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1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Bureau of Real Estate
4 P.O. Box 137007
5 Sacramento, CA 95813-7007

October 23, 2013

BUREAU OF REAL ESTATE

4 Telephone: (916) 263-8672
5 (916) 263-8676 (Direct)

By

Fax

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

THE HERSH MANAGEMENT COMPANY
and HAROLD DAVIS,

Respondents.

No. H-11603 SF
ACCUSATION

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16 The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of
17 the State of California, for cause of Accusation against THE HERSH MANAGEMENT
18 COMPANY and HAROLD DAVIS (Respondents), is informed and alleges as follows:

19 PRELIMINARY ALLEGATIONS

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

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

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At all times after May 31, 2013, Respondent THE HERSH MANAGEMENT COMPANY (HERSH) was and is licensed by the State of California Bureau of Real Estate (Bureau) as a real estate broker corporation.

At all times mentioned, Respondent HAROLD DAVIS (DAVIS) was and is licensed by the Bureau individually as a real estate broker, and as the designated broker officer of HERSH. As said designated officer-broker, DAVIS 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 HERSH for which a license is required.

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

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.

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6 On or about June 20, 2013, and continuing intermittently through July 11, 2013,
7 an audit was conducted of the records of HERSH. The auditor herein examined the records for
8 the period of June 1, 2010, through May 31, 2013.

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While acting as a real estate broker as described in Paragraph 6, Respondents
accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in
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.

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The trust funds accepted or received by Respondents as described in Paragraph 9
were deposited or caused to be deposited by Respondents into trust accounts which were
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: Avidbank
400 Emerson Street
Palo Alto, CA 94031
Account No XXXXX7385

Entitled Hersh Management Company dba Davis Property
Management Trust Account

ACCOUNT # 2

Bank Name and Location: Avidbank
400 Emerson Street
Palo Alto, CA 94031

Account No.: XXXXX1322

Entitled: Hersh Management Company dba Davis Property
Management Trust Account

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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 May 31, 2013, was approximately \$410,378.69 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) failed to deposit trust funds into one or more trust funds accounts in the name of Respondent as trustee at a bank or other financial institution, in conformance with Section 10145 of the Code and Section 2832 of the Regulations;

(c) caused, permitted, and/or allowed, the possible withdrawal of trust funds from Account #'s 1 and 2 by a person who was not licensed by the Bureau and not covered by a fidelity bond in violation of Section 2834 of the Regulations;

(d) failed to maintain a written control record of all trust funds received and disbursed for Account #'s 1 and 2, containing all information as required by Section 2831 of the Regulations;

(e) failed to keep accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into Account #'s 1 and 2, containing all of the information required by Section 2831.1 of the Regulations; and

(f) operated the real estate business, under the fictitious business names of "Davis Property Management" without obtaining a license bearing said fictitious business name in violation of Section 2731 of the Regulations.

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) As to Paragraph 11(a), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;
- (2) As to Paragraph 11(b), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832 of the Regulations;
- (3) As to Paragraph 11(c), under Section 10177(d) of the Code in conjunction with Section 2834 of the Regulations;
- (4) As to Paragraph 11(d), under Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations;
- (5) As to Paragraph 11(e), under Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations; and
- (6) As to Paragraph 11(f), under Section 10177(d) of the Code in conjunction with Section 10159.5 of the Code and Section 2731 of the Regulations.

SECOND CAUSE OF ACTION

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

Respondent DAVIS failed to exercise reasonable supervision over the acts of Respondent HERSH 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 HERSH described in Paragraph 14 constitute failure on the part of DAVIS, as designated broker-officer for HERSH, to exercise reasonable supervision and control over the licensed activities of HERSH as required by Section 10159.2 of the Code.

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The facts described above as to the Second Cause of Action constitute cause for the suspension or revocation of the licenses and license rights of Respondent DAVIS 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.

COST RECOVERY

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The acts and/or omissions of Respondent as alleged above, entitle the Bureau 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 Bureau, 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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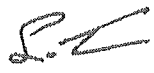
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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondent under the Code, 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 ROBIN S. TANNER
9 Deputy Real Estate Commissioner

10
11 2nd October, 2013
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13 D DEMAND

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