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FILED
MAY -7 2007

DEPARTMENT OF REAL ESTATE

By *K. Contreras*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
PERFORMANCE PROPERTY)	
MANAGEMENT, INC., and)	H-8682 SF
KENDRA GAIL HOLLOWAY)	
)	
Respondents.)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSES

TO: Respondents PERFORMANCE PROPERTY MANAGEMENT, INC.,
a California Corporation, and KENDRA GAIL HOLLOWAY
(hereinafter "Respondents"):

I

On or about September 12, 2004, restricted real estate
broker licenses were issued by the Department of Real Estate
(hereinafter "the Department") to Respondents on the terms,
conditions, and restrictions set forth in the Real Estate
Commissioner's Order of August 11, 2004, in Case No. H-8682 SF.
Included in said terms, conditions, and restrictions, Respondents
were required to pay, within 45 days of receiving an invoice
therefor, the Commissioner's reasonable cost, not to exceed

1 \$9,109.52, for an audit to determine if Respondents have
2 corrected certain specified trust fund violations.

3 II

4 On May 7, 2007, in Case No. H-10003 SF,
5 an Accusation by a Deputy Real Estate Commissioner of the State
6 of California was filed charging Respondents with violation of
7 the requirement described in Paragraph I, above.

8 NOW, THEREFORE, IT IS ORDERED under authority of
9 Section 10156.7 of the Business and Professions Code of the
10 State of California that the restricted real estate broker
11 licenses heretofore issued to Respondents and the exercise of
12 any privileges thereunder is hereby suspended pending final
13 determination made after the hearing on the aforesaid Accusation.

14 IT IS FURTHER ORDERED that all license certificates and
15 identification cards issued by the Department that are in the
16 possession of Respondents be immediately surrendered by personal
17 delivery or by mailing in the enclosed self-addressed envelope
18 to:

19 DEPARTMENT OF REAL ESTATE
20 ATTN: FLAG SECTION
21 P. O. Box 187000
Sacramento, CA 95818-7000

22 This order shall be effective immediately.

23 DATED: 4-24, 2007.

24 JEFF DAVI
25 Real Estate Commissioner

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

FILED
SEP 21 2004

DEPARTMENT OF REAL ESTATE

By Laurie G. J...

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	DRE No. H-8682 SF
12)	
13 PERFORMANCE PROPERTY MANAGEMENT,)	OAH No. N-2004030649
14 INC., a Corporation, and)	
15 KENDRA GAIL HOLLOWAY,)	<u>STIPULATION AND AGREEMENT</u>
16)	
17 Respondent.)	
18)	

16 It is hereby stipulated by and between Respondents
17 PERFORMANCE PROPERTY MANAGEMENT, INC. (herein "PPM") and KENDRA
18 GAIL HOLLOWAY (herein "HOLLOWAY"), individually and through
19 William A. Gillis, Esq., attorney of record herein for PPM and
20 HOLLOWAY (herein "Respondents"), and the Complainant, acting
21 through James L. Beaver, Counsel for the Department of Real
22 Estate (herein "the Department"), as follows for the purpose of
23 settling and disposing of the Accusation filed on March 4, 2004
24 in this matter (herein "the Accusation"):

25
26
27 DRE No. H-8682 SF PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act (APA), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement.

8 2. Respondents have received, read and understand the
9 Statement to Respondent, the Discovery Provisions of the APA and
10 the Accusation filed by the Department in this proceeding.

11 3. On March 10, 2004, Respondents filed Notices of
12 Defense pursuant to Section 11505 of the Government Code for the
13 purpose of requesting a hearing on the allegations in the
14 Accusation. Respondents each hereby freely and voluntarily
15 withdraw said Notice of Defense. Respondents acknowledge that
16 Respondents understand that by withdrawing said Notice of Defense
17 Respondents will thereby waive Respondents' right to require the
18 Real Estate Commissioner (herein "the Commissioner") to prove the
19 allegations in the Accusation at a contested hearing held in
20 accordance with the provisions of the APA and that Respondents
21 will waive other rights afforded to Respondents in connection
22 with the hearing such as the right to present evidence in defense
23 of the allegations in the Accusation and the right to cross-
24 examine witnesses.
25

26
27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 4. This stipulation is based on the factual
2 allegations contained in the Accusation. Respondents do not admit
3 the factual allegations of the Accusations. However, in the
4 interest of expediency and economy, Respondents choose not to
5 contest these factual allegations, but instead choose to remain
6 silent and understand that, as a result thereof, these factual
7 statements will serve as a prima facie basis for the
8 "Determination of Issues" and "Order" set forth below. The
9 Commissioner shall not be required to provide further evidence to
10 prove such allegations. This Stipulation and Respondents'
11 decision not to contest the Accusation are made for the purpose
12 of reaching an agreed disposition of this proceeding and are
13 expressly limited to this proceeding and any other proceeding or
14 case in which the Department of Real Estate (herein "the
15 Department"), the state or federal government, an agency of this
16 state, or an agency of another state is a party.

