

KYLE T. JONES, Counsel (SBN 300751)
Department of Real Estate
P.O. BOX 137007
Sacramento, CA 95813-7007

Telephone: (916) 576-8700
(916) 263-3767 (Fax)
(916) 576-7840 (Direct)

FILED

JAN 25 2023

DEPARTMENT OF REAL ESTATE

By J. Targant

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	No. H-7185 SAC
SCOTT THOMAS SWINDELL,)	
)	<u>ACCUSATION</u>
Respondent.)	
)	

The Complainant, TRICIA D. PARKHURST, acting in her official capacity as a Supervising Special Investigator of the State of California, for this Accusation against SCOTT THOMAS SWINDELL ("Respondent"), is informed and alleges as follows:

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At all times mentioned herein, Respondent was, and is presently licensed and/or has license rights by the Department of Real Estate ("Department"), under the California Business and Professions Code ("Code") as a real estate broker, License No. 01349638.

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At all times mentioned herein, Respondent was a broker associate, a broker acting in the capacity of a salesperson, for Northpoint Asset Management, Inc. ("Northpoint"), a licensed real estate corporation, License No. 01875453.

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At all times mentioned, Respondent engaged in the business within the meaning of Section 10131(a) of the Code, including the operation and conduct of a residential resale brokerage wherein Respondent bought, sold, or offered to buy or sell, solicited or obtained listings of, and negotiated the purchase, sale or exchange of real property or business opportunities, all for or in expectation of compensation.

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On or about September 29, 2021, Respondent executed a Residential Listing Agreement with Ryan C. to sell the property located at 4800 Carey Road, Sacramento, CA 95835 ("Carey Road"). The agreement provided Northpoint a five percent commission of the listing price or if a purchase agreement was entered into, of the purchase price.

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On October 17, 2021, Rich G., a licensed salesperson, contacted Respondent by telephone to inform Respondent that he would be showing Carey Road to a prospective buyer and to request the alarm code. Respondent provided Rich G. the alarm code. Later that day, Respondent showed Carey Road to the prospective buyer.

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On October 18, 2021, Rich G. sent a text message to Respondent identifying himself and asking if permitted work was added to Carey Road. Respondent replied and stated that the buyer would need to check. Later that day, Rich G. called Respondent and spoke to him for approximately five minutes.

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On October 19, 2021, Rich G. called Respondent and spoke with him for approximately one minute. Rich G. informed Respondent that his prospective buyer was interested in Carey Road and an offer would be submitted to Respondent.

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On October 20, 2021, Rich G. sent a text to Respondent asking to view Carey Road again with the prospective buyer. Respondent replied and granted Rich G. permission to view Carey Road. Later that day, Rich G. sent another text to Respondent asking who Respondent opened escrow with. Respondent replied twice. The first response stated "First American." The second response stated "Getting another offer tonight." Rich G. replied and informed Respondent that he would likely have an offer to Respondent the following morning.

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On October 21, 2021, Respondent received an offer from Colette W. representing Pennacel Investments for Carey Road with a purchase price of \$425,000. Respondent spoke with Ryan C. and the offer was rejected.

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On October 21, 2021, Respondent prepared an offer on behalf of Makhan K. and Jaspreet K. ("the Buyers") for Carey Road with a purchase price of \$532,000. Ryan C. accepted the offer and escrow closed on or about November 1, 2021. Respondent acted as a dual agent. Northpoint and Respondent received \$11,970 more in commissions than if Respondent were to have only represented Ryan C. in the sale and another agent represented the buyers.

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On October 21, 2021, prior to Ryan C. receiving the written offer from the Buyers, Rich G. emailed Respondent an offer from Leila K. ("Rich G.'s Offer") for Carey Road with a purchase price of \$575,000.

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On October 21, 2021, immediately prior to accepting Respondent's offer from the Buyers, Ryan C. spoke with Respondent. Respondent told Ryan C. that there were no other offers and no other interest in Carey Road besides the offer from the Buyers.

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On October 22, 2021, Rich G. texted Respondent and asked Respondent if he had received the offer. Respondent replied that he had received the offer but another offer was received and accepted by the seller. Respondent asked if he could keep Rich G.'s Offer as a backup. Rich G. agreed to be a backup offer to the accepted offer.

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On November 3, 2021, Ryan C. texted Respondent and asked Respondent if he had discussed another offer with anyone around the time Ryan C. accepted the offer from the Buyers. Respondent replied and denied receiving an offer in writing. Ryan C. then disclosed to Respondent he had a written offer for \$575,000. Respondent then stated that the offer was only for \$475,000 and came in after Ryan C. accepted the offer from the Buyers. Ryan C. then texted Respondent a picture of Rich G.'s Offer.

GROUND FOR DISCIPLINE

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The facts alleged in Paragraphs 1 through 14, above, constitute cause under Sections 10176(a) (misrepresentation), 10176(c) (continued and flagrant course of misrepresentation), 10176(i) (fraud or dishonest dealing), 10177(g) (negligence or incompetence), and/or 10177(j) (fraud or dishonest dealing) of the Code for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

COST RECOVERY

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The Department will seek to recover the costs of the investigation and prosecution of this case pursuant to Section 10106 of the Code which 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.

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondent under the Real Estate Law, for the
4 cost of investigation and enforcement as permitted by law, and for such other and further relief as
5 may be proper under other provisions of law.

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8 TRICIA D. PARKHURST

9 Supervising Special Investigator

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11 Dated at Sacramento, California,
12 this 20th day of January 2023.
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15 DISCOVERY DEMAND

16 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the
17 Department hereby makes demand for discovery pursuant to the guidelines set forth in the
18 *Administrative Procedure Act*. Failure to provide Discovery to the Department may result in the
19 exclusion of witnesses and documents at the hearing or other sanctions that the Office of
20 Administrative Hearings deems appropriate.
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