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**FILED**

SEP 26 2019

DEPARTMENT OF REAL ESTATE  
By De Kropp

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of: ) NO. H- 6760 SAC  
12 )  
12 RMK REALTY INC. ) ACCUSATION  
13 and DEAN ROBERT KESSLER, )  
14 Respondents. )  
15 )

16 The Complainant, TRICIA D. PARKHURST, acting in her official capacity as a  
17 Supervising Special Investigator of the State of California, for cause of Accusation against  
18 Respondents RMK REALTY INC. ("RMK REALTY") and DEAN ROBERT KESSLER  
19 ("KESSLER") (collectively referred to as "Respondents"), is informed and alleges as follows:

20 RESPONDENTS

21 1.

22 RMK REALTY is presently licensed by the Department of Real Estate  
23 ("Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the  
24 Code ("the Real Estate Law") as a corporate real estate broker, and at all relevant times herein  
25 was acting by and through KESSLER as its designated officer.

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2.

KESSLER is presently licensed by the Department and/or has license rights under the Real Estate Law as a real estate broker. At all relevant times, KESSLER was the designated officer of RMK REALTY and at all times was operated under the DBA "The Kessler Team."

3.

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

4.

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 residential resale brokerage wherein Respondents bought, sold, or offered to buy or sell, solicited or obtained listings of, and negotiated the purchase, sale or exchange of real property or business opportunities, all for or in expectation of compensation.

STATEMENT OF RELEVANT FACTS

5.

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

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6.

In 2017, Lois F. and Glen F. ("Sellers") owned real property located at 6155 Marge Court, Eureka, California 95503 ("Subject Property"). In or about January 2017, Respondents entered into a Residential Listing Agreement with Sellers regarding the Subject Property whereby Respondents agreed to serve as Sellers' real estate brokers.

7.

As part of listing their home for sale, Sellers executed a Seller Property Questionnaire ("SPQ"). In section J of the SPQ, which asked if Sellers are aware of any past, present or pending tax liens on the property, Sellers checked the box marked "No" for their answer. Lois F. signed the SPQ on January 14, 2017, and Glen F. signed the SPQ on February 1, 2017.

8.

In or about February 2017, KESSLER received a copy of the preliminary title report for the Subject Property showing two IRS liens. The first such lien, recorded on October 21, 2016, was for \$38,374.55. The second such lien, recorded on November 14, 2016, was for \$29,795.10.

9.

On February 6, 2017, KESSLER emailed Sellers and informed Sellers that he received a copy of the preliminary title report for the Subject Property that showed "two sizeable IRS liens" recorded against the Subject Property.

10.

Between February 6, 2017, and February 10, 2017, KESSLER had several email communications with Sellers regarding the tax liens attached to the Subject Property and how to seek a release of the liens from the IRS.

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11.

On or about February 11, 2017, KESSLER participated in a conference call with Henry K. and Susan N. ("Buyers") and Buyer's agent, Arlene O. ("Buyer's Agent"). At no time during the aforementioned conference call did KESSLER inform Buyers, or Buyers' Agent, of the tax liens attached to the Subject Property. At no time during the Subject Transaction did KESSLER provide Buyer's agent with a copy of the preliminary title report, as described above in Paragraph 8.

12.

On February 11, 2017, Buyers made an offer to purchase the Subject Property for \$475,000. After Buyers and Sellers each made counter-offers, Seller accepted Buyer's counter-offer February 17, 2017, and the parties were in escrow on the transaction ("Subject Transaction") on February 17, 2017. Escrow was set to close on the Subject Transaction on April 7, 2017.

13.

On or about February 22, 2016, Buyers listed for sale their residence in Sparks, Nevada ("Sparks Home"). On February 26, 2017, Buyers accepted an offer on their Sparks Home and escrow was set to close on the Sparks Home on April 7, 2017.

14.

On or about March 6, 2017, Respondents submitted the SPQ to the Buyers' Agent that falsely indicated there were no liens attached to the Subject Property.

15.

On or about March 6, 2017, Respondents completed and submitted an Agent Visual Inspection Disclosure ("AVID"). In the section of the AVID asking the agent to list "Other Observed or Known Conditions Not Specified Above," Respondents wrote: "No notes."

16.

On March 13, 2017, Buyers' agent received a copy of the preliminary title report showing the two IRS liens attached to the Subject Property, as described above in Paragraph 8.

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17.

Because Buyers were in contract to sell their Sparks Home, they felt restrained from walking away from the Subject Transaction. Buyers agreed to extend escrow several times in order to allow Sellers time to discharge the tax lien from the Subject Property.

FIRST CAUSE OF ACTION  
Dishonest Dealings  
(As to both RMK REALTY and KESSLER)

18.

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

19.

Respondents have an affirmative obligation to Buyers to: (a) diligently exercise reasonable skill and care in the performance of Respondents' duties; (b) act honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the value or desirability of the property that are known to, or within the diligent attention and observation of Respondents.

20.

Respondents failed to meet the affirmative obligations described above in Paragraph 19 when they withheld information from Buyers and Buyers' Agent about the tax liens, and failed to provide Buyers' Agent with a copy of the preliminary title report, as described above in Paragraph 11.

21.

Respondents failed to meet the affirmative obligations described above in Paragraph 19 when they submitted the SPQ to Sellers' Agent knowing the SPQ failed to disclose the tax liens existing on the Subject Property at the time, as described above in Paragraph 14.

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22.

Respondents failed to meet the affirmative obligations described above in Paragraph 19 when they submitted an AVID that failed to disclose the tax liens existing on the Subject Property at the time, as described above in Paragraph 15.

23.

Respondents' representations, actions and/or omissions, as described above in Paragraphs 20 through 22, were substantially fraudulent, misleading, dishonest and deceitful, and were known by Respondents to be substantially fraudulent, misleading, dishonest and deceitful during the transaction of the Subject Property.

24.

The acts and/or omissions of Respondents, as alleged above in Paragraphs 18 through 23, are grounds for the revocation or suspension of Respondents' real estate licenses or license rights under Sections 10176(a) (misrepresentation), 10176(i) (fraud or dishonest dealing), 10177(j) (fraud or dishonest dealing), and/or 10177(g) (negligence/incompetence) of the Code.

SECOND CAUSE OF ACTION  
Failure to Supervise  
(As to KESSLER only)

25.

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

26.

At all relevant times, KESSLER, as the supervising broker of RMK REALTY, was required to exercise reasonable supervision and control over the activities of RMK REALTY pursuant to Section 10177(h) of the Code and Section 2725 of the Regulations.

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27.

KESSLER failed to exercise reasonable supervision over the acts and/or omissions of RMK REALTY in such a manner as to allow the acts and/or omissions as described in the First Cause of Action to occur, which constitutes cause for the suspension or revocation of the license(s) and license rights of KESSLER under Sections 10177(d) and/or 10177(g) of the Code, 10177(h), and 10159.2 of the Code, in conjunction with Section 2725 of the Regulations.

COST RECOVERY

28.

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request the Administrative Law Judge to direct a licensee or licensees 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 Respondents under the Code, for the cost of investigation and enforcement as permitted by law, for the cost of the audit, and for such other and further relief as may be proper under other provisions of law.



TRICIA D. PARKHURST  
Supervising Special Investigator

Dated at Sacramento, California,  
this 24th day of September, 2019

DISCOVERY DEMAND

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

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