

1 MARY F. CLARKE, Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 -or- (916) 227-0780 (Direct)
7 -or- (916) 227-9458 (Fax)

FILED

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DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 DBX CAPITAL, INC.,) NO. H-5961 SAC
13 a Corporation,)
14 HENRY JOSEPH ZELLMAN, III, and) ACCUSATION
15 BRIAN JOHN NIELSEN,)
16 Respondents.)

17 The Complainant, TRICIA SOMMERS, a Deputy Real Estate Commissioner of
18 the State of California, for cause of Accusation in her official capacity against DBX CAPITAL,
19 INC. (herein "DBX"), HENRY JOSEPH ZELLMAN, III (herein "ZELLMAN") and BRIAN
20 JOHN NIELSEN (herein "NIELSEN") (herein collectively "Respondents), is informed and
21 alleges as follows:

22 1

23 At all times herein mentioned, Respondents were and/or now, licensed and/or
24 have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and
25 Professions Code) (herein "the Code").

26 2

27 At all times herein mentioned, DBX was licensed by the State of California
Department of Real Estate (herein the "Department") as a corporate real estate broker by and

1 through ZELLMAN as designated officer-broker of DBX, to qualify said corporation and to act
2 for said corporation as a real estate broker. DBX's license expired May 14, 2012.

3 3

4 At all times herein mentioned, ZELLMAN was and now is licensed by the
5 Department as a real estate broker individually and as designated officer-broker of DBX. As
6 said designated officer-broker, ZELLMAN was at all times mentioned herein responsible
7 pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers,
8 agents, real estate licensees, and employees of DBX, for which a license is required.

9 4

10 At all times herein mentioned, NIELSEN was and now is licensed by the
11 Department as a real estate salesman employed by DBX.

12 5

13 At all times herein mentioned, Respondents DBX and NIELSEN engaged in
14 the business of, acted in the capacity of, advertised, or assumed to act as real estate licensees
15 within the State of California on behalf of others, for compensation or in expectation of
16 compensation within the meaning of Section 10131(b) of the Code in the operations of a
17 property management brokerage with the public wherein, on behalf of others, for compensation
18 or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and
19 placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real
20 property or improvements thereon, and collected rents from real property or improvements
21 thereon.

22 6

23 In so acting as a real estate broker as described in Paragraph 5 above, DBX
24 accepted or received funds in trust (herein "trust funds") from or on behalf of owners, tenants,
25 and others in connection with the leasing, renting, and collection of rents on real property or
26 improvements thereon.

27 ///

The aforesaid trust funds accepted or received by DBX were deposited or caused to be deposited by DBX into one or more bank accounts (herein "trust fund accounts") maintained by DBX for the handling of trust funds at the Portland, Oregon branch of Wells Fargo Bank, N.A.:

- (a) "DBX CAPITAL INC RETA, ACCOUNT A," account number xxxxxx7997 (herein "Bank Account #1");
- (b) "DBX CAPITAL INC RETA, DEPOSITS ACCOUNT," account number xxxxxx7963 (herein "Bank Account #2");
- (c) "DBX CAPITAL INC RETA, ACCOUNT C," account number xxxxxx8243 (herein "Bank Account #3");
- (d) "DBX CAPITAL INC RETA, ACCOUNT N," account number xxxxxx8086 (herein "Bank Account #4");
- (e) "DBX CAPITAL INC RETA, ACCOUNT M," account number xxxxxx8078 (herein "Bank Account #5"); and,
- (f) "DBX CAPITAL INC RETA, MAIN ACCOUNT," account number xxxxxx7971 (herein "Bank Account #6").

Between about April 1, 2010 and August 10, 2011, in connection with the activities described in Paragraphs 5 through 7, above, DBX:

(a) caused, suffered or permitted the balance of funds in Bank Accounts #1 and #2 to be reduced to amounts less than the liability of DBX resulting in trust fund shortages and/or contained unidentified/unaccounted funds, in violation of Section 2832.1 of Chapter 6, Title 10, California Code of Regulations (herein "the Regulations") as follows:

<u>Bank Account #1:</u>	<u>Date</u>	<u>Shortage Amount</u>
	4/22/11	\$11,843.65
	4/22/11	Unidentified Funds \$ 1,372.20
<u>Trust Account #2:</u>	<u>Date</u>	<u>Shortage Amount</u>
	4/12/11	\$3,778.66

