

AUG 09 2017

BUREAU OF REAL ESTATE

By H. Diaz

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Bureau of Real Estate
4 P.O. Box 137007
5 Sacramento, CA 95813-7007

6 Telephone: (916) 263-8670
7 (916) 263-8676 (Direct)

8 Fax: (916) 263-3767

9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of

No. H - 12117 SF

13 PATHMARK REALTY CORP., HORN
14 LOW, and SU KEMP,

ACCUSATION

Respondents.

15 The Complainant, ROBIN S. TANNER, a Supervising Special Investigator of the
16 State of California, for cause of Accusation against PATHMARK REALTY CORP., HORN
17 LOW, and SU KEMP (Respondents), is informed and alleges as follows:

PRELIMINARY ALLEGATIONS

18 1

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

21 2

22 Respondents are presently licensed and/or have license rights under the Real
23 Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

24 ///

25 ///

26 ///

27 ///

At all times mentioned, Respondent PATHMARK REALTY CORP. (PRC) was and is licensed by the State of California Bureau of Real Estate (Bureau) as a real estate broker corporation. At all times mentioned, PRC had a mortgage loan originator (MLO) license endorsement issued by the Bureau authorizing PRC to act as a mortgage loan originator.

At all times mentioned, Respondent HORN LOW (LOW) was and is licensed by the Bureau individually as a real estate broker, and as the designated broker-officer of PRC. As said designated officer-broker, LOW was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of PRC for which a license is required. At all times mentioned, PRC had a MLO license endorsement issued by the Bureau authorizing PRC to act as a mortgage loan originator.

At all times mentioned, Respondent SU KEMP (KEMP) was and is licensed by the Bureau as a real estate salesperson. At all times after September 11, 2014, KEMP worked under the employ of real estate corporation PRC. At no time did KEMP have a MLO license endorsement issued by the Bureau authorizing her to act as a mortgage loan originator.

At no time mentioned prior to April 14, 2017, was Prosperity Property Services (PPS) licensed by the Bureau in any capacity. As of April 14, 2017, PPS was licensed as a fictitious business name of PRC.

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

At all times mentioned, Respondents 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, Respondents 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;

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, Respondents 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; and/or

c) Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein Respondents solicited lenders and borrowers for loans secured directly or collaterally by liens on real property or a business opportunity, and wherein such loans were arranged, negotiated, processed, and consummated by Respondents on behalf of others for compensation or in expectation of a compensation.

On or about April 6, 2017, and continuing intermittently through May 23, 2017, the Bureau conducted of the records of PRC. The auditor examined the records for the period of January 1, 2016, through March 31, 2017.

///

///

///

1 FIRST CAUSE OF ACTION

2 10

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

5 11

6 In the course of the activities described in Paragraph 8, prior to April 14, 2017,
7 Respondents failed to obtain a real estate license bearing the fictitious business name "Prosperity
8 Property Services" while conducting activities for which a license was required in that name, in
9 violation of Section 10159.5 of the Code, and Section 2731 of the Regulations.

10 12

11 In the course of the activities described in Paragraph 8, and within three years
12 prior to the filing of this Accusation, Respondents failed to disclose license identification
13 numbers on PPS's website, <http://prosperityrealestatesf.com>, in violation of Section 10140.6(b)
14 of the Code and Section 2773 of the Regulations.

15 13

16 In the course of the activities described in Paragraph 8, and within three years
17 prior to the filing of this Accusation, PRC and LOW failed to disclose license identification
18 numbers on PRC's website, www.pathmarkrealty.com, in violation of Section 10140.6(b) of the
19 Code and Section 2773 of the Regulations.

20 14

21 In the course of the activities described in Paragraph 8, and within three years
22 prior to the filing of this Accusation, PRC and LOW failed to obtain a written agreement with
23 real estate salesperson Ladislao Diamante Rapiz Jr., in violation of Section 2726 of the
24 Regulations.

25 ///

26 ///

27 ///

15

The acts and/or omissions of PRC and LOW as alleged in the First Cause of Action constitute grounds for the suspension or revocation of all licenses and license rights of Respondents under Section 10177(d) and/or 10177(g) of the Code.

16

The acts and/or omissions of KEMP as alleged in the Paragraphs 11 and 12 constitute grounds for the suspension or revocation of all licenses and license rights of KEMP under Section 10177(d) and/or 10177(g) of the Code.

SECOND CAUSE OF ACTION

17

Each and every allegation in Paragraphs 1 through 13, inclusive, above, are incorporated by this reference as if fully set forth herein.

18

While acting as a real estate broker as described in Paragraph 8(b), and within three years prior to the filing of this Accusation, PRC and LOW 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.

