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1 JASON D. LAZARK, Counsel (SBN 263714)
2 Bureau of Real Estate
3 P. O. Box 137007
4 Sacramento, CA 95813-7007
5 Telephone: (916) 263-8670
6 (916) 263-8684 (Direct)

FILED

MAR 26 2014

BUREAU OF REAL ESTATE
By L. Just

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-6098 SAC
13 KIM JOSEPH CURRIERI, and)
14 JERALD LEROY MASON, JR.,)
15 Respondents.) ACCUSATION

16 The Complainant, TRICIA SOMMERS, acting in her official capacity as a
17 Deputy Real Estate Commissioner of the State of California, for cause of Accusation against
18 Respondents KIM JOSEPH CURRIERI ("CURRIERI"), dba Avenue Realty, and JERALD
19 LEROY MASON, JR. ("MASON"), (collectively referred to as "Respondents") are informed
20 and allege as follows:

21 PRELIMINARY ALLEGATIONS

22 1.

23 At all time herein mentioned, CURRIERI was licensed and/or has license rights
24 under Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
25 ("Code") as a real estate broker, doing business as "Avenue Realty".

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2.

At all times herein mentioned, MASON was licensed and/or had license rights under the Real Estate Law, Part 1 of Division 4 of the Code ("the Real Estate Law") as a real estate salesperson and was licensed under CORRIERI.

3.

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California on behalf of others, for compensation or in expectation of compensation within the meaning of section 10131(a) of the Code, including the operation and conduct of a real estate brokerage that included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or exchange of real property or a business opportunity.

4.

At all times relevant herein, M. Garner ("Garner") owned the real property at 4137 Yacht Harbor Dr., Stockton, CA 95204 ("Subject Property"). Garner fell behind on his payments to lender PNC Bank ("the Bank") and therefore sought to sell the Subject Property in a short sale.

5.

On January 19, 2012, Garner entered into a Residential Listing Agreement with Avenue Realty giving Respondents the exclusive right for six consecutive months to list the Subject Property for a short sale whereby Avenue Realty agents agreed to negotiate with the Bank to permit the sale of the Subject Property for an amount less than the balance due on the loans secured by the Subject Property along with the agreement that the Bank would forgive any remaining balance due on the promissory notes and/or release their liens.

6.

On June 26, 2012, J. Conley ("Conley") through his real estate broker, C. Mello ("Mello"), made an offer to purchase the Subject Property ("Purchase Contract") for \$435,000

1 and on July 2, 2012, Garner accepted that offer. Avenue Realty was due to make upon closing
2 3.5 % of the total 6% commission approved by Garner.

3 7.

4 On July 3, 2012, MASON demanded that Conley provide Avenue Realty with
5 \$795.00 purportedly as consideration for MASON's efforts in negotiating with the Bank
6 regarding the Purchase Contract. After receiving the \$795.00 from Conley, MASON told
7 Conley on July 5, 2012 that MASON submitted the Purchase Contract to the Bank. Also, on
8 July 5, 2012, CURRIERI deposited Conley's \$795.00 check into his Avenue Realty business
9 account.

10 8.

11 On July 9, 2012, MASON, while representing both Garner and a different
12 prospective buyer, made an offer to purchase the Subject Property (Dual Agency Purchase
13 Contract") for a purchase price of \$452,000. Also on July 9, 2012, Garner accepted the Dual
14 Agency Purchase Contract. Because Avenue Realty represented both the buyer and the seller in
15 the Dual Agency Purchase Contract, Avenue Realty was due to make upon closing all 6% of the
16 total commission approved by Garner.

17 9.

18 On July 10, 2012, MASON informed Mello that he in fact did not submit
19 Conley's Purchase Contract to the Bank as he previously stated on July 3, 2012 and that he
20 would present the Purchase Contract as a back up to the Dual Agency Purchase Contract. In
21 response, also on July 10, 2012, Mello sent an email to CURRIERI detailing MASON's
22 misrepresentations and stating that Conley had retained legal counsel.

23 10.

24 On or about July 12, 2012, Mello contacted MASON to find out the amount of
25 the Dual Agency Purchase Contract offer so that Conley could make a larger offer to purchase
26 the Subject Property. In response, MASON informed Mello that the Dual Agency Purchase
27 Contract offer was for \$500,000. In actuality, the Dual Agency Purchase Contract offer was for

1 \$452,500 which is approximately \$50,000 less than what MASON represented to Mello.

2 11.

