

1 JOHN W. BARRON, (SBN 171246)
2 Counsel
3 Bureau of Real Estate
4 P. O. Box 137007
5 Sacramento, CA 95813-7007

6 Telephone: (916) 263-8672
7 -or- (916) 263-8680 (Direct)

FILED

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BUREAU OF REAL ESTATE

By B. dew

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 PROPERTY UPSURGE INC., and)
14 ERIC ROBERT HUBER,)
15 Respondents.)

NO. H-11914 SF

ACCUSATION

16 The Complainant, ROBIN S. TANNER, in her official capacity as a Supervising
17 Special Investigator of the State of California, for cause of Accusation against PROPERTY
18 UPSURGE INC., individually and doing business as "Property Upsurge", ("PUI"), and
19 ERIC ROBERT HUBER ("HUBER"), (collectively "Respondents") is informed and alleges as
20 follows:

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

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26 At all times relevant, HUBER was licensed and/or had license rights by the
27 Bureau as a real estate broker under the Code and was licensed by the Bureau as the designated

1 broker/officer of PUI. As the designated broker/officer, HUBER was responsible, pursuant to,
2 Section 10159.2 (responsibility of corporate broker in charge) of the Code for the supervision of
3 the activities of the officers, agents, real estate licensees and employees of PUI for which a real
4 estate license is required.

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7 At all times herein mentioned, Respondents were engaged in the business of,
8 acted in the capacity of, advertised or assumed to act as real estate brokers in the State of
9 California within the meaning of Section 10131(a) (broker defined – selling/buying real
10 property) of the Code, including selling or offering to sell, buying or offer to buy, soliciting
11 prospective sellers or purchasers of, soliciting or obtaining lists of, or negotiating the purchase,
12 sale or exchange of real property; and Section 10131(b) of the Code (property management),
13 including the operation and conduct of a property management business with the public,
14 wherein, on behalf of others, for compensation or in expectation of compensation, Respondent
15 leased or rented and offered to lease or rent, and solicited for prospective tenants of real property
16 or improvements thereon, and collected rents from real property or improvements thereon.

17 FIRST CAUSE OF ACTION

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19 On or about May 12, 2015, and continuing intermittently through May 29, 2015,
20 an audit was conducted of Respondents at their main office located at 501 Railroad Avenue,
21 Pittsburg, California, where the auditor examined the records for the period of May 1, 2014,
22 through April 30, 2015 (the audit period).

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24 While acting as real estate brokers as described in Paragraph 3, above, and
25 within the audit period, Respondents accepted or received funds in trust (trust funds) in the
26 course of the real estate activities described in Paragraph 3, above, and deposited or caused
27 to be deposited those funds into a bank account maintained by Respondents, including, but
not limited to:

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Account No.: XXXXXX1030

Signatories: Eric Robert Huber, D.O.
Yaniv Benaroya, REB
Michael Jacob Winton, RES
Yael Maital Benaroya, RES (expired 7/14/14)

Wells Fargo
3001 Railroad Avenue
Pittsburg, CA 94565

Account No.: XXXXXX1048

Account Name: Property Upsurge, Inc dba Property Upsurge
Client Trust Security Deposit

Signatories: Eric Robert Huber, D.O.
Yaniv Benaroya, REB
Michael Jacob Winton, RES
Yael Maital Benaroya, RES (expired 7/14/14)

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

In the course of the activities described in Paragraph 3, above, in connection with the collection and disbursement of trust funds:

(a) As of April 30, 2015, there was a shortage in Respondents' Bank Account #1 of at least \$35,003.88. 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

1 aggregate account liability of Respondents to all owners and/or principals of those funds. Such
2 acts and/or omissions by Respondents violate Section 10145 (handling of trust funds) of the
3 Code and Section 2832.1 (trust fund handling for multiple beneficiaries) of Title 10 of the
4 California Code of Regulations ("the Regulations").

5 (b) Bank Account #1 was an interest-bearing account in which Respondents
6 held trust funds for more than a single beneficiary. Such acts and/or omissions by Respondents
7 violate Section 10145(d) of the Code.

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

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

16 (e) Respondents did not have a written broker-salesperson relationship
17 agreement with Yaniv Benaroya and Michael Jacob Winter covering the material aspects of their
18 relationship, including supervision of licensed activities, duties and compensation. Such acts
19 and/or omissions of Respondents violate Section 2726 (written broker-salesperson agreement
20 requirements) of the Regulations.

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22 The facts alleged in Paragraph 6, above, individually and collectively, are grounds
23 for the suspension or revocation of the licenses and license rights of Respondents under Sections
24 10177(d) (willful disregard of Real Estate Law) and/or 10177(g) (negligence/incompetence) of
25 the Code. In addition, the Bureau is entitled to reimbursement from Respondents for the costs of
26 its audit pursuant to Section 10148(b) (cost of audit in final decision following disciplinary
27 hearing) of the Code.

1 COST RECOVERY

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

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

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15 ROBIN S. TANNER
16 Supervising Special Investigator

17 Dated at Oakland, California

18 this 11th day of December, 2015.
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