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FILED
OCT 21 2011

DEPARTMENT OF REAL ESTATE
By *R. Mar*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-11229 SF
13 MANZAR DOKHT AZARI,)
14 Respondent.) ACCUSATION
15)

16 The Complainant, E. J. HABERER, II, in his official capacity as a Deputy Real
17 Estate Commissioner of the State of California, for cause of Accusation against MANZAR
18 DOKHT AZARI (hereinafter "Respondent"), is informed and alleges as follows:

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20 Respondent is presently licensed by the California Department of Real Estate ("the
21 Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
22 California Business and Professions Code ("the Code"), as a real estate broker.

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24 At all times relevant herein, Respondent had the following fictitious business
25 names registered with the Department: "Azari Property Management" and "The Azari Group."

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Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent, such allegation shall be deemed to mean that the employees, agents and real estate licensees employed by or associated with Respondent committed such act or omission while engaged in furtherance of the business or operations of Respondent and while acting within the course and scope of their authority and employment.

At all times herein mentioned, Respondent engaged in activities on behalf of others within the State of California for or in expectation of compensation, for which a real estate license is required under:

- (a) Section 10131(a) of the Code, including the operation and conduct of a real estate brokerage that included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or exchange of real property or a business opportunity; and
- (b) Section 10131(b) of the Code, including the leasing or renting or offer to lease or rent, or placing for rent, or solicitation of listings of places for rent, or solicitation of prospective tenants, or negotiation of the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collection of rents from real property, or improvements thereon, or from business opportunities.

FIRST CAUSE OF ACTION

(Audit Violations)

Each and every allegation in Paragraphs 1 through 4, inclusive, above, is incorporated by this reference as if fully set forth herein.

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Beginning on or about April 25, 2011, and continuing intermittently until May 13, 2011, an audit was conducted at Respondent's office located at 595 Market Street, No. 1350, San Francisco, California, wherein the Auditor examined Respondent's records for the period of January 1, 2010 through March 31, 2011 (hereinafter "the audit period").

While acting as real estate broker as described in Paragraph 4, above, and within the audit period, Respondent accepted or received funds in trust (hereinafter "trust funds") from or on behalf of owners, tenants and others in connection with the rental or lease of residential property, for or in expectation of compensation, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

Respondent did not receive any trust funds related to Respondent's resale activities, as earnest money deposits were forwarded directly from buyers to the escrow company.

The trust funds accepted or received by Respondent as described in Paragraph 7, above, were deposited or caused to be deposited by Respondent into two bank accounts maintained by Respondent for the handling of trust funds and general business funds, and thereafter from time-to-time Respondent made disbursements of said trust funds, identified as follows:

BANK ACCOUNT # 1

Bank Name and Location:	Bank of America, 33 New Montgomery St., San Francisco, CA 94105
Account No.:	XXXXXX-43754
Entitled:	"Azari Property Management"
Signatories:	Manzar Dokht Azari (REB)
No. of Signatures Required:	One

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BANK ACCOUNT # 2

Bank Name and Location:	Bank of America, 33 New Montgomery St., San Francisco, CA 94105
Account No.:	XXXXX-73105
Entitled:	"The Azari Group Real Estate, Inc."
Signatories:	Manzar Dokht Azari (REB) John P. Evangelatos
No. of Signatures Required:	One

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In the course of the activities described in Paragraph 4, above, and within the audit period, Respondent:

- (a) caused, suffered, or permitted the balance of funds in Bank Account #1 to be reduced to an amount which, as of March 31, 2011, was approximately \$448,317.90 less than the aggregate liability of Bank Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations (hereafter "the Regulations");
- (b) failed to maintain separate records for each beneficiary of trust funds accepted or received for Bank Account #1 and Bank Account #2, in violation of Section 10145 of the Code and Section 2831.1 of the Regulations;
- (c) failed to reconcile the total of separate beneficiary/property records with a control record on at least a monthly basis, for Bank Account #1 and Bank Account #2 in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;
- (d) failed to designate Bank Account #1 and Bank Account #2 as a trust account in the name of Respondent as trustee, in violation of Section 10145 of the Code and Section 2832 of the Regulations;
- (e) allowed John P. Evangelatos ("Evangelatos"), an unlicensed individual who was not covered by a fidelity bond equal to the maximum amount of the trust funds to which

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1 Evangelatos had access, to appear as a signatory on Bank Account #2, in violation
2 of Section 2834 of the Regulations;

3 (f) caused, suffered or permitted money of others, trust funds, which were received and
4 held by Respondent in Bank Account #1 to be commingled with Respondent's own
5 money, in violation of Section 10176(e) of the Code and Section 2835 of the
6 Regulations; and,

7 (g) operated a real estate brokerage business at 595 Market Street, No. 1375, San
8 Francisco, California and 1840 Prairie City Road, 100-PMB 280, Folsom,
9 California, branch offices and locations which require a real estate license, without
10 first procuring a real estate license for those branch office locations in violation of
11 Section 10163 of the Code and Section 2715 of the Regulations.

12 11

13 The acts and/or omissions of Respondent described in Paragraph 10, above,
14 constitute grounds for the suspension or revocation of Respondent's license and license rights
15 pursuant to Section 10177(d) and/or 10177(g) of the Code.

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17 The acts and/or omissions of Respondent as alleged in Paragraph 10, above, entitle
18 the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the
19 Code.

