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FILED

AUG 07 2020

DEPARTMENT OF REAL ESTATE
By *X. Kuypp*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:	)	NO. H-6804 SAC
	)	
PPM INVESTMENTS, INC.	)	<u>FIRST AMENDED</u>
and DARUS KAYN TRUTNA,	)	<u>ACCUSATION</u>
	)	
Respondents.	)	
	)	

The Complainant, TRICIA D. PARKHURST, in her official capacity as a Supervising Special Investigator of the State of California, for cause of Accusation against PPM INVESTMENTS, INC. ("PPM"), and DARUS KAYN TRUTNA ("TRUTNA"), (collectively referred to as "Respondents"), is informed and alleges as follows:

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

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TRUTNA is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code ("the Real Estate Law") as an individual real estate broker and, at all relevant times, was the designated broker officer of PPM.

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

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

COUNT ONE
DISHONEST DEALING
(As to Respondents PPM and TRUTNA)

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

As part of the electronic rental application process to rent a unit managed by Respondents, applicants paid a \$42 fee on-line. Pursuant to Respondents' Terms of Agreement, Respondents agreed to use \$15 of the \$42 submitted by an applicant to pay for a consumer credit report. From the period of January 1, 2017, to April 30, 2018, approximately \$20,946 in consumer credit report fees were disbursed to Respondents without Respondents having accessed a consumer

1 credit report for the corresponding applicants, and without Respondents having provided the
2 appropriate refund to the applicants.

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4 The acts and/or omissions of Respondents, as set forth above in Paragraph 6, were
5 substantially fraudulent, misleading, dishonest, and deceitful, and were known by Respondents to
6 be substantially fraudulent, misleading, dishonest, and deceitful during the transaction of the
7 Subject Property.

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9 The acts and/or omissions of Respondents, as alleged above in Paragraphs 5
10 through 7, are grounds for the revocation or suspension of Respondents' real estate licenses or
11 license rights under Sections 10176(a) (misrepresentation), 10176(i) (fraud or dishonest dealing),
12 10177(j) (fraud or dishonest dealing) and/or 10177(g) (negligence/incompetence) of the Code.

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14 **COUNT TWO**
AUDIT VIOLATIONS

15 (As to Respondents PPM and TRUTNA)

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17 Each and every allegation in paragraphs 1 through 8, inclusive, above, is
18 incorporated by this reference as if fully set forth herein.

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20 Beginning on or about May 22, 2018, and continuing until on or about December 11,
21 2018, the Department conducted an audit of the books and records related to the real estate activities
22 of Respondents at Respondents' business office located at 710 E Street, Suite 140, Eureka, CA
23 95501. The auditor examined records for the period of January 1, 2017, to April 30, 2018 ("audit
24 period").

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26 While acting as real estate brokers as described above in paragraph 4, and within the
27 audit period, Respondents accepted or received funds in trust ("trust funds") and deposited or

1 caused the trust funds to be deposited into bank accounts maintained by Respondents, and
2 thereafter, from time-to-time, Respondents made disbursements of said trust funds, identified as
3 follows:

4 Trust Account #1

5 Bank Name: Umpqua Bank
6 Account No.: Last 4 Digits: xxx6875
7 Account Name: PPM Investments Inc. Trust Account
8 Signatories: Darus K. Trutna (REB)
9 Sheila Bearden (RES)
10 Susan Whiteside (RES)
11 Henry J. Hammacher (REB)
12 Purpose: Used to hold rents, security deposits, application fees, repairs
13 and maintenance fees.

14 Trust Account #2

15 Bank Name: Seacoast Commerce Bank
16 Account No.: Last 4 Digits: xxxx4221
17 Account Name: PPM Investments Inc.
18 DBA Real Property Management Humboldt as Trustee
19 Client Trust Account
20 Signatories: Darus K. Trutna (REB)
21 Sheila Bearden (RES)
22 Susan Whiteside (RES)
23 Henry J. Hammacher (REB)
24 Purpose: As of December 19, 2017, Trust Account #2 was the successor
25 account to Trust Account #1.