17
18 5. It is understood by the parties that the
19 Commissioner may adopt the Stipulation and Agreement as his
20 decision in this matter, thereby imposing the penalty and
21 sanctions on Respondents' real estate license and license rights
22 as set forth in the "Order" below. In the event that the
23 Commissioner in his discretion does not adopt the Stipulation and
24 Agreement, it shall be void and of no effect, and Respondents
25 shall retain the right to a hearing and proceeding on the
26

27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 Accusation under all the provisions of the APA and shall not be
2 bound by any admission or waiver made herein.

3 6. This Stipulation and Agreement shall not
4 constitute an estoppel, merger or bar to any further
5 administrative or civil proceedings by the Department with
6 respect to any matters which were not specifically alleged to be
7 causes for accusation in this proceeding. This Stipulation and
8 Agreement shall constitute an estoppel, merger and bar to any
9 further administrative or civil proceedings by the Department
10 with respect to any events which were specifically alleged to be
11 causes for accusation in this proceeding.

12 7. Respondents understand that by agreeing to this
13 Stipulation and Agreement, Respondents jointly and severally
14 agree to pay, pursuant to Section 10148 of the California
15 Business and Professions Code (herein "Code"):

16 (a) the cost of the audit which resulted in the
17 determination that Respondents committed the trust fund
18 violation(s) found in paragraph I, below, of the Determination of
19 Issues. The amount of said costs is \$9,109.52.

20 (b) the costs of any audit conducted pursuant to
21 Section 10148 of the Code to determine if the trust fund
22 violation(s) found in paragraph I, below, of the Determination of
23 Issues have been corrected. The costs of said audit shall not
24 exceed \$9,109.52.
25

26
27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 ///

2 ///

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations, admissions and
5 waivers and solely for the purpose of settlement of the pending
6 Accusation without hearing, it is stipulated and agreed that the
7 following Determination of Issues shall be made:

8 I

9 The acts and omissions of Respondents PPM and HOLLOWAY
10 as described in the Accusation are grounds for the suspension or
11 revocation of the licenses and license rights of Respondents PPM
12 and HOLLOWAY under the following provisions of the California
13 Business and Professions Code (herein "the Code") and/or Chapter
14 6, Title 10, California Code of Regulations (herein "the
15 Regulations"):

16
17 (a) as to Paragraph IX under Section 10130 of the Code
18 in conjunction with Section 10177(d) of the Code;

19 (b) as to subparagraph (a) of Paragraph X under
20 Section 10145 of the Code and Section 2831 of the Regulations in
21 conjunction with Section 10177(d) of the Code;

22 (c) as to subparagraph (b) of Paragraph X under
23 Section 10145 of the Code and Section 2831.1 of the Regulations
24 in conjunction with Section 10177(d) of the Code;

25 (d) as to subparagraph (c) of Paragraph X under
26

27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 Section 10145 of the Code and Section 2831.2 of the Regulations
2 in conjunction with Section 10177(d) of the Code;

3 (e) as to subparagraph (d) of Paragraph X under
4 Section 10145 of the Code and Section 2832 of the Regulations in
5 conjunction with Section 10177(d) of the Code;

6 (f) as to subparagraph (e) of Paragraph X under
7 Section 10145 of the Code and Section 2832.1 of the Regulations
8 in conjunction with Section 10177(d) of the Code; and

9 (g) as to subparagraph (f) of Paragraph X under
10 Section 10145 of the Code and Section 2834 of the Regulations in
11 conjunction with Section 10177(d) of the Code.

