

1 JASON D. LAZARK, Counsel
2 State Bar No. 263714
3 Department of Real Estate
4 P.O. Box 137007
5 Sacramento, CA 95813-7007
6
7
8 DRE Legal Number: (916) 576-8700
9 Direct Number: (916) 576-7843
10 E-mail: jason.lazark@dre.ca.gov

FILED

MAY 05 2022

DEPARTMENT OF REAL ESTATE
By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

11 In the Matter of the Accusation of:) NO. H-12580 SF
12)
13 JOHN STEWART COMPANY, and) ACCUSATION
14 MARI TUSTIN,)
15 Respondents.)

16 The Complainant, STEPHANIE YEE, acting in her official capacity as a Supervising
17 Special Investigator of the State of California, for cause of Accusation against JOHN STEWART
18 COMPANY ("JS COMPANY"), and MARI TUSTIN ("TUSTIN") (collectively referred to as
19 "Respondents"), is informed and alleges as follows:

20 1

21 Respondent JS COMPANY is presently licensed by the California Department of
22 Real Estate ("the Department") and/or has license rights under the Real Estate Law, Part 1 of
23 Division 4 of the California Business and Professions Code ("the Code"), as a corporate real estate
24 broker, and at all times relevant herein was acting by and through TUSTIN as its designated broker
25 officer.

26 ///

27 ///

TUSTIN 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 as the designated broker officer of JS COMPANY. At all times relevant herein, TUSTIN, acting in the capacity as the designated broker officer of JS COMPANY, 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 JS COMPANY for which a real estate license is required.

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

///

///

///

///

Beginning on January 6, 2021, and continuing intermittently until April 16, 2021, the Department conducted an audit of the books and records related to the real estate activities of Respondents at the Department’s main office located at 1515 Clay Street, Suite 702, Oakland, CA 94612. The auditor examined records for the period of October 1, 2019, to September 30, 2020 (“audit period”).

FIRST CAUSE OF ACTION

UNLICENSED ACTIVITY

(As to Respondents JS COMPANY and TUSTIN)

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

Within the last three years, Respondents allowed unlicensed individuals who were not resident managers of apartment buildings managed by Respondents to perform property management brokerage activities described in Paragraph 4, including, but not limited to, negotiated property management agreements and/or extensions to property management agreements, negotiated rental agreements, and/or collected rents and/or security deposits from real properties owned by another or others, regarding the following properties:

<u>UNLICENSED EMPLOYEE</u>	<u>UNLICENSED ACTIVITY</u>	<u>PROPERTY LOCATION(S)</u>
Christina Williams	Negotiation of Lease of Camille B. executed 3/1/20	164 Elmwood Ave., Burbank, CA 91502, AKA: Burbank Housing Corporation
Leno Campbell	Negotiation of Lease of Renee M. executed 2/11/20	685 N. 6 th Street, San Jose, CA 95112 AKA: Japantown Senior Apartments

1 2 3	LaToya Garrett	Negotiation of Lease of Quincella J. executed 1/11/21	5257 Creely Ave., Richmond, CA 948004 AKA: Arbors Apartments
4 5 6	Carissa Estrada	Negotiation to Extend Housing Management Agreement dated 10/17/19	1220 Olive Dr., Davis, CA 95616 AKA: Cesar Chavez Plaza
7 8 9	Miguel Jacquez	Negotiation to Extend Housing Management Agreement dated 1/1/2020	261 E. Alaska Ave., Fairfield, CA 94533 AKA: Monument Arms Communities

8

In acting as described above, Respondents willfully disregard Section 10130 of the Code.

9

The facts alleged in paragraphs 6 through 8 are grounds for the suspension or revocation of Respondents' licenses and license rights pursuant to Section 10130 of the Code, in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACTION

AUDIT VIOLATIONS

(As to Respondents JS COMPANY and TUSTIN)

10

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

11

While acting as real estate brokers as described above in Paragraph 4, and within the audit period, JS COMPANY and TUSTIN accepted or received funds in trust ("trust funds") and deposited or caused the trust funds to be deposited into bank accounts maintained by JS COMPANY

///

1 and TUSTIN, and thereafter, from time-to-time, JS COMPANY and TUSTIN made disbursements
2 of said trust funds, identified as follows:

3 Bank Account #1 (BA#1)

4
5 Bank Name: Citi Bank
6 Account No.: xxxxx4340
7 Account Name: John Stewart Company
8 Elmwood Operating
9 Signatories: Jack Dmitri Gardner (RES)
10 Steve McElroy (RES)
11 Fourteen (14) unlicensed employees of JS Company
12 Purpose: BA#1 is a single beneficiary account maintained for property
13 owner Burbank Housing Corporation

14 Bank Account #2 (BA#2)

15
16 Bank Name: Citi Bank
17 Account No.: xxxxx4823
18 Account Name: 11754 Vanowen Gardens, L.P.
19 Signatories: Jack Dmitri Gardner (RES)
20 Steve McElroy (RES)
21 Fourteen (14) unlicensed employees of JS Company
22 Purpose: BA#2 is a single beneficiary account maintained for property
23 owner Vanowen Gardens, LP

24
25 Bank Account #3 (BA#3)

26
27 Bank Name: Wells Fargo Bank

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Account No.: xxxxxx2510
Account Name: John Stewart Company
FBO Gish Apartments, L.P.
Signatories: Mari Tustin (REB)
Warren Reed (Unlicensed)
Rena MacDonell (Unlicensed)
Jennifer Taylor (Unlicensed)
Cherie L. Stewart (Unlicensed)
Kathleen Kiyabu (Unlicensed)
Belinda Solis (Unlicensed)
Purpose: BA#3 is a single beneficiary account maintained for property
owner Gish Apartments, LP

