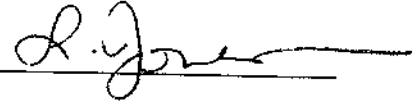


FILED

January 10, 2013

DEPARTMENT OF REAL ESTATE

By



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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

HARBOR BAY REALTY INC. and  
DENNIS GEORGE PAGONES,

Respondents.

No. H-11500 SF

ACCUSATION

The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against HARBOR BAY REALTY INC. and DENNIS GEORGE PAGONES (Respondents), is informed and alleges as follows:

PRELIMINARY ALLEGATIONS

1

The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2

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

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3

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

4

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

5

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

6

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 6, inclusive, is  
4 incorporated by this reference as if fully set forth herein.

5 8

6 On or about July 18, 2012, and continuing intermittently through September 27,  
7 2012, an audit was conducted of the records of HARBOR. The auditor herein examined the  
8 records for the period of September 1, 2011, through August 31, 2012.

9 9

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

15 10

16 The trust funds accepted or received by Respondents as described in Paragraph 9  
17 were deposited or caused to be deposited by Respondents into trust accounts which were  
18 maintained by Respondents for the handling of trust funds, and thereafter from time-to-time  
19 Respondents made disbursements of said trust funds, identified as follows:

20

ACCOUNT # 1	
21 Bank Name and Location:	Bank of Alameda 2130 Otis Drive Alameda, CA 94501
23 Account No.:	XXXX0719
24 Entitled:	Harbor Bay Realty – Property Management Trust Account

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ACCOUNT # 2	
Bank Name and Location:	Bank of Alameda 2130 Otis Drive Alameda, CA 94501
Account No.:	XXXX0727
Entitled:	Harbor Bay Realty – Property Management Trust Account – Security Deposit

11

In the course of the activities described in Paragraph 6, Respondents:

(a) caused, suffered, or permitted the balance of funds in Account #1 to be reduced to an amount which, as of August 31, 2012, was approximately \$33,098.09 less than the aggregate liability of Account #1 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations (Regulations);

(b) caused, suffered, or permitted the balance of funds in Account #2 to be reduced to an amount which, as of August 31, 2012, was approximately \$200.00 less than the aggregate liability of Account #2 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

(c) failed to keep accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into Account #2, containing all of the information required by Section 2831.1 of the Regulations; and

(d) failed to reconcile, for Account #1 and #2, the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for each account as required by Section 2831.2 of the Regulations.

12

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

1 (1) As to Paragraphs 11(a) and 11(b), under Section 10177(d) of the Code in  
2 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

3 (3) As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction  
4 with Section 2831.1 of the Regulations;

5 (4) As to Paragraph 11(d), under Section 10177(d) of the Code in  
6 conjunction with Section 2831.2 of the Regulations;

7 SECOND CAUSE OF ACTION

8 13

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

11 14

12 Respondent PAGONES failed to exercise reasonable supervision over the acts of  
13 Respondent HARBOR in such a manner as to allow the acts and events described above to occur.

14 15

15 The acts and/or omissions of HARBOR described in Paragraph 14 constitute  
16 failure on the part of PAGONES, as designated broker-officer for HARBOR, to exercise  
17 reasonable supervision and control over the licensed activities of HARBOR required by Section  
18 10159.2 of the Code.

19 16

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

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COST RECOVERY

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The acts and/or omissions of Respondent as alleged above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund handling violation) 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.

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 Respondent under the 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.



ROBIN S. TANNER  
Deputy Real Estate Commissioner

Dated at Oakland, California,

this 7<sup>th</sup> day of January, 2013

DISCOVERY DEMAND

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