12 ORDER

13 I

14 All licenses and licensing rights of Respondent
15 PERFORMANCE PROPERTY MANAGEMENT, INC. under the Real Estate Law
16 are revoked; provided, however, a restricted corporate real
17 estate broker license shall be issued to said Respondent
18 pursuant to Section 10156.5 of the Business and Professions
19 Code if, within 90 days from the effective date of the Decision
20 entered pursuant to this Order, the Respondent, prior to and as
21 a condition of the issuance of said restricted license:

22 (a) makes application for the restricted license and
23 pays to the Department of Real Estate the appropriate fee
24 therefor; and

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27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 (b) submits proof satisfactory to the Commissioner
2 that the balance of funds held by Respondent PPM in trust
3 equals the aggregate liability of Respondent PPM to all owners
4 of such funds.

5 The restricted license issued to Respondent shall be
6 subject to all of the provisions of Section 10156.7 of the
7 Business and Professions Code and to the following limitations,
8 conditions and restrictions imposed under authority of Section
9 10156.6 of that Code:

10 1. The restricted license issued to Respondent may
11 be suspended prior to hearing by Order of the Commissioner in
12 the event of Respondent's conviction or plea of nolo contendere
13 to a crime which is substantially related to Respondent's
14 fitness or capacity as a real estate licensee.

15 2. The restricted license issued to Respondent may
16 be suspended prior to hearing by Order of the Commissioner on
17 evidence satisfactory to the Commissioner that Respondent has
18 violated provisions of the California Real Estate Law, the
19 Subdivided Lands Law, Regulations of the Commissioner or
20 conditions attaching to the restricted license.

21 3. Respondent shall not be eligible to apply for the
22 issuance of an unrestricted real estate license nor for the
23 removal of any of the conditions, limitations or restrictions
24 of a restricted license until two (2) years have elapsed from
25

26
27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 the effective date of this Decision.

2 ///

3 4. Pursuant to Section 10148 of the Business and
4 Professions Code, Respondent shall, jointly and severally with
5 Respondent HOLLOWAY, pay the sum of \$9,109.52 as and for the
6 Commissioner's cost of the audit which led to this disciplinary
7 action. Respondent shall pay such cost within 45 days of
8 receiving an invoice therefor from the Commissioner. The
9 Commissioner may suspend the restricted license issued to
10 respondent pending a hearing held in accordance with Section
11 11500, et seq., of the Government Code, if payment is not
12 timely made as provided for herein, or as provided for in a
13 subsequent agreement between the Respondent and the
14 Commissioner. The suspension shall remain in effect until
15 payment is made in full or until Respondent enters into an
16 agreement satisfactory to the Commissioner to provide for
17 payment, or until a decision providing otherwise is adopted
18 following a hearing held pursuant to this condition.

19
20 5. Pursuant to Section 10148 of the Business and
21 Professions Code, Respondent shall, jointly and severally with
22 Respondent HOLLOWAY, pay the Commissioner's reasonable cost,
23 not to exceed \$9,109.52, for an audit to determine if
24 Respondent has corrected the trust fund violation(s) found in
25 paragraph I of the Determination of Issues. In calculating the
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27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 amount of the Commissioner's reasonable cost, the Commissioner
2 may use the estimated average hourly salary for all persons
3 performing audits of real estate brokers, and shall include an
4 allocation for travel time to and from the auditor's place of
5 work. Respondent shall pay such cost within 45 days of
6 receiving an invoice therefor from the Commissioner detailing
7 the activities performed during the audit and the amount of
8 time spent performing those activities. The Commissioner may
9 suspend the restricted license issued to respondent pending a
10 hearing held in accordance with Section 11500, et seq., of the
11 Government Code, if payment is not timely made as provided for
12 herein, or as provided for in a subsequent agreement between
13 the Respondent and the Commissioner. The suspension shall
14 remain in effect until payment is made in full or until
15 Respondent enters into an agreement satisfactory to the
16 Commissioner to provide for payment, or until a decision
17 providing otherwise is adopted following a hearing held
18 pursuant to this condition.
19

20 II

21 All licenses and licensing rights of Respondent
22 KENDRA GAIL HOLLOWAY under the Real Estate Law are revoked;
23 provided, however, a restricted real estate broker license
24 shall be issued to such Respondent pursuant to Section 10156.5
25 of the Business and Professions Code if, within 90 days from
26

27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 the effective date of the Decision entered pursuant to this
2 Order, the Respondent, prior to and as a condition of the
3 issuance of said restricted license:

4 (a) makes application for the restricted license and
5 pays to the Department of Real Estate the appropriate fee
6 therefor;

