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FILED

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DEPARTMENT OF REAL ESTATE
By B. Nicholas

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

13 BELINDA LATRICE SMITH, and JACOB)
14 BENJAMIN WINDING,)

15 Respondents.)

No. H-6901 SAC

ACCUSATION

16 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
17 of the State of California, for cause of Accusation against BELINDA LATRICE SMITH, and
18 JACOB BENJAMIN WINDING (Respondents), is informed and alleges as follows:

19 PRELIMINARY ALLEGATIONS

20 1

21 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
22 of the State of California, makes this Accusation in her official capacity.

23 2

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

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At all times mentioned, Respondent BELINDA LATRICE SMITH (SMITH) was and is licensed by the Department of Real Estate (Department) as a real estate broker. At all times after August 17, 2015, SMITH was licensed to do business using the fictitious business name Purple Blanket Real Estate and Property Management.

At all times mentioned through July 9, 2019, Respondent JACOB BENJAMIN WINDING (WINDING) was and is licensed by the Department as a real estate salespersons. At all times from on or about August 5, 2015, through October 4, 2017, WINDING's salesperson license was affiliated under the brokerage of SMITH. On or about October 5, 2017, WINDING's real estate salesperson license was suspended pursuant to Section 10475 of the Business and Professions Code (Code) with the payment of Consumer Recovery Account Claim R-4508. On or about July 9, 2019, WINDING's salesperson license expired.¹

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate licensee in the State of California within the meaning of Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the

FIRST CAUSE OF ACTION

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

¹ Section 10103 of the Code provides, "[t]he lapsing or suspension of a license ... shall not deprive the department of jurisdiction to proceed with any ... disciplinary proceeding against such a license, or to render a decision suspending or revoking such license."

1 7

2 On or about May 1, 2017, WINDING, acting on behalf of Smith and Purple
3 Blanket Real Estate and Property Management, entered into a Listing Agreement with Ella
4 Johnson (Johnson) to sell the property located at 3059 Penelope Lane, Stockton (Penelope
5 property).

6 8

7 On or about May 1, 2017, SMITH posted the listing for the Penelope property on
8 the multiple listing service (MLS) maintained by Metro List.

9 9

10 Between on or about May 4, 2017, and September 28, 2017, Respondents acted as
11 the agent for Johnson in negotiations with Wells Fargo Bank to accomplish a short sale of the
12 Penelope property.

13 10

14 On or about May 2017, WINDING, acting on behalf of Smith and Purple Blanket
15 Real Estate and Property Management, solicited Eugene Brisco (Brisco) to purchase the Penelope
16 property. WINDING told Brisco that Johnson was facing foreclosure. WINDING further
17 informed Brisco he would need to catch-up the payments, around \$30,000. WINDING sent
18 Brisco a text link to the MLS listing for the Penelope property.

19 11

20 In or about August 2017, SMITH met with Brisco at the office of Purple Blanket
21 Real Estate and Property Management. SMITH solicited Brisco to purchase the Penelope
22 property in that SMITH told Brisco that the Penelope property was "her deal", that it was a "good
23 deal", and that she had thought about buying the property herself.

24 12

25 On or about September 24, 2017, WINDING solicited Brisco to purchase the
26 Penelope property. WINDING telephoned Brisco and told him that the Penelope property was in
27 foreclosure and that the trustee sale was September 28, 2017. WINDING promised Brisco that if

1 he paid the past due amount of \$30,498.41, on behalf of Johnson, WINDING would deliver a
2 Grant Deed to Brisco signed by Johnson. WINDING emailed Brisco with information from
3 Wells Fargo Bank related to the past due amount.

4 13

5 On or about September 27, 2017, WINDING again solicited Brisco to purchase
6 the Penelope property before it went into foreclosure. WINDING also sent texts to Brisco asking
7 him to purchase the property. Based on WINDING's advice and representations Brisco decided
8 to purchase the Penelope property. At no time was a purchase contract drafted and/or entered
9 into between Brisco and Johnson.

10 14

11 On or about September 27, 2017, Brisco, as directed by WINDING, wired
12 \$30,498.41 from his personal account to Johnson's mortgage account at Wells Fargo to catch-up
13 the loan payments and stop the foreclosure.

