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FILED

OCT 05 2016
BUREAU OF REAL ESTATE
By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
ANNE KEIKO WILBUR,) No. H-12028 SF
Respondent.) ACCUSATION

The Complainant, ROBIN S. TANNER, a Supervising Special Investigator of the State of California, for cause of Accusation against ANNE KEIKO WILBUR (Respondent), is informed and alleges as follows:

PRELIMINARY ALLEGATIONS

1

The Complainant, ROBIN S. TANNER, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

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Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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At all times mentioned, Respondent was and is licensed by the Bureau as a real estate broker. Respondent is licensed to do business under the fictitious business names: Coldwell Banker Commercial Wilbur Properties; ERA Wilbur Properties; and Wilbur Properties.

4

At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate licensee, in the State of California, within the meaning of:

a) Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property or a business opportunity; and

b) Section 10131(b) of the Code in the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for 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

5

Each and every allegation in Paragraphs 1 through 4, inclusive, above are incorporated by this reference as if fully set forth herein.

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Beginning on or about March 26, 2015, Respondent employed Eric Winfield Gunderson (Gunderson) as a real estate salesperson.

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On or about June 24, 2015, Gunderson, on behalf of Respondent, entered into a Business Listing Agreement (listing) to sell the business, Yogurt Cove, located at 1275 Lincoln Avenue #1, San Jose, California, owned by John Claus (Claus). The termination date for the listing was December 24, 2015.

8

On or about September 15, 2015, Gunderson was terminated from Wilbur's employ. Around this time, Respondent discontinued the marketing of the listing.

9

On or about December 18, 2015, Claus learned, for the first time, that the listing had been discontinued and of Gunderson's termination.

10

Respondent breached her duty to Claus, as the listing broker, in failing to: (1) continue marketing the listing on behalf of Claus; (2) notify Claus of the cancelation of the listing; and/or (3) transfer of the listing to Gunderson's new employing broker.

11

Respondent failed to immediately notify the commissioner of Gunderson's termination as required by Section 10161.8 of the Code.

12

The acts and/or omissions of Respondent as alleged in Paragraphs 5 through 10 constitute negligence and is grounds for the suspension or revocation of the licenses and license rights of Respondent under Section 10177(g) of the Code.

13

The acts and/or omissions of Respondent as alleged in Paragraphs 5 through 10 show Respondent failed to exercise reasonable supervision over the activities of her salesperson, and constitute grounds for the suspension or revocation of the licenses and license rights of Respondent under Section 10177(h) of the Code.

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The acts and/or omissions of Respondent as alleged in Paragraph 13 constitute grounds for the suspension or revocation of the licenses and license rights of Respondent under Sections 10177(g) and/or 10177(d) of the Code in conjunction with Section 10161.8 of the Code.

SECOND CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 14, inclusive, above are incorporated by this reference as if fully set forth herein.

16

On or about August 24, 2016, and August 30, 2016, a designated representative of the Real Estate Commissioner made demand, pursuant to Section 10148 of the Code, that Respondent make available for examination, inspection, and copying by the Bureau, all of Respondent's books and records pertaining to Respondent's real estate brokerage activities in connection with the listing of the business described in Paragraph 7.

17

In connection with the Bureau's request described in Paragraph 16, Respondent failed and refused to make said records available for inspection, and/or failed to retain said records in violation of Section 10148 of the Code.

18

The acts and/or omissions of Respondent described in the Second Cause of Action, constitute grounds for the suspension or revocation of the licenses and license rights of Respondent under Sections 10177(g) and/or 10177(d) of the Code in conjunction with Section 10148 of the Code.

THIRD CAUSE OF ACTION

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

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On or about May 5, 2016, and continuing intermittently through May 31, 2016, the Bureau conducted an audit of the records of Respondent. The auditor examined the records for the period of January 1, 2015, through April 30, 2016.

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While acting as a real estate broker as described in Paragraph 4(b), and within three years prior to the filing of this Accusation, Respondent accepted or received trust funds from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time to time made disbursements of said trust funds.

