

FILED

June 11, 2012

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DEPARTMENT OF REAL ESTATE

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 MARILYN FRANCINE BAILEY-BYRD,)
14 Respondent.)

No. H-5827 SAC
ACCUSATION

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16 The Complainant, TRICIA SOMMERS, a Deputy Real Estate Commissioner of
17 the State of California, for cause of Accusation against MARILYN FRANCINE BAILEY-
18 BYRD, (Respondent), is informed and alleges as follows:

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20 The Complainant makes this Accusation in her official capacity.

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22 Respondent is presently licensed and/or has license rights under the Real Estate
23 Law, Part 1 of Division 4 of the Business and Professions Code ("Code").

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25 At all times mentioned, Respondent was and is licensed by the Department
26 individually as a real estate broker.

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At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of Section 10131(b) of the Code in the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

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While acting as a corporate real estate broker as described in Paragraph 4, Respondent accepted or received funds in trust ("trust funds") from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time to time made disbursements of said trust funds.

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The trust funds accepted or received by Respondent as described in Paragraph 5, were deposited or caused to be deposited by Respondent into trust 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:

ACCOUNT # 1	
Bank Name and Location:	Wells Fargo Bank, P.O. Box 6995, Portland, OR 97228
Account No.:	xxxxxxx3430
Account Name:	Prime Real Estate Network Inc.

ACCOUNT # 2	
Bank Name and Location:	Citibank, N.A., P.O. Box 26892, San Francisco, CA 94126
Account No.:	xxxxxx7378
Account Name:	Prime Real Estate Network

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In the course of the activities described in Paragraph 4, Respondent:

(a) caused, suffered, or permitted the balance of funds in Account #1 to be reduced to an amount which, as of May 31, 2011, was approximately \$1,164.26 less than the aggregate liability of Account #1 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 Title 10 of the California Code of Regulations (“Regulations”);

(b) caused, suffered, or permitted the balance of funds in Account #2 to be reduced to an amount which, as of May 31, 2011, was approximately \$160.37 less than the aggregate liability of 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 a written control record of all trust funds received and not placed in broker’s trust account containing all information required by Section 2831 of the Regulations;

(d) failed to keep accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into the Trust Account #1, containing all of the information required by Section 2831.1 of the Regulations;

(e) failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for each account as required by Section 2831.2 of the Regulations; and,

1 (f) failed to deposit trust funds into one or more trust funds accounts in the
2 name of Respondent as trustee at a bank or other financial institution, in conformance with
3 Section 10145 of the Code and Section 2832 of Title 10 of the Regulations.

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5 The facts alleged in the above are grounds for the suspension or revocation of
6 Respondent's licenses and license rights under the following sections of the Code and
7 Regulations:

8 (1) As to Paragraphs 7(a) and 7(b) under Section 10177(d) of the Code in
9 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

10 (2) As to Paragraph 7(c), under Section 10177(d) of the Code in conjunction
11 with Section 2831 of the Regulations;

12 (3) As to Paragraph 7(d), under Section 10177(d) of the Code in conjunction
13 with Section 2831.1 of the Regulations;

14 (4) As to Paragraph 7(e), under Section 10177(d) of the Code in conjunction
15 with Section 2831.2 of the Regulations; and

16 (5) As to Paragraph 7(f), under Section 10177(d) of the Code in conjunction
17 with Section 2832 of the Regulations and Section 10145 of the Code.

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19 The acts and/or omissions of Respondent as alleged above, entitle the Department
20 to reimbursement of the costs of its audit pursuant to Section 10148 (Reimbursement for Cost of
21 Audit for Trust Fund Handling Violation) of the Code.

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

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondent under the Code, for the cost of
4 investigation and enforcement as permitted by law, and for such other and further relief as may
5 be proper under the provisions of law.

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8 TRICIA SOMMERS
9 Deputy Real Estate Commissioner

9 Dated at Sacramento, California,
10 this 31st day of May, 2012

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12 DISCOVERY DEMAND

13 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Department of
14 Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the
15 *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate
16 may result in the exclusion of witnesses and documents at the hearing or other sanctions that the
17 Office of Administrative Hearings deems appropriate.