

FILED

May 21, 2012

DEPARTMENT OF REAL ESTATE

By P. Jones

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

11 In the Matter of the Accusation of)

12 ACCOLADE, INC. and PAUL CHEN,)

13 Respondents.)

No. H-11387 SF

ACCUSATION

14
15 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the
16 State of California, for cause of Accusation against ACCOLADE INC., and PAUL CHEN,
17 (Respondents), is informed and alleges as follows:

18 PRELIMINARY ALLEGATIONS

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20 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the
21 State of California, makes this Accusation in his official capacity.

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23 Respondents are presently licensed and/or have license rights under the Real
24 Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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At all times mentioned, Respondent ACCOLADE INC. (ACCOLADE) was and is licensed by the State of California Department of Real Estate (Department) as a real estate broker corporation.

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At all times mentioned, Respondent PAUL CHEN (CHEN) was and is licensed by the Department individually as a real estate broker, and as the designated broker officer of ACCOLADE. As said designated officer-broker, CHEN 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 ACCOLADE for which a license is required.

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

5

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of Section 10131(b) of the Code in the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

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1 FIRST CAUSE OF ACTION

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3 Each and every allegation in Paragraphs 1 through 5, inclusive, above, are
4 incorporated by this reference as if fully set forth herein.

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6 While acting as a corporate real estate broker as described in Paragraph 5,
7 ACCOLADE accepted or received funds in trust (trust funds) from or on behalf of owners and
8 tenants in connection with the leasing, renting, and collection of rents on real property or
9 improvements thereon, as alleged herein, and thereafter from time to time made disbursements of
10 said trust funds.

11 8

12 The trust funds accepted or received by ACCOLADE as described in Paragraph 7,
13 were deposited or caused to be deposited by ACCOLADE into trust accounts which were
14 maintained by ACCOLADE for the handling of trust funds, and thereafter from time-to-time
15 ACCOLADE made disbursements of said trust funds, identified as follows:

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ACCOUNT # 1	
17 Bank Name & Location:	Wells Fargo, 901 Franklin Street, Suite 88, Oakland, CA 94607
18 Account No.:	xxxxxxx8999
19 Entitled:	Accolade Inc.

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22 In the course of the activities described in Paragraph 5, above, ACCOLADE:
23 (a) failed to keep accurate separate records for each beneficiary or transaction,
24 accounting therein for all funds which were deposited into the Trust Account #2, containing all
25 of the information required by Section 2831.1 of the Regulations;
26 (b) failed to reconcile the balance of separate beneficiary or transaction
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1 records with the control record of trust funds received and disbursed at least once a month, and/or
2 failed to maintain a record of such reconciliations for each account as required by Section 2831.2
3 of the Regulations; and

4 (c) commingled with its own money or property, the money or property of
5 others which was received or held by Respondent in trust in violation of Section 10176(e) of the
6 Code.

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8 Respondent failed to obtain a branch license from the Department for the branch
9 office located at 580 California Street, 12th Floor, San Francisco, California as required by
10 Section 10163 of the Code.

11 11

12 The facts alleged in the First Cause of Action are grounds for the suspension or
13 revocation of DREC's licenses and license rights under the following sections of the Code and
14 Regulations:

15 (1) As to Paragraph 9(a), under Section 10177(d) of the Code in conjunction
16 with Section 2831.1 of the Regulations;

17 (2) As to Paragraph 9(b), under Section 10177(d) of the Code in conjunction
18 with Section 2831.2 of the Regulations;

19 (3) As to Paragraph 9(c), under Section 10176(e) of the Code; and

20 (4) As to Paragraph 10, under Section 10177(d) of the Code in conjunction
21 with Section 2715 of the Regulations and Section 10163 of the Code.

22 12

23 The acts and/or omissions of ACCOLADE as alleged the First Cause of Action,
24 entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148
25 (Reimbursement for Cost of Audit for Trust Fund Handling Violation) of the Code.

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

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Respondent CHEN failed to exercise reasonable supervision over the acts of Respondent ACCOLADE in such a manner as to allow the acts and events described above to occur.

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The acts and/or omissions of CHEN described in Paragraph 14, constitute failure on the part of CHEN, as designated broker-officer for ACCOLADE, to exercise reasonable supervision and control over the licensed activities of ACCOLADE required by Section 10159.2 of the Code.

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The facts described above as to the Second Cause of Accusation constitute cause for the suspension or revocation of the licenses and license rights of Respondent CHEN under Section 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

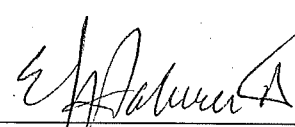
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Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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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
3 action against all licenses and license rights of Respondent under the Code, for the cost of
4 investigation and enforcement as permitted by law, and for such other and further relief as may
5 be proper under the provisions of law.

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7 
8 E. J. HABERER II
9 Deputy Real Estate Commissioner

10 Dated at Oakland, California,
11 this 17 day of May, 2012

12 DISCOVERY DEMAND

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