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FILED

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DEPARTMENT OF REAL ESTATE

By Ry dew

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	NO. H-7212 SAC
)	
AAA ADVANTAGE REALTY, INC.,)	<u>ACCUSATION</u>
SANDRA JO STEVENSON, and)	
NADENE M. BERRYESSA,)	
)	
Respondents.)	

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 AAA ADVANTAGE REALTY, INC. ("AAA ADVANTAGE"), SANDRA JO STEVENSON ("STEVENSON"), and NADENE M. BERRYESSA ("BERRYESSA"), (collectively "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 relevant times, AAA ADVANTAGE was and is licensed by the State of California, Department of Real Estate ("Department"), as a RESTRICTED real estate broker corporation.

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2 At all relevant times, STEVENSON was and is licensed by the Department as a
3 RESTRICTED real estate broker.

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5 At all relevant times, STEVENSON was the designated broker officer of AAA
6 ADVANTAGE. Pursuant to Section 10159.2 of the Code, STEVENSON was responsible for,
7 among other things, supervising the activities of the officers, agents, real estate licensees, and
8 employees of AAA ADVANTAGE.

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10 At all relevant times, BERRYESSA was licensed by the Department individually
11 as a real estate salesperson who worked under the broker supervision of AAA ADVANTAGE.

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13 Whenever reference is made in an allegation in this Accusation to an act or
14 omission of AAA ADVANTAGE, such allegation shall be deemed to mean that the officers,
15 directors, employees, agents and/or real estate licensees employed by or associated with AAA
16 ADVANTAGE committed such act or omission while engaged in the furtherance of the business
17 or operations of AAA ADVANTAGE, and while acting within the course and scope of their
18 authority and employment.

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20 At all relevant times, Respondents engaged in the business of, acted in the
21 capacity of, advertised, or assumed to act as real estate licensees, in the State of California, on
22 behalf of others, for compensation or in expectation of compensation, within the meaning of
23 Section 10131(a) of the Code, including the operation and conduct of a real estate resale
24 brokerage with the public wherein, on behalf of others, for compensation or in expectation of
25 compensation, Respondents sold and offered to sell, bought and offered to buy, solicited
26 prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the
27 purchase and resale of real property.

FIRST CAUSE OF ACTION
(Negligence, Misrepresentation, Fraud and/or Dishonest Dealings)

8

Each and every allegation made above in Paragraphs 1 through 7, inclusive, is incorporated by reference as if fully set forth herein.

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On or about April 28, 2022, Carol W. ("Seller") entered into an agreement to have BERRYESSA and AAA ADVANTAGE serve as her listing agent to sell the property located at 29722 Hwy 299, Canby CA ("Canby Property").

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On or about June 5, 2022, Barbara H. ("Buyer") contacted BERRYESSA regarding the purchase of Canby Property. After speaking to BERRYESSA, Buyer asked that AAA ADVANTAGE serve as Buyer's agent in the purchase of the Canby Property. BERRYESSA and AAA ADVANTAGE agreed to represent Buyer, effectively becoming dual agents in the Canby Property transaction.

11

While acting as dual agents for both Seller and Buyer, AAA ADVANTAGE and BERRYESSA owed the same fiduciary duties, including the duty to act with the utmost loyalty and care, to both the Seller and the Buyer.

12

On or about June 6, 2022, BERRYESSA submitted to Seller an all-cash offer in the amount of \$355,000 on behalf of Buyer for the purchase of the Canby Property. The offer stated that Buyer was to pay an initial deposit of \$2,000 by personal check within seven business days of acceptance by Seller.

13

On or about June 7, 2022, Seller accepted Buyer's offer pursuant to the above-described terms and a Residential Purchase Agreement ("RPA") was executed by both parties. The RPA instructed Buyer to deliver the deposit directly to Escrow Holder.

14

On or about June 8, 2022, Buyer notified BERRYESSA that Buyer would be sending the deposit the next day and instructed BERRYESSA to open escrow on June 9, 2022.

15

On or about June 9, 2022, Seller informed BERRYESSA that Seller had concerns about Buyer and no longer wanted to proceed with selling the Canby Property to Buyer. In response, BERRYESSA incorrectly informed Seller that she could discontinue the transaction since BERRYESSA had not yet opened escrow.

16

Also on June 9, 2022, BERRYESSA informed Buyer that Seller no longer wished to proceed with the transaction because Seller was having personal issues and could not sell the home at that time. Buyer told BERRYESSA that Seller could not discontinue the transaction because there was a valid contract, the RPA, between the parties and that Buyer still wished to proceed. BERRYESSA told Buyer that Seller was able to cancel the transaction because escrow had not been opened and Buyer had not provided the earnest money deposit.

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Pursuant to the terms of the RPA, Seller had until June 16, 2022, to provide the \$2,000 earnest money deposit.

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After June 9, 2022, and before June 16, 2022, STEVENSON informed BERRYESSA that the Seller was contractually obligated to proceed with the transaction and that Seller had no grounds to cancel the RPA.

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Despite this knowledge, neither BERRYESSA nor STEVENSON inform the Seller that she was bound by the terms of the RPA and did not have grounds to cancel the contract.

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2 On or about June 10, 2022, Buyer emailed STEVENSON regarding the pending
3 cancellation. STEVENSON did not read the email until two days later and did not respond to
4 Buyer.

5 21

6 On or about June 13, 2022, Buyer sent STEVENSON another email regarding the
7 pending cancellation and asked STEVENSON to respond. STEVENSON read Buyer's email that
8 same day, but again did not respond to Buyer.

