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BUREAU OF REAL ESTATE

By S. Black

1 TRULY SUGHRUE, Counsel
 2 State Bar No. 223266
 3 Bureau of Real Estate
 4 P.O. Box 137007
 5 Sacramento, CA 95813-7007
 6 Telephone: (916) 263-8672
 (916) 263-8676 (Direct)
 7
 8 Fax: (916) 263-3767
 9

10 BEFORE THE BUREAU OF REAL ESTATE
 11 STATE OF CALIFORNIA

12 In the Matter of the Accusation of)
 13)
 CWP PROPERTY MANAGEMENT, INC.)
 14 and ROBERT DONALDSON WINKLER,)
 15 Respondents.)

No. H-11780 SF
ACCUSATION

16 The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of
 17 the State of California, for cause of Accusation CWP PROPERTY MANAGEMENT, INC. and
 18 ROBERT DONALDSON WINKLER (Respondents), is informed and alleges as follows:

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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2 At all times prior to February 26, 2013, and after July 12, 2013, Respondent CWP
3 PROPERTY MANAGEMENT INC. (CWP) was and is licensed by the State of California
4 Bureau of Real Estate (Bureau) as a real estate broker corporation.

5 4

6 At all times mentioned, Respondent ROBERT DONALDSON WINKLER
7 (WINKLER) was and is licensed by the Bureau individually as a real estate broker, and as the
8 designated broker officer of CWP. As said designated broker officer, WINKLER was
9 responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the
10 officers, agents, real estate licensees, and employees of CWP for which a license is required.

11 5

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

17 6

18 At all times mentioned, Respondents engaged in the business of, acted in the
19 capacity of, advertised, or assumed to act as real estate brokers in the State of California, within
20 the meaning of Section 10131(b) of the Code in the operation and conduct of a property
21 management business with the public wherein, on behalf of others, for compensation or in
22 expectation of compensation, Respondents leased or rented and offered to lease or rent, and
23 placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of
24 real property or improvements thereon, and collected rents from real property or improvements
25 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 incorporated by
4 this reference as if fully set forth herein.

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6 On or about May 14, 2014, and continuing intermittently through
7 August 21, 2014, an audit was conducted of the records of CWP. The auditor herein examined
8 the records for the period of July 1, 2012, through June 30, 2014.

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:

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ACCOUNT # 1	
21 Bank Name and Location:	Fremont Bank 1480 E. 14 th Street San Leandro, CA 94577
22 Account No.:	XXX4317
23 Entitled:	CWP Property Management Inc Trust Account III

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ACCOUNT # 2	
Bank Name and Location:	Fremont Bank 1480 E. 14 th Street San Leandro, CA 94577
Account No.:	XXX4325
Entitled:	CWP Property Management as Agt C & P Owned Trust

ACCOUNT # 3	
Bank Name and Location:	Fremont Bank 1480 E. 14 th Street San Leandro, CA 94577
Account No.:	XXX4503
Entitled:	CWP Property Management Inc Agt Sandpiper Apt Trust Act

ACCOUNT # 4	
Bank Name and Location:	Fremont Bank 1480 E. 14 th Street San Leandro, CA 94577
Account No.:	XXX4457
Entitled:	CWP Property Management as Agt Cottonwood Mobile Home

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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 June 30, 2014, was approximately \$6,838.97 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 #4 to be reduced to an amount which, as of May 31, 2014, was approximately \$933.67 less than the aggregate liability of Account #4 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

1 (c) failed to deposit trust funds into one or more trust funds accounts in the
2 name of CWP as trustee at a bank or other financial institution, in conformance with Section
3 10145 of the Code and Section 2832 of the Regulations;

4 (d) caused, permitted, and/or allowed, the possible withdrawal of trust funds
5 from Account #'s 1, 2, 3, and 4 by a person who was not licensed by the Bureau and not covered
6 by a fidelity bond in violation of Section 2834 of the Regulations; and

7 (e) failed to reconcile the balance of separate beneficiary or transaction
8 records with the control record of trust funds received and disbursed at least once a month,
9 and/or failed to maintain a record of such reconciliations for each account as required by Section
10 2831.2 of the Regulations.

11 12

12 In connection with the operation and conduct of the activities and transactions
13 described in Paragraph 6, Respondents:

14 (a) employed real estate salespersons, including but not limited to Karen A.
15 Bergendahl, to engage in activities requiring a real estate salesperson license without first
16 entering into the broker-salesperson relationship agreement with such salespersons in
17 conformance with Section 2726 of the Regulations; and

18 (b) failed to disclose CWP's corporate broker license identification number on
19 its website in violation of Section 2773 of the Regulations and Section 10140.6 of the Code.

20 13

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

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

26 (2) As to Paragraph 11(c), under Section 10177(d) of the Code in
27 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

1 (3) As to Paragraph 11(d), under Section 10177(d) of the Code in
2 conjunction with Section 2834 of the Regulations;

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

5 (5) As to Paragraph 12(a), under Section 10177(d) of the Code in
6 conjunction with 2726 of the Regulations;

7 (6) As to Paragraph 12(b), under Section 10177(d) of the Code in
8 conjunction with Section 10140.6 of the Code and Section 2773 of the Regulations; and

9 SECOND CAUSE OF ACTION

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11 Each and every allegation in Paragraphs 1 through 13, inclusive, is incorporated
12 by this reference as if fully set forth herein.

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14 Between February 27, 2013 and July 11, 2013, while CWP's license was
15 expired, Respondents willfully caused, suffered, permitted, and/or disregarded the real estate
16 law by allowing CWP to perform the acts and conduct the real estate activities described in
17 Paragraph 6, above, including but not limited to the activities described in Paragraph 16.

18 16

19 Between February 27, 2013 and July 11, 2013, while CWP's license was expired,
20 in the course of the employment and activities described in Paragraph 6, CWP solicited
21 prospective tenants for, negotiated rental agreements for, and/or collected rents from real
22 properties owned by another or others, including but not limited to the management of 204
23 residential properties with 283 units, 55 apartment complexes with 869 units, and 10 commercial
24 complexes with 46 units.

25 17

26 In acting as described in the Second Cause of Action, Respondents willfully
27 caused, suffered, and/or permitted, CWP to willfully disregard Section 10130 of the Code.

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2 The facts alleged in the Second Cause of Accusation are grounds for the
3 suspension or revocation of Respondents' licenses and license rights pursuant to Section 10130
4 of the Code in conjunction with Section 10177(d) and/or 10177(g) of the Code.

5 THIRD CAUSE OF ACTION

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

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10 Respondent WINKLER failed to exercise reasonable supervision over the acts of
11 CWP in such a manner as to allow the acts and events described above to occur.

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13 The acts and/or omissions of CWP described in Paragraph 20 constitute failure on
14 the part of WINKLER, as designated broker-officer for CWP, to exercise reasonable supervision
15 and control over the licensed activities of CWP as required by Section 10159.2 of the Code.

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17 The facts described above as to the Third Cause of Action constitute cause for the
18 suspension or revocation of the licenses and license rights of Respondent WINKLER under
19 Section 10177(g) and/or Section 10177(h) of the Code, and Section 10159.2 of the Code in
20 conjunction with Section 10177(d) of the Code.

21 COST RECOVERY

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23 The acts and/or omissions of Respondents as alleged above, entitle the Bureau to
24 reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund
25 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.

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 5th day of December, 2014

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Bureau 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 Bureau 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.