

FILED

October 3, 2012

1 ANNETTE E. FERRANTE, ESQ. (SBN 258842)
2 Real Estate Counsel
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

By 

6 Telephone: (916) 227-0789
7 -or- (916) 227-0788 (Direct)

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Applications of)
12) No. H-5857 SAC
13 ACCLAIM PROPERTIES & INVESTMENTS, INC.)
14 and RUTHERFORD BERNARD BROWNING III,) FIRST AMENDED
15 Respondents.) STATEMENT OF ISSUES

16 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy
17 Real Estate Commissioner of the State of California, makes this Statement of Issues against
18 ACCLAIM PROPERTIES & INVESTMENTS, INC., (hereinafter "ACCLAIM") and
19 RUTHERFORD BERNARD BROWNING III (hereinafter "BROWNING"), is informed and
20 alleges as follows:

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22 BROWNING is presently licensed and/or has license rights under the Real Estate
23 Law (Part 1 of Division 4 of the California¹ Business and Professions Code) (hereinafter "Code")
24 as a real estate salesperson.

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27 ¹ All references are to California Codes and Regulations, unless otherwise stated.

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At all times relevant herein, BROWNING was and is the President of ACCLAIM, a California corporation.

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On or about January 25, 2012, BROWNING made application to the Department for a real estate broker license.

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On or about February 8, 2012, BROWNING, on behalf of ACCLAIM, made application for a corporate real estate license for ACCLAIM with BROWNING as the designated officer/broker.

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In response to Part D, Question 2 of BROWNING's real estate broker license application described in paragraph 3, above, to wit: "Are there criminal charges pending against you at this time?", BROWNING concealed and failed to disclose the pending criminal charges against BROWNING filed on April 6, 2011, before the San Joaquin County Superior Court, case number TF036194A, which led to the convictions identified in paragraph 7, below.

6

In response to Section II, Question 18 of ACCLAIM's corporate real estate broker license application described in paragraph 4, above, to wit: "Are there criminal charges pending against you at this time?", BROWNING concealed and failed to disclose the pending criminal charges against BROWNING filed on April 6, 2011, before the San Joaquin County Superior Court, case number TF036194A, which led to the convictions identified in paragraph 7, below.

7

On or about April 3, 2012, in the San Joaquin County Superior Court, State of California, case number TF036194A, BROWNING was convicted upon a plea of guilty to violating Section 368(b)(1) of the Penal Code (Elder or Dependent Adult Abuse), a

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1 misdemeanor, and was convicted upon a plea of nolo contendere to violating Section 597(b) of
2 the Penal Code (Cruelty to Animals), a felony, both crimes which independently and jointly
3 bear a substantial relationship under Section 2910, Title 10, California Code of Regulations,
4 to the qualifications, functions, or duties of a real estate licensee.

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6 BROWNING's failure to reveal in BROWNING's application for a real estate
7 broker license the convictions set forth in paragraph 7, above, constitutes the procurement of or
8 attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a
9 material misstatement of fact in an application, which failure is cause for the denial of
10 BROWNING's application for a real estate broker license pursuant to the provisions of Sections
11 480(c) (Knowingly Made False Statement of Fact Required to Be Revealed in License
12 Application) and 10177(a) (Attempt to Procure License by Fraud/Misrepresentation/Deceit, or
13 Making of False Statement Required to Be Revealed in License Application) of the Code.

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15 BROWNING's failure to reveal in ACCLAIM's application for a corporate real
16 estate broker license the convictions set forth in paragraph 7, above, constitutes the procurement
17 of or attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making
18 a material misstatement of fact in an application, which failure is cause for the denial of
19 ACCLAIM's application for a corporate real estate broker license pursuant to the provisions of
20 Sections 480(c) and 10177(a) of the Code.

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22 The facts alleged in paragraph 7, above, constitute cause for the denial of
23 BROWNING's application for a real estate broker license under Sections 480(a) (Conviction of
24 Crime, Relationship of Crime to Licensed Activity) and 10177(b) (Conviction of Crime
25 Substantially Related to Qualifications, Functions or Duties of Real Estate Licensee) of the
26 Code.

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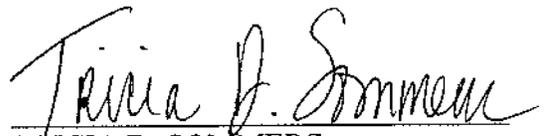
The facts alleged in paragraph 7, above, constitute cause for the denial of ACCLAIM's application for a corporate real estate broker license under Sections 480(a) and 10177(b) of the Code.

Matter in Aggravation

In response to Section II, Question 1A of ACCLAIM's corporate real estate broker license application described in paragraph 4, above, to wit: "Do you currently hold or have you previously held a real state license in California?", BROWNING responded "Yes". In response to Section II, Question 1C, of said corporate license application, to wit: "Type of License", BROWNING responded "Broker". However, at no time has Respondent ever been issued a real estate broker license by the Department.

