

FILED

SEP 27 2021

DEPARTMENT OF REAL ESTATE

By 13 dsw

MEGAN LEE OLSEN, Counsel, (SBN 272554)

Department of Real Estate

P. O. Box 137007

Sacramento, CA 95813-7007

Telephone: (916) 576-8700

(916) 263-3767 (Fax)

(916) 576-7846 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

MARK STUART GARSTANG,

Respondent.

No. H-7067 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 MARK STUART GARSTANG (Respondent), is informed and alleges as follows:

1

At all times herein mentioned, Respondent was and is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (Code) by the Department of Real Estate (the Department) as a real estate broker.

2

At all times herein mentioned, Respondent conducted real estate activity under his individual broker license and the unregistered fictitious business name, "Landlord Support Services".

///

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker 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, Respondent leased or rented or offered to lease or rent, or solicited listings of places for rent or solicited for prospective tenants, or negotiated the sale, purchase or exchange of leases on real property, or on a business opportunity, or collected rent from tenants.

FIRST CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 3, inclusive, is incorporated by this reference as if fully set forth herein

On or about September 22, 2020, and September 25, 2020, an audit was conducted of the records of Respondent. The auditor examined the records for the period of January 1, 2019, through July 31, 2020 (the audit period).

Respondent, while acting as a real estate broker, as described in Paragraph 3, accepted or received funds in trust (trust funds) from or on behalf of owners, lessees and others in connection with property management activities, and deposited those funds into bank accounts maintained by Respondent, at the following financial institutions, including, but not limited to:

TRUST ACCOUNT #1	
Bank:	U.S. Bank, N.A., 206 Walker Street, Orland, CA 95963
Account No.:	XXXXXXXXXX4236
Entitled:	Preferred Agents Trust Fund Account

BANK ACCOUNT #1	
Bank:	Cornerstone Community Bank, P.O. Box 889, Red Bluff, CA 96080
Account No.:	XXXXXX3156
Entitled:	Lynne T Moule d/b/a Bus. Connections Landlord Support ¹

BANK ACCOUNT #2	
Bank:	Cornerstone Community Bank, P.O. Box 889, Red Bluff, CA 96080
Account No.:	XXXXXX5888
Entitled:	Lynne T Moule d/b/a Bus. Connections Landlord Support "Repair/Maintenance" ²

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

7

In the course of the activities described in Paragraph 3, in connection with the collection and disbursement of trust funds, it was determined that:

- (a) Respondent failed to properly designate Bank Account #1 and Bank Account #2 as trust accounts in the name of the broker as trustee, as required by Section 10145 of the Code and Section 2832 of Chapter 6, Title 10, California Code of Regulations (Regulations);
- (b) Respondent allowed a person licensed as a broker to be a signatory on Bank Account # 1 and Bank Account #2 without having entered into a written agreement pursuant to Section 2726, in violation of Section 10145 of the Code and Section 2834 of the Regulations;

¹ The bank statements for Bank Account #1 also set forth the name, "Bill & Lynne Moule Family Trst DBA Bus. Connections Landlord Support".

² The bank statements for Bank Account #2 also set forth the name, "Bill & Lynne Moule Family Trst DBA Lynne T Moule Bus. Connections Landlord Support 'Repair/Maintenance' ".

- 1 (c) Trust Account #1 contained unidentified and/or unaccounted for funds of
2 \$452.58 for which no separate record was maintained, in violation of Section
3 10145 (g) of the Code and Section 2831.1 of the Regulations;
- 4 (d) Respondent failed to perform and/or maintain records of monthly
5 reconciliations, reconciling the balance of all separate beneficiary or
6 transaction records with the balance of the record of all trust funds received
7 and disbursed for Trust Account #1, in violation of Section 2831.2 of the
8 Regulations;
- 9 (e) Respondent conducted real estate activities using the fictitious business name
10 "Landlord Support Services" without first registering with the Department, as
11 required by Section 10159.5 of the Code, and in violation of Section 2731 of
12 the Regulations.
- 13 (f) Respondent employed broker associates, James Huntsman and Michael
14 Weibling, to perform property management activities, and failed to notify the
15 Department within 5 days of employment, in violation of Section 10161.8 of
16 the Code and Section 2752 of the Regulations; and
- 17 (g) Respondent was not an authorized signer on Bank Account #1 and Bank
18 Account #2, in violation of Section 2725 of the Regulations.

19 8

20 The acts and/or omissions described above constitute violations of Sections 2731
21 (Use of False/Fictitious Name), 2725 (Broker Supervision), 2752 (Notice of Change of Broker),
22 2831.1 (Separate Records), 2831.2 (Trust Fund Reconciliation), 2832 (Bank Account Not
23 Properly Designated as Trust Account), and 2834 (Trust Fund Signatories) of the Regulations,
24 and Sections 10145 (Trust Fund Handling), 10159.5 (Fictitious Name), and 10161.8 (Broker
25 Associate Retention) of the Code, and are grounds for discipline under Sections 10177(d)
26 (Willful Disregard of Real Estate Laws) and/or 10177(g) (Negligence/Incompetence Licensee) of
27 the Code.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

COST RECOVERY

14

Audit Costs

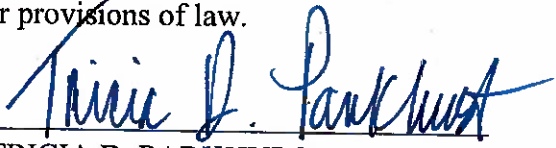
The acts and/or omissions of Respondents, as alleged above, entitle the Department to reimbursement of the costs of its audits pursuant to Section 10148(b) (Audit Costs for Trust Fund Handling Violations) of the Code.

15

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 Respondent under the Code, for the reasonable 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 17th day of September, 2021

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.