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FILED

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DEPARTMENT OF REAL ESTATE

By *K. Contreras*

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

12 \* \* \*

13 In the Matter of the Accusation of )  
14 ROBERT WAYNE DAVIDSON, )  
15 Respondent. )

No. H-5983 SAC  
ACCUSATION

16 The Complainant, TRICIA SOMMERS, a Deputy Real Estate Commissioner of  
17 the State of California, for cause of Accusation against ROBERT WAYNE DAVIDSON  
18 (Respondent), is informed and alleges as follows:

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20 The Complainant, TRICIA SOMMERS, a Deputy Real Estate Commissioner of  
21 the State of California, makes this Accusation in her official capacity.

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

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

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

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10 At all times mentioned, while acting as a real estate broker as described in  
11 Paragraph 4, Respondent employed unlicensed individuals Joan Andrews ("Andrews") and  
12 Jolene Whitney ("Whitney").

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14 On or about August 27, 2012, through November 30, 2012, an audit was  
15 conducted of the records of Respondent. The auditor herein examined the records for the  
16 period of July 1, 2011, through August 31, 2012.

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

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

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TRUST ACCOUNT # 1	
Bank Name and Location:	Bank of Marin 600 Trancas Street Napa, CA 94558
Account No.:	XX-XX1466
Account Name:	Davidson and Bennett Realtors Rental Trust
Signatories:	Robert Wayne Davidson Joan Andrews Jolene Whitney
Description:	Trust Account #1 was used for deposits and disbursements related to the management of approximately twenty eight residential properties. Deposits included rents, security deposits, and owner contributions. Disbursements included payments of proceeds to owners, repair and maintenance expenses, management fees to salesperson Patricia Williams, and return of security deposits to vacating tenants.

BANK ACCOUNT #1	
Bank Name and Location:	Bank of Marin 600 Trancas Street Napa, CA 94558
Account No.:	XX-XX1235
Account Name:	Davison and Bennett Realtors Property Management
Signatories:	Robert Wayne Davidson Joan Andrews Jolene Whitney
Description:	Bank Account #1 was used for deposits and disbursements. Deposits included rents, security deposits, owner contributions, and cash management transfers from Bank Account #1 to Bank Account #2. Disbursements included payments of proceeds to owners, repair and maintenance expenses, management fees, returns of security deposits to vacating tenants, and cash management transfers to Bank Account #2.

BANK ACCOUNT #2	
Bank Name and Location:	Bank of Marin 600 Trancas Street Napa, CA 94558
Account No.:	XX-XX1227
Account Name:	Davison and Bennett Realtors General Account
Signatories:	Robert Wayne Davidson Joan Andrews Jolene Whitney
Description:	Bank Account #2 was used as a general business account. Deposits included commissions earned from property resale activity, fees and commissions earned from property management activity, reimbursements of repair and maintenance expenses, miscellaneous receivables from sales agents, and cash management transfers from Bank Account #1. Disbursements included payment of commissions earned from property sales activity, payment of repair and maintenance expenses, payment for payroll, tax payments, and other business expenses.

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

(a) caused, suffered, or permitted the balance of funds in Trust Account #1 to be reduced to an amount which, as of July 31, 2012, was approximately \$33,107.60 less than the aggregate liability of Trust Account #1 to all owners 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 Bank Account #1 to be reduced to an amount which, as of July 31, 2012, was approximately \$275,507.34 less than the aggregate liability of Bank Account #1 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

(c) failed to obtain the written consent of every principal who was an owner of funds in Trust Account #1 and Bank Account #1 prior to each disbursement when such

1 disbursement reduced the balance of funds in Trust Account #1 and Bank Account #1 to an  
2 amount less than the aggregate trust liability of the broker to all owners of the funds in violation  
3 of Section 10145 of the Code and Section 2832.1 of the Regulations;

4 (d) failed to designate Bank Account #1 as a trust account with the designation  
5 of the broker as trustee, despite the use of Bank Account #1 in the handling of trust funds in  
6 violation of Section 10145 of the Code and Section 2832 of the Regulations;

7 (e) failed to designate Bank Account #2 as a trust account with the designation  
8 of the broker as trustee, despite the use of Bank Account #2 in the handling of trust funds in  
9 violation of Section 10145 of the Code and Section 2832 of the Regulations;

10 (f) commingled trust funds with non-trust funds in violation of Section  
11 10176(e) of the Code and Section 2835 of the Regulations;

12 (g) transferred trust funds to Bank Account #2 and converted such funds for the  
13 payment of non-trust related expenses in violation of Section 10176(e) of the Code and Section  
14 2835 of the Regulations;

15 (h) provided unlicensed employees Andrews and Whitney signatory rights as to  
16 Trust Account #1, Bank Account #1, and Bank Account #2, without fidelity bond coverage at  
17 least equal to the maximum amount of the trust funds to which the employees had access to at  
18 any time in violation of Section 2834 of the Regulations;

19 (i) failed to maintain a written control record of all trust funds received and  
20 disbursed, containing all information required by Section 2831 of the Regulations;

21 (j) failed to keep accurate separate records for each beneficiary or transaction,  
22 accounting therein for all funds which were deposited, containing all of the information required  
23 by Section 2831.1 of the Regulations;

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

1 (l) failed to exercise reasonable supervision over the acts of Respondent's  
2 agents and employees in such a manner as to allow the acts and omissions on the part of  
3 Respondent, described above, to occur in violation of Section 10159.2 of the Code  
4 and Section 2725 of the Regulations.

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6 The facts alleged above are grounds for the suspension or revocation of  
7 Respondent's license and license rights pursuant to Sections 10145, 10159.2, and 10176(e) of  
8 the Code, Sections 2725, 2831, 2831.1, 2831.2, 2832, 2832.1, 2834, and 2835 of the  
9 Regulations, in conjunction with Sections 10177(d), (g), and (j) of the Code.

10 COST RECOVERY

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12 The acts and/or omissions of Respondent as alleged above, entitle the Department  
13 to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund  
14 handling violation) of the Code.

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

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

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26 Dated at Sacramento, California,  
27 this 19<sup>th</sup> day of April, 2013

  
TRICIA SOMMERS  
Deputy Real Estate Commissioner