22

The trust funds accepted or received by Respondent as described in Paragraph 21 were deposited or caused to be deposited by Respondent into a trust account which was maintained by Respondent for the handling of trust funds, and thereafter from time-to-time Respondent made disbursements of said trust funds, identified as follows:

ACCOUNT # 1	
Bank Name and Location:	Heritage Bank of Commerce 419 C. San Antonio Road Los Altos, CA 94022
Account No.:	XXXXXX6938
Entitled:	Anne K. Wilbur DBA Wilbur Properties Trust Account

ACCOUNT # 2	
Bank Name and Location:	Heritage Bank of Commerce 419 C. San Antonio Road Los Altos, CA 94022
Account No.:	XXXXXX6953
Entitled:	Anne K. Wilbur DBA Wilbur Properties Miller/Bonas Trust Account

1
2 In the course of the activities described in Paragraph 4(b), and within three years
3 prior to the filing of this Accusation, Respondent:

4 (a) caused, suffered, or permitted the balance of funds in Account #1 to be
5 reduced to an amount which, as of February 29, 2016, was approximately \$63,458.99 less than
6 the aggregate liability of Account #1 to all owners of such funds in violation of Section 10145 of
7 the Code and Section 2832.1 of Title 10 of the California Code of Regulations (Regulations);

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

12 (c) commingled with its own money or property, the money or property of
13 others which was received or held by Respondent in trust in violation of Section 10176(e) of the
14 Code;

15 (d) failed to deposit the rent check collected on September 5, 2015 from the
16 tenant of 800 Santa Cruz Avenue, Menlo Park., into Account #1 within three business days after
17 receipt, in violation of Section 2832 of the Regulations; and

18 (e) failed to disclose license identification numbers on their website,
19 www.wilburproperties.com, in violation of Section 10140.6(b) of the Code and Section 2773 of
20 the Regulations.

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22 The acts and/or omissions of Respondent as alleged in the Third Cause of Action
23 constitute grounds for the suspension or revocation of all licenses and license rights of
24 Respondent, pursuant to the following provisions of the Code and Regulations:

25 As to Paragraph 22(a), under Sections 10177(d) and/or 10177(g) of the Code in
26 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

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1 As to Paragraph 22(b), under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 2831.2 of the Regulations.

3 As to Paragraph 22(c), under Section 10176(e) (comingling) of the Code;

4 As to Paragraph 22(d), under Sections 10177(d) and/or 10177(g) of the Code in
5 conjunction with Section 2831 (control record) of the Regulations;

6 As to Paragraph 17(c), under Sections 10177(d) (willful disregard or violation of
7 Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of
8 the Code in conjunction with Section 2832 of the Regulations; and

9 As to Paragraph 17(d), under Sections 10177(d) and/or 10177(g) of the Code in
10 conjunction with Section 10140.6 of the Code and Section 2773 of the Regulations.

11 COST RECOVERY

12 24

13 The acts and/or omissions of Respondent as alleged above, entitle the Bureau to
14 reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund
15 handling violation) of the Code.

16 25

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

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1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
3 discipline on all licenses and license rights of Respondent under the Real Estate Law (Part 1 of
4 Division 4 of the Business and Professions Code), for the cost of the audit as permitted by law,
5 for the cost of the investigation and enforcement of this case as permitted by law, and for such
6 other and further relief as may be proper under the provisions of law.

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10 ROBIN S. TANNER
Supervising Special Investigator

11 Dated at Oakland, California,
12 this 4th day of October, 2016

13 DISCOVERY DEMAND

14 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Bureau of Real
15 Estate hereby makes demand for discovery pursuant to the guidelines set forth in the
16 *Administrative Procedure Act*. Failure to provide Discovery to the Bureau of Real Estate may
17 result in the exclusion of witnesses and documents at the hearing or other sanctions that the
18 Office of Administrative Hearings deems appropriate.
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