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8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of )  
12 ) NO. H-7250 SAC  
13 A C O N, INC. )  
14 and DAVID NOVELO, ) ACCUSATION  
15 Respondents. )

16 The Complainant, Tricia D. Parkhurst, a Supervising Special Investigator of the  
17 State of California, for Accusation against Respondent A C O N, INC. (A C O N), and  
18 Respondent DAVID NOVELO (NOVELO), collectively Respondents, is informed and alleges  
19 as follows:

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21 The Complainant makes this Accusation against Respondents in her official  
22 capacity.

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24 At all times mentioned, A C O N was and now is licensed by the Department as a  
25 corporate real estate broker whose license has at all times mentioned herein since May 21, 2021,  
26 been, and now is, a restricted corporate real estate broker license subject to terms, conditions

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1 and restrictions pursuant to Sections 10156.6 and 10156.7 of the Business and Professions  
2 (Code).

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4 At all times mentioned, NOVELO was and now is licensed by the Department as  
5 a real estate salesperson whose license has at all times mentioned herein since May 21, 2021,  
6 been, and now is, a restricted real estate salesperson license subject to terms, conditions and  
7 restrictions pursuant to Sections 10156.6 and 10156.7 of the Code.

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9 At all times during the audit period, NOVELO was licensed by the Department as  
10 the designated broker/officer of A C O N. As the designated broker/officer, NOVELO was  
11 responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the  
12 officers, agents, real estate licensees and employees of A C O N for which a real estate license is  
13 required to ensure the compliance of the corporation with the Real Estate law and the  
14 Regulations.

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16 At all times herein mentioned, Respondents engaged in the business of, acted in  
17 the capacity of, advertised, or assumed to act as real estate brokers within the State of California  
18 within the meaning of Section 10131(b) of the Code, including the operation and conduct of a  
19 property management business with the public wherein, on behalf of others, for compensation  
20 or in expectation of compensation, collected rents from tenants on behalf of landlords, offered  
21 to rent and performed other duties regarding property owned by landlords.

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23 At all times mentioned, Respondents engaged in the business of, acted in the  
24 capacity of, advertised or assumed to act as a real estate broker in the State of California, within  
25 the meaning of Section 10131(a) of the Code, including the operation and conduct of a  
26 residential resale brokerage wherein Respondents bought, sold, or offered to buy or sell,  
27 solicited or obtained listings of, and negotiated the purchase, sale or exchange of real property

1 or business opportunities, all for or in expectation of compensation.

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3 Whenever reference is made in an allegation in this Accusation to an act or  
4 omission of A C O N, such allegation shall be deemed to mean that the officers, directors,  
5 employees, agents and real estate licensees employed by or associated with A C O N committed  
6 such act or omission while engaged in furtherance of the business or operations of A C O N and  
7 while acting within the course and scope of their corporate authority and employment.

8 FIRST CAUSE OF ACTION

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10 Complainant refers to Paragraphs 1 through 7, above and incorporates the same,  
11 herein, by reference.

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13 An audit was conducted of A C O N's property management business at the  
14 Department's office located at 1651 Exposition Blvd., Sacramento, California, where the  
15 auditor examined records for the period of February 1, 2021, through January 31, 2022 (the  
16 audit period).

17 10

18 While acting as a real estate broker as described in Paragraph 5, above, and  
19 within the audit period, A C O N accepted or received funds in trust (trust funds) from tenants  
20 on behalf of landlords in connection with the property management activities, deposited or  
21 caused to be deposited those funds into bank accounts at Wells Fargo Bank, P. O. Box 6995,  
22 Portland, Oregon, as follows:

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BANK ACCOUNT #1	
Account No.:	XXXXXXX4214
Entitled:	A.C.O.N. Inc. DBA Capital Mgmt Operating Trt Acct
TRUST ACCOUNT #1	
Account No.:	XXXXXXX2719
Entitled:	A.C.O.N. Inc. DBA Capital Mgmt Operating Trt Acct

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In the course of the activities described in Paragraph 5, in connection with the collection and disbursement of trust funds, A C O N:

- (a) An accountability was performed on Bank Account #1, and as of January 31, 2022, a shortage of \$103 was revealed in violation of Section 10145 of the Code;
- (b) Respondents failed to obtain written permission from owners of trust funds in Bank Account #1, to allow the balance to drop below accountability, in violation of Section 2832.1 of Chapter 6, Title 10, California Code of Regulations (Regulations); and
- (c) Respondents left broker funds exceeding \$200 in Bank Account #1 in violation of Section 10176(e) of the Code.

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The acts and/or omissions of A C O N as alleged above violate Section 2832.1 of the Regulations and Sections 10145 (trust fund handling) and 10176(e) (mix trust funds with broker funds) of the Code and are grounds for discipline under Sections 10176(e), 10177(d) (Willful Disregard/Violation of Real Estate Law), and/or 10177(g) (negligence/incompetence of licensee) of the Code.

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1 SECOND CAUSE OF ACTION

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3 Complainant refers to Paragraphs 1 through 12, above, and incorporates them  
4 herein by reference.

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6 At all times during the audit period, NOVELO was responsible, as the designated  
7 broker officer of A C O N, for the supervision and control of the activities conducted on behalf  
8 of the corporation by its officers and employees to ensure its compliance with the Real Estate  
9 Law and the Regulations. NOVELO failed to exercise reasonable supervision and control over  
10 the property management brokering activities of A C O N. In particular, NOVELO permitted,  
11 ratified and/or caused the conduct described in the First and Second Causes of Action, above, to  
12 occur, and failed to take reasonable steps, including but not limited to the handling of trust  
13 funds, supervision of employees, and the implementation of policies, rules, procedures, and  
14 systems to ensure the compliance of the corporation with the Real Estate Law and the  
15 Regulations.

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17 The above acts and/or omissions of NOVELO violate Section 2725 (Broker  
18 Supervision) of the Regulations and Section 10159.2 (Responsibility/Designated Officer) of the  
19 Code and are grounds for disciplinary action under the provisions of Sections 10177(d) (Willful  
20 Disregard/Violation of Real Estate Law and 10177(h) (Broker Supervision) of the Code.

21 Prior Discipline

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23 Effective May 21, 2021, in Case No. H-6959 SAC, the Real Estate Commissioner  
24 revoked Respondents' real estate licenses, granting the right to restricted licenses under terms  
25 and conditions. The grounds for said discipline were numerous audit violations of the  
26 Regulations and Sections 10145 and 10177(d) of the Code. Further grounds for discipline of  
27 NOVELO were failure to supervise, under Section 10177(h) of the Code.

Effective March 8, 2016, in Case No. H-6099 SAC, the Real Estate Commissioner revoked Respondents' real estate licenses, granting the right to restricted licenses under terms and conditions. The grounds for said discipline were violation of Section 10177(g) of the Code. Further grounds for discipline of NOVELO were failure to supervise, under Section 10177(h) of the Code.

Investigation Costs

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, 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.

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.

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

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11 TRICIA D. PARKHURST  
12 Supervising Special Investigator

13 Dated at Sacramento, California,  
14 this 13<sup>th</sup> day of November, 2023.

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18 DISCOVERY DEMAND

19                   The Department of Real Estate hereby requests discovery pursuant to Section  
20 11507.6 of the California Government Code. Failure to provide discovery to the Department  
21 may result in the exclusion of witnesses and/or documents at the hearing, and other sanctions as  
22 the Administrative Law Judge deems appropriate.