7 (b) submits proof satisfactory to the Commissioner
8 of having taken and completed at an accredited institution the
9 continuing education course on trust fund accounting and
10 handling specified in paragraph (3) of subdivision (a) of
11 Section 10170.5 of the Business and Professions Code. Said
12 course must have been completed within 120 days prior to the
13 issuance of the restricted license. Credit against the
14 continuing education condition set forth in Paragraph "6" below
15 will be given for completion of this trust fund accounting and
16 handling course during the 120 days prior to the issuance of
17 the restricted license; and

18 (c) submits proof satisfactory to the Commissioner
19 that the balance of funds held by Respondent PPM in trust
20 equals the aggregate liability of Respondent PPM to all owners
21 of such funds.

22 The restricted license issued to such Respondent
23 shall be subject to all of the provisions of Section 10156.7 of
24 the Business and Professions Code and to the following
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26
27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 limitations, conditions and restrictions imposed under
2 authority of Section 10156.6 of that Code:

3 1. The restricted license issued to such Respondent
4 may be suspended prior to hearing by Order of the Commissioner
5 in the event of the Respondent's conviction or plea of nolo
6 contendere to a crime which is substantially related to
7 Respondent's fitness or capacity as a real estate licensee.

8 2. The restricted license issued to such Respondent
9 may be suspended prior to hearing by Order of the Commissioner
10 on evidence satisfactory to the Commissioner that the
11 Respondent has violated provisions of the California Real
12 Estate Law, the Subdivided Lands Law, Regulations of the
13 Commissioner or conditions attaching to the restricted license.

14 3. Respondent shall not be eligible to apply for the
15 issuance of an unrestricted real estate license or for the
16 removal of any of the conditions, limitations or restrictions
17 of a restricted license until two (2) years have elapsed from
18 the effective date of this Decision.

19 4. Pursuant to Section 10148 of the Business and
20 Professions Code, Respondent shall, jointly and severally with
21 Respondent PPM, pay the sum of \$9,109.52 as and for the
22 Commissioner's cost of the audit which led to this disciplinary
23 action. Respondent shall pay such cost within 45 days of
24 receiving an invoice therefor from the Commissioner. The
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27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 Commissioner may suspend the restricted license issued to
2 respondent pending a hearing held in accordance with Section
3 11500, et seq., of the Government Code, if payment is not
4 timely made as provided for herein, or as provided for in a
5 subsequent agreement between the Respondent and the
6 Commissioner. The suspension shall remain in effect until
7 payment is made in full or until Respondent enters into an
8 agreement satisfactory to the Commissioner to provide for
9 payment, or until a decision providing otherwise is adopted
10 following a hearing held pursuant to this condition.

11 5. Pursuant to Section 10148 of the Business and
12 Professions Code, Respondent shall, jointly and severally with
13 Respondent PPM, pay the Commissioner's reasonable cost, not to
14 exceed \$9,109.52, for an audit to determine if Respondent has
15 corrected the trust fund violation(s) found in paragraph I of
16 the Determination of Issues. In calculating the amount of the
17 Commissioner's reasonable cost, the Commissioner may use the
18 estimated average hourly salary for all persons performing
19 audits of real estate brokers, and shall include an allocation
20 for travel time to and from the auditor's place of work.
21 Respondent shall pay such cost within 45 days of receiving an
22 invoice therefor from the Commissioner detailing the activities
23 performed during the audit and the amount of time spent
24 performing those activities. The Commissioner may suspend the

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26
27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 restricted license issued to respondent pending a hearing held
2 in accordance with Section 11500, et seq., of the Government
3 Code, if payment is not timely made as provided for herein, or
4 as provided for in a subsequent agreement between the
5 Respondent and the Commissioner. The suspension shall remain
6 in effect until payment is made in full or until Respondent
7 enters into an agreement satisfactory to the Commissioner to
8 provide for payment, or until a decision providing otherwise is
9 adopted following a hearing held pursuant to this condition.

10 6. Respondent shall, within nine months from the
11 effective date of the Decision, present evidence satisfactory
12 to the Commissioner that Respondent has, since the most recent
13 issuance of an original or renewal real estate license, taken
14 and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
16 for renewal of a real estate license. If Respondent fails to
17 satisfy this condition, the Commissioner may order the
18 suspension of the restricted license until the Respondent
19 presents such evidence. The Commissioner shall afford
20 Respondent the opportunity for a hearing pursuant to the
21 Administrative Procedure Act to present such evidence.