9 22

10 As of June 14, 2022, Respondents failed to open an escrow account for the Canby
11 Property transaction and failed to provide Buyer with any account information for Buyer to make
12 the earnest money deposit. Pursuant to the terms of the RPA, the seven-day period for Buyer to
13 deposit the earnest money expired on June 14, 2022.

14 23

15 On June 15, 2022, STEVENSON met with BERRYESSA regarding the
16 transaction and instructed BERRYESSA to send the Buyer a Notice to Buyer to Perform
17 ("NBP") regarding the earnest money deposit.

18 24

19 Despite being instructed by STEVENSON to send Buyer an NBP, at no point
20 during the Canby Property transaction did BERRYESSA issue an NBP to Buyer.

21 25

22 After instructing BERRYESSA to send the NBP, STEVENSON became aware
23 that BERRYESSA did not in fact follow through on the instruction. STEVENSON did not
24 intervene any further.

25 26

26 At no point during the Canby Property transaction, did Respondents provide the
27 Seller with a Notice to Seller to Perform ("NSP") despite having knowledge that Seller was in

1 contract with Buyer and was in violation of the RPA by not proceeding with the sale of the
2 Canby Property.

3 SECOND CAUSE OF ACTION
4 **(Failure to Supervise As to STEVENSON)**

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6 Each and every allegation made above in Paragraphs 1 through 26, inclusive, is
7 incorporated by this reference as if fully set forth herein.

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9 As the designated officer for AAA ADVANTAGE, STEVENSON was
10 responsible for the supervision and control over the activities conducted on behalf of AAA
11 ADVANTAGE by the corporation's officers, employees and agents, as necessary to ensure full
12 compliance with all provisions of the Real Estate Law, including the supervision of all persons
13 licensed under the corporation in the performance of acts for which a real estate license is
14 required.

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16 The acts and/or omissions as described above in the FIRST CAUSE OF
17 ACTION occurred while STEVENSON was legally responsible for the supervision of AAA
18 ADVANTAGE and BERRYESSA.

19 THIRD CAUSE OF ACTION
20 **(Breach of Fiduciary Duties as to Respondents)**

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22 Each and every allegation made above in Paragraphs 1 through 29, inclusive, is
23 incorporated by this reference as if fully set forth herein.

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25 Pursuant to Cal. Civ. Code Section 2079 et seq., Respondents, while acting as
26 agents for both the Seller and the Buyer in the Canby Property transaction, owed both the Seller

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1 and the Buyer certain fiduciary duties, including, but not limited to the following: duty of
2 reasonable care and skill; duty of good faith; duty of loyalty; and duty of diligence.

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4 Respondent breached those fiduciary duties owed to both the Seller and the
5 Buyer by engaging in the acts and/or omissions described above in the FIRST and SECOND
6 CAUSES OF ACTION.

7 GROUND FOR DISCIPLINE

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9 Each and every allegation made above in Paragraphs 1 through 32, inclusive, is
10 incorporated by this reference as if fully set forth herein.

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12 The acts and/or omissions of Respondents, as alleged in the FIRST CAUSE OF
13 ACTION, constitute grounds for the suspension or revocation of the license and license rights of
14 Respondents pursuant to 10176(a) (making a substantial misrepresentation), 10176(i) (conduct
15 that constitutes fraud or dishonest dealings), 10177(d) (willful disregard of real estate laws),
16 10177(g) (negligence), and/or 10177(j) (fraud and/or dishonest dealings) of the Code.

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18 The acts and/or omissions described above in the SECOND CAUSE OF
19 ACTION constitute further grounds for the suspension or revocation of the license and license
20 rights STEVENSON pursuant to Sections 10177(d) (willful disregard of real estate law),
21 10177(h) (failure to supervise), and 10177(g) (negligence) of the Code.

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23 The acts and/or omissions of Respondents, as alleged in the THIRD CAUSE OF
24 ACTION, constitute further grounds for the suspension or revocation of the license and license
25 rights of Respondents pursuant to 10177(d) (willful disregard of real estate laws) and 10177(g)
26 (negligence) of the Code.

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MATTERS IN AGGRAVATION
(Prior Discipline as to AAA ADVANTAGE and STEVENSON)

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On or about December 20, 2016, the Department filed an Accusation, Matter No. H-6474 SAC, against the real estate licenses of AAA ADVANTAGE and STEVENSON based on allegations of audit violations and failure to supervise.

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On or about April 13, 2017, the Department filed a First Amended Accusation wherein it was further alleged that, in addition to the violations alleged in the original Accusation, Respondents also engaged in making unauthorized withdrawals from a trust account.

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On or about April 22, 2019, the matter was settled by way of a Stipulation and Agreement, which became effective on May 6, 2019. Pursuant to the terms of the Stipulation the real estate corporate broker license of AAA ADVANTAGE and the real estate broker license of STEVENSON were restricted for a period of four years.

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As of the date of the filing of this Accusation, both the license of AAA ADVANTAGE and the license of STEVENSON remain RESTRICTED.

COST RECOVERY

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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.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all

1 licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of
2 the Business and Professions Code), for the cost of investigation and enforcement of this matter
3 as permitted by law, and for such other and further relief as may be proper under other
4 provisions of law.

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7 TRICIA PARKHURST
Supervising Special Investigator

8 Dated at Sacramento, California,
9 this 31st day of January, 2024.
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11 DISCOVERY DEMAND

12 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedures Act*, the
13 Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set
14 forth in the *Administrative Procedures Act*. Failure to provide Discovery to the Department of
15 Real Estate may result in the exclusion of witnesses and documents at the hearing or other
16 sanctions that the Office of Administrative Hearings deems appropriate.
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