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FILED

MAY 30 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 BIAGINI PROPERTIES, INC.
14 and THOMAS JOHN BIAGINI,

15 Respondents.

No. H-11395-SF

ACCUSATION

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 BIAGINI
18 PROPERTIES, INC. and THOMAS JOHN BIAGINI (collectively referred to herein as
19 "Respondents"), is informed and alleges as follows:

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21 Respondent BIAGINI PROPERTIES, INC., (hereinafter "BPI"), is presently
22 licensed by the Department of Real Estate (hereinafter "the Department") and/or has license
23 rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code
24 (hereafter "the Code"), as a real estate corporation, acting by and through THOMAS JOHN
25 BIAGINI as its designated officer.

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Respondent THOMAS JOHN BIAGINI (hereinafter "BIAGINI") 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, BIAGINI was licensed by the Department as the designated officer of BPI. As the designated officer, BIAGINI 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 BPI for which a real estate license is required.

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

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At all times mentioned herein, BPI 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.

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1 FIRST CAUSE OF ACTION

2 (As Against BPI)

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

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7 Beginning on or about March 8, 2011, and continuing intermittently until June 29,
8 2011, an audit was conducted at BPI's main office location on W. El Camino Real in Sunnyvale,
9 California, and at the Department's Oakland District Office, wherein the Auditor examined BPI's
10 records for the period of January 1, 2010 through May 31, 2010 (hereinafter "the audit period").

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12 While acting as a real estate broker as described in Paragraph 5, above, and within
13 the audit period, BPI accepted or received funds in trust (hereinafter "trust funds") from or on
14 behalf of owners, tenants and others in connection with the rental or lease of residential property,
15 for or in expectation of compensation, as alleged herein, and thereafter from time-to-time made
16 disbursements of said trust funds.

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18 The trust funds accepted or received by BPI as described in Paragraph 8, above,
19 were deposited or caused to be deposited by BPI into twenty-seven (27) bank accounts and one
20 trust account which were maintained by BPI for the handling of trust funds, and thereafter from
21 time-to-time BPI made disbursements of said trust funds, identified as follows:

22 All bank accounts with one exception, and the trust account were maintained at
23 Focus Business Bank, 10 Almaden Blvd., Suite 150, San Jose, CA 95113.

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TRUST ACCOUNT # 1	
Account No. (Last 4 Digits):	2124
Entitled:	"Biagini Properties Inc Trust Account Thomas J. Biagini Broker/Trustee"
Signatories:	Thomas Biagini (REB/D.O.), Mark Biagini (REB)

For the following bank accounts, the signatories on the account were Richard N. Thornton (REB/D.O.), Mark Biagini (REB), and the property owner(s) for which the account was set up (all unlicensed individuals):

BANK ACCOUNTS	
Account No. (Last 4 Digits):	Entitled:
0791	"Paseo Gateway Associates C/O Biagini Properties, Inc"
0916	"Campisi Alameda-Morrison, LLC"
0365	"Jim Shuhtai Chou Almaden/Alma Retail C/O. Biagini Properties, Inc"
0650	"Jim Shuhtai Chou alum Rock Plaza C/O Biagini Properties Inc"
0817	"John Sorci Child's Trust – Survivor Antioch C/O Biagini Properties Inc"
0643	"Margaret Ma Tam Berryessa Hill Shopping Cntr C/O Biagini Properties Inc"
0809	"Bloom Plaza, Phase I C/O Biagini Properties Inc"
0668	"Bloom Plaza, LLC C/O Biagini Properties Inc"
0767	"F&M Sorci Land Co, Inc Branham-Ross Retail C/O Biagini Properties Inc"
0692	"Ronald J Marazzo San Antonio CA Shopping Center C/O Biagini Properties Inc"
2474	"Frank M. Martinez Revocable Trust The Crossings C/O Biagini Properties Inc"
1088	"ELS Properties Corporation Cypress Plaza Agreement Dtd 12/16/96 C/O Biagini Properties Inc"
0619	"Kiely Center LLC C/O Biagini Properties Inc"

