

FILED

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May 30, 2014

BUREAU OF REAL ESTATE

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By _____

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

ADVENT PROPERTIES, INC.,
and BENJAMIN JOHN SCOTT,

Respondents.

No. H-11708 SF

ACCUSATION

The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of the State of California, for Accusation against Respondents ADVENT PROPERTIES, INC. (API), and BENJAMIN JOHN SCOTT (SCOTT) is informed and alleges as follows:

1

The Complainant makes this Accusation against Respondent in her official capacity.

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API is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (Code) by the Bureau of Real Estate (Bureau) as a corporate real estate broker.

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SCOTT is presently licensed and/or has license rights under the Code as a real estate broker.

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At all times herein mentioned, SCOTT was the designated broker-officer of API. As the designated broker-officer, SCOTT was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of officers, agents, real estate licensees and employees of API for which a real estate license is required to ensure the compliance of the corporation with the Real Estate law and the Regulations.

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At all times herein mentioned, API engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation. API leased or rented or offered to lease or rent, or places for rent, or solicited listings of places for rent or solicited for prospective tenants, or negotiated the sale, purchase or exchange of leases on real property, or on a business opportunity, or collected rents from tenants.

FIRST CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 5, above, and incorporates the same herein.

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Beginning on January 7, 2014, and continuing through February 24, 2014, an audit was conducted at API's main office located at 1600 MacArthur Blvd., Oakland, California, where the auditor examined records for the period of April 15, 2011, through November 30, 2013 (the audit period).

While acting as a real estate broker as described in Paragraph 5, above, and within the audit period, API accepted or received funds in trust (trust funds) from or on behalf of property owners, lessees and others in connection with property management activities, deposited or caused to be deposited those funds into bank accounts maintained by API, at Bank of America, 2200 Powell Street, Emeryville, California, as described below:

TRUST ACCOUNT #1	
Account No.:	XXX3801
Entitled:	Advent Properties, Inc. Broker Trust

and thereafter from time to time made disbursement of said trust funds.

In the course of the activities described in Paragraph 5, in connection with the collection and disbursement of trust funds, it was determined that:

- (a) as of November 20, 2013, an accountability of Trust Account #1, revealed a shortage of \$524,834.16, in violation of Section 10145 of the Code;
- (b) API failed to maintain a record of all trust funds received and disbursed (control records) for Trust Account #1, as required by Section 2831 of Chapter 6, Title 10, of the Regulations (Regulations);
- (c) API failed to maintain separate beneficiary records for Trust Account #1, as required by Section 2831.1 of the Regulations;
- (d) API failed to perform monthly reconciliations of the separate beneficiary records and control records for Trust Account #1, as required by Section 2831.2 of the Regulations;

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- 1 (e) API solicited and collected advance fees for an eviction service without
2 first obtaining a no objection letter from the Bureau, in violation of
3 Section 10085 of the Code and
4 (f) API disbursed trust funds in excess of recorded management fees earned
5 in the amount of \$474,715.52, thereby converting trust funds, in violation
6 of Section 10176(i) of the Code.

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8 The acts and/or omissions described above constitute violations of Sections 2831
9 (control records), 2831.1 (separate beneficiary records) and 2831.2 (monthly reconciliations) of
10 the Regulations and of Sections 10085 (advance fees), 10145 (trust fund handling), 10176(i)
11 (other conduct: fraud or dishonest conduct) of the Code and are grounds for discipline under
12 Sections 10176(i), 10177(d) (willful disregard of real estate laws) and 10177(g)
13 (negligence/incompetence licensee) of the Code.

14 SECOND CAUSE OF ACTION

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16 Complainant refers to Paragraphs 1 through 10, above, and incorporates them
17 herein by reference.

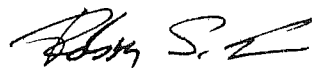
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19 At all times herein mentioned, SCOTT was responsible as the supervising
20 designated broker/officer for API for the supervision and control of the activities conducted on
21 behalf of API'S business by its employees to ensure its compliance with the Real Estate Law and
22 Regulations. SCOTT failed to exercise reasonable supervision and control over the property
23 management activities of API. In particular, SCOTT permitted, ratified and/or caused the
24 conduct described above to occur, and failed to take reasonable steps, including but not limited
25 to, the handling of trust funds, supervision of employees, and the implementation of policies,
26 rules, and systems to ensure the compliance of the business with the Real Estate Law and the
27 Regulations.

The above acts and/or omissions of SCOTT violate Section 2725 of the Regulations and Section 10159.2 (responsibility/designated officer) of the Code and constitute grounds for disciplinary action under the provisions of Sections 10177(d), 10177(g) and 10177(h) (broker supervision) of the Code.

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 imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), 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 22nd day of May, 2014.