3 On July 20, 2012, MASON changed his story and informed Mello that the Conley
4 Purchase Contract *had* been sent to the Bank although MASON did not indicate exactly when
5 the Purchase Contract was submitted.

6 12.

7 On July 23, 2012, MASON informed Mello that Conley's Purchase Contract had
8 been rejected. On July 27, 2012, the Bank repossessed the Subject Property.

9 13.

10 On July 28, 2012, Conley received a check ("Refund Check") from Avenue
11 Realty for \$795.00 for the return of the short sale negotiation fee paid by Conley to Avenue
12 Realty. The back of the Refund Check under the section entitled "Endorse Here" included
13 language that an endorsement of the Refund Check served to release Avenue Realty and all
14 agents from any further obligations or claims. After Conley refused to accept the Refund Check,
15 Conley received another refund check from Avenue Realty for \$795.00; this time with no
16 language appearing under the "Endorse Here" section. Conley has not cashed either of the
17 refund checks but instead has filed a civil cause of action against Avenue Realty and its agents
18 and representatives.

19 FIRST CAUSE OF ACTION
20 Fraud or Dishonest Dealing
(As to Respondents CURRIERI and MASON)

21 14.

22 Each and every allegation contained above in Paragraphs 1 through 13, inclusive,
23 is incorporated by this reference as if fully set forth herein.

24 15.

25 As set out above in Paragraphs 7 through 13, Respondents' representations
26 and/or actions were false and/or dishonest and were known by Respondents at all relevant times
27 to be false and/or dishonest.

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16.

The facts alleged above in paragraphs 14 and 15 are grounds for suspension or revocation of the licenses and license rights of Respondents under Sections 10176(a) (substantial misrepresentation), 10176(b) (false promise likely to induce), 10176(c) (flagrant course of misrepresentation), 10176(i) (fraud or dishonest dealing) and/or 10177(j) (fraud or dishonest dealing) of the Code.

17.

In the alternative, the facts alleged above in Paragraphs 14 and 15 are grounds for suspension or revocation of the licenses and license rights of Respondents under Section 10177(g) (negligence or incompetence) of the Code.

SECOND CAUSE OF ACTION
Unlawful Collection of Advance Fee
(As to Respondents CURRIERI and MASON)

18.

Each and every allegation contained above in Paragraphs 1 through 17, inclusive, is incorporated by this reference as if fully set forth herein.

19.

In connection with the activities described above in Paragraphs 4 through 13, Respondents demanded and collected an advance fee within the meaning of Sections 10026 (advance fee definition) and 10131.2 (broker definition – advance fees) of the Code in exchange for purportedly providing short sale negotiation services.

20.

The acts or omissions of Respondents, as alleged above in Paragraph 19, violate Sections 10085.5 (advance fees collection) and 10085.6 (collection of advance fees prior to performance of services) of the Code and are grounds for discipline under Section 10177(d) of the Code.

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THIRD CAUSE OF ACTION
Failure to Submit Advance Fee Contract
(As to Respondents CURRIERI and MASON)

21.

Each and every allegation in Paragraphs 1 through 20, inclusive, above, is incorporated by this reference as if fully set forth herein.

22.

In connection with the collection and handling of advance fees as alleged above in Paragraph 19, Respondents failed to submit the advance fee contract and all materials used in obtaining those advance fee agreements to the Bureau of Real Estate for approval prior to their use in obtaining advance fees from Conley.

23.

The acts and/or omissions of Respondents as alleged above in Paragraph 22 violate Sections 10085.5, 10085.6 and 10177(d) in conjunction with Section 10085 (submission of advance fee agreements and materials) of the Code, and Sections 2970 (submission of advance fee agreements and materials) and 2972 (content requirements of verified accounting) of Title 10, Chapter 6, California Code of Regulations (“Regulations”).

24.

The acts and/or omissions of Respondents as alleged above in Paragraphs 22 and 23, are grounds for the suspension or revocation of Respondents’ licenses and license rights under Sections 10177(d) and/or 10177(g) of the Code.

FOURTH CAUSE OF ACTION

Audit Violations
(As to Respondent CURRIERI)

25.

Each and every allegation contained above in Paragraphs 1 through 24, inclusive, is incorporated by this reference as if fully set forth herein.

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26.

On May 3, 2013, the Bureau conducted an audit at CURRIERI's main office located at 2930 Pacific Ave., Stockton CA, where the auditor examined records for the period of January 1, 2011 to March 31, 2013 ("the audit period").

27.

