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FILED

MAR 10 2021

DEPARTMENT OF REAL ESTATE
By J. Jaggard

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MYND MANAGEMENT, INC.) No. H-12497 SF
13 and DARRYL JOHN WILLIS,) ACCUSATION
14 Respondents.)

15 The Complainant, STEPHANIE YEE, acting in her official capacity as a
16 Supervising Special Investigator of the State of California, for cause of Accusation against
17 Respondents MYND MANAGEMENT, INC. (MMI) and DARRYL JOHN WILLIS (WILLIS),
18 sometimes collectively referred to as Respondents, is informed and alleges as follows:

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

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23 At all times mentioned, MMI was and is licensed by the State of California
24 Department of Real Estate (Department) as a real estate broker corporation.

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26 At all times herein mentioned, WILLIS was and is presently licensed by the
27 Department as a real estate broker. Effective October 7, 2019, WILLIS was and is the

1 designated broker officer of MMI. As the designated broker officer, WILLIS was responsible,
2 pursuant to Section 10159.2 of the Code, for the supervision of the activities of officers, agents,
3 real estate licensees and employees of MMI for which a real estate license is required to ensure
4 the compliance of the corporation with the Real Estate Law and Regulations.

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

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12 At all times herein mentioned, Respondents engaged in the business of, acted in
13 the capacity of, advertised, or assumed to act as real estate brokers within the State of California
14 within the meaning of Section 10131 (b) of the Code, including the operation and conduct of a
15 property management business with the public wherein, on behalf of others, for compensation or
16 in expectation of compensation, Respondents leased or rented or offered to lease or rent, or
17 placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or
18 negotiated the sale, purchase or exchanges of leases on real property, or on a business
19 opportunity, or collected rents from real property, or improvements thereon, or from business
20 opportunities.

21 FIRST CAUSE OF ACTION

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

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On or about April 7, 2020, and continuing intermittently through May 29, 2020, an audit was conducted of the records of MMI. The auditor examined records for the period of September 1, 2018, through January 31, 2020 (the audit period).

While acting as real estate brokers as described in Paragraph 5, above, and within the audit period, Respondents accepted or received funds in trust (trust funds) from or on behalf of property owners, lessees and others in connection with property management activities, and deposited or caused to be deposited those funds into bank accounts maintained by Respondents, at Wells Fargo Bank, P.O. Box 6995, Portland, Oregon 97228-6995, including but not limited to the following:

| TRUST ACCOUNT #1 | |
|------------------|--|
| Account No.: | XXXXXXX1420 |
| Entitled: | MYND MANAGEMENT, INC. REAL ESTATE TRUST ACCOUNT NEW OWNER OPERATING |
| TRUST ACCOUNT #2 | |
| Account No.: | XXXXXXX1438 |
| Entitled: | MYND MANAGEMENT, INC. REAL ESTATE TRUST ACCOUNT NEW OWNER SECURITY DEPOSIT |
| TRUST ACCOUNT #3 | |
| Account No.: | XXXXXXX5408 |
| Entitled: | MYND MANAGEMENT, INC. REAL ESTATE TRUST ACCOUNT |

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|----|------------------|---------------------------|
| 1 | | SOCAL OWNER OPERATING |
| 2 | TRUST ACCOUNT #4 | |
| 3 | Account No.: | XXXXXXX5424 |
| 4 | Entitled: | MYND MANAGEMENT, INC. |
| 5 | | REAL ESTATE TRUST ACCOUNT |
| 6 | | SOCAL OWNER SEC DEP |
| 7 | TRUST ACCOUNT #5 | |
| 8 | Account No.: | XXXXXXX1396 |
| 9 | Entitled: | MYND MANAGEMENT, INC. |
| 10 | | REAL ESTATE TRUST ACCOUNT |
| 11 | | SOUTH BAY OWNER OPERATING |
| 12 | TRUST ACCOUNT #6 | |
| 13 | Account No.: | XXXXXXX1404 |
| 14 | Entitled: | MYND MANAGEMENT, INC. |
| 15 | | REAL ESTATE TRUST ACCOUNT |
| 16 | | SOUTH BAY SEC DEP |
| 17 | | |

