

FILED

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December 26, 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)	
)	
LEGAL ONE REALTY, and)	NO. H- 11783 SF
DANIEL MARC BORNSTEIN,)	
)	<u>ACCUSATION</u>
Respondents.)	
)	

The Complainant, ROBIN S. TANNER, in her official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against LEGAL ONE REALTY ("LEGAL ONE"), individually and doing business as "Bay Property Advisors", "Bay Property Group", "BPG Maintenance Services", "BPG Management", "First Release Homes", "Legal One Business Brokers", "Legal One Group", "Legal One Mortgage" and "Legal One Property Management"; and, DANIEL MARC BORNSTEIN ("BORNSTEIN"), (collectively "Respondents"), is informed and alleges as follows:

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At all times relevant, LEGAL ONE was licensed and/or had license rights by the Bureau of Real Estate ("the Bureau") as a corporate real estate broker under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code ("the Code").

At all times relevant, BORNSTEIN was licensed and/or had license rights by the Bureau as a real estate broker under the Code, and was licensed by the Bureau as the designated broker/officer of LEGAL ONE. As the designated broker/officer, BORNSTEIN was responsible, pursuant to Section 10159.2 (responsibility of corporate broker in charge) of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of LEGAL ONE for which a real estate license is required.

At no time has Anna Katz ("KATZ") been licensed by the Bureau to conduct real estate activities in the State of California.

At all times herein mentioned, Respondents were 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(a) (sale/purchase of real estate) of the Code, including selling or offering to sell, buying or offer to buy, soliciting prospective sellers or purchasers of, soliciting or obtaining lists of, or negotiating the purchase, sale or exchange of real property; and Section 10131(b) (property management) 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, Respondents leased or rented and offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

FIRST CAUSE OF ACTION

On or about April 25, 2013, and continuing intermittently through August 21, 2013, an audit was conducted of Respondents at their main office located at 482 West MacArthur Boulevard, Oakland, California, where the auditor examined the records for the period of July 1, 2012, through June 30, 2013 (the audit period).

While acting as real estate brokers as described in Paragraph 4, above, and within the audit period, Respondents accepted or received funds in trust (trust funds) in the course of the real estate activities described in Paragraph 4, above, and deposited or caused to be deposited those funds into bank accounts maintained by Respondents, including, but not limited to:

Bank Account #1

Wells Fargo Bank
P.O. Box 6995
Portland, OR 97228-6995

Account No.: XXXXXX4829

Account Name from

6/1/12 to 3/31/13: Legal One Realty dba Bay Property Group Property
Operating Account

Account Name from

4/1/13 to 6/30/13: Legal One Realty dba Bay Property Group Real Estate
Trust Account Property Operating Account

Signatories: Daniel Marc Bornstein (REB)
Anna Katz, controller (unlicensed)

Bank Account #2

Wells Fargo Bank
P.O. Box 6995
Portland, OR 97228-6995

Account No.: XXXXXX4837

Account Name from

6/1/12 to 3/31/13: Legal One Realty dba Bay Property Group Property
Operating Account

Account Name from

4/1/13 to 6/30/13: Legal One Realty dba Bay Property Group Real Estate
Trust Account Security Deposit Acct

Signatories: Daniel Marc Bornstein (REB)
Anna Katz, controller (unlicensed)

Thereafter, Respondents from time-to-time made disbursement of said trust funds.

In the course of the activities described in Paragraph 4, above, in connection with the collection and disbursement of trust funds:

(a) As of June 30, 2013, there was a shortage in Respondents' Bank Account #1 of at least \$55,214.66. As of May 31, 2013, there was a shortage in Respondents' Bank Account #1 of at least \$73,061.59. Respondents failed to obtain the prior written consent of every principal who is an owner of the funds in Bank Account #1 prior to any disbursement which would reduce the balance of the funds in Bank Account #1 to an amount less than the existing aggregate account liability of Respondents to all owners and/or principals of those funds. Such acts and/or omissions by Respondents violate Section 10145 (handling of trust funds) of the Code and Section 2832.1 (trust fund handling for multiple beneficiaries) of Title 10 of the California Code of Regulations ("the Regulations").

(b) As of June 30, 2013, there was a shortage in Respondents' Bank Account #2 of at least \$10,255.19. Respondents failed to obtain the prior written consent of every principal who is an owner of the funds in Bank Account #2 prior to any disbursement which would reduce the balance of the funds in Bank Account #2 to an amount less than the existing aggregate account liability of Respondents to all owners and/or principals of those funds. Such acts and/or omissions by Respondents violate Section 10145 of the Code and Section 2832.1 of the Regulations.

(c) Respondents failed to designate Bank Accounts #1 and #2 as trust accounts. Such acts and/or omissions by Respondents violate Section 10145 of the Code and Section 2832 (trust fund handling) of the Regulations.

(d) Respondents allowed non-licensee KATZ to be a signatory on Bank Accounts #1 and #2. In addition, Respondents failed to maintain adequate fidelity bond coverage for KATZ. Such acts and/or omissions by Respondents violate Section 10145 of the Code and Section 2834 (trust account withdrawals) of the Regulations.

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The acts and/or omissions alleged in Paragraph 7, above, are grounds for the discipline of the licenses and license rights of Respondents under Sections 10177(d) (willful disregard of Real Estate Law) and/or 10177(g) (negligence/incompetence) of the Code. In addition, the Bureau is entitled to reimbursement from Respondents for the costs of its audit pursuant to Section 10148(b) (cost of audit in final decision following disciplinary hearing) of the Code.

SECOND CAUSE OF ACTION

As the designated broker officer for LEGAL ONE, BORNSTEIN was responsible for the supervision and control of the activities conducted on behalf of LEGAL ONE by its officers and employees. BORNSTEIN failed to exercise reasonable supervision and control over the property management activities of LEGAL ONE. In particular, BORNSTEIN permitted, ratified and/or caused the conduct described in the First Cause of Action, above, to occur, and failed to take reasonable steps, including, but not limited to, the handling of trust funds, supervision of employees, and the implementation of policies, rules, procedures and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

The acts and/or omissions of BORNSTEIN as set forth in Paragraph 9, above, violate Section 10159.2 of the Code and Section 2725 (broker supervision) of the Regulations, and are grounds for the discipline of BORNSTEIN's license and license rights under Sections 10177(d) and/or 10177(g), and 10177(h) (reasonable broker supervision) of the Code.

COST RECOVERY

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

1 Administrative Law Judge to direct a licensee found to have committed a violation of this part
2 to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
3 case.

4 WHEREFORE, Complainant prays that a hearing be conducted on the
5 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
6 disciplinary action against all licenses and license rights of Respondents under the Code, and
7 for such other and further relief as may be proper under the provisions of law.

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12 ROBIN S. TANNER
13 Deputy Real Estate Commissioner
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15 Dated at Oakland, California

16 this 22nd day of December, 2014.
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