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FILED

AUG 09 2018

DEPARTMENT OF REAL ESTATE

3y K. Knapp

8
9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

11 In the Matter of the Accusation of)
12) No. H-6604 SAC
13 JUDY DAVIS and)
14 CLIFFORD MCGAHEY,) ACCUSATION
15)
16 Respondent.)

17 The Complainant, TRICIA D. PARKHURST, acting in her official capacity as a
18 Supervising Special Investigator of the State of California, for cause of Accusation against
19 JUDY DAVIS (DAVIS) and CLIFFORD MCGAHEY (MCGAHEY), sometimes collectively
20 referred to as Respondents, is informed and alleges as follows:

21 1

22 Respondents are presently licensed and/or have license rights under the Real
23 Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

24 2

25 At all times herein mentioned, DAVIS was and is presently licensed by the
26 Department of Real Estate (Department) as a real estate broker.

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2 At all times herein mentioned, MCGAHEY was and is presently licensed by the
3 Department as a real estate salesperson. DAVIS has been the employing broker for MCGAHEY
4 since December 1, 2010.

5 4

6 At no time herein mentioned was MCGAHEY REAL ESTATE (MRE), licensed
7 as a corporate real estate broker or registered as a fictitious business name with the Department.

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9 At no time herein mentioned did MRE meet the requirements of a team name in
10 accordance with Section 10159.6 of the Code.

11 6

12 At all times herein mentioned, Respondents conducted real estate activity under
13 DAVIS' individual broker license and under MRE.

14 7

15 At all times herein mentioned, Respondents engaged in the business of, acted in
16 the capacity of, advertised, or assumed to act as real estate brokers within the State of California
17 within the meaning of Sections:

18 (a) 10131(a) of the Code, sold or offered to sell, bought or offered to buy,
19 solicited prospective sellers or purchasers of, solicited or obtained listings of, or
20 negotiated the purchase, sale or exchange of real property or a business
21 opportunity; and

22 (b) 10131 (b) of the Code, including the operation and conduct of a property
23 management business with the public wherein, on behalf of others, for
24 compensation or in expectation of compensation, Respondents leased or rented
25 or offered to lease or rent, or solicited listings of places for rent or solicited for
26 prospective tenants, or negotiated the sale, purchase or exchange of leases on real
27 property, or on a business opportunity, or collected rent from tenants.

1 FIRST CAUSE OF ACTION

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3 Each and every allegation in Paragraphs 1 through 7, inclusive, is incorporated by
4 this reference as if fully set forth herein.

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6 Beginning on January 23, 2018 through March 20, 2018, an audit was conducted
7 of the records of Respondents. The auditor examined the records for the period of March 1,
8 2017 through March 31, 2018 (the audit period).

9 10

10 Respondents, while acting as real estate brokers, as described in Paragraph 7,
11 accepted or received funds in trust (trust funds) from or on behalf of owners, lessees and others
12 in connection with property management activities, and deposited those funds into bank accounts
13 maintained by Respondents, at Bank of Stockton, P.O. Box 1110, Stockton, California 95201,
14 including but not limited to the following:

15

16 TRUST #1	
17 Account No.:	XXXXXXX3511
18 Entitled:	JUDY DAVIS DBA MCGAHEY REAL ESTATE TEAM, CLIENT
19	TRUST ACCOUNT

20 and thereafter from time-to-time made disbursement of said trust funds.

21 11

22 In the course of the activities described in Paragraph 7, it was determined that:

- 23 (a) as of March 31, 2018, Trust #1 contained unidentified/unaccounted for funds
24 in the amount of \$791.21 for which no separate record was maintained, in
25 violation of Section 10145 (g) of the Code and 2831.1 of the California Code
26 of Regulations (Regulations); and

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1 (b) Respondents failed to perform monthly reconciliations of control records and
2 separate records, in violation of Section 2831.2 of the Regulations.

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4 The acts and/or omissions described above constitute violations of Sections
5 2831.1 (Separate Beneficiary Records) and 2831.2 (Trust Fund Reconciliation) of the
6 Regulations, and Section 10145 (Trust Fund Handling) of the Code, and are grounds for
7 discipline under Sections 10177(d) (Willful Disregard of Real Estate Laws) and/or 10177(g)
8 (Negligence/Incompetence Licensee) of the Code.

9 SECOND CAUSE OF ACTION

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11 Each and every allegation in Paragraphs 1 through 12, inclusive, is incorporated
12 by this reference as if fully set forth herein.

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14 On or about April 19, 2017, Respondents, while acting in the capacity of real
15 estate brokers, as described in Paragraph 7, entered into a property management agreement with
16 Joe C. to rent, lease, operate, and manage the property known as 721 Livingston Place, Rio Vista
17 (Property). The property management agreement was entered into under DAVIS' license number
18 and listed MRE as the Real Estate Broker.

