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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) No. H-33975 LA
) L-2007070030
 TROYSTAR INVESTMENTS INC., et al.,)
)
)
 Respondent(s).)
 _____)

FILED

JUN 16 2008

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

DECISION

The Proposed Decision dated May 21, 2008, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on July 16, 2008.

IT IS SO ORDERED *[Signature]*

JEFF DAVIS
 Real Estate Commissioner

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

Troystar Investments Inc., doing business as
Century 21 All Pro, and Century 21 Duncan &
Associates, and James Michael La Peter,
individually and as designated officer of
Troystar Investments Inc.

Respondents.

Case No. H-33975 LA

OAH No. L2007070030

PROPOSED DECISION

This matter was heard on April 1, 2008, in Los Angeles, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings.

James Michael La Peter (La Peter) was present and was represented by Carl Agren, attorney at law. Mr. Agren also represented Troystar Investments, Inc. (Troystar). La Peter and Troystar will collectively be referred to as "Respondents" in this decision.

Complainant Robin Trujillo, Deputy Real Estate Commissioner (Complainant), was represented by Elliot Mac Lennan, Counsel for the Department of Real Estate (Department).

At hearing, the First Amended Accusation was amended as follows:

Page 6, line 25, was amended to: "(e) Failed to maintain a complete and accurate monthly reconciliation of the".

Page 7, line 6, was amended to: "#1 and T/A #3 . . ."

Page 7, line 14, was amended to: "account T/A #3 based on amount of trust fund".

Page 7, line 16, was amended and the word "NORRIS" was changed to "TROYSTAR".

Page 7, line 17, was amended and the word "collection" was changed to "escrow T/A #3".

Oral and documentary evidence was received and the matter was argued. The record was held open until May 1, 2008, in order to allow Respondent to submit additional evidence. No additional evidence was submitted by Respondent. The matter was submitted for decision on May 1, 2008.

FACTUAL FINDINGS

1. Complainant filed the First Amended Accusation (FAA) in her official capacity.

License History

2. Troystar, at all relevant times, was licensed or had license rights issued by the Department as a real estate broker. On April 5, 1996, Troystar was originally licensed as a real estate broker.

3. La Peter, at all relevant times, was licensed or had license rights issued by the Department as a real estate broker. On April 8, 1980, La Peter was originally licensed as a real estate broker. On July 15, 2002, La Peter was licensed as the designated officer of Troystar. La Peter's real estate broker license was previously disciplined in Department case numbers H-26009 LA and H-29444 LA, as more fully set forth below.

4. At all relevant times, Troystar was licensed by the Department as a corporate real estate broker by and through La Peter, as the designated officer and broker responsible, pursuant to Business and Professions Code (Code) section 10159.2¹, for supervising the activities requiring a real estate license conducted on behalf Troystar by Troystar's officers, agents and employees, including La Peter.

Brokerage Activities

5. Respondents acted as real estate brokers and conducted licensed activities within the meaning of Code section 10131, subdivision (a), in the City of Anaheim Hills, County of Orange. Respondents operated a residential resale brokerage and did business under the name "Century 21 All Pro and Century 21 Duncan & Associates."

6. Respondents also operated a property management brokerage and conducted broker-controlled escrows through Troystar's escrow division, under the exemption set forth in California Financial Code section 17006, subdivision (a)(4), for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required. (See Code § 10131, subdivision (b).)

¹ All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to California Code of Regulations, title 10, chapter 6,

The Department Audit

7. On October 31, 2005, the Department's auditor, Lisa Kwong, completed an audit examination of the books and records of Troystar pertaining to the residential resale, property management and broker escrow activities that require a real estate license. The audit examination for Troystar residential resale and broker escrow activities covered from July 1, 2002, to June 30, 2005. The audit examination for Troystar's property management activities covered from June 1, 2003, to June 30, 2005. The audit examination revealed some violations of the Code and the Regulations as set forth in Findings 8-16. La Peter and his staff fully cooperated with Ms. Kwong.

8. In conducting its real estate business, Troystar accepted or received funds, including funds in trust (trust funds) from or on behalf of actual or prospective parties to real estate transactions handled by Troystar. Troystar placed the trust funds in the following bank accounts²:

- a. Troystar Investments Inc. Account number 189196xxxx - Commercial Bank-California in Inglewood, California (T/A #1).
- b. Troystar Investments Inc. Account number 189196xxxx - Commercial Bank-California in Inglewood, California (T/A #2).
- c. Troystar Investments Inc. Account No. 912008xxxx - Union Bank of California in Los Angeles, California (T/A #3).
- d. Troystar Investments Inc. Account No. 189147xxxx - Commercial Bank-California in El Segundo, California (T/A #4).