Bank Account #4 (BA#4)

Bank Name: Wells Fargo Bank
Account No.: xxxxxx9599
Account Name: John Stewart Company
FBO Japantown Apartments, LP
Signatories: Mari Tustin (REB)
Warren Reed (Unlicensed)
Jennifer Taylor (Unlicensed)
Sonya Rosenback (Unlicensed)
Noah G. Schwartz (Unlicensed)
Jack D. Gardner (RES)
Purpose: BA#4 is a single beneficiary account maintained for property
owner Japantown Apartments, LP

1 Signatories: Mari Tustin (REB)
2 Thirteen (13) unlicensed employees of JS Company
3 Purpose: BA#7 is a single beneficiary account maintained for property
4 owner Kents Court
5

6 Trust Account #1 (TA#1)
7

8 Bank Name: WestAmerica Bank
9 Account No.: xxxxx6009
10 Account Name: John Stewart Company
11 FBO Cesar Chavez Plaza
12 Client Trust Account
13 Signatories: Eleven (11) unlicensed employees of JS Company
14 Purpose: TA#1 is a single beneficiary account maintained for property
15 owner Cesar Chavez Plaza
16

17 Trust Account #2 (TA#2)
18

19 Bank Name: WestAmerica Bank
20 Account No.: xxxxx6223
21 Account Name: John Stewart Company
22 FBO Monument Arms Communities Partners
23 Client Trust Account
24 Signatories: Twelve (12) unlicensed employees of JS Company
25 Purpose: TA#2 is a single beneficiary account maintained for property
26 owner Monument Arms Communities Partners
27

///

In the course of the real estate broker activities described above in Paragraph 4, and during the audit period, JS COMPANY and TUSTIN:

(a) failed to designate bank accounts used to hold trust funds (BA #1 through BA #7) as trust accounts, in violation of Section 10145 of the Code and Section 2832 the Regulations;

(b) allowed, authorized, and/or permitted numerous unlicensed employees to serve as signatories on BA #1-BA #7, TA #1, and TA #2, without fidelity bond coverage for any of the unlicensed employees, in violation of Section 10145 of the Code and Section 2834 of the Regulations; and

(c) failed to have TUSTIN serve as an authorized signatory on BA #1, BA#2, BA#5, BA#6, TA#1, and TA#2, in violation of Section 10145 of the Code and Section 2834 of the Regulations.

The acts and/or omissions of JS COMPANY and TUSTIN, as alleged above in Paragraph 12, constitute grounds for the suspension or revocation of all licenses and license rights of JS COMPANY and TUSTIN pursuant to the following provisions of the Code and Regulations:

As to Paragraph 12(a), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Sections 10145 of the Code and Sections 2832 of the Regulations;

As to Paragraph 12(b), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10145 of the Code and Section 2834 of the Regulations; and

As to Paragraph 12(c), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10145 of the Code, and Section 2834 of the Regulations.

THIRD CAUSE OF ACTION

FAILURE TO SUPERVISE

(As to Respondent TUSTIN)

///

1 14

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

4 15

5 TUSTIN, as the designated officer of JS COMPANY, was required to exercise
6 reasonable supervision and control over the real estate activities conducted on behalf of JS
7 COMPANY, by the corporation's officers, employees and agents, as necessary to ensure full
8 compliance with all provision of the real estate law including the supervision of all salespersons
9 licensed under the corporation in the performance of acts for which a real estate license is required.

10 16

11 TUSTIN failed to exercise reasonable supervision over the acts and/or omissions of
12 JS COMPANY, and its employees, in such a manner as to allow the acts and/or omissions as
13 described above in Paragraphs 6 and 13 to occur, which constitutes cause for the suspension or
14 revocation of the license(s) and license rights of TUSTIN under Sections 10177(d) and/or 10177(g),
15 10177(h) and 10159.2 of the Code, in conjunction with Section 2725 of the Regulations.

16 **FOURTH CAUSE OF ACTION**

17 **BREACH OF FIDUCIARY DUTIES**

18 (As to Respondents JS COMPANY and TUSTIN)

19 17

20 Each and every allegation above in Paragraphs 1 through 16, inclusive, is
21 incorporated by this reference as if fully set forth herein.

22 18

23 At all relevant times, while acting as real estate agents, Respondents owed its clients
24 and/or beneficiaries those fiduciary duties that are inherent in a position of trust as created by the
25 agent/principal relationship, including, but not limited to, the following duties: the duty of
26 reasonable care and skill, the duty of honesty, the duty of good faith and fair dealings, the duty of
27 loyalty, and the duty of diligence.

1 19

2 JS COMPANY breached its fiduciary duties by engaging in the acts and/or omissions
3 described above in paragraphs 6 through 13.

4 20

5 TUSTIN breached his fiduciary duties by engaging in the acts and/or omissions
6 described above in Paragraphs 6 through 16.

7 **COST RECOVERY**

8 Audit Costs

9 21

10 The acts and/or omissions of Respondents, as alleged above in Paragraphs 5 through
11 13, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of
12 the Code.

13 Investigation and Enforcement Costs

14 22

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

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

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.

6
7 

8 _____
STEPHANIE YEE
Supervising Special Investigator

9
10 Dated at Oakland, California,
11 this 2nd day of May, 2022.

12
13 DISCOVERY DEMAND

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