22 7. Respondent shall, within six (6) months from the
23 issuance of the restricted license, take and pass the
24 Professional Responsibility Examination administered by the
25 Commissioner.

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27 DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

1 Department, including the payment of the appropriate
2 examination fee. If Respondent fails to satisfy this
3 condition, the Commissioner may order the suspension of the
4 restricted license until Respondent passes the examination.

5 August 2, 2004
6 DATED

James L. Beaver
7 JAMES L. BEAVER, Counsel
8 Department of Real Estate

9 * * *

10 I have read the Stipulation and Agreement and discussed
11 it with my attorney and its terms are understood by me and are
12 agreeable and acceptable to me. I understand that I am waiving
13 rights given to me by the California Administrative Procedure Act
14 (including but not limited to Sections 11506, 11508, 11509, and
15 11513 of the Government Code), and I willingly, intelligently,
16 and voluntarily waive those rights, including the right of
17 requiring the Commissioner to prove the allegations in the
18 Accusation at a hearing at which I would have the right to cross-
19 examine witnesses against me and to present evidence in defense
20 and mitigation of the charges.

21 7/26/04
22 DATED

PERFORMANCE PROPERTY MANAGEMENT, INC.
Respondent

23 By Kendra Gail Holloway
24 KENDRA GAIL HOLLOWAY
25 Designated Officer - Broker

26 7/26/04
27 DATED

Kendra Gail Holloway
KENDRA GAIL HOLLOWAY
Respondent

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DRE No. H-8682 SF

PERFORMANCE PROPERTY MANAGEMENT,
INC. and KENDRA GAIL HOLLOWAY

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* * *

I have reviewed the Stipulation and Agreement as to form and content and have advised my clients accordingly.

July 26, 2004 DATED By: W. A. Gillis
WILLIAM A. GILLIS
Attorney for Respondents

WANAHAN & REILLEY LLP

* * *

The foregoing Stipulation and Agreement is hereby adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on OCTOBER 12, 2004.

IT IS SO ORDERED August 11, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED

JUL - 6 2004

DEPARTMENT OF REAL ESTATE

By Laurie G. Zin

In the Matter of the Accusation of

PERFORMANCE PROPERTY
MANAGEMENT, INC., AND
KENDRA GAIL HOLLOWAY,

Case No. H-8682 SF

OAH No. N-2004030649

Respondents

**SECOND AMENDED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **TUESDAY, AUGUST 3, 2004**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: JULY 6, 2004

By James L. Beaver
JAMES L. BEAVER, Counsel

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED

MAY 24 2004

DEPARTMENT OF REAL ESTATE

By Laurel J. Zini

In the Matter of the Accusation of

PERFORMANCE PROPERTY
MANAGEMENT, INC., AND
KENDRA GAIL HOLLOWAY,

Case No. H-8682 SF

OAH No. N-2004030649

Respondents

**FIRST AMENDED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **WEDNESDAY, JUNE 30, 2004**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: MAY 24, 2004

By James L. Beaver
JAMES L. BEAVER, Counsel

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED

APR - 1 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

PERFORMANCE PROPERTY
MANAGEMENT, INC., AND
KENDRA GAIL HOLLOWAY,

}

By Lucretia J. Zin

Case No. H-8682 SF

OAH No. N-2004030649

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **FRIDAY, MAY 28, 2004**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: APRIL 1, 2004

By James L. Beaver
JAMES L. BEAVER, Counsel (2)

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED

MAR 4 2004

DEPARTMENT OF REAL ESTATE

By Laurie L. Jiri

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 PERFORMANCE PROPERTY) No. H-8682 SF
13 MANAGEMENT, INC., and) ACCUSATION
14 KENDRA GAIL HOLLOWAY,)
15 Respondents.)

16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against PERFORMANCE PROPERTY MANAGEMENT, INC. (herein
19 "PPM") and KENDRA GAIL HOLLOWAY formerly known as Kendra Gail
20 Carlese (herein "HOLLOWAY"), is informed and alleges as follows:

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22 The Complainant, Les R. Bettencourt, a Deputy Real
23 Estate Commissioner of the State of California, makes this
24 Accusation in his official capacity.

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II

At all times herein mentioned herein from and after January 21, 2004, Respondent PPM was and now is licensed or had license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code"). At no time mentioned herein prior to January 21, 2004 was PPM licensed by the Department in any capacity. At all times mentioned herein Respondent HOLLOWAY was and now is licensed or had license rights under the Real Estate Law.

