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FILED

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BUREAU OF REAL ESTATE

By B. Nicholas

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8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of:) NO. H-12103 SF
12)
13 WA KRAUSS & COMPANY INC.,)
14 and JENNIFER M. VAIL,) ACCUSATION
Respondents.)

15 The Complainant, ROBIN S. TANNER, in her official capacity as a Supervising
16 Special Investigator of the State of California, for cause of Accusation against WA KRAUSS &
17 COMPANY INC. ("WA KRAUSS"), and JENNIFER M. VAIL ("VAIL"), (collectively referred to
18 a "Respondents"), is informed and alleges as follows:

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20 Respondent WA KRAUSS is presently licensed by the California Bureau of Real
21 Estate ("the Bureau") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of
22 the California Business and Professions Code ("the Code"), as a corporate real estate broker, and at
23 all relevant times herein was acting by and through VAIL as its designated officer broker.

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25 VAIL is presently licensed and/or has license rights under the Real Estate Law, Part 1 of
26 Division 4 of the Code ("the Real Estate Law") as an individual real estate broker and, at all
27 relevant times herein, was the designated broker officer of WA KRAUSS.

Whenever reference is made in an allegation in this Accusation to an act or omission of WA KRAUSS, such allegation shall be deemed to mean that the employees, agents, real estate licensees, and others employed by or associated with WA KRAUSS committed such act or omission while engaged in furtherance of the business or operations of WA KRAUSS and while acting within the course and scope of their authority and employment.

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a corporate real estate broker within the State of California on behalf of others, for compensation or in expectation of compensation 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, 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 for sale, purchase or exchanges of leases on real property, or on a business opportunity, or collected rent from real property, or improvements thereon, or from business opportunities.

COUNT ONE

AUDIT VIOLATIONS

(As to Respondents WA KRAUSS and VAIL)

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

On or about April 18, 2016, and continuing intermittently through May 5, 2016, the Bureau conducted an audit of the books and records related to the real estate activities of Respondents at WA KRAUSS' main office located at 541 S. Murphy Ave., Sunnyvale, CA 94086, where the auditor examined records for the period of January 1, 2015, to March 31, 2016 ("audit period").

While acting as real estate brokers as described above in paragraph 4, and within the audit period, Respondents accepted or received funds in trust ("trust funds") and deposited or caused the trust funds to be deposited into bank accounts maintained by Respondents, and thereafter, from time-to-time, Respondents made disbursements of said trust funds, identified as follows:

Trust Account #1

Bank Name: First Republic Bank
 Account No.: Last 4 Digits: xxxxxxxx5883
 Account Name: "W A Krauss & Company Inc Jennifer M Vail,
 Broker/Trustee Trust Account for W A Krauss & Company
 Inc"
 Signatories: Jeffrey Vail (REB) and Jennifer M. Vail (D.O./REB)
 Purpose: Used for deposits and disbursements related to property
 management for approximately 200 owners.

Bank Account #1

Bank Name: First Republic Bank
 Account No.: Last 4 Digits: xxxxxxxx5875
 Account Name: "W A Krauss & Company, Inc."
 Signatories: Jeffrey Vail (REB) and Jennifer M. Vail (D.O./REB)
 Purpose: Used as the operating account for WA Krauss.

In the course of the real estate broker activities described in paragraph 4, above, and during the audit period, Respondent:

(a) caused, suffered, or permitted the balance of funds in Trust Account #1 to be reduced to an amount which, as of March 31, 2016, was approximately \$5,566.68 less than the aggregate liability of Trust Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations ("the Regulations");

(b) collected advance fees from 75 principals for providing services referred to as "Eviction Protection Plan" ("EPP") and "Rent Loss Protection Plan" ("RLPP"), and failed to submit an advance fee agreement and all materials used in obtaining the advance fee agreement to the

1 Bureau prior to use, as required by Sections 10085 and 10085.5 of the Code and Section 2970 of the
2 Regulations;

3 (c) in connection with the advance fee agreements identified in paragraph 7(b)
4 above, Respondents collected advance fees from principals for providing EPP and RLPP services in
5 connection with its property management services, and did not maintain and provide a verified
6 accounting to those principals showing the services rendered, identification of the bank account into
7 which the funds were deposited, and details of how those funds were disbursed, in violation of
8 Sections 10146 and 10085.5 of the Code and 2972 of the Regulations;