1 (b) failed to keep a columnar record in chronological sequence of all trust
2 funds received and disbursed from Bank Account #6 containing all the information required by
3 Section 2831 of the Regulations;

4 (c) failed to keep a separate record for each beneficiary or transaction for
5 Bank Account #6 containing all the information required by Section 10145 of the Code and
6 Section 2831.1 of the Regulations;

7 (d) failed to reconcile at least once a month, the balance of all separate
8 beneficiary or transaction records with Bank Accounts #1, #2 and #6 required by Section
9 2831.2 of the Regulations;

10 (e) failed to place trust funds entrusted to DBX into the hands of a principal
11 on whose behalf the funds were received, into a neutral escrow depository, or into a trust fund
12 account in the name of DBX as trustee at a bank or other financial institution, in that DBX
13 placed such funds in Bank Accounts #1 through #6, in violation of Section 10145 of the Code
14 and Section 2832 of the Regulations;

15 (f) willfully caused, suffered and permitted DBX to perform licensed
16 activities during the time DBX was not in good standing with the office of the Secretary of
17 State, in violation of Section 2742(c) the Regulations;

18 (g) failed to disclose mark-ups received on maintenance and repair expenses,
19 in violation of Sections 10176(g) and/or 10177(g) of the Code;

20 (h) collected advance fees for services in connection with eviction actions
21 prior to submitting an advance fee agreement for review by the Real Estate Commissioner and
22 failed to maintain a record of, or account for, said advance fees, in violation of Sections 10085,
23 10085.5 and 10146 of the Code and Sections 2970 , 2972, 2831 and 2831.1 of the Regulations;
24 and

25 (i) NIELSEN failed to disclose license identification number on first point of
26 contact materials, in violation of Section 10140.6 of the Code and Section 2733 of the
27 Regulations.

At all times mentioned herein, ZELLMAN failed to exercise reasonable supervision over the acts of DBX, and its agents and employees in such a manner as to allow the acts and omissions on the part of DBX, described above, to occur in violation of Sections 10177(h) and (g) and 10159.2 of the Code and Section 2725 of the Regulations.

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code and/or the Regulations:

- (a) as to Paragraph 8(a) and Respondent DBX, under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph 8(b) and Respondent DBX, under Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) as to Paragraph 8(c) and Respondent DBX, under Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) as to Paragraph 8(d) and Respondent DBX, under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;
- (e) as to Paragraph 8(e) and Respondent DBX, under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;
- (f) as to Paragraph 8(f) and Respondent DBX, under Section 2742(c) of the Regulations in conjunction with Section 10177(d) of the Code;
- (g) as to Paragraph 8(g) and Respondent DBX, under Sections 10176(g) and/or 10177(g) of the Code;
- (h) as to Paragraph 8(h) and Respondent DBX, under Sections 10085, 10085.5, and 10146 of the Code and Sections 2970 , 2972, 2831 and 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;

1 (i) as to Paragraph 8(i) and Respondent NIELSEN, under Section 10140.6 of the
2 Code and Section 2733 of the Regulations in conjunction with Section
3 10177(d) of the Code; and

4 (j) as to Paragraph 9 and Respondent ZELLMAN, under Sections 10177(h) and
5 (g) and 10159.2 of the Code and Section 2725 of the Regulations in
6 conjunction with Section 10177(d) of the Code.

7 COST RECOVERY

8 11

9 Audit Costs

10 The acts and/or omissions of Respondents as alleged above in Paragraph 8(a)-(e),
11 above, entitle the Department to reimbursement of the costs of its audit pursuant to Section
12 10148(b) of the Code.

13 12

14 Investigation and Enforcement Costs

15 Section 10106 of the Code provides, in pertinent part, that in any order issued in
16 resolution of a disciplinary proceeding before the Department, the Commissioner may request the
17 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
18 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

19 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
20 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
21 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of
22 Division 4 of the Business and Professions Code), for the cost of the investigation and
23 enforcement as permitted by law, and for such other and further relief as may be proper under
24 other applicable provisions of law.

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26 TRICIA SOMMERS
27 Deputy Real Estate Commissioner

28 Dated at Sacramento, California
29 this 5th day of January, 2013.