III

At all times herein mentioned:

(a) from and after January 21, 2004, PPM was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a corporate real estate broker by and through HOLLOWAY as designated officer-broker of PPM to qualify said corporation and to act for said corporation as a real estate broker; and

(b) HOLLOWAY was and now is licensed by the Department as a real estate broker, individually and, from and after January 21, 2004, as designated officer-broker of PPM; and

IV

Whenever reference is made in an allegation in this Accusation to an act or omission of PPM, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with PPM committed such act or omission while engaged in the furtherance of the business or operations of such corporate

1 Respondent and while acting within the course and scope of their
2 authority and employment.

3 V

4 At all times herein mentioned between on or about
5 June 1, 2003 and on or about November 30, 2003, HOLLOWAY and
6 PPM, acting as the agents and or employees of one another,
7 engaged in the business of, acted in the capacity of,
8 advertised, or assumed to act as real estate brokers within the
9 State of California within the meaning of Sections 10131(b) of
10 the Code, including the operation and conduct of a property
11 management business with the public wherein, on behalf of
12 others, for compensation or in expectation of compensation,
13 Respondents leased or rented and offered to lease or rent, and
14 placed for rent, and solicited listings of places for rent, and
15 solicited for prospective tenants of real property or
16 improvements thereon, and collected rents from real property or
17 improvements thereon.

18 VI

19 In so acting as real estate brokers, as described in
20 Paragraph V, above, Respondents accepted or received funds in
21 trust (herein "trust funds") from or on behalf of owners and
22 tenants in connection with the leasing, renting, and collection
23 of rents on real property or improvements thereon, as alleged
24 herein, and thereafter from time to time made, or caused to be
25 made, disbursements of said funds.

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1 VII

2 The aforesaid trust funds accepted or received by
3 Respondents were deposited or caused to be deposited by
4 Respondents into one or more bank accounts (herein "trust fund
5 accounts") maintained by Respondents for the handling of trust
6 funds, including but not necessarily limited to the following
7 accounts:

8 (a) the "Performance Property Management, Inc. Trust
9 Account", account number 0070023676, maintained by Respondents
10 at the Santa Rosa, California, branch of Exchange Bank (herein
11 "Trust #1");

12 (b) the "MGBC LLC DBA Rockwell Terrace", account,
13 account number 1148261, maintained by Respondents at the Santa
14 Rosa, California, branch of Sonoma National Bank (herein "Bank
15 #1");

16 (c) the "Kendra Carlese DBA Performance Property
17 Management", account, account number 1305192, maintained by
18 Respondents at the Santa Rosa, California, branch of Sonoma
19 National Bank (herein "Bank #2"); and

20 (d) the "Russell C. Beringer Connie Beringer Kendra
21 Carlese (Apartment Account)", account number 2015220, maintained
22 by Respondents at the Santa Rosa, California, branch of National
23 Bank of the Redwoods (herein "Bank #3").

24 VIII

25 Between on or about June 1, 2003 and on or about
26 November 30, 2003, in course of the property management and
27 trust fund activities described in Paragraphs V through VII,

1 inclusive, above, Respondents managed approximately 280
2 properties for 95 owners, including collecting approximately
3 \$1,000,000.00 per month in rent from tenants, screening tenants
4 and paying expenses.

5 IX

6 In acting as described in Paragraphs II through VIII,
7 above, Respondent PPM violated, and Respondent HOLLOWAY
8 willfully caused, suffered and permitted PPM to violate, Section
9 10130 of the Code.

10 X

11 Between on or about June 1, 2003 and on or about
12 November 30, 2003, in course of the property management and
13 trust fund activities described in Paragraphs V through VIII,
14 above, Respondents:

15 (a) failed to keep a columnar record in chronological
16 sequence of all trust funds received and disbursed from Trust #1
17 containing all the information required by Section 2831 of
18 Chapter 6, Title 10, California Code of Regulations (herein "the
19 Regulations");

20 (b) failed to keep a separate record for each
21 beneficiary or transaction for Trust #1 containing all the
22 information required by Section 2831.1 of the Regulations;

23 (c) failed, with respect to Trust #1 to reconcile, at
24 least once a month, the balance of all separate beneficiary or
25 transaction records with the record of trust funds received and
26 disbursed from such accounts;

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1 (d) failed to place trust funds entrusted to
2 Respondents into the hands of a principal on whose behalf the
3 funds were received, into a neutral escrow depository, or into a
4 trust fund account in the name of a Respondent as trustee at a
5 bank or other financial institution within three business days
6 of receipt, in conformance with the requirements of Section
7 10145 of the Code and Section 2832(a) of the Regulations in
8 that:

9 (1) Respondents placed such funds in Bank #1, Bank
10 #2, and Bank #3, each an account that was not in
11 the name of either of the Respondents as trustee;
12 and

13 (2) deposited trust funds into Trust #1 more than
14 three business days after receipt thereof.