20 SECOND CAUSE OF ACTION

21 (Misappropriation of Client Funds)

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23 Each and every allegation in Paragraphs 1 through 12, inclusive, above, is
24 incorporated by this reference as if fully set forth herein.

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26 Pursuant to the Rent Control Ordinances of San Francisco, California, San
27 Francisco Administrative Code Chapter 49, Section 49.2, landlords owning property within the

1 City and County of San Francisco are required to pay to tenants interest earned upon security
2 deposits held by or on behalf of landlords for the benefit of the tenant.

3 15

4 Respondent and Respondent's landlord clients entered into property management
5 agreements wherein the clients agreed to permit Respondent to receive tenant security deposits,
6 deposit the security deposits into a trust account and make required disbursements from the funds
7 including, but not limited to the payment of the annual interest earned on the security deposits held
8 by Respondent. Respondent on behalf of her landlord clients entered into lease agreements with
9 tenants wherein Respondent would collect security deposits from the tenants and deposit same into
10 a trust account.

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12 Respondent, as a fiduciary to her property management clients and in that capacity,
13 owed a duty of utmost good faith and loyalty to her clients and was required to place the interests
14 of her clients above her own interests. Respondent's fiduciary duty included, but was not limited
15 to the following:

- 16 (a) Protecting trust funds provided by or on behalf of Respondent's clients by properly
17 handling the funds, including the deposit of such funds in an interest bearing trust
18 account as required under the San Francisco Rent Control ordinances and Section
19 10145 of the Code [Section 10145(d) permits the deposit of trust funds into an
20 interest bearing account insured by the FDIC];
- 21 (b) Not depositing trust funds into risky investment vehicles such as a stock portfolio
22 without the expressed written consent of the landlords and tenants;
- 23 (c) Not investing trust funds in real property which was encumbered by other debts
24 which may have had security priority over the trust funds;
- 25 (d) Not depositing trust funds into investment vehicles which were not liquid and
26 could not be accessed without delay should access be required; and

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1 (e) Depositing trust funds in an account properly titled as a trust account and/or titling
2 the asset as being held for the benefit of the trust account beneficiaries and thereby
3 protecting the trust funds from Respondent's creditors.

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5 Respondent breached her fiduciary duty to her clients by, among other breaches,
6 depositing client trust funds first into a bank trust account and then transferring the trust funds to
7 one of four (4) non-trust bank accounts which were either personal accounts of Respondent or non-
8 trust business accounts of Respondent identified below, and ultimately, without disclosing to or
9 obtaining consent of the beneficiaries, investing client trust funds into a stock portfolio and/or the
10 purchase of a residential or commercial property, each of which was not designated as holding trust
11 funds or that the assets were being held for the benefit of the beneficiaries and each of which was
12 not insured by the FDIC as required under the Code.

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14 Account	Transfers from	Transfers to	Net Amount	Bank
15 (last 4	Bank Account #1	Bank Account #1	from Bank	Balance as of
16 digits)			Account #1	3/31/11
17 0122	\$127,600.00	\$58,690.00	\$68,910.00	not available
18 1530	\$49,700.00	\$20,700.00	\$29,000.00	not available
19 3037	\$1,451,000.00	\$1,002,000.00	\$449,000.00	\$47,435.96
20 7173	\$445,512.50	\$70,700.00	\$374,812.50	\$5,671.05

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25 Further, as Respondent had not obtained expressed written approval from the
26 beneficiaries prior to, nor, at any time subsequent, Respondent's acts constituted embezzlement,
27 conversion or misappropriation of client trust funds and were willful, deceptive, dishonest and a

1 breach of her fiduciary duties to the beneficiaries. Each such transfer jointly and severally
2 constitutes a violation of Section 10145 of the Code, and Sections 2830.1, 2831.1, 2832.1, and
3 2835 of the Regulations; violations of each of the aforementioned sections constitutes a separate
4 violation of Sections 10176(a), 10176(b), 10176(c), 10176(e), 10176(i), 10177 (j), and 10177(o) of
5 the Code, and Section 10177(d) and/or 10177(g) of the Code, and each violation provides separate
6 grounds for imposing disciplinary action, including but not limited to the revocation of all licenses
7 and license rights of Respondent.

8 THIRD CAUSE OF ACTION

9 (Failure to Supervise)

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11 Each and every allegation in Paragraphs 1 through 18, inclusive, above, is
12 incorporated by this reference as if fully set forth herein.

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14 At all times herein mentioned, Respondent was required to exercise reasonable
15 supervision and control over Respondent's employees and salespersons pursuant to Section 2725
16 of the Regulations.

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18 Respondent failed to exercise reasonable supervision over the acts and/or omissions
19 of her employees and salespersons in such a manner as to allow the acts and/or omissions as
20 described in Paragraph 10, above, to occur.

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22 The acts and/or omissions of Respondent described in Paragraph 21, above,
23 constitutes cause for the suspension or revocation of the licenses and license rights of Respondent
24 under Section 10177(d) and/or 10177(g) of the Code, and Section 10177(h) of the Code.

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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 action
3 against all licenses and license rights of Respondent named herein under the Real Estate Law (Part
4 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may
5 be proper under other provisions of law.

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9 E. J. HABERER, II
Deputy Real Estate Commissioner

10 Dated at Oakland, California,
11 this 17 day of October, 2011.