While doing business within the audit period, CURRIERI accepted or received funds in trust ("trust funds") from or on behalf of prospective purchasers and others and deposited or caused to be deposited those funds into bank accounts maintained by CURRIERI, including:

BANK ACCOUNT # 1	
Bank Name and Location:	BBVA Compass 2562 Pacific Ave. Stockton, CA 95204
Account No.:	XXXX7791
Entitled:	Kim J Currieri Lynne C Currieri DBA Avenue Realty
Signatories:	Kim Currieri, REB and Lyne Currieri, Expired RES
No. of Signatures Required:	One

From time to time, CURRIERI made collections to and disbursement from said accounts.

28.

In the course of the activities described above in Paragraph 27, in connection with the collection and disbursement of trust funds, CURRIERI:

(a) failed to maintain or keep an accurate record in chronological sequence of all trust funds received and disbursed (control record) for Bank Account #1, containing all the information required by Section 2831 of the Regulations, in violation of Section 10148 of the Code;

(b) failed to maintain and/or keep accurate and complete separate records for the receipt and disposition of all trust funds deposited into Bank Account #1, in violation of Section 10145(g) of the Code and Section 2831.1 of the Regulations;

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1 (c) failed to reconcile at least once per month, the balance of all separate
2 beneficiary or transaction records to the balance of the control records for Bank Account #1, in
3 violation of Section 10145 of the Code and Section 2831.2 of the Regulations;

4 (d) failed to properly designate Bank Accounts #1 as a trust account in the
5 name of Respondent or his fictitious business name, as trustee, in violation of Section 10145 of
6 the Code and Section 2832 of the Regulations;

7 (e) allowed expired salesperson Lynne Currieri to serve as an authorized
8 signor on Bank Account #1 without providing for fidelity bond coverage, in violation of Section
9 10145 of the Code, and Section 2834 of the Regulations;

10 29.

11 The acts and/or omissions of CURRIERI, as alleged above in Paragraph 28
12 constitute grounds for the suspension or revocation of all licenses and license rights of
13 Respondent pursuant to the following provisions of the Code and Regulations:

14 As to Paragraph 28(a), under Section 10177(d) and/or 10177(g) of the Code, in
15 conjunction with Section 10148 of the Code and Section 2831 of the Regulations;

16 As to Paragraph 28(b), under Section 10177(d) and/or 10177(g) of the Code, in
17 conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

18 As to Paragraph 28(c), under Section 10177(d) and/or 10177(g) of the Code, in
19 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

20 As to Paragraph 28(d), under Section 10177(d) and/or 10177(g) of the Code, in
21 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

22 As to Paragraph 28(e), under Section 10177(d) and/or 10177(g) of the Code, in
23 conjunction with Section 10145 of the Code and Section 2834 of the Regulations.

24 30.

25 The acts and/or omissions of CURRIERI as alleged above in Paragraph 28 entitle
26 the Bureau to reimbursement of the costs of its audit pursuant to Section 10148 of the Code.

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1 FIFTH CAUSE OF ACTION

2 Failure to Supervise
3 (As to Respondent CURRIERI)

4 31.

5 Each and every allegation in Paragraphs 1 through 30, inclusive, above, is
6 incorporated by this reference as if fully set forth herein.

7 32.

8 CURREIRI, as the broker of record for MASON, was required to exercise
9 reasonable supervision and control over the activities of MASON. CURREIRI failed to exercise
10 reasonable supervision over the acts and/or omissions of MASON in such a manner as to allow
11 the acts and/or omissions as described in Paragraphs 1 through 24, above, to occur, in violation
12 of Section 10159.2 of the Code and Section 2725 of the Regulations.

13 33.

14 The facts described above as to the Fifth Cause of Action constitutes cause for the
15 discipline of all licenses and license rights of CURRIERI under Section 10177(h) of the Code
16 and/or Section 10177(g) of the Code.

17 COST RECOVERY

18 34.

19 The Bureau will seek to recover cost of this suit pursuant to Section 10106 of the
20 Code which provides, in pertinent part, that in any order issued in resolution of a disciplinary
21 proceeding before the Bureau, the commissioner may request the administrative law judge to
22 direct a licensee found to have committed a violation of this part to pay a sum not to exceed the
23 reasonable costs of the investigation and enforcement of the case.

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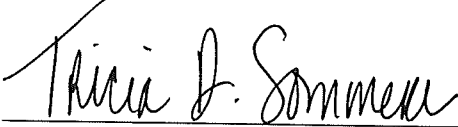
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and license rights of Respondent under the Real Estate Law, for the cost of investigation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



TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 21st day of March, 2014.

DISCOVERY DEMAND

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