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

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20 In the course of the activities described in Paragraph 5, in connection with the
 21 collection and disbursement of trust funds, it was determined that:

- 22 (a) An accountability was performed on Trust Account #1, and as of January 31,
 23 2020, there was a shortage of \$435.03 revealed, in violation of Section 10145
 24 of the Code;
- 25 (b) An accountability was performed on Trust Account #2, and as of January 31,
 26 2020, there was a shortage of \$274.09 revealed, in violation of Section 10145
 27 of the Code;

- 1 (c) An accountability was performed on Trust Account #3, and as of January 31,
2 2020, there was a shortage of \$353.00 revealed, in violation of Section 10145
3 of the Code;
- 4 (d) An accountability was performed on Trust Account #4, and as of January 31,
5 2020, there was a shortage of \$7,205.00 revealed, in violation of Section
6 10145 of the Code;
- 7 (e) An accountability was performed on Trust Account #5, and as of January 31,
8 2020, there was a shortage of \$17,782.85 revealed, in violation of Section
9 10145 of the Code;
- 10 (f) Respondents failed to obtain written permission from owners of trust funds in
11 Trust Account #1, Trust Account #2, Trust Account #3, Trust Account #4 and
12 Trust Account #5, to allow the balances to drop below accountability, in
13 violation of Section 2832.1 of Chapter 6, Title 10, California Code of
14 Regulations (Regulations);
- 15 (g) WILLIS, as the designated officer for MMI, was not an authorized signer on
16 Trust Account #1, Trust Account #2, Trust Account #3, Trust Account #4,
17 Trust Account #5 and Trust Account #6, in violation of Section 10159.2 of
18 the Code and Section 2725 of the Regulations; and
- 19 (h) Respondents collected and retained secret or undisclosed compensation,
20 commission, or profit, and failed to disclose the secret or undisclosed
21 compensation, commission or profit to property owners, in violation of
22 Section 10176 (g) of the Code. Specifically, Respondents received from Wells
23 Fargo Bank secret or undisclosed compensation, in the form of an earnings
24 credit, which was determined by multiplying the credit rate by the average
25 collected balances of each trust account and operating accounts MMI
26 maintained with Wells Fargo Bank.

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The acts and/or omissions described above constitute violations of Sections 2725 (Broker Supervision), and 2832.1 (Written Permission for Balance Below Accountability) of the Regulations and of Sections 10145 (Trust Fund Handling), 10159.2 (Responsibility of Corporate Officer in Charge), and 10176 (g) (Secret or Undisclosed Compensation) of the Code, and are grounds for discipline under Sections 10176 (g), 10177(d) (Willful Disregard of Real Estate Laws) and/or 10177(g) (Negligence/Incompetence Licensee) of the Code.

SECOND CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 10, inclusive, is incorporated by this reference as if fully set forth herein.

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Respondent WILLIS failed to exercise reasonable supervision and control over the property management activities of MMI. In particular, WILLIS permitted, ratified and/or caused the conduct described above to occur, and failed to take reasonable steps, including but not limited to, the handling of trust funds, supervision of employees, and the implementation of policies, rules and systems to ensure the compliance of the business with the Real Estate Law and the Regulations.

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The above acts and/or omissions of WILLIS violate Section 2725 of the Regulations and Section 10159.2 of the Code and constitute grounds for disciplinary action under the provisions of Sections 10177(d), 10177(g) and/or 10177(h) of the Code.

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COST RECOVERY

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Audit Costs

The acts and/or omissions of Respondents, 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 Real Estate 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 disciplinary action against all licenses and license rights of Respondents under the Real Estate Law, for the cost of the 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.



STEPHANIE YEE
Supervising Special Investigator

Dated at Oakland, California,
this 4th day of January, 2021.

DISCOVERY DEMAND

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Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Department 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 Department 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.