

FILED

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BUREAU OF REAL ESTATE

By J. Cummings

1 MARY F. CLARKE, Counsel (SBN 186744)
2 Bureau of Real Estate
3 1651 Exposition Blvd.
4 P. O. Box 137007
5 Sacramento, CA 95813-7007

6 Telephone: (916) 263-8670
7 -or- (916) 263-7303 (Direct)
8 -or- (916) 263-3767 (Fax)

9 BEFORE THE BUREAU OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12	In the Matter of the Accusation of)	
13)	
14	M & C ASSOCIATION MANAGEMENT)	NO. H- 11853 SF
15	SERVICES INC., a Corporation, and)	
16	MICHAEL EARL PACKARD)	<u>ACCUSATION</u>
17)	
18	Respondents.)	
19)	

20 The Complainant, ROBIN TANNER, a Deputy Real Estate Commissioner of
21 the State of California, makes this Accusation in her official capacity for cause of Accusation
22 against M & C ASSOCIATION MANAGEMENT SERVICES INC. (herein "MCAMSI") and
23 MICHAEL EARL PACKARD (herein "PACKARD") (herein collectively "Respondents"), is
24 informed and alleges as follows:

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26 At all times herein mentioned, Respondents were and now are licensed and/or
27 have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and
Professions Code) (herein "Code").

2 2

At all times herein mentioned, MCAMSI was and now is licensed by the State
of California Bureau of Real Estate (herein "Bureau") as a corporate real estate broker, by and

1 through PACKARD as designated officer-broker of MCAMSI, to qualify said corporation and to
2 act for said corporation as a real estate broker.

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4 At all times herein mentioned, PACKARD was and now is licensed by the
5 Bureau individually and as the designated officer-broker of MCAMSI. As said designated
6 officer-broker, PACKARD was at all times mentioned herein responsible pursuant to Section
7 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate
8 licensees, and employees of MCAMSI for which a license is required.

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

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

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In so acting as real estate brokers, as described in Paragraph 5, above, Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of tenants, owners, and others in connection with real estate leasing, renting, and collection of rents on real property or improvements thereon, and thereafter from time to time made disbursements of said funds.

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The aforesaid trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more bank accounts (herein "trust fund accounts") maintained by Respondents for the handling of trust funds at the Rancho Cucamonga branch of Union Bank as follows:

- (a) "M&C Association Management Services Inc., ITF M&C Client Trust Account," account number xxxxxx7898 (herein "Trust Account #1"); and
- (b) "M&C Association Management Services Inc., Rental-Deposit" account number xxxxxx9053 (herein "Bank Account #1");

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Between about February 20, 2015, and about March 12, 2015, an audit was conducted of the records of Respondents in connection with the activities described in Paragraphs 5 through 7, above. The auditor herein examined the records for the period between about February 1, 2014, and about January 31, 2015, and found Respondents:

- (a) caused, suffered or permitted the balance of funds in said Trust Account #1 to be reduced to amounts less than the liability of Respondents without written consent from the owners of the account to allow Respondents to reduce the balance of funds in the account less than the existing aggregate trust fund liabilities, resulting in a trust fund shortage of about \$9,385.37 on about January 31, 2015, in violation of Section 2832.1 of Title 10, Chapter 6 of the California Code of Regulations (herein "Regulations");

1 (b) failed to place trust funds entrusted to Respondents into the hands of a
2 principal on whose behalf the funds were received, into a neutral escrow
3 depository, or into a trust fund account in the name of Respondents as
4 trustee at a bank or other financial institution for Bank Account #1 within
5 three (3) business days, in violation of Sections 10145 of the Code and
6 Section 2832 of the Regulations; and

7 (c) authorized M. Wyatt and G. Smith, unlicensed persons without
8 fidelity bond coverage to make withdrawals from Trust
9 Account #1, in violation of Section 2834 of the Regulations.

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11 At all times herein mentioned, Respondents failed to obtain a branch office
12 license from the Bureau while conducting property management services from the location at
13 4305 Hacienda Drive, Suite 140, Pleasanton, CA 94588, in violation of Section 10163 of the
14 Code.

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16 At all times herein mentioned, Respondents failed to disclose license
17 identification numbers on their website and business cards in violation of Section 10140.6 of the
18 Code and Section 2773 of the Regulations.

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20 The facts alleged above are grounds for the suspension or revocation of the license
21 and license rights of Respondents under the following provisions of the Code and/or the
22 Regulations:

23 (a) as to Paragraph 8(a) under Section 2832.1 of the Regulations in
24 conjunction with Section 10177(d) of the Code;

25 (b) as to Paragraph 8(b) under Section 10145 of the Code and Section
26 2832 of the Regulations in conjunction with Section 10177(d) of the
27 Code;

- 1 (c) as to Paragraph 8(c) under Section 2834 of the Regulations in
2 conjunction with Section 10177(d) of the Code;
3 (d) as to Paragraph 9 under Section 10163 of the Code in conjunction with
4 Section 10177(d) of the Code; and
5 (e) as to Paragraph 10 under Section 10140.6 of the Code and Section 2773
6 of the Regulations in conjunction with Section 10177(d) of the Code.

7 COST RECOVERY

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9 Audit Costs

10 The acts and/or omissions of Respondents as alleged above entitle the Bureau to
11 reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

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13 Investigation and Enforcement Costs

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

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

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26 ROBIN TANNER
27 Deputy Real Estate Commissioner

26 Dated at Oakland, California
27 this 3rd day of June, 2015.