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FILED

MAR 25 2014

BUREAU OF REAL ESTATE

By L. Frost

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

10 In the Matter of the Accusation of) NO. H-11667 SF
11)
12 WEST MANAGEMENT COMPANY INC.,) ACCUSATION
13 and DAVID ELIOT WEST,)
14 Respondents.)

15 The Complainant, ROBIN S. TANNER, in her official capacity as a Deputy Real
16 Estate Commissioner of the State of California, for cause of Accusation against WEST
17 MANAGEMENT COMPANY INC. and DAVID ELIOT WEST, is informed and alleges as
18 follows:

19 1

20 Respondent WEST MANAGEMENT COMPANY INC. (hereinafter "WMCI") is
21 presently licensed by the California Bureau¹ of Real Estate (hereinafter "the Bureau") and/or has
22 license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and
23 Professions Code (hereafter "the Code"), as a real estate broker corporation, and at all relevant
24 times herein was acting by and through DAVID ELIOT WEST as its designated officer broker.

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27 ¹ Effective July 1, 2013, the Department of Real Estate has become the Bureau of Real Estate pursuant to the Governor's Reorganization Plan of 2012.

Respondent DAVID ELIOT WEST (hereinafter "WEST") is presently licensed by the Bureau and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker. At all times relevant herein, WEST was licensed by the Bureau as the designated officer broker of WMCI. As the designated officer broker, WEST 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 WMCI for which a real estate license is required.

PREVIOUS ADMINISTRATIVE PROCEEDINGS

Effective May 10, 1991, in Case No. H-6391 SF, the Real Estate Commissioner issued an Order ("Order") which revoked WEST's real estate broker license, and granted WEST a restricted real estate broker license. The Order was supported by findings that cause to discipline WEST's real estate broker license existed for violation of Section 490 of the Code (conviction of crime). Effective February 24, 1995, WEST's real estate broker license was reinstated.

Effective April 2, 2004, in Case No. H-8129 SF, the Real Estate Commissioner issued an Order ("Order") pursuant to a Stipulation and Agreement which suspended WEST's real estate broker license for 120 days, staying 90 days for one year and staying the remaining 30 days upon payment of a monetary penalty, among other terms and conditions. The Order was supported by findings that cause to discipline WEST's real estate broker license existed for violation of Section 10177(d) (willful disregard or violation of the Real Estate Law) of the Code in conjunction with Section 10145 (trust fund handling) of the Code.

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondents, such allegation shall be deemed to mean that the employees, agents, real estate licensees, and others employed by or associated with Respondents committed such act or omission

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1 while engaged in furtherance of the business or operations of Respondents and while acting within
2 the course and scope of their authority and employment.

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4 At all times relevant herein, Respondents engaged in the business of, acted in the
5 capacity of, advertised or assumed to act as a real estate broker within the State of California within
6 the meaning of Section 10131(b) of the Code (Broker Defined – Property Management/Collection
7 of Rent), including the operation and conduct of a property management business with the public,
8 wherein, on behalf of others, for compensation or in expectation of compensation, Respondents
9 leased or rented or offered to lease or rent, and solicited for prospective tenants of real property or
10 improvements thereon, and collected rents from real property or improvements thereon.

11 FIRST CAUSE OF ACTION

12 As Against All Respondents

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14 Each and every allegation in Paragraphs 1 through 6, inclusive, above, is
15 incorporated by this reference as if fully set forth herein.

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17 On or about June 28, 2012, and continuing intermittently through July 9, 2012, an
18 audit was conducted of Respondents' business activities at Respondents' main office location at 120
19 Hamilton Place, Oakland, California, wherein the auditor examined Respondents' records for the
20 period of June 1, 2010 through May 31, 2012 (hereinafter "the audit period").

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22 While acting as a real estate broker as described in paragraph 6, above, and within
23 the audit period, Respondents accepted or received funds in trust (hereinafter "trust funds") and
24 deposited or caused the trust funds to be deposited into bank accounts maintained by Respondents,
25 and thereafter, from time-to-time, Respondents made disbursements of said trust funds, identified as
26 follows:

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Trust Account #1

Bank Name: Comerica Bank
Account No.: Last 4 Digits: xxxxxx4706
Account Name: "Arthur W Perrott Testamentary Trust West Management Company Inc Trustee David E West Trustee"
Signatories: David Eliot West (REB)
Purpose: Trust Account #1 was opened on December 13, 2011 to replace Bank Account #1, identified below. Trust Account #1 was used for deposits and disbursements related to the property 12915-12929 San Pablo Ave., Richmond, CA.

Bank Account #1

Bank Name: Summit Bank
Account No.: Last 4 Digits: xxxxx5514
Account Name: "David West as Trustee for Arthur W. Perrott Testamentary Trust"
Signatories: David Eliot West (REB)
Purpose: Bank Account #1 was replaced with Trust Account #1, identified above. It was closed on April 23, 2012. Bank Account #1 was used for deposits and disbursements related to the property 12915-12929 San Pablo Ave., Richmond, CA.