BROWNING is currently the Respondent in an Accusation brought by the Department of Real Estate, Case Number H-5856 SAC. This Statement of Issues and the Accusation have common questions of fact and law. Therefore, pursuant to Government Code Section 11507.3, the Department intends to seek consolidation of these actions prior to hearing.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a corporate real estate broker license to Respondent ACCLAIM, and a real estate broker license to Respondent BROWNING, 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 2nd day of October, 2012.

DISCOVERY DEMAND:

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

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FILED

August 2, 2012

1 KENNETH C. ESPELL (SBN 178757)
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5 Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

By 

6 Telephone: (916) 227-0789
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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)	No. H-5857 SAC
12 ACCLAIM PROPERTIES & INVESTMENTS, INC.)	<u>STATEMENT OF ISSUES</u>
13 and RUTHERFORD BERNARD BROWNING III)	
14 Respondents.)	

15
16 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy
17 Real Estate Commissioner of the State of California, makes this Statement of Issues against
18 ACCLAIM PROPERTIES & INVESTMENTS, INC., (hereinafter "ACCLAIM") and
19 RUTHERFORD BERNARD BROWNING III (hereinafter "BROWNING") and is informed
20 and alleges as follows:

21 1

22 On or about February 8, 2012, BROWNING, on behalf of ACCLAIM, made
23 application for a corporate real estate license for ACCLAIM with BROWNING as the
24 Designated Officer/Broker.

25 2

26 BROWNING is presently licensed and/or has license rights under the Real Estate
27 Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "Code") as a real

1 estate salesperson. At all times relevant herein, BROWNING was and is the President of
2 ACCLAIM. Despite BROWNING's allegation in Section II *Broker-Officer Information* to the
3 contrary, at no time has BROWNING held a real estate broker license issued by the Department
4 of Real Estate.

5 3

6 BROWNING is currently the Respondent in an Accusation brought by the
7 Department of Real Estate, Case Number H-5856 SAC. This Statement of Issues and the
8 Accusation have common questions of fact and law. Therefore, pursuant to Government Code
9 Section 11507.3, the Department intends to seek consolidation of these actions prior to hearing.

10 4

11 In response to Question 18 of the corporate license application described in
12 Paragraph 1, above, to wit: "Are there criminal charges pending against you?", BROWNING
13 responded "NO", failing to disclose the then pending charges against BROWNING in San
14 Joaquin County Superior Court, State of California, case number TF036194 which in April 2012
15 resulted in the convictions set forth in Paragraph 5, herein.

16 5

17 On or about April 3, 2012, in the San Joaquin County Superior Court, State of
18 California, case number TF036194A, BROWNING was convicted of violating Section 368
19 (b)(1) of the Penal Code (Elder or Dependent Adult Abuse), a misdemeanor, and Section 597
20 (b) of the Penal Code (Cruelty to Animals), a felony, each of which jointly and severally bear a
21 substantial relationship under Section 2910, Title 10, California Code of Regulations, to the
22 qualifications, functions, or duties of a real estate licensee.

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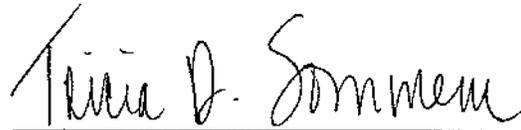
24 BROWNING's failure to reveal in the application the convictions set forth in
25 Paragraph 5, above, was knowingly and intentionally withheld from the Department of Real
26 Estate, which constitutes the attempted procurement of a real estate license by fraud,
27 misrepresentation, deceit, or by making a material misstatement of fact in the application and

1 therefore is grounds for denial of ACCLAIM's application for a corporate real estate brokers
2 license and a Designated Officer/Broker license for BROWNING under Sections 480(a) and
3 10177(a) of the California Business and Professions Code.

4 7

5 BROWNING's convictions, as alleged in Paragraph 5, above, constitutes
6 grounds for denial of ACCLAIM's application for a corporate real estate brokers license and a
7 Designated Officer/Broker license for BROWNING under Sections 480(a) and 10177(a) of the
8 California Business and Professions Code.

9 WHEREFORE, the Complainant prays that the above-entitled matter be set for
10 hearing and, upon proof of the charges contained herein, that the Commissioner refuse to
11 authorize the issuance of, and deny the issuance of, a real estate corporate broker and designated
12 Broker/Officer license to Respondents and for such other and further relief as may be proper
13 under other provisions of law.

14 

15 TRICIA D. SOMMERS
16 Deputy Real Estate Commissioner

17
18 Dated at Sacramento, California,

19 this 30th day of July, 2012.

20
21 **DISCOVERY DEMAND:**

22 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedures Act*, the Department
23 of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in
24 the *Administrative Procedures Act*. Failure to provide Discovery to the Department of Real
25 Estate may result in the exclusion of witnesses and documents at the hearing or other
26 sanctions that the Office of Administrative Hearings deems appropriate.