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FILED

JUL - 9 2013

BUREAU OF REAL ESTATE

By K. Contreras

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

13 KIMBERLY HIGBY,)

14 Respondent.)

No. H-6000 SAC

ACCUSATION

15 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
16 of the State of California, for cause of Accusation against KIMBERLY HIGBY (hereinafter
17 "Respondent"), is informed and alleges as follows:

18 PRELIMINARY ALLEGATIONS

19 1

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

22 2

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 (hereinafter the "Code").

25 3

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

At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker 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 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.

On or about September 17, 2012, and continuing intermittently through November 29, 2012, an audit was conducted of the records of Respondent. The auditor herein examined the records for the period of August 1, 2011 through August 31, 2012.

While acting as a 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.

The trust funds accepted or received by Respondent as described in Paragraph 6 were deposited or caused to be deposited by Respondent into a trust account which was 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:

TRUST ACCOUNT	
Bank Name and Location:	Rabobank P.O. Box 1845 El Centro, California 92244
Account No.:	XXXXXX9731
Entitled:	Higby, Kimberly

In the course of the activities described in Paragraph 7, Respondent:

- (a) caused, suffered, or permitted the balance of funds in the account to be reduced to amounts less than the liability of Respondent, resulting in the trust fund shortages shown below, in violation of Section 10145 of the Code and Section 2832.1 of the Regulations:

<u>DATE</u>	<u>AMOUNT</u>
8/31/12	\$13,156.24;

- (b) 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 the trust account as required by Section 10177(d) of the Code and Section 2831.2 of the Regulations;
- (c) failed to keep accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into the trust account, containing all of the information required by Section 2831.1 of the Regulations; and,
- (d) failed to properly designate the trust account described in Paragraph 7, above, as a trust account in violation of Section 10145 of the Code and Section 2832 of the Regulations.

The facts described above constitute cause for the suspension or revocation of the licenses and license rights of Respondent under Section 10145 of the Code, and Sections 2831, 2831.1, 2831.2, 2832, and 2832.1 of the Regulations, in conjunction with Section 10177(d) of the Code.

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1 COST RECOVERY

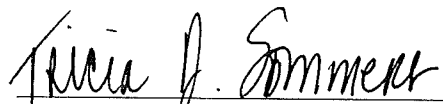
2 10

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

6 11

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

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

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17 

18 TRICIA D. SOMMERS
19 Deputy Real Estate Commissioner

20 Dated at Sacramento, California,
21 this 19th day of June, 2013

22 DISCOVERY DEMAND

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