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**FILED**

MAY 14 2012

DEPARTMENT OF REAL ESTATE  
By R. Mar

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of

13 SONOMA PROPERTIES, INC.,  
14 HENRY KISER MAYO,  
15 JENNIFER ANN POWELL and  
16 HENRY BRIAN MAYO,

Respondents.

No. H-11375 SF

ACCUSATION

17 The Complainant, E. J. HABERER II, in his official capacity as a Deputy Real  
18 Estate Commissioner of the State of California, for cause of Accusation against SONOMA  
19 PROPERTIES, INC., HENRY KISER MAYO, JENNIFER ANN POWELL and HENRY  
20 BRIAN MAYO, (collectively referred to herein as "Respondents"), is informed and alleges as  
21 follows:

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23 Respondent SONOMA PROPERTIES, INC., (hereinafter "SPI"), is presently  
24 licensed by the Department of Real Estate (hereinafter "the Department") and/or has license  
25 rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code  
26 (hereafter "the Code"), as a corporate real estate broker, acting by and through HENRY KISER  
27 MAYO as its designated officer.

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At no time mentioned herein, as of January 31, 2011, were any fictitious business names licensed under SPI's real estate corporate broker license.

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Respondent HENRY KISER MAYO (hereinafter "HKM") is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker.

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At all times mentioned herein, HKM was licensed by the Department as the designated officer of SPI. As the designated officer, HKM was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of SPI for which a real estate license is required.

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Respondent JENNIFER ANN POWELL (hereinafter "POWELL") is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate salesperson.

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Respondent HENRY BRIAN MAYO (hereinafter "HBM") is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate salesperson.

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

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At all times mentioned herein, SPI engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California, within the meaning of 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  
(As Against Respondent SPI)

Each and every allegation in Paragraphs 1 through 8, inclusive, above, is incorporated by this reference as if fully set forth herein.

Beginning on February 11, 2011 and continuing intermittently until August 1, 2011, an audit was conducted of SPI's real estate activities at its main office located at 669 Broadway, Sonoma, California and at the Department's Oakland District Office, wherein the auditor examined SPI's records for the period of July 1, 2010 through January 31, 2011 (hereinafter "the audit period").

While acting as a real estate broker as described in Paragraph 8, above, and within the audit period, SPI 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.

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The trust funds accepted or received by SPI as described in Paragraph 11, above, were deposited or caused to be deposited by SPI into three bank accounts which were maintained by SPI for the handling of trust funds, and thereafter from time-to-time SPI made disbursements of said trust funds, identified as follows:

<b>TRUST ACCOUNT # 1</b>	
Bank Name and Location:	Sonoma Valley Bank, 202 West Napa St., Sonoma, CA 95476
Account No. (Last 4 Digits):	7976
Entitled:	"Sonoma Properties Inc Trust Account"
Signatories:	Henry K. Mayo (REB/DO) H. Brian Mayo (RES) Jennifer A. Powell (RES)
Purpose:	Used for deposits and disbursements related to the management of approximately 102 properties for 85 owners.

<b>BANK ACCOUNT # 1</b>	
Bank Name and Location:	Sonoma Valley Bank, 202 West Napa St., Sonoma, CA 95476
Account No. (Last 4 Digits):	7330
Entitled:	As shown on signature card: "Valley of the Moon Realty Partners DBA Frank Howard Allen Property Management"  As shown on bank statements: "Valley of the Moon Realty Partners DBA Frank Howard Allen Property Mgmt Attn: Brian Mayo / Sec Dep Trust Account"
Signatories:	Henry K. Mayo (REB/DO) H. Brian Mayo (RES) Jennifer A. Powell (RES)
Purpose	An interest bearing account used to hold security deposits.

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<b>BANK ACCOUNT # 2</b>	
Bank Name and Location:	Sonoma Valley Bank, 202 West Napa St., Sonoma, CA 95476
Account No. (Last 4 Digits):	4008
Entitled:	"Valley of the Moon Realty Partners DBA Frank Howard Allen Property Management"
Signatories:	Henry K. Mayo (REB/DO) H. Brian Mayo (RES) Jennifer A. Powell (RES)
Purpose	Predecessor account to Trust Account #1, above. Account closed on 12/10/10 and funds of \$19,113.19 transferred to Trust Account #1. Used for deposits and disbursements related to property management.