9. Respondents allowed the disbursement of trust funds from T/A #1 and T/A #3, the escrow trust accounts, such that the disbursement of funds reduced the total of aggregate funds in T/A #1 and T/A #3, to an amount which, on June 30, 2005, was \$31,557.76, less than the existing aggregate trust fund liability of Troystar to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code section 10145 and Regulations 2832.1, 2950, subdivision (d), 2950, subdivision (g), and 2951. No consumer suffered any financial injury and La Peter thereafter deposited his own money into that account so as to comply with the Department's request. The \$31,557.76 deposited by La Peter remains in the trust account even though Troystar closed their escrow department in 2005. Therefore, Respondents established that while the escrow account contained insufficient funds on June 30, 2005, sufficient funds were almost immediately placed into that account sufficient to cover all liabilities. Respondents' violation was a timeliness error rather than a willful misuse of funds.

10. Respondents allowed disbursement of trust funds from T/A #4, the property management trust account, such that the disbursement of funds reduced the total of aggregate

² The last four digits of each account number have been deleted so as to protect the financial privacy of Respondents.

funds in T/A #4, to an amount which, on June 30, 2005, was \$31,476.11, less than the existing aggregate trust fund liability of Troystar to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code section 10145 and Regulations 2832.1, 2950, subdivision (d), 2950, subdivision (g) and 2951. No consumer suffered any financial injury, and while the property management trust account did not have sufficient funds on June 30, 2005, it was established that Respondents almost immediately placed money into that account sufficient to cover all liabilities. Respondents' violation was a timeliness error rather than a willful misuse of funds.

11. Respondents failed to maintain an accurate and complete control record in the form of a columnar record in chronological order of all trust funds received, deposited and disbursed by T/A #1 through T/A #4, as required by Code section 10145 and Regulations 2831, 2950, subdivision (d), and 2951.

12. Respondents failed to maintain an accurate and complete separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited into and disbursed from T/A #1 through T/A #4, as required by Code section 10145 and Regulations 2831.1, 2950, subdivision (d), and 2951.

13. Respondents failed to maintain a complete and accurate monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by T/A #1 through-T/A #4, as required by Code section 10145 and Regulation 2831.2.

14. Respondents permitted an unlicensed and unbonded person, Naomi Felamino, to be an authorized signatory on the trust accounts T/ #1 through T/A #3, and permitted Glenda Prentice, a real estate salesperson who did not have a valid real estate license from October 5, 2003, through March 22, 2005, to be an authorized signatory on trust account T/A #4, in violation of Code section 10145 and Regulation 2834. In mitigation, Respondents offered a print-out of Ms. Prentice's licensing history available over the internet. That print-out does not reflect that Ms. Prentice's license was inactive, or otherwise invalid, from October 2003 to March 2005. Ms. Prentice was employed by Troystar as a trainer of new agents. In that capacity, she did not need a license. However, Ms. Prentice was required to be licensed in order to have access to the trust fund and she was not. Respondents should have looked at her actual license to see if it was active and valid. There was no financial injury to any consumer and La Peter subsequently ordered his staff to check all personnel's licenses on their respective renewal date so as to ensure that each license is active and valid.

15. Respondents received undisclosed compensation via an earning credit given by the Bank of California (Bank). Bank service charges were deducted from the earning credit given on trust account T/A #3 based on the amount of trust fund activity. The earnings credit arrangement was not disclosed by Troystar to the borrowers, lenders, or beneficiaries of the escrow T/A #3 trust account, in violation of Code section 10176, subdivision (g). Because Respondents conducted many transactions at the Bank, the Bank considered

Respondents good customers and gave Respondents earning credits which could be used to off-set other fees the Bank charged Respondents for maintaining the account. La Peter testified that he was unaware the Bank was giving him earnings credits on this account and as soon as he became aware of such he asked the Bank to discontinue doing so.

