

NOV 26 2019

DEPARTMENT OF REAL ESTATE

By B. dew

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

HOLT & COMPANY INC and

DONALD LEE HOLT,

Respondents.

No. H-6871 SAC

ACCUSATION

The Complainant, TRICIA D. PARKHURST, acting in her official capacity as a Supervising Special Investigator of the State of California, for cause of Accusation against Respondents HOLT & COMPANY INC (HCI) and DONALD LEE HOLT (HOLT), sometimes collectively referred to as Respondents, is informed and alleges as follows:

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

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

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At all times mentioned herein, HOLT was and is presently licensed by the Department, individually as a real estate broker.

At all times herein mentioned, Respondents conducted real estate activity under HCI's real estate broker corporation license and the fictitious business name, "Realty Management Company", registered with the Department.

At all times mentioned herein, HOLT was and is the designated broker officer of HCI. As the designated broker officer, HOLT was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of officers, agents, real estate licensees and employees of HCI for which a real estate license is required to ensure the compliance of the corporation with the Real Estate Law and Regulations.

Whenever reference is made to an allegation in this Accusation to an act or omission of HCI, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with HCI committed such acts or omissions while engaged in furtherance of the business or operation of HCI and while acting within the course and scope of their corporate 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 real estate brokers 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, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented or offered to lease or rent, or placed for rent, or solicited listings of 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.

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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 On or about April 24, 2019, and continuing intermittently through May 22, 2019,
7 an audit was conducted of the records of HCI. The auditor examined the records for the period
8 of January 1, 2017, through March 31, 2019 (the audit period).

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10 While acting as a real estate broker as described in Paragraph 7, above, and
11 within the audit period, Respondents accepted or received funds in trust (trust funds) from or on
12 behalf of property owners, lessees and others in connection with property management
13 activities, and deposited or caused to be deposited those funds into bank accounts maintained by
14 Respondents, at First Citizens Banks, P.O. Box 27131, Raleigh, North Carolina 27611-7131,
15 including but not limited to the following:

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TRUST ACCOUNT #1	
Account No.:	XXXXXXX4464
Entitled:	HOLT & COMPANY INC DBA REALTY MANAGEMENT COMPANY CLIENT TRUST ACCOUNT

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

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23 In the course of the activities described in Paragraph 7, in connection with the
24 collection and disbursement of trust funds, it was determined that:

- 25 (a) An accountability was performed on Trust Account #1, and as of June 30,
26 2018, there was a shortage of \$16,222.71 revealed, in violation of Section
27 10145 of the Code;

- 1 (b) An accountability was performed on Trust Account #1, and as of January 31,
2 2019, there was a shortage of \$11,401.58 revealed, in violation of Section
3 10145 of the Code;
- 4 (c) Respondents failed to obtain written permission from owners of trust funds in
5 Trust Account #1, to allow the balances to drop below accountability, in
6 violation of Section 2832.1 of Chapter 6, Title 10, California Code of
7 Regulations (Regulations); and
- 8 (d) Respondents caused, suffered, or permitted funds of others which were
9 received and held by Respondents to be commingled with broker funds in
10 excess of \$200 in Trust Account #1, in violation of Section 10176 (e) of the
11 Code and Section 2835 of the Regulations.

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13 The acts and/or omissions described above constitute violations of Sections
14 2832.1 (Written Permission for Balance Below Accountability) and 2835 (Commingling) of the
15 Regulations, and of Sections 10145 (Trust Fund Handling) and 10176 (e) (Commingling) of the
16 Code, and are grounds for discipline under Sections 10177(d) (Willful Disregard of Real Estate
17 Laws) and/or 10177(g) (Negligence/Incompetence Licensee) of the Code.

18 SECOND CAUSE OF ACTION

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

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

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

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

8 PRIOR ADMINISTRATIVE ACTION

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10 Effective October 17, 2007, in Case No. H-4765 SAC, before the Department of
11 Real Estate of the State of California, the Real Estate Commissioner suspended the license and
12 licensing rights of HCI for a period of 5 days for the following violations: Sections 2832.1 of the
13 Regulations and Sections 10145 and 10177 (d) of the Code.

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15 Effective October 17, 2007, in Case No. H-4765 SAC, before the Department of
16 Real Estate of the State of California, the Real Estate Commissioner suspended the license and
17 licensing rights of HOLT for a period of 5 days for the following violations: Sections 10159.2,
18 10177 (d), 10177 (g) and 10177 (h) of the Code.

19 COST RECOVERY

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21 Audit Costs

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

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Costs of Investigation and Enforcement

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.

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 Real Estate Law, for the cost of the investigation and enforcement as permitted by law, for the cost of the audit as permitted by law, 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 76th day of November, 2019.

DISCOVERY DEMAND

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.