15 (e) caused, suffered or permitted the balance of
16 funds in Trust #1 to be reduced to an amount which, as of
17 September 30, 2003, was approximately \$197,908.80 less than the
18 liability of Respondents to all owners of such funds without
19 first obtaining the written consent of each and every owner of
20 such funds; and

21 (f) authorized unlicensed persons without fidelity
22 bond coverage to make withdrawals from Bank #1 and Bank #3.

23 XI

24 Between on or about June 1, 2003 and on or about
25 November 30, 2003, in course of the property management and
26 trust fund activities described in Paragraphs V through VIII,
27 above, Respondents converted funds entrusted to Respondents, on

1 each of the dates and in each of the amounts tabulated below, to
2 the use and benefit of Respondents or to uses not authorized by
3 the owners of such funds:

	<u>DATE</u>	<u>AMOUNT</u>
4		
5	(1)	07/16/03 \$25,000.00;
6	(2)	07/31/03 \$20,000.00; and
7	(3)	09/15/03 \$20,000.00

8 XII

9 The acts and omissions of Respondents described in
10 Paragraph XI, above, constituted fraud and/or dishonest dealing.

11 XIII

12 Between on or about June 1, 2003 and on or about
13 November 30, 2003, in course of the property management
14 activities described in Paragraph V, above, Respondent HOLLOWAY
15 failed to have a written agreement with Patricia L. Jones, a
16 real estate salesperson licensed under CARLESE, covering duties,
17 compensation, supervision, and other material aspects of the
18 relationship between the parties, as required by Section 2726 of
19 the Regulations.

20 XIV

21 At all times mentioned herein HOLLOWAY was an officer,
22 director, and/or person owning or controlling 10 percent or more
23 of the stock of Respondent PPM.

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2 The facts alleged above are grounds for the suspension
3 or revocation of the licenses and license rights of Respondents
4 HOLLOWAY and PPM under the following provisions of the Code
5 and/or the Regulations:

6 (a) As to Paragraph IX, under Section 10130 of the
7 Code in conjunction with Section 10177(d) of the Code;

8 (b) As to subparagraph (a) of Paragraph X, under
9 Section 10145 of the Code and Section 2831 of the Regulations in
10 conjunction with Section 10177(d) of the Code;

11 (c) As to subparagraph (b) of Paragraph X, under
12 Section 10145 of the Code and Section 2831.1 of the Regulations
13 in conjunction with Section 10177(d) of the Code;

14 (d) As to subparagraph (c) of Paragraph X, under
15 Section 10145 of the Code and Section 2831.2 of the Regulations
16 in conjunction with Section 10177(d) of the Code;

17 (e) As to subparagraph (d) of Paragraph X, under
18 Section 10145 of the Code and Section 2832 of the Regulations in
19 conjunction with Section 10177(d) of the Code;

20 (f) As to subparagraph (e) of Paragraph X, under
21 Section 10145 of the Code and Section 2832.1 of the Regulations
22 in conjunction with Section 10177(d) of the Code;

23 (g) As to subparagraph (f) of Paragraph X, under
24 Section 10145 of the Code and Section 2834 of the Regulations in
25 conjunction with Section 10177(d) of the Code;

26 (h) As to Paragraphs XI and XII, under Section
27 10176(i) of the Code.

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XVI

The facts alleged in Paragraph XIII, above, are grounds for the suspension or revocation of the licenses and license rights of Respondent HOLLOWAY under the provisions of the Section 2726 of the Regulations in conjunction with Section 10177(d) of the Code.

XVII

The acts and omissions of Respondent HOLLOWAY described above are grounds for the suspension or revocation of the licenses and license rights of Respondent PPM under the provisions of Section 10177 of the Code.

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 Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 20th day of February, 2004.