursement of earnest money
6 deposits collected from buyers Lloyd and Sharon C. for property located on Patricia Lane, and
7 Ernie and Connie E. for property located on Sundown Trail, in the Record of Trust Funds
8 Received-Not Placed in Broker's Trust Account, in violation of Section 2831(a)(6) of the
9 Regulations.

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11 The acts and/or omissions of Respondent as alleged in Paragraph 9, above,
12 constitute grounds for the suspension or revocation of all licenses and license rights of
13 Respondent pursuant to the following provisions of the Code and Regulations:

14 As to Paragraph 9(a), under Section 10177(d) and/or 10177(g) of the Code in
15 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

16 As to Paragraph 9(b), under Section 10177(d) and/or 10177(g) of the Code in
17 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

18 As to Paragraph 9(c), under Section 10177(d) and/or 10177(g) of the Code in
19 conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

20 As to Paragraph 9(d), under Section 10177(d) and/or 10177(g) of the Code in
21 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

22 As to Paragraph 9(e), under Section 10177(d) and/or 10177(g) of the Code in
23 conjunction with Sections 10145 and 10176(e) of the Code and Section 2835 of the
24 Regulations; and,

25 As to Paragraph 9(f), under Section 10177(d) and/or 10177(g) of the Code in
26 conjunction with Section 2831(a)(6) of the Regulations.

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The acts and/or omissions of Respondent as alleged in Paragraph 9, above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148 of the Code, in conjunction with Section 10145 of the Code.

SECOND CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 11, inclusive, above, is incorporated by this reference as if fully set forth herein.

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In connection with Respondent's activities described in Paragraph 4 above, and his handling of trust funds described in Paragraphs 7 and 8, above, Respondent owed duties to the owners of the trust funds, which include, but are not limited to:

- (a) Maintaining trust funds in a bank account designated as a trust account under Section 2832 of the Regulations;
- (b) Preventing said trust funds from being taken through tax liens or judgment creditors; and,
- (c) Maintaining proper records as set forth by Sections 2831, et seq. of the Regulations and Section 10145 of the Code.

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Respondent acted as the property manager for certain real property known as 2372 Tahoe Vista Drive, South Lake Tahoe, California (hereinafter "Tahoe Vista Property") which was owned by Michael S.

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During the time that Respondent was responsible for the management of the Tahoe Vista Property, the tenant moved out and a squatter moved in. Michael S. incurred costs and his property suffered damages as a result of the squatter living in his property and having to retain counsel to evict the squatter.

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2 On or about January 25, 2011, Michael S. served Respondent with a demand
3 letter for compensation in the amount of \$9,200.00 for damages arising out the Respondent's
4 failure to prevent the squatter from moving in and resulting damages. In response to Michael
5 S.'s demand letter, Respondent failed to pay Michael S. for damages arising out of his acts
6 and/or omissions as property manager for the Tahoe Vista Property.

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8 Michael S. filed and served a complaint in Small Claims Court, El Dorado
9 County, Case No. SSC 2010027, against Respondent for the damages mentioned in Paragraphs
10 15 and 16, above.

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12 Despite being served with the complaint mentioned above, Respondent failed to
13 pay the amount sought by Michael S. in his Small Claims Action. Trial was held on April 14,
14 2011, resulting in a judgment in favor of Michael S. in the amount of \$6,571.55.

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16 As a routine matter, the Clerk of the El Dorado County Superior Court mails
17 Small Claims Court Judgments to both parties. Despite receiving a copy of the judgment,
18 Respondents failed to pay Michael S.

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20 On or about July 18, 2011, Michael S., through the El Dorado County Sheriff,
21 levied Respondent's Bank Account #2, identified in Paragraph 8, above, which contained trust
22 funds, but was not properly designated as a trust account. Despite notice of the bank levy
23 against his clients' trust funds and a ten (10) day period to prevent the levy, Respondent failed
24 to pay Michael S. to avoid the removal of said funds from Bank Account #2.

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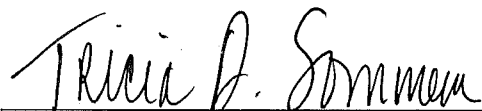
26 Respondent filed a claim of exemption against the bank levy, which was denied
27 and funds in the amount of \$6,571.55 were released to Michael S. as judgment creditor.

The acts and/or omissions of Respondent as alleged in Paragraphs 13 through 21, above, constitute grounds for the suspension or revocation of all licenses and license rights of Respondent pursuant Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10145 of the Code, and Section 2832 of the Regulations.

COST RECOVERY

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the department, 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.

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



TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 17th day of May, 2012.