19 15

20 On or about April 26, 2017, Respondents, while acting in the capacity of real
21 estate brokers, as described in Paragraph 7, entered into a lease agreement with Florence E. for
22 the Property. The lease agreement was entered into under DAVIS' license number and listed
23 MRE as the Real Estate Broker.

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25 The acts and/or omissions described above constitute violations of Section 2731
26 (Use of False/Fictitious Name) of the Regulations and Sections 10159.5 (Fictitious Name) and
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1 10159.6 (Team Name Requirements) of the Code, and are grounds for discipline under Sections
2 10177 (d) and (g) of the Code.

3 THIRD CAUSE OF ACTION

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5 Each and every allegation in Paragraphs 1 through 16, inclusive, is incorporated
6 by this reference as if fully set forth herein.

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8 On or about August 8, 2017, Respondents, in connection with the website,
9 <http://mcgaheyrealestate.com> (website), identified themselves as "McGahey Real Estate."

10 19

11 Respondents, on the home page of their website, advertised, "We work with
12 buyers and sellers in Rio Vista, Sacramento Delta, Isleton areas and the surrounding areas and
13 have had extensive training in the latest real estate marketing strategies." Respondents also
14 advertised, "As your agent we will assure that you see all the properties in the area that meet your
15 criteria, guide you through the entire home buying process, from finding homes to look at, to
16 getting the best financing."

17 20

18 Respondents in connection with their website, in the section marked "Listings",
19 advertised listings of real property for sale in Rio Vista, Isleton, and Walnut Grove.

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21 On or about September 6, 2017, Respondents, in connection with the facebook
22 page, <http://www.facebook.com/McgaheyRealEstate/> (facebook page), identified themselves as
23 "McGahey Real Estate."

24 22

25 Respondents in connection with their facebook page, advertised listings of real
26 property for sale in Rio Vista, Isleton, and Walnut Grove.

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1 23

2 The acts and/or omissions described above constitute violations of Section 2731
3 of the Regulations and Sections 10159.5 and 10159.6 of the Code, and are grounds for discipline
4 under Sections 10177 (d) and (g) of the Code.

5 FOURTH CAUSE OF ACTION

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7 Each and every allegation in Paragraphs 1 through 23, inclusive, is incorporated
8 by this reference as if fully set forth herein.

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10 On or about September 19, 2017, a broker office survey (BOS) was conducted
11 regarding the real estate activities of Respondents. During the BOS, the Department Special
12 Investigator discovered that MCGAHEY was conducted property management activities under
13 MRE. Furthermore, DAVIS is not involved in the property management business and has
14 delegated all property management duties to MCGAHEY.

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16 The acts and or omissions identified above constitute grounds for the suspension
17 or revocation of the license and license rights of Respondent pursuant to Sections 10130
18 (Unlicensed Broker Activity), 10177 (d) and (g) of the Code.

19 FIFTH CAUSE OF ACTION

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21 Each and every allegation in Paragraphs 1 through 26, inclusive, is incorporated
22 by this reference as if fully set forth herein.

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24 Respondent DAVIS failed to exercise reasonable supervision and control over
25 the property management activities of MCGAHEY. In particular, DAVIS permitted, ratified
26 and/or caused the conduct described above to occur, and failed to take reasonable steps,
27 including but not limited to, the handling of trust funds, supervision of employees, and the

1 implementation of policies, rules and systems to ensure the compliance of the business with the
2 Real Estate Law and the Regulations.

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4 The above acts and/or omissions of DAVIS violate Section 2725 (Broker
5 Supervision) of the Regulations, and constitute grounds for disciplinary action under the
6 provisions of Sections 10177(d), (g) and/or 10177(h) (Broker Supervision) of the Code.

7 COST RECOVERY

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9 Audit Costs

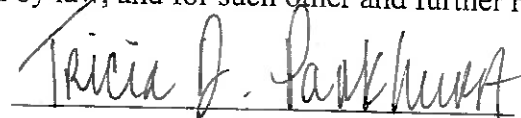
10 The acts and/or omissions of Respondents, as alleged above, entitle the
11 Department to reimbursement of the costs of its audits pursuant to Section 10148(b) (Audit Costs
12 for Trust Fund Handling Violations) of the Code.

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14 Costs of Investigation and Enforcement

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, for the
22 cost of investigation and enforcement as permitted by law, and for such other and further relief as
23 may be proper under the provisions of law.

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25 TRICIA D. PARKHURST
Supervising Special Investigator

26 Dated at Sacramento, California,
27 this 2nd day of August, 2018

DISCOVERY DEMAND

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