

FILED
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BUREAU OF REAL ESTATE
By M. Robert

TRULY SUGHRUE, Counsel
State Bar No. 223266
Bureau of Real Estate
P.O. Box 137007
Sacramento, CA 95813-7007

Telephone: (916) 263-8672
(916) 263-8676 (Direct)

Fax: (916) 263-3767

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	NO. H-6305 SAC
JOHN BENJAMIN BURGESS,)	
)	<u>FIRST AMENDED</u>
Respondent.)	<u>ACCUSATION</u>
)	

The Complainant, TRICIA PARKHURST, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity against JOHN BENJAMIN BURGESS (Respondent), and is informed and alleges as follows:

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Respondent is presently licensed by the California Bureau of Real Estate (Bureau) and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (Code) as a real estate broker.

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At all times herein mentioned, Respondent conducted real estate activity under his individual broker license and the fictitious business name "F Street Property Management" (FSPM), registered with the Bureau.

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Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with Respondent committed such act or omission while engaged in the furtherance of the business or operations and while acting within the course and scope of their authority and employment.

4

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

5

In so acting as a real estate broker as described in Paragraph 4, above, Respondent accepted or received funds in trust (trust funds) from or on behalf of tenants, owners, and others in connection with real estate leasing, renting, and collection of rents on real property or improvements thereon, and thereafter from time-to-time made disbursements of said funds.

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The aforesaid trust funds accepted or received by Respondent were deposited or caused to be deposited by Respondent into one or more bank accounts maintained by Respondent for the handling of trust funds at the Oakdale, California, branch of Bank of the West, under account name:

(a) "Patricia M Coons DBA Oakdale Realty," account number xxxx7704

(Trust-Account).

1 FIRST CAUSE OF ACTION

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3 Between about June 3, 2014, and about June 26, 2014, an audit was conducted of
4 the records of Respondent in connection with the activities described in Paragraphs 4, 5, and 6,
5 above. The auditor herein examined the records for the period between about May 1, 2013, and
6 about May 31, 2014, and found Respondent:

7 (a) caused, suffered or permitted the balance of funds in the Trust Account to
8 be reduced to amounts, which as of May 31, 2014, were approximately \$31,943.43 less than the
9 aggregate liability of all owners of such funds, without the prior written consent of the owners of
10 such funds, in violation of Section 10145 of the Code in conjunction with Section 2832.1 of
11 Chapter 6, Title 10, of the California Code of Regulations (Regulations);

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

16 (c) failed to maintain a written control record of all trust funds received and
17 disbursed in the Trust Account, containing all information required by Section 2831 of the
18 Regulations; and,

19 (d) allowed an unlicensed individual without fidelity bond coverage, Ethel A.
20 (Ethel), to be a signatory on the trust account, in violation of Section 2834 of the Regulations.

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22 The facts alleged in the First Cause of Action are grounds for the suspension or
23 revocation of Respondent's license and license rights under the following sections of the Code
24 and Regulations:

25 As to Paragraph 7(a), under Sections 10177(d) and/or 10177(g) of the Code in
26 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

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1 As to Paragraph 9(b), under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 2831.2 of the Regulations;

3 As to Paragraph 9(c), under Sections 10177(d) and/or 10177(g) of the Code in
4 conjunction with Section 2831 of the Regulations; and

5 As to Paragraph 9(d), under Sections 10177(d) and/or 10177(g) of the Code in
6 conjunction with Section 2834 of the Regulations and Section 10145 of the Code.

7 SECOND CAUSE OF ACTION

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9 Each and every allegation in Paragraphs 1 through 8, inclusive, above, are
10 incorporated by this reference as if fully set forth herein.

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12 At all times relevant herein, Respondent was required to exercise reasonable
13 supervision and control over the activities of Respondent's employees, agents, and others acting
14 on Respondent's behalf pursuant to Section 2725 of the Regulations.

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16 Respondent failed to exercise reasonable supervision over the acts and/or
17 omissions of Respondent's employees, agents and others acting on Respondent's behalf in
18 such a manner as to allow the acts and/or omissions as described in Paragraph 10, above, to
19 occur, which constitutes cause for the suspension or revocation of the licenses and license rights
20 of Respondent pursuant to Sections 10177(d), 10177(g), and/or 10177(h) of the Code, in
21 conjunction with Section 2725 of the Regulations.

22 COST RECOVERY

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24 Audit Costs

25 The acts and/or omissions of Respondent as alleged above entitle the Bureau to
26 reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

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Investigation and Enforcement Costs

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, 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.

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



TRICIA PARKHURST
Supervising Special Investigator

Dated at Sacramento, California

this 10th day of January, 2017.