0601	"Eureka Square Shopping Center LP C/O Biagini Properties Inc"
0718	"Gavilan Plaza I Gavilan Plaza Shopping Center C/O Biagini Properties Inc"
0965	"Grace A. Sanfilippo Grant Park Plaza C/O Biagini Properties Inc"
0676	"Carlo Marengo Hamilton Professional Center C/O Biagini Properties Inc"
0759	"F&M Sorci Land Co, Inc McCarthy Ranch C/O Biagini Properties Inc"
0593	"Mowry East Shopping Center C/O Biagini Properties Inc"
0684	"Dieter M Luck Overlook Shopping Center C/O Biagini Properties Inc"
0700	"Peter L Lavallo Remington Retail C/O Biagini Properties Inc"
0726	"Soquel/Ocean Shopping Center C/O Biagini Properties Inc"
0825	"John Soric Child's Trust – Bypass San Ramon C/O Biagini Properties Inc"
0742	"Pek Chu Tully Retail C/O Biagini Properties Inc"
0783	"Cristina Properties, LLC Wind 'N Sea Plaza C/O Biagini Properties Inc"
0775	F&M Sorci Land Co, Inc Woodhams Center C/O Biagini Properties Inc"
Unknown	"Strawberry Parl Ltd", account maintained at Wells Fargo Bank

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In the course of the activities described in Paragraph 5, above, and within the audit period, BPI:

(a) failed to properly designate all twenty-seven (27) of the bank accounts identified in Paragraph 9, above, as trust accounts in the name of BPI or its fictitious business name, 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"); and,

(b) failed to perform and maintain records of the required monthly reconciliation of the separate beneficiary records with a control record for Trust Account #1, and all twenty-seven (27) of the bank accounts identified in Paragraph 9, above, for the period from

1 October 1, 2010 through May 31, 2011, in violation of Section 10145 of the Code and Section
2 2831.2 of the Regulations.

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4 The acts and/or omissions of BPI as alleged in Paragraph 10, above, constitute
5 grounds for the suspension or revocation of all licenses and license rights of BPI pursuant to the
6 following provisions of the Code and Regulations:

7 As to Paragraph 10(a), under Section 10177(d) and/or 10177(g) of the Code in
8 conjunction with Section 10145 of the Code and Section 2832 of the Regulations; and,

9 As to Paragraph 10(b), under Section 10177(d) and/or 10177(g) of the Code in
10 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations.

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12 The acts and/or omissions of BPI as alleged in Paragraph 10, above, entitle the
13 Department to reimbursement of the costs of its audit pursuant to Section 10148 of the Code, in
14 conjunction with Section 10145 of the Code.

15 SECOND CAUSE OF ACTION

16 (As Against BLAGINI)

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

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21 At all times relevant herein, BLAGINI, as the designated officer of BPI, was
22 required to exercise reasonable supervision and control over the activities of BPI and its
23 employees pursuant to Section 10159.2 of the Code and Section 2725 of the Regulations.

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25 BLAGINI failed to exercise reasonable supervision over the acts and/or omissions
26 of BPI and its employees in such a manner as to allow the acts and/or omissions as described in
27 Paragraph 10, above, to occur, which constitutes grounds for the suspension or revocation of the

1 licenses and license rights of BIAGINI under Sections 10177(d) and/or 10177(g) of the Code,
2 and Section 10177(h) of the Code, in conjunction with Section 10159.2 of the Code and Section
3 2725 of the Regulations.

4 COST RECOVERY

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

9 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
10 of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and
11 license rights of all Respondents named herein under the Real Estate Law (Part 1 of Division 4 of
12 the Business and Professions Code), including all mortgage loan originator license endorsements
13 and license endorsement rights of Respondents under the Code, for the cost of investigation and
14 enforcement as permitted by law, and for such other and further relief as may be proper under
15 other provisions of law.

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

20 Dated at Oakland, California,
21 this 23 day of May, 2012.
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