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In the course of the activities described in Paragraph 8, above, and within the audit period, SPI:

(a) failed to properly designate Bank Account #1 and Bank Account #2 as a trust account in the name of SPI, as trustee, in violation of Section 10145 of the Code and Section 2832 of Title 10 of the California Code of Regulations (hereafter "the Regulations");

(b) caused, suffered, or permitted the balance of funds in Trust Account #1 to be reduced to an amount which, as of January 31, 2011, was approximately \$17,290.30 less than the aggregate liability of Trust 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 the Regulations;

(c) caused, suffered, or permitted the balance of funds in Bank Account #1 to be reduced to an amount which, as of January 31, 2011, was approximately \$92,122.23 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 the Regulations;

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1 (d) deposited trust funds of multiple beneficiaries into an interest bearing  
2 account, Bank Account #1, that was not in the name of the broker as trustee, nor were the funds  
3 kept separate, distinct and apart from funds belonging to any other person for whom SPI holds  
4 funds in trust, as required by Section 10145(d) of the Code;

5 (e) failed to maintain complete and accurate records of all trust funds  
6 received and disbursed (control record) for Trust Account #1, in violation of Section 10145 of  
7 the Code and Section 2831 of the Regulations;

8 (f) failed to maintain separate records for each beneficiary or property of  
9 trust funds accepted or received for Bank Account #1, in violation of Section 10145(g) of the  
10 Code and Section 2831.1 of the Regulations;

11 (g) failed to perform and maintain reconciliations of the total of separate  
12 beneficiary records with a control record on at least a monthly basis for Trust Account #1 and  
13 Bank Account #1, in violation of Section 10145 of the Code and Section 2831.2 of the  
14 Regulations;

15 (h) conducted real estate activities using the fictitious business names  
16 "Valley of the Moon Realty Partners", "Frank Howard Allen Property Management", and  
17 "Frank Howard Allen Realtors", without first registering these fictitious business names with  
18 the Department as required by Section 10159.5 of the Code and Section 2731 of the  
19 Regulations; and,

20 (i) failed to place the real estate license numbers on the business cards of  
21 HBM and POWELL as required by Section 10140.6 of the Code, and Section 2773 of the  
22 Regulations.

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24 The acts and/or omissions of Respondent SPI as alleged in Paragraph 13, above,  
25 constitute grounds for the suspension or revocation of all licenses and license rights of  
26 Respondent SPI pursuant to the following provisions of the Code and Regulations:

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1 As to Paragraph 13(a), under Section 10177(d) and/or 10177(g) of the Code in  
2 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

3 As to Paragraph 13(b), under Section 10177(d) and/or 10177(g) of the Code in  
4 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

5 As to Paragraph 13(c), under Section 10177(d) and/or 10177(g) of the Code in  
6 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

7 As to Paragraph 13(d), under Section 10177(d) and/or 10177(g) of the Code in  
8 conjunction with Section 10145(d) of the Code;

9 As to Paragraph 13(e), under Section 10177(d) and/or 10177(g) of the Code in  
10 conjunction with Section 10145 of the Code and Section 2831 of the Regulations;

11 As to Paragraph 13(f), under Section 10177(d) and/or 10177(g) of the Code in  
12 conjunction with Sections 10145(g) of the Code and Section 2831.1 of the Regulations;

13 As to Paragraph 13(g), under Section 10177(d) and/or 10177(g) of the Code in  
14 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

15 As to Paragraph 13(h), under Section 10177(d) and/or 10177(g) of the Code in  
16 conjunction with Section 10159.5 of the Code and Section 2731 of the Regulations; and,

17 As to Paragraph 13(i), under Section 10177(d) and/or 10177(g) of the Code in  
18 conjunction with Section 10140.6 of the Code and Section 2773 of the Regulations.

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20 The acts and/or omissions of Respondent SPI as alleged in Paragraph 13, above,  
21 entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148 of  
22 the Code, in conjunction with Section 10145 of the Code.

23 SECOND CAUSE OF ACTION

24 (As Against All Respondents)

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26 Each and every allegation in Paragraphs 1 through 15, inclusive, above, is  
27 incorporated by this reference as if fully set forth herein.

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2 Respondents HKM, POWELL and HBM (collectively "Respondents"), as  
3 fiduciaries to SPI's property management clients and in that capacity, owed a duty of utmost  
4 good faith and loyalty to their clients and were required to place the interests of their clients  
5 above their own interests. Respondents' fiduciary duty included, but was not limited to the  
6 following:

- 7 (a) Protecting trust funds provided by or on behalf of Respondents' clients by  
8 properly handling the funds, including the deposit of such funds in a trust  
9 account as required under Section 10145 of the Code [Section 10145(d) permits  
10 the deposit of trust funds into an interest bearing account insured by the FDIC];  
11 (b) Not depositing trust funds into an investment vehicle such as a Certificate of  
12 Deposit without the expressed written consent of all beneficiaries of the trust  
13 funds;  
14 (c) Not depositing trust funds into investment vehicles which were not liquid and  
15 could not be accessed without delay should access be required;  
16 (d) Depositing trust funds in an account properly titled as a trust account and/or  
17 titling the asset as being held for the benefit of the trust account beneficiaries  
18 and thereby protecting the trust funds from Respondents' creditors; and,  
19 (e) Not taking any secret or undisclosed compensation, commission or profit under  
20 any agreement employing Respondents to do any acts for which a license is  
21 required for compensation.

