

JASON D. LAZARK, Counsel (SBN 263714)
Department of Real Estate
P. O. Box 137007
Sacramento, CA 95813-7007

Telephone: (916) 263-8670
(916) 263-8684 (Direct)

FILED

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DEPARTMENT OF REAL ESTATE
By S. Knapp

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:)	NO. H-12300 SF
)	
MARTIN HERTZ ASSOCIATES, INC.)	
and MARTIN HERTZ,)	<u>ACCUSATION</u>
)	
Respondents.)	
)	

The Complainant, ROBIN S. TANNER, in her official capacity as a Supervising Special Investigator of the State of California, for cause of Accusation against MARTIN HERTZ ASSOCIATES, INC. ("HERTZ INC."), and MARTIN HERTZ ("HERTZ"), (collectively referred to as "Respondents"), is informed and alleges as follows:

1

HERTZ INC. is presently licensed by the California Department of Real Estate ("the Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("the Code"), as a corporate real estate broker.

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

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Whenever reference is made in an allegation in this Accusation to an act or omission of HERTZ INC., such allegation shall be deemed to mean that the employees, agents, real estate licensees, and others employed by or associated with HERTZ INC. committed such act or omission while engaged in furtherance of the business or operations of HERTZ INC. 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 real estate brokers 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 HERTZ INC. and HERTZ)

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

Beginning on or about February 8, 2018, and continuing intermittently through March 7, 2018, the Department conducted an audit of the books and records related to the real estate activities of Respondents at the main office of HERTZ INC. located at 1425 Leimert Blvd., Suite 201, Oakland, CA 94602. The auditor examined records for the period of January 1, 2017, to December 31, 2017 ("audit period").

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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 a bank account maintained by Respondents, and thereafter, from time-to-time, Respondents made disbursements of said trust funds, identified as follows:

Bank Account #1

Bank Name: Bank of America
Account No.: Last 4 Digits: XXXX-XXXX-4241
Account Name: Martin Hertz
Frank Fragomeni, Jr.
Bascom Account
Signatories: Martin Hertz (REB)
Cynthia Lee Hertz (RES)
Frank Fragomeni, Jr. (unlicensed)
Purpose: Used for property management of Bascom commercial property

Bank Account #2

Bank Name: Bank of America
Account No.: Last 4 Digits: XXXX-XXXX-0496
Account Name: Winton Center
Martin Hertz, Frank Fragomeni, Jr.
Signatories: Cynthia Lee Hertz (RES)
Purpose: Used for property management of Winton commercial property

Bank Account #3

Bank Name: Bank of America
Account No.: Last 4 Digits: XXXX-XXXX-0493
Account Name: Martin Hertz Assoc.
dba Tennyson Center
Signatories: Martin Hertz Associates, Inc. (REB)
Cynthia Lee Hertz (RES)
Frank Fragomeni, Jr (unlicensed)
Purpose: Used for property management of Tennyson commercial property

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

(a) failed to properly designate Bank Account #1, Bank Account #2, and Bank Account #3 as trust accounts in the name of Respondents and/or a fictitious business name associated with Respondents, as trustee, in violation of Section 10145 of the Code, and Section 2832, Title 10, California Code of the Regulations ("the Regulations");

(b) failed to maintain complete and accurate records of all trust funds received and disbursed (control record) for Bank Account #1, Bank Account #2, and Bank Account #3, in violation of Section 10145 of the Code, and Section 2831 of the Regulations;

(c) allowed Frank Fragomeni, Jr. to serve as a signor on Bank Account #1 and Bank Account #3 when, at no relevant time, did Frank Fragomeni, Jr. serve as an employee of, or licensee under HERTZ INC., in violation of Section 10145 of the Code, and Section 2834 of the Regulations;

(d) failed to serve as a signor along with salesperson Cynthia Lee Hertz on Bank Account #2, in violation of Section 10145 of the Code, and 2834 of the Regulations;

(e) failed to obtain and/or maintain a written broker-salesperson relationship agreement with salesperson Cynthia Lee Hertz, in violation of Section 10145 of the Code, and Section 2726 of the Regulations; and

(f) failed to obtain and/or maintain a copy of the bank signature cards for Bank Account #1, Bank Account #2, and Bank Account #3, in violation of Section 10148 of the Code.

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

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

1 As to Paragraph 8(b), under Section 10177(d) and/or 10177(g) of the Code, in
2 conjunction with Section 10145 of the Code, and Section 2831 of the Regulations;

3 As to Paragraph 8(c), under Section 10177(d) and/or 10177(g) of the Code, in
4 conjunction with Section 10145 of the Code, and 2834 of the Regulations;

5 As to Paragraph 8(d), under Section 10177(d) and/or 10177(g) of the Code, in
6 conjunction with Section 10145 of the Code, and 2834 of the Regulations;

7 As to Paragraph 8(e), under Section 10177(d) and/or 10177(g) of the Code, in
8 conjunction with Section 10145 of the Code, and Section 2726 of the Regulations; and

9 As to Paragraph 8(f), under Section 10177(d) and/or 10177(g) of the Code, in
10 conjunction with Section 10148 of the Code.

11 **COUNT TWO**
12 **SOLICITATION VIOLATION**
(As to Respondent HERTZ Only)

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

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17 An examination of HERTZ's business card during the audit described above in
18 Paragraph 6 revealed that HERTZ failed to disclose his license number on his business cards.

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20 The acts and/or omissions of HERTZ, as alleged above in Paragraph 11, constitute
21 grounds for the suspension or revocation of all licenses and license rights of HERTZ pursuant to
22 Section 10140.6 of the Code and Section 2773 of the Regulations.

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1 **COUNT THREE**
2 **FAILURE TO SUPERVISE**
3 **(As to Respondent HERTZ)**

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5 Each and every allegation in Paragraphs 1 through 12, inclusive, above, is
6 incorporated by this reference as if fully set forth herein.

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8 HERTZ, as the designated officer of HERTZ INC., was required to exercise
9 reasonable supervision and control over the activities of HERTZ INC., its employees, and the real
10 estate activities being conducted by HERTZ INC.

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12 HERTZ failed to exercise reasonable supervision over the acts and/or omissions of
13 HERTZ INC. and its employees, in such a manner as to allow the acts and/or omissions as
14 described above in Count One to occur, which constitutes cause for the suspension or revocation of
15 the license(s) and license rights of HERTZ under Sections 10177(d) and/or 10177(g), 10177(h) and
16 10159.2 of the Code, in conjunction with Section 2725 of the Regulations.

17 **COST RECOVERY**

18 **Audit Costs**

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20 The acts and/or omissions of Respondents, as alleged above in Count One, entitle the
21 Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

22 **Investigation and Enforcement Costs**

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

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

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8 ROBIN S. TANNER
9 Supervising Special Investigator

10 Dated at Oakland, California,
11 this 16th day of October, 2018.

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14 DISCOVERY DEMAND

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