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27 In the course of the real estate broker activities described above in paragraph 4, and
during the audit period, Respondents:

(a) caused, suffered, or permitted the balance of funds in Trust Account #1 to
be reduced to an amount which, as of June 30, 2017, was approximately \$35,531.58 less than the
aggregate liability of Trust Account #1 to all owners of such funds, without the prior written
consent of each and every owner of such funds, in violation of Section 10145 of the Code, and
Section 2832.1 of Chapter 6, Title 10, California Code of Regulations ("the Regulations");

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1 (b) caused, suffered, or permitted the balance of funds in Trust Account #2 to
2 be reduced to an amount which, as of April 30, 2018, was approximately \$13,607.29 less than the
3 aggregate liability of Trust Account #2 to all owners of such funds, without the prior written
4 consent of each and every owner of such funds, in violation of Section 10145 of the Code, and
5 Section 2832.1 of the Regulations;

6 (c) failed to maintain and/or keep accurate and complete separate records for the
7 receipt and disposition of all trust funds deposited into Trust Account #2 on December 19, 2017, in
8 violation of Section 10145(g) of the Code and Section 2831.1 of the Regulations;

9 (d) failed to reconcile at least once per month, the balance of all separate
10 beneficiary or transaction records to the balance of the control records for Trust Account #1 and
11 Trust Account #2, in violation of 10145 of the Code and Section 2831.2;

12 (e) conducted real estate activities using the fictitious business name "Real
13 Property Management Humboldt" without first registering this fictitious business name with the
14 Department as required by Section 10159.5 of the Code and Section 2731 of the Regulations; and

15 (f) failed to notify the Commissioner in writing of the employment of real estate
16 broker Henry Hammacher, as required by Section 10161.8 of the Code.

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18 The acts and/or omissions of Respondents as alleged above in paragraph 8, constitute
19 grounds for the suspension or revocation of all licenses and license rights of Respondents pursuant
20 to the following provisions of the Code and Regulations:

21 As to Paragraph 12(a), under Section 10177(d) and/or 10177(g) of the Code, in
22 conjunction with Section 10145 of the Code, and Section 2832.1 of the Regulations;

23 As to Paragraph 12(b), under Section 10177(d) and/or 10177(g) of the Code, in
24 conjunction with Section 10145 of the Code, and Section 2832.1 of the Regulations;

25 As to Paragraph 12(c), under Section 10177(d) and/or 10177(g) of the Code, in
26 conjunction with Section 10145(d) of the Code and Section 2831.1 of the Regulations;

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1 As to Paragraph 12(d), under Section 10177(d) and/or 10177(g) of the Code, in
2 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

3 As to Paragraph 12(e), under Section 10177(d) and/or 10177(g) of the Code, in
4 conjunction with Section 10159.5 of the Code and Section 2731 of the Regulations; and

5 As to Paragraph 12(f), under Section 10177(d) and/or 10177(g) of the Code, in
6 conjunction with Section 10161.8 of the Code.

7 **COUNT TWO**
8 **FAILURE TO SUPERVISE**
(As to Respondent TRUTNA)

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

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13 TRUTNA, as the designated officer of PPM, was required to exercise reasonable
14 supervision and control over the activities of PPM, its employees, and the real estate activities being
15 conducted by PPM.

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17 TRUTNA failed to exercise reasonable supervision over the acts and/or omissions of
18 PPM and its employees, in such a manner as to allow the acts and/or omissions as described above
19 in Paragraphs 5 through 13 to occur, which constitutes cause for the suspension or revocation of the
20 license(s) and license rights of TRUTNA under Sections 10177(d) and/or 10177(g), 10177(h), and
21 10159.2 of the Code, in conjunction with Section 2725 of the Regulations.

22 **COST RECOVERY**

23 **Audit Costs**

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25 The acts and/or omissions of Respondents, as alleged above in the Second Cause of
26 Action, entitle the Department to reimbursement of the costs of its audit pursuant to Section
27 10148(b) of the Code.

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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 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.

Tricia D. Parkhurst
TRICIA D. PARKHURST
Supervising Special Investigator

DISCOVERY DEMAND

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