Trust Account #2

Bank Name: Comerica Bank
Account No.: Last 4 Digits: xxxxxx5018
Account Name: "Lewis and Emily Needle West Management Company Inc Trustee David E West Trustee"
Signatories: David Eliot West (REB)
Purpose: Trust Account #2 was opened on December 13, 2011 to replace Bank Account #2, identified below. Trust Account #2 was used for deposits and disbursements related to the property 734 Albemarle St., El Cerrito, CA.

Bank Account #2

Bank Name: Summit Bank
Account No.: Last 4 Digits: xxxxx7221
Account Name: "David West as trustee for Lewis and Emily Needle c/o West Management Co., Inc."
Signatories: David Eliot West (REB)
Purpose: Bank Account #2 was replaced with Trust Account #2, identified above. It was closed on April 23, 2012. Bank Account #2 was used for deposits and disbursements related to the property 734 Albemarle St., El Cerrito, CA.

In the course of the real estate broker activities described in Paragraph 6, above, and during the audit period, Respondents:

(a) caused, suffered, or permitted the balance of funds in Bank Account #1 to be reduced to an amount which, as of February 29, 2012, was approximately \$81,913.55 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 (handling of trust funds) of the Code and Section 2832.1 (written authorization of all beneficiaries required to reduce funds to below liability) of Title 10 of the California Code of Regulations ("the Regulations"). The cause of said trust fund shortage was attributed to unauthorized transfers made between May 2011 and October 2011 from Bank Account #1 to four other bank accounts owned by WMCI and WEST and to the IRS for the benefit of WMCI;

(b) disbursed trust funds from Bank Account #1 to Respondents in excess of those earned totaling \$81,913.55 as of February 29, 2012, which constitutes fraud or dishonest dealing under Section 10176(i) (fraud or dishonest dealing in connection with licensed activity) of the Code;

(c) caused, suffered or permitted money of others, trust funds, which were received and held by Respondents in Bank Account #1 to be commingled with Respondents' own money, in violation of Section 10176(e) (grounds for discipline - commingling of trust funds with broker funds) of the Code and Section 2835 (commingling prohibited) of the Regulations;

(d) failed to maintain complete and accurate records of all trust funds received and disbursed (control records) for Bank Account #1, including, but not limited to the a failure to record unauthorized transfers from Bank Account #1 totaling \$81,913.55 and a deposit in the amount of \$31,854.80, in violation of Section 10145 of the Code and Section 2831 of the Regulations; and,

(e) conducted real estate activities at 15 Embarcadero Cove, Oakland, CA from 2009 through January 2012, and from February 2012 to the present at 120 Hamilton Place, Oakland,

1 CA, locations which requires a real estate license, without first procuring a real estate license for
2 those office locations in violation of Section 10162 of the Code and Section 2715 of the
3 Regulations.

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

8 As to Paragraph 10(a), under Section 10177(d) (willful disregard or violation of
9 Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of the
10 Code, in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

11 As to Paragraph 10(b), under Section 10176(i) of the Code;

12 As to Paragraph 8(c), under Section 10176(e), and 10177(d) and/or 10177(g) of the
13 Code, in conjunction with Section 2835 of the Regulations;

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

16 As to Paragraph 10(e), under Section 10177(d) and/or 10177(g) of the Code, in
17 conjunction with Section 10162 of the Code and Section 2715 of the Regulations.

18 SECOND CAUSE OF ACTION

19 As Against Respondent WEST

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21 Each and every allegation in Paragraphs 1 through 11, inclusive, above, is
22 incorporated by this reference as if fully set forth herein.

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24 At all times relevant herein, Respondent WEST, as the designated officer broker of
25 WMCI, was required to exercise reasonable supervision and control over the activities of WMCI
26 and its employees pursuant to Section 10159.2 (reasonable supervision by designated officer) of the
27 Code and Section 2725 (reasonable supervision by broker) of the Regulations.

Respondent WEST failed to exercise reasonable supervision over the acts and/or omissions of WMCI and its employees in such a manner as to allow the acts and/or omissions as described in Paragraph 10, above, to occur, which constitutes cause for the suspension or revocation of the licenses and license rights of Respondent WEST under Sections 10177(d) (willful disregard or violation of Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of the Code, and Section 10177(h) (failure to exercise reasonable supervision) of the Code, in conjunction with Section 10159.2 (reasonable supervision by designated officer) of the Code and Section 2725 (reasonable supervision by broker) of the Regulations.

COST RECOVERY

Audit Costs

The acts and/or omissions of Respondent as alleged in the First Cause of Action, above, entitle the Bureau to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund handling violations) of the Code.

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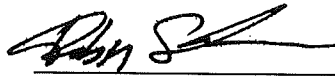
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Investigation and Enforcement Costs

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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.

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, for the cost of the audit as permitted by law, and for such other and further relief as may be proper under other provisions of law.



ROBIN S. TANNER
Deputy Real Estate Commissioner

Dated at Oakland, California,

this 10th day of March, 2014.