22 Respondents breached their fiduciary duties to their clients by, among other  
23 breaches, without disclosing to or obtaining consent of the beneficiaries, investing client trust  
24 funds into a Certificate of Deposit which was not held in trust for the benefit of the  
25 beneficiaries.  
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2 On or about December 14, 2006, Respondents withdrew \$70,000.00 in trust  
3 funds from Bank Account #1 and purchased a Certificate of Deposit No. XXXX1053  
4 (hereinafter "the CD") at Sonoma Valley Bank in the name of "Sonoma Properties Inc". The  
5 signature card for the CD did not set forth any trust designation. In 2008, Respondents  
6 deposited an additional \$15,000 into the CD. Westamerica Bank, formerly Sonoma Valley  
7 Bank, issued a "Renewal Notice" (hereinafter "Notice") to Respondents for the CD dated  
8 March 14, 2011, which showed a current balance for the CD of \$85,041.24. The Notice did  
9 not set forth any trust designation. The CD was automatically renewed in 2007, 2008, 2009 and  
10 2010. All interest earned on the CD during 2007, 2008, 2009 and 2010, a total of \$7,122.23,  
11 was withdrawn and disbursed to Respondents HBM and POWELL, each taking a fifty percent  
12 (50%) share of the accrued interest. At no time did Respondents notify their clients, the  
13 beneficiaries of the trust funds used to open the CD, of the existence of the CD or the interest  
14 payments received by HBM and POWELL.

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16 As Respondents had not obtained expressed written approval from the  
17 beneficiaries prior to, nor, at any time subsequent to the withdrawal of trust funds from Bank  
18 Account #1 used to open the CD, the repeated renewals of the CD, or the disbursements of  
19 interest payments on the CD to Respondents HBM and POWELL, Respondents' acts  
20 constituted embezzlement, conversion or misappropriation of client trust funds, and the receipt  
21 of secret compensation, commissions or profits, and were willful, deceptive, dishonest and a  
22 breach of their fiduciary duties owed to the beneficiaries. Each transfer of trust funds, each  
23 continued renewal of the CD, and each disbursement of interest payments earned on the CD,  
24 individually and jointly constitutes a violation of Section 10145 of the Code, and Sections  
25 2830.1, 2831.1, 2832.1 of the Regulations.

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The acts and/or omissions of Respondents HKM, POWELL and HBM as alleged in Paragraphs 17 through 20, above, constitute grounds for the suspension or revocation of all licenses and license rights of Respondents pursuant to Section 10176(g), 10176(i), and 10177(d) and/or 10177(g) of the Code in conjunction with Sections 10145 of the Code and Sections 2830.1, 2831.1, 2832.1 of the Regulations.

THIRD CAUSE OF ACTION

(As Against Respondent HKM)

22

Each and every allegation in Paragraphs 1 through 21, inclusive, above, is incorporated by this reference as if fully set forth herein.

23

At all times mentioned herein, HKM, as the designated officer broker of SPI, was required to exercise reasonable supervision and control over the activities of SPI and its employees, including but not limited to POWELL and HBM, pursuant to Section 10159.2 of the Code and Section 2725 of the Regulations.

24

HKM failed to exercise reasonable supervision over the acts and/or omissions of SPI and its employees in such a manner as to allow the acts and/or omissions as described in Paragraphs 13, and 17 through 20, above, to occur, which constitutes cause for the suspension or revocation of the licenses and license rights of HKM under Sections 10177(d) and/or 10177(g) of the Code, and Sections 10177(h) and 10159.2 of the Code, in conjunction with Section 2725 of the Regulations.

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PRIOR ADMINISTRATIVE PROCEEDINGS

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Effective February 3, 2005, in Case No. H-4023 SAC, the Real Estate Commissioner suspended Respondent SPI's corporate real estate broker license for violating Section 10177.5 of the Code.

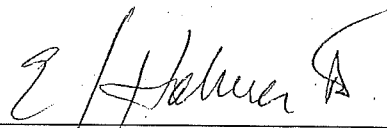
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Effective February 3, 2005, in Case No. H-4023 SAC, the Real Estate Commissioner suspended Respondent HKM's real estate broker license for violating Section 10177.5 of the Code.

COST RECOVERY

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

  
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E. J. HABERER, II  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 10 day of May, 2012.