

FILED

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BUREAU OF REAL ESTATE

By S. Blach

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

GREGORY ELIOTT MENKEN,

Respondent.

No. H-11832 SF

ACCUSATION

The Complainant, ROBIN S. TANNER, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against Respondent GREGORY ELIOTT MENKEN (MENKEN), is informed and alleges as follows:

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

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MENKEN is presently licensed and/or has license rights under the California Business and Professions Code (Code) as a real estate broker.

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At all times herein mentioned, MENKEN engaged in the business of, acted in the capacity of, advertised, or assumed to act as 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, MENKEN leased or rented or offered to lease or rent, or placed 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.

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Beginning on July 15, 2014, and continuing intermittently through July 17, 2014, an audit was conducted at MENKEN'S main office located at 18300 Old Coast Hwy., Fort Bragg, CA 95437, wherein the auditor examined MENKEN's records for the period of July 1, 2013, through June 30, 2014 (the audit period).

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While acting as a real estate broker as described in Paragraph 3, above, and within the audit period, MENKEN 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 MENKEN, at Savings Bank of Mendocino County, Fort Bragg, CA, as described below:

BANK ACCOUNT #1	
Account No.:	XXX8799
Entitled:	"Gregory E Menken Trustee Margi Menken Trustee Menken Family Trust DTD 1/19/94 DBA Remax Shoreline Properties"

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

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In the course of the activities described in Paragraph 3, in connection with the collection and disbursement of trust funds, it was determined that:

- (a) MENKEN failed to designate Bank Account #1 as a trust account as required by Section 2832 of Chapter 6, Title 10, California Code of Regulations (Regulations);
- (b) MENKEN allowed a person who was not licensed and did not have a fidelity bond to be a signatory on the trust account, in violation of Section 2834 of the Regulations;
- (c) During an accountability performed on Bank Account #1, and as of June 30, 2014, a shortage of \$668.41 was revealed, in violation of Section 10145 of the Code;
- (d) MENKEN failed to obtain written permission from owners of trust funds in Bank Account #1 to allow the balance to drop below accountability, in violation of Section 2832.1 of the Regulations;
- (e) MENKEN deposited a rent payment into a business account No. XXXXXX4063, thereby mixing trust funds with non-trust funds in violation of Section 10176(e) of the Code;
- (f) Bank Account #1 was an interest-bearing account used to hold trust fund for multiple beneficiaries, in violation of Section 10145(d) of the Code;
- (g) MENKEN failed to maintain control records for Bank Account #1, as required by Section 2831 of the Regulations and,
- (h) MENKEN failed to maintain separate beneficiary records for Bank Account #1 as required by Section 2831.1 of the Regulations.

The acts and/or omissions of MENKEN described above constitute violations of Sections 2831 (control records), 2831.1 (separate beneficiary records), 2832 (trust fund

1 designation), 2832.1 (written permission balance below accountability) and 2834 (unlicensed
2 signatories) of the Regulations and Sections 10145 (trust fund handling), 10145(d) (interest
3 bearing account) and 10176 (e) (commingling) of the Code and are grounds for discipline under
4 Sections 10176(e), 10177(d) (willful disregard of real estate laws) and 10177(g)
5 (negligence/incompetence licensee) of the Code.

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7 Audit Costs

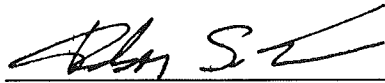
8 The acts and/or omissions of MENKEN as alleged above, entitle the Bureau to
9 reimbursement of the costs of its audits pursuant to Section 10148(b) (audit costs for trust fund
10 handling violations) of the Code.

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12 Costs of Investigation and Enforcement

13 Section 10106 of the Code provides, in pertinent part, that in any order issued
14 in resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the
15 administrative law judge to direct a licensee found to have committed a violation of this part to
16 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

17 WHEREFORE, Complainant prays that a hearing be conducted on the
18 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
19 disciplinary action against all licenses and license rights of Respondent under the Real Estate
20 Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of the
21 investigation and enforcement of this case, for the cost of the audit, and for such other and
22 further relief as may be proper under other provisions of law.

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25 ROBIN S. TANNER

26 Deputy Real Estate Commissioner

27 Dated at Oakland, California,

this 19th day of March, 2015.