9 (d) failed to properly designate Bank Account #1, used for handling EPP and RLPP
10 fees, as a trust account in the name of Respondents and/or a fictitious business name associated with
11 Respondents, as trustees, in violation of Section 10145 of the Code and Section 2832 of the
12 Regulations;

13 (e) failed to maintain and/or keep accurate and complete separate records for the
14 receipt and disposition of all trust funds deposited into Bank Account #1, in violation of Section
15 10145(g) of the Code and Section 2831.1 of the Regulations;

16 (f) failed to reconcile at least once per month, the balance of all separate
17 beneficiary or transaction records to the balance of the control records for Bank Account #1, in
18 violation of 10145 of the Code and Section 2831.2;

19 (g) caused, suffered, or permitted money of others, in the form of fees regarding
20 EPP and RLPP, which was received and held by Respondents in Bank Account #1 to be
21 commingled with broker funds, in violation of Sections 10145 and 10176(e) of the Code and
22 Section 2835 of the Regulations;

23 (h) permitted real estate salesperson J David Hunt to perform property
24 management activities for WA KRAUSS, without first notifying the Commissioner within five days
25 of his employment, in violation of Section 10161.8 of the Code and Section 2752 of the
26 Regulations; and

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1 (i) failed to disclose the license identification number for WA Krauss on its
2 company website, in violation of Section 10140.6 of the Code and Section 2773 of the Regulations.

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4 The acts and/or omissions of Respondents as alleged in paragraph 8, above,
5 constitute grounds for the suspension or revocation of all licenses and license rights of Respondents
6 pursuant to the following provisions of the Code and Regulations:

7 As to Paragraph 8(a), under Section 10177(d) and/or 10177(g) of the Code, in
8 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

9 As to Paragraph 8(b), under Section 10177(d) and/or 10177(g) of the Code, in
10 conjunction with Sections 10085 and 10085.5 of the Code and Section 2970 of the Regulations;

11 As to Paragraph 8(c), under Section 10177(d) and/or 10177(g) of the Code, in
12 conjunction with Sections 10085.5 and 10146 of the Code, and Section 2972 of the Regulations;

13 As to Paragraph 8(d), under Section 10177(d) and/or 10177(g) of the Code, in
14 conjunction with Section 10145 of the Code, and Section 2832 of the Regulations;

15 As to Paragraph 8(e), under Section 10177(d) and/or 10177(g) of the Code, in
16 conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

17 As to Paragraph 8(f), under Section 10177(d) and/or 10177(g) of the Code, in
18 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

19 As to Paragraph 8(g), under Section 10177(d) and/or 10177(g) of the Code, in
20 conjunction with Sections 10145 and 10167(e) of the Code and Section 2835 of the Regulations;

21 As to Paragraph 8(h), under Section 10177(d) and/or 10177(g) of the Code, in
22 conjunction with Section 10161.8 of the Code and Section 2752 of the Regulations; and

23 As to Paragraph 8(i), under Section 10177(d) and/or 10177(g) of the Code, in
24 conjunction with Section 10140.6 of the Code and Section 2773 of the Regulations.

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COUNT TWO
FAILURE TO SUPERVISE
(As to Respondent VAIL)

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Each and every allegation in Paragraphs 1 through 9, inclusive, above, is incorporated by this reference as if fully set forth herein.

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VAIL, as the designated officer of WA KRAUSS, was required to exercise reasonable supervision and control over the activities of WA KRAUSS and its employees and the real estate activities being conducted by WA KRAUSS.

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VAIL failed to exercise reasonable supervision over the acts and/or omissions of WA KRAUSS and its employees in such a manner as to allow the acts and/or omissions as described above in the First Cause of Action to occur, which constitutes cause for the suspension or revocation of the licenses and license rights of VAIL under Sections 10177(d) and/or 10177(g), 10177(h) and 10159.2 of the Code in conjunction with Section 2725 of the Regulations.

COST RECOVERY

Audit Costs

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The acts and/or omissions of Respondents as alleged in the First Cause of Action, above, entitle the Bureau to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund handling violations) of the Code.

Investigation and Enforcement Costs

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

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


ROBIN S. TANNER
Supervising Special Investigator

Dated at Oakland, California,
this 8th day of June, 2017.

DISCOVERY DEMAND

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