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FILED

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DEPARTMENT OF REAL ESTATE
By Z. Kravayev

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 3 POINT REAL ESTATE & CONSTRUCTION)
13 and CHRIS E. MACPHAIL,)
14 Respondents.)

No. H-6769 SAC
ACCUSATION

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 3 POINT REAL ESTATE & CONSTRUCTION (3 POINT) and CHRIS E.
19 MACPHAIL (MACPHAIL), sometimes collectively referred to as Respondents, is informed and
20 alleges as follows:

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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).

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25 At all times mentioned, 3 POINT was and is licensed by the State of California
26 Department of Real Estate (Department) as a real estate broker corporation.

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2 At all times mentioned herein, MACPHAIL was and is licensed by the
3 Department individually as a real estate broker, and as the designated broker officer of
4 3 POINT. As the designated broker officer, MACPHAIL was responsible, pursuant to Section
5 10159.2 of the Code, for the supervision of the activities of officers, agents, real estate licensees
6 and employees of 3 POINT for which a real estate license is required to ensure the compliance
7 of the corporation with the Real Estate Law and Regulations.

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9 Whenever reference is made to an allegation in this Accusation to an act or
10 omission of 3 POINT, such allegation shall be deemed to mean that the officers, directors,
11 employees, agents and real estate licensees employed by or associated with 3 POINT committed
12 such acts or omissions while engaged in furtherance of the business or operation of 3 POINT
13 and while acting within the course and scope of their corporate authority and employment.

14
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 Section 10131(b) of the Code, including the operation and conduct of a
18 property management business with the public wherein, on behalf of others, for compensation or
19 in expectation of compensation, Respondents leased or rented or offered to lease or rent, or
20 placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or
21 negotiated the sale, purchase or exchanges of leases on real property, or on a business
22 opportunity, or collected rents from real property, or improvements thereon, or from business
23 opportunities.

24 FIRST CAUSE OF ACTION

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

On or about April 17, 2017, and continuing intermittently through May 29, 2018, an audit was conducted of the records of 3 POINT. The auditor examined records for the period of April 1, 2016, to March 31, 2017 (the audit period).

While acting as real estate brokers as described in Paragraph 5, above, and within the audit period, Respondents accepted or received funds in trust (trust funds) from or on behalf of property owners, lessees and others in connection with property management activities, and deposited or caused to be deposited those funds into bank accounts maintained by Respondents, at Bank of America, P.O. Box 25118, Tampa, Florida 33622-5118, including but not limited to the following:

BANK ACCOUNT #1	
Account No.:	XXXX XXXX 4552
Entitled:	3 POINT REAL ESTATE & CONSTRUCTION INC. (PROPERTY MANAGEMENT)

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

In the course of the activities described in Paragraph 5, in connection with the collection and disbursement of trust funds, it was determined that:

- (a) Respondents failed to designate Bank Account #1 as a trust fund account in the name of a holder of a license as trustee as required by Section 10145 of the Code and Section 2832 of Chapter 6, Title 10, California Code of Regulations (Regulations);
- (b) Respondents failed to maintain an accurate columnar record in chronological sequence of all trust funds received and disbursed (Control Record), containing all required information, for Bank Account #1, in violation of

1 Section 2831 of the Regulations;

2 (c) Respondents failed to maintain adequate and accurate separate records for
3 each beneficiary of trust funds accepted or received and disbursed for Bank
4 Account #1, in violation of Section 2831.1 of the Regulations;

5 (d) Respondents failed to reconcile at least once a month, the balance of all
6 separate beneficiary or transaction records, in violation of Section 2831.2 of
7 the Regulations; and

8 (e) Respondents collected and retained compensation, commission, or profit, and
9 failed to disclose the compensation, commission or profit from property
10 owners in connection with charging mark ups on repairs/maintenance, in
11 violation of Section 10176 (g) of the Code.

12 10

13 The acts and/or omissions described above constitute violations of Sections 2831
14 (Control Records), 2831.1 (Separate Beneficiary Records), 2831.2 (Trust Account
15 Reconciliation), and 2832 (Bank Account Not Properly Designated as Trust Account) of the
16 Regulations and Sections 10145 (Trust Fund Handling) and 10176 (g) (Secret or Undisclosed
17 Compensation) of the Code, and are grounds for discipline under Sections 10177(d) (Willful
18 Disregard of Real Estate Laws) and/or 10177(g) (Negligence/Incompetence Licensee) of the
19 Code.

20 SECOND CAUSE OF ACTION

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22 Each and every allegation in Paragraphs 1 through 10, inclusive, is incorporated
23 by this reference as if fully set forth herein.

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25 Respondent MACPHAIL failed to exercise reasonable supervision and control
26 over the property management activities of 3 POINT. In particular, MACPHAIL permitted,
27 ratified and/or caused the conduct described above to occur, and failed to take reasonable steps,

1 including but not limited to, the handling of trust funds, supervision of employees, and the
2 implementation of policies, rules and systems to ensure the compliance of the business with the
3 Real Estate Law and the Regulations.

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5 The above acts and/or omissions of MACPHAIL violate Section 2725 (Broker
6 Supervision) of the Regulations and Section 10159.2 (Responsibility/Designated Officer) of the
7 Code, and constitute grounds for disciplinary action under the provisions of Sections 10177(d),
8 10177(g) and/or 10177(h) (Broker Supervision) of the Code.

9 COST RECOVERY

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11 Audit Costs

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

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16 Costs of Investigation and Enforcement

17 Section 10106 of the Code provides, in pertinent part, that in any order issued in
18 resolution of a disciplinary proceeding before the Department, the commissioner may request the
19 administrative law judge to direct a licensee found to have committed a violation of this part to
20 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case

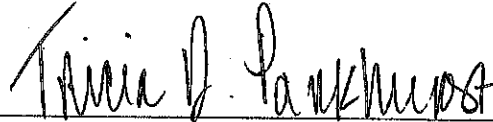
21 WHEREFORE, Complainant prays that a hearing be conducted on the
22 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
23 disciplinary action against all licenses and license rights of Respondents under the Real Estate
24 Law, for the cost of the investigation and enforcement as permitted by law, for the cost of the

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1 audit as permitted by law, and for such other and further relief as may be proper under other
2 provisions of law.

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TRICIA D. PARKHURST
Supervising Special Investigator

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6 Dated at Sacramento, California,
7 this 22nd day of February, 2019.

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9 DISCOVERY DEMAND

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

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