19

The trust funds accepted or received by Respondents as described in Paragraph 8(b) were deposited or caused to be deposited by PRC and LOW into a trust account which was maintained by PRC and LOW for the handling of trust funds, and thereafter from time-to-time PRC and LOW made disbursements of said trust funds, identified as follows:

///

///

///

///

ACCOUNT # 1	
Bank Name and Location:	Chase 1200 El Camino Real San Bruno, CA 94066
Account No.:	XXXXXX8037
Entitled:	Pathmark Realty Corp

20

In the course of the activities described in Paragraph 8(b), and within three years prior to the filing of this Accusation, PRC and LOW:

(a) failed to deposit trust funds into a trust fund account in the name of PRC as trustee at a bank or other financial institution, in conformance with Section 10145(a) of the Code and Section 2832 of the Regulations;

(b) commingled with its own money or property, the money or property of others which was received or held by PRC and LOW in trust in violation of Section 10176(e) of the Code;

(c) failed to maintain a written control record of all trust funds received and disbursed in Account #1, containing all information required by Section 2831 of the Regulations;

(d) failed to keep accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into Account #1, containing all of the information required by Section 2831.1 of the Regulations and Section 10145(g) of the Code; and

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

///

///

The acts and/or omissions of PRC and LOW as alleged in the Second Cause of Action constitute grounds for the suspension or revocation of all licenses and license rights of PRC and LOW, pursuant to the following provisions of the Code and Regulations:

As to Paragraph 20(a), under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145(a) of the Code and Section 2832 of the Regulations;

As to Paragraph 20(b), under Section 10176(e) of the Code;

As to Paragraph 20(c), under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 2831 of the Regulations;

As to Paragraph 20(d), under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

As to Paragraph 20(e), under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 2831.2 of the Regulations;

THIRD CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 21, inclusive, above, are incorporated by this reference as if fully set forth herein.

In the course of the activities described in Paragraph 8(c), and within three years prior to the filing of this Accusation, PRC and LOW failed to disclose within the printed text of the Mortgage Loan Disclosure Statement the license and MLO license endorsement numbers for PRC and LOW in violation of Sections 10236.4 and 10241(i) of the Code. The following are examples of such transactions:

///

///

///

///

<u>Property Address</u>	<u>PRC's CalBRE ID Number</u>	<u>Low's MLO ID Number</u>
678 Monterey Blvd, San Francisco	Number disclosed was incorrect	Number disclosed was incorrect
5723 Mission Street, San Francisco	Number disclosed was incorrect	Number disclosed was incorrect
1707 Hampton Lane #13, Daly City	Number disclosed was incorrect	Number disclosed was incorrect
5377 San Simeon Place, Castro Valley	Number disclosed was incorrect	Not disclosed
2429 Candlestick Drive, Antioch	Not disclosed	Number disclosed was incorrect
748 Hensley Avenue, San Bruno	Number disclosed was incorrect	Not disclosed

24

The acts and/or omissions of PRC and LOW as alleged in the Third Cause of Action constitute grounds for the suspension or revocation of all licenses and license rights of Respondents under Section 10177(d) and/or 10177(g) of the Code.

FOURTH CAUSE OF ACTION

25

Each and every allegation in Paragraphs 1 through 24, inclusive, above, are incorporated by this reference as if fully set forth herein.

26

Respondent LOW failed to exercise reasonable supervision over the acts of PRC in such a manner as to allow the acts and events described above to occur.

27

The acts and/or omissions of LOW described in Paragraph 26, constitute failure on the part of LOW, as designated broker-officer for PRC, to exercise reasonable supervision and control over the licensed activities of PRC required by Section 10159.2 of the Code and Section 2725 of the Regulations.

28

The facts described above as to the Fourth Cause of Accusation constitute cause for the suspension or revocation of the licenses and license rights of Respondent LOW under

///

1 Section 10177(g) of the Code, Section 10177(h) of the Code, and/or Section 10177(d) of the
2 Code in conjunction with Section 10159.2 of the Code and Section 2725 of the Regulations.

3 COST RECOVERY

4 29

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

8 30

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

13 WHEREFORE, Complainant prays that a hearing be conducted on the
14 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
15 discipline on all licenses and license rights of Respondents under the Real Estate Law (Part 1 of
16 Division 4 of the Business and Professions Code), for the cost of the investigation and
17 enforcement of this case as permitted by law, for the cost of the Bureau's audit as permitted by
18 law, and for such other and further relief as may be proper under the provisions of law.

19
20 
21 ROBIN S. TANNER
Supervising Special Investigator

22 Dated at Oakland, California,
23 this 9th day of August, 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.