14 Brisco sent to WINDING, via email, proof of the wire transfer. WINDING told
15 Brisco that he would deliver him a Grant Deed signed by Johnson.

16 WINDING requested Brisco provide WINDING \$15,000 cash to cover a payment
17 to Johnson for "Cash for Keys" and for Respondents commission for the sale of the Penelope
18 property. WINDING notified Brisco that Johnson would be out of the property by October 6,
19 2017.

20 15

21 On or about September 27, 2017, WINDING met with Johnson at the Penelope
22 property and presented a Grant Deed for Johnson to sign. Johnson signed the Grant Deed before
23 a Notary Public.

24 16

25 On or about October 2, 2017, Brisco gave WINDING \$5,000 in cash as partial
26 commission for the Penelope property sale. WINDING failed to provide Brisco with a receipt
27 for the \$5,000.

1 17

2 On or about October 6, 2017, WINDING met with Johnson and Brisco at the
3 Penelope property. WINDING accepted from Brisco \$10,000 in cash as the balance of
4 Respondents' commission from the sale of the Penelope property, and to pay Johnson "Cash for
5 Keys" to vacate the Penelope property. WINDING failed to provide Brisco with a receipt for the
6 \$10,000.

7 WINDING provided Brisco with the mailbox key, code for the alarm, and assisted
8 Brisco in having the locks to the Penelope changed.

9 WINDING gave Brisco a copy of an unrecorded Grant Deed signed by Johnson
10 which transferred title of the Penelope property to Brisco, as a single man.

11 18

12 On or about October 7, 2017, WINDING met with Brisco. Brisco requested
13 receipts for the cash payment and inquired about getting a recorded grant deed. WINDING told
14 Brisco he would get a copy of the recorded Grant Deed in the mail.

15 19

16 On or about November 21, 2017, WINDING recorded at the San Joaquin County
17 Recorder's Office a Grant Deed that was different than the one given to Brisco on October 7,
18 2017. This altered Grant Deed purported to transfer titled of the Penelope property to
19 WINDING.

20 20

21 On or about November 27, 2017, Brisco learned that the Grant Deed that was
22 recorded was not the same as WINDING provided to him on October 7, 2017.

23 21

24 On or about November 28, 2017, Respondents changed the locks on the Penelope
25 property. Respondents also occupied and continue to occupy the Penelope property.

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2 Respondents' conduct described above, constitutes the making of substantial
3 misrepresentations, making false promises, fraud or dishonest dealing, and/or negligence and is
4 cause under Sections 10176(a), 10176(b), 10176(i), 10177(g), and/or 10176(j) of the Code for
5 suspension or revocation of all licenses and license rights of Respondents.

6 SECOND CAUSE OF ACTION

7 23

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

10 24

11 As a real estate broker, SMITH is required to retain for three years copies of all
12 listings, deposit receipts, canceled checks, trust records, and other documents executed by her or
13 obtained by her in connection with any transactions for which a real estate broker license is
14 required.

15 25

16 On or about July 27, 2018, a designated representative of the Real Estate
17 Commissioner made demand, pursuant to Section 10148 of the Code, that SMITH make
18 available for examination, inspection and copying by the Department, all of SMITH's records,
19 papers, books, accounts, and documents regarding the listing, sale, and/or purchase of the
20 Penelope property.

21 26

22 On or about August 16, 2018, SMITH responded to the Department's request
23 providing that she had no transaction file for the Penelope property. To date, SMITH has failed
24 and/or refused to provide to the Department the requested transaction file.

25 27

26 SMITH's failure to retain and/or failure to make available for inspection the
27 records described in Paragraph 24, constitutes cause for the suspension or revocation of all

1 licenses and license rights of SMITH under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 10148 of the Code.

3 COST RECOVERY

4 28

5 Section 10106 of the Code provides, in pertinent part, that in any order issued in
6 resolution of a disciplinary proceeding before the Department, the Commissioner may request the
7 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
8 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
10 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
11 action against all licenses and license rights of Respondent under the Code, for the cost of
12 investigation and enforcement as permitted by law, and for such other and further relief as may
13 be proper under the provisions of law.

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15 TRICIA D. PARKHURST
16 Supervising Special Investigator

17 Dated at Sacramento, California,
18 this 4th day of May, 2020

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21 DISCOVERY DEMAND

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