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FILED
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DEPARTMENT OF REAL ESTATE
By L. West

8
9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

11 In the Matter of the Accusation of) H-5907 SAC
12)
13 VIRGIL DEAN MCKENZIE,) ACCUSATION
14 Respondent.)
15)

16 The Complainant, TRICIA D. SOMMERS, acting in her official capacity as a
17 Deputy Real Estate Commissioner of the State of California, for cause of Accusation VIRGIL
18 DEAN MCKENZIE ("Respondent"), is informed and alleges as follows:

19 1.

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

23 PRIOR LICENSE DISCIPLINE

24 2.

25 On or about April 2, 1992, the Registrar of Contractors issued license number
26 641468, classification B (general building contractor) and classification C17 (glazing) to Golden
27 West Windows, Inc., doing business as Golden West Windows and Remodeling ("Golden

1 West"). From January 22, 2001 through November 20, 2006, Respondent served as the
2 Responsible Managing Officer, Chief Executive Officer and President of Golden West
3 Windows, Inc.

4 3.

5 On or about May 9, 2006, homeowner Gilbert B. hired Golden West to build a
6 room addition and remodel a bathroom in his home for the total contract price of \$48,600. After
7 Gilbert B. paid Golden West a deposit of \$1,000, Golden West began working on Gilbert B.'s
8 home on July 24, 2006. From July 25, 2006 to October 31, 2006, Gilbert B. paid Golden West
9 an additional \$44,131 of the contract price. On or about November 17, 2006, despite a
10 significant amount of work remaining on the project, Golden West stopped working on Gilbert
11 B's home. Gilbert B. then contacted the General Manager of Golden West who informed Gilbert
12 B. that Golden West was going out of business and possibly filing for bankruptcy. On or about
13 November 28, 2006, Gilbert B. filed a complaint with the California Department of Consumer
14 Affairs, Contractor's State Licensing Board (herein "CSLB").

15 4.

16 On or about February 28, 2007, a CSLB investigator sent Respondent an
17 interview appointment letter by certified mail and first class mail to Respondent's business
18 address and home address. The CSLB investigator did not receive any response from
19 Respondent and Respondent failed to attend the scheduled appointment. Respondent also failed
20 to respond to written requests from CSLB to cooperate with said investigation.

21 5.

22 On or about August 14, 2007, regarding Citation Number 32007-1252, the CSLB
23 sent Respondent via certified mail and first class mail to Respondent's business address and
24 home address, a Notice to Licensee Copy of Citation, Statement to Cited Person, Notice of
25 Appeal, Section Violated, and return self addressed envelope. The Notice to Licensee alleged
26 that Golden West violated Business and Professions Code sections 7111.1 (failure to cooperate
27 with an investigation), 7154 (employed unregistered home improvement salesperson),

1 7159(e)(6)(A) (failed to provide the notice of "Three-Day Right to Cancel") and 7159(a)(5)
2 (accepting payment that exceeded the value of the work performed or material delivered.)

3 The Notice to Licensee also stated that unless Golden West contested the citation on or before
4 September 5, 2007, the citation would become a final order of the Registrar on September 6,
5 2007.

6 6.

7 The Notices of Automatic Suspension indicated that license number 641468
8 regarding Golden West and license number 742317 regarding Mc Kenzie Construction (another
9 CSLB license in which Respondent served as the Sole Owner) were automatically suspended
10 effective October 1, 2007, and unless Respondent complied with the provision of Citation
11 Number 32007-1252 within 90 days of said suspensions, both CSLB licenses would be revoked.

12 7.

13 On or about January 1, 2008, after giving Respondent fair notice of
14 the pending charges and affording him the opportunity for a hearing and other due process
15 protections, CSLB license numbers 641468 and 742317 were revoked by default.

16 APPLICATION FRAUD

17 8.

18 On or about October 2, 2007, Respondent made application to the State of
19 California Department of Real Estate ("the Department") for a real estate salesperson license.

20 9.

21 In response to Question 24A of said application, to wit: "HAVE YOU EVER
22 HAD A DENIED, SUSPENDED, RESTRICTED, OR REVOKED BUSINESS OR
23 PROFESSIONAL LICENSE (INCLUDING REAL ESTATE), IN CALIFORNIA OR ANY
24 OTHER STATE?", Respondent concealed and failed to disclose the suspensions of CSLB
25 license numbers 641468 and 742317, identified above in paragraphs 2 through 6.

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GROUNDS FOR DISCIPLINE

10.

The facts alleged above in Paragraphs 2 through 7 constitute grounds under section 10177(f) (revocation of license issued by state agency), section 10177(g) (negligence or incompetence in performing act for which license was required) and/or section 10177(j) (fraudulent or dishonest conduct) of the Code for the suspension and/or revocation of all licenses and license rights of Respondent under the Real Estate Law.

11.

The facts alleged above in Paragraphs 8 and 9 constitute grounds under section 10177(a) (making material misstatements of fact in license application) of the Code, for the suspension or revocation of all licenses and license rights of Respondent under Part 1 of Division 4 of the Code (“the Real Estate Law”).

COST RECOVERY

12.

The Department will seek to recover cost of this suit pursuant to section 10106 of the Code which 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.

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1 PRAYER

2 13.

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

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10 
11 TRICIA D. SOMMERS
Deputy Real Estate Commissioner

12 Dated at Sacramento, California,
13 this 6th day of November, 2012.

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16
17 DISCOVERY DEMAND

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