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DEPARTMENT OF REAL ESTATE

By B. dew

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
) No. H-12421 SF
JOHN EDWARD BARRY,)
) ACCUSATION
Respondent.)
)

The Complainant, ROBIN S. TANNER, acting in her official capacity as a
Supervising Special Investigator of the State of California, for cause of Accusation against
JOHN EDWARD BARRY (Respondent), is informed and alleges as follows:

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At all times herein mentioned, Respondent was and is presently licensed and/or
has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and
Professions Code (Code) by the Department of Real Estate (the Department) as a real estate
broker.

2

At all times herein mentioned, Respondent conducted real estate activity under
his individual broker license and the fictitious business name, "William Hill Property
Management Services". However, Respondent was not licensed by the Department to use any
fictitious business names.

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California 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 or in expectation of compensation, Respondent leased or rented or offered to lease or rent, or solicited listings of places for rent or solicited for prospective tenants, or negotiated the sale, purchase or exchange of leases on real property, or on a business opportunity, or collected rent from tenants.

FIRST CAUSE OF ACTION

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

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Beginning on January 2, 2019, through January 15, 2019, an audit was conducted of the records of Respondent. The auditor examined the records for the period of December 1, 2017, through November 30, 2018 (the audit period).

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Respondent, while acting as a real estate broker, as described in Paragraph 3, accepted or received funds in trust (trust funds) from or on behalf of owners, lessees and others in connection with property management activities, and deposited those funds into bank accounts maintained by Respondent, at the following financial institutions, including but not limited to the following:

BANK ACCOUNT #1	
Bank:	Seacoast Commerce Bank, 11939 Rancho Bernardo Rd., Ste. 200, San Diego, CA 92128
Account No.:	XXXXXX7858

1	Entitled:	WILLIAM M HILL DBA WILLIAM HILL PROPERTY MANAGEMENT CLIENT TRUST ACCOUNT
2	BANK ACCOUNT #2	
3	Bank:	Seacoast Commerce Bank, 11939 Rancho Bernardo Rd., Ste. 200, San Diego, CA 92128Westamerica Bank, 1172 E Shaw Avenue, Fresno, CA 93710
4	Account No.:	xxxxxx9311
5	Entitled:	WILLIAM M HILL DBA WILLIAM HILL PROPERTY MANAGEMENT CLIENT TRUST ACCOUNT
6	BANK ACCOUNT #3	
7	Bank:	Wells Fargo Bank, P.O. Box 6995, Portland, OR 97228-6995
8	Account No.:	XXXXXXX8384
9	Entitled:	JOHN E BARRY DBA JOHN BARRY, REALTOR
10	BANK ACCOUNT #4	
11	Bank:	Wells Fargo Bank, P.O. Box 6995, Portland, OR 97228-6995
12	Account No.:	XXXXXXX8569
13	Entitled:	JOHN E BARRY JOHN BARRY, REALTOR
14		
15		

16 and thereafter from time-to-time made disbursement of said trust funds.

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18 In the course of the activities described in Paragraph 3, in connection with the
19 collection and disbursement of trust funds, it was determined that:

- 20 (a) An accountability was performed on Bank Account #4, and as of November
21 30, 2018, there was a shortage of \$1,048.00 revealed, in violation of Section
22 10145 of the Code;
- 23 (b) Respondent failed to obtain written permission from owners of trust funds in
24 Bank Account #4, to allow the balances to drop below accountability, in
25 violation of Section 2832.1 of Chapter 6, Title 10, California Code of
26 Regulations (Regulations);
- 27 (c) Respondent failed to properly designate Bank Account #1, Bank Account #2,

1 Bank Account #3 and Bank Account #4, as trust accounts and in the name of
2 the broker as trustee as required by Section 10145 of the Code and Section
3 2832 of the Regulations;

4 (d) Respondent failed to reconcile at least once a month, the balance of all
5 separate records to the balance of the control record for Bank Account #1 and
6 Bank Account #2, in violation of Section 2831.2 of the Regulations;

7 (e) Respondent caused, suffered or permitted funds of others which were received
8 and held by Respondent to be commingled with broker funds which had not
9 been disbursed within 25 days of earning them in Bank Account #4, in
10 accordance with Section 2835 of the Regulations and in violation of Section
11 10176 (e) of the Code; and

12 (f) Respondent was not an authorized signer on Bank Account #1 and Bank
13 Account #2, in violation of Section 10145 of the Code, and Sections 2725 and
14 2834 of the Regulations.

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16 The acts and/or omissions described above constitute violations of Sections 2725
17 (Broker Supervision), 2831.2 (Trust Fund Reconciliation), 2832 (Bank Account Not Properly
18 Designated as Trust Account), 2832.1 (Written Permission for Balance Below Accountability),
19 2834 (Trust Fund Signatories) and 2835 (Commingling) of the Regulations, and Sections 10145
20 (Trust Fund Handling) and 10176 (e) (Commingling) of the Code, and are grounds for discipline
21 under Sections 10177(d) (Willful Disregard of Real Estate Laws) and/or 10177(g)
22 (Negligence/Incompetence Licensee) of the Code.

23 SECOND CAUSE OF ACTION

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25 Each and every allegation in Paragraphs 1 through 8, inclusive is incorporated by
26 this reference as if fully set forth herein.

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On or about November 15, 2018, Respondent, in connection with the website, <http://williamhillpropertymanagement.com> (WHPM website), conducted real estate activities using the fictitious business name, "William Hill Property Management Services".

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Respondent, in connection with the WHPM website, advertised the following, "Our company manages more houses, condos, and lofts than any other company in San Francisco". Respondent also solicited property management business by stating, "We offer many levels of services to include a full services property management option."

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The acts and/or omissions described above constitute violations of Section 2731 (Use of False/Fictitious Name) of the Regulations and Sections 10159.5 (Fictitious Name) of the Code, and are grounds for discipline under Sections 10177 (d) and (g) of the Code.

COST RECOVERY

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Audit Costs

The acts and/or omissions of Respondent, as alleged above, entitle the Department to reimbursement of the costs of its audits pursuant to Section 10148(b) (Audit Costs for Trust Fund Handling Violations) of the Code.

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Costs of Investigation and Enforcement

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.

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

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7 ROBIN S. TANNER
8 Supervising Special Investigator

9 Dated at Oakland, California,
10 this 13th day of January, 2020

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