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**FILED**

SEP 25 2019

DEPARTMENT OF REAL ESTATE  
By B. Nicholas

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 )  
13 BLACK DIAMOND HOLDINGS INC., and ERIN )  
JOSEPH GARDERE, )  
14 Respondents. )

No. H-12410 SF

ACCUSATION

15 The Complainant, ROBIN S. TANNER, a Supervising Special Investigator of the  
16 State of California, for cause of Accusation against BLACK DIAMOND HOLDINGS INC., and  
17 ERIN JOSEPH GARDERE (collectively "Respondents"), is informed and alleges as follows:

18 PRELIMINARY ALLEGATIONS

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

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

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2 At all times mentioned, Respondent BLACK DIAMOND HOLDINGS INC.  
3 (BDHI) was and is licensed by the State of California Department of Real Estate (Department)  
4 as a real estate broker corporation.

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6 At all times mentioned, Respondent ERIN JOSEPH GARDERE (GARDERE)  
7 was and is licensed by the Department individually as a real estate broker, and as the designated  
8 broker officer of BDHI. As said designated broker officer, GARDERE was responsible pursuant  
9 to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real  
10 estate licensees, and employees of BDHI for which a license is required.

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

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18 At all times mentioned, Respondents engaged in the business of, acted in the  
19 capacity of, advertised, or assumed to act as real estate brokers in the State of California, within  
20 the meaning of Section 10131 of the Code.

21 FIRST CAUSE OF ACTION

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

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On or about November 19, 2018, an audit was conducted of the records of BDHI. The auditor herein examined the records for the period of September 1, 2017, through August 31, 2018.

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While acting as a real estate broker as described in Paragraph 6, Respondents accepted or received funds in trust (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.

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The trust funds accepted or received by Respondents as described in Paragraph 9 were deposited or caused to be deposited by Respondents into trust accounts which were maintained by Respondents for the handling of trust funds, and thereafter from time-to-time Respondents made disbursements of said trust funds, identified as follows:

ACCOUNT # 1	
Bank Name and Location:	US Bank P.O. Box 1800 Saint Paul, Minesota 55101-0800
Account No.:	XXXXXXXX9994
Entitled:	Black Diamond Holdings Inc dba Black Diamond Management Co.

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In the course of the activities described in Paragraph 6, Respondents:

(a) caused, suffered, or permitted the balance of funds in Account #1 to be reduced to an amount which, as of August 31, 2018, was approximately \$555.56 less than the aggregate liability of Account #1 to all owners of such funds in violation of Section 10145 of the Code; and

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

The facts alleged in the First Cause of Action are grounds for the suspension or revocation of Respondents' licenses and license rights under the following Sections of the Code and Regulations:

As to Paragraph 11(a), under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations; and

As to Paragraph 11(b), under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2832 of the Regulations.

SECOND CAUSE OF ACTION

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

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

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The acts and/or omissions of GARDERE as described in Paragraph 14, constitutes failure on the part of GARDERE, as designated broker-officer for BDHI, to exercise reasonable supervision and control over the licensed activities of BDHI as required by Section 10159.2 of the Code and Section 2725 of the Regulations.

The facts described above as to the Second Cause of Action constitute cause for the suspension or revocation of the licenses and license rights of Respondent GARDERE under Section 10177(g) and/or Section 10177(h) of the Code, and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

COST RECOVERY

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


Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, 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 imposing discipline on all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of the investigation and enforcement of this case as

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1 permitted by law, for the cost of the Department's audit as permitted by law, and for such other  
2 and further relief as may be proper under the provisions of law.

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5 ROBIN S. TANNER  
6 Supervising Special Investigator

7 Dated at Oakland, California,  
8 this 17<sup>th</sup> day of September, 2019

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11 DISCOVERY DEMAND

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