16. Respondents, or their agents, misrepresented to sellers that Respondents held earnest money deposits for buyers Jimmie Lewis and William and Loyce Price, while not having the earnest money deposit on hand when the offers were presented, in violation of Code sections 10176, subdivision (a), and 10177, subdivision (g). However, Ms. Kwong only looked at a sampling of ten transactions handled by Respondents. Of those ten, she found the violations described above (the Lewis and Price transactions). During the audit period, Respondents handled approximately 960 transactions. It was not established whether or not the remaining 950 transactions not reviewed by Ms. Kwong had the same percentage of transactions where the earnest money deposit was not on hand when the offers were presented. As a result of this audit conclusion, La Peter has reiterated to all of his agents that an earnest money deposit must be on hand when an offer is presented.

Prior Discipline

17. On December 13, 1994, as amended on August 23, 1995, in Department case number H-26009 LA, an Accusation was filed against La Peter. Ultimately, that Accusation resulted in discipline by revocation of his real estate broker license with a right to a restricted real estate broker license (for one year), effective February 20, 1996. In mitigation, the conduct leading to the discipline occurred after he had sold his business, but remained as the broker of record while the new owner was operating the business.

18. On April 4, 2002, in Department case number H-29444 LA, an Accusation was filed against La Peter that resulted in discipline by a stayed suspension of his real estate broker license under Code sections 10177, subdivision (f), and 10177, subdivision (j), effective October 2, 2002. La Peter's license was disciplined because he made a misstatement in an application he filed with the Department of Corporations. La Peter paid a fine in lieu of the period of suspension.

La Peter's History

19. La Peter has been in the real estate business for approximately 35 years and has been a licensed real estate broker for approximately 28 years. During the Department's audit, La Peter was fully cooperative. In 2005, La Peter's business was booming. He operated five offices and he was responsible for over 300 agents. It was established that La Peter was unable to fully supervise the operation of his enterprise. In 2005, before the Department's audit, La Peter became concerned about Troystar's escrow operation, and he closed that portion of his business. La Peter is no longer interested in conducting broker escrow activities, and Troystar has not done so for the last three years. Prior to the Department's audit, La Peter hired Ken Bredding, a retired Department auditor, to help him review all of his businesses' finances and to make sure he was compliant with Department

rules and regulations. Mr. Bredding found some issues similar to Ms. Kwong's findings, and La Peter immediately took corrective action.

20. La Peter has recently closed four of his five offices due to the downturn in the real estate market. He testified that any restriction on his license would make an already difficult financial situation worse. While La Peter has suffered prior discipline on two prior occasions, the first occurred when he agreed to remain as broker of record on a business which he had sold. Thus, it was not his direct conduct, but rather that of the new owner, which led to the discipline. The second case of discipline occurred as a result of La Peter's misstatement on a Department of Corporations application. Thus, both cases of prior discipline did not occur as a result of La Peter's misconduct during real estate transactions that he was supervising. As such, this is the first instance that La Peter has been directly involved in the activities for which discipline is sought.

LEGAL CONCLUSIONS AND DISCUSSION

1. Respondents' conduct discussed in Findings 8-16 violated Code sections 10145, 10176, subdivisions (a) and (g), and 10177, subdivision (g), and Regulations 2832.1, 2950, subdivision (d), 2950 subdivisions (d) and (g), 2951, 2832.1, 2831, 2831.1, 2831.2, and 2834.

2. The foregoing violations described in Legal Conclusion number 1 constitute cause for the suspension or revocation of the real estate licenses and license rights of Troystar and La Peter under Code sections 10176, subdivision (a), 10176, subdivision (g), and 10177, subdivisions (d) and (g).

3. Respondents' overall conduct was negligent in their exercise of reasonable supervision and control over the licensed activities of Troystar as required by Code section 10159.2, and Respondents failed to keep Troystar in compliance with the Real Estate Law. This is cause for the suspension or revocation of the real estate licenses and license rights of Respondents pursuant to the provisions of Code sections 10177, subdivisions (d), (g), and (h).

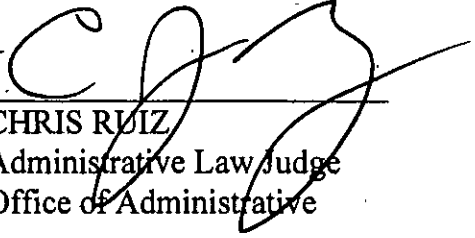
4. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal. 4th 763, 785-786.) The violations established by the Department's audit, while important, would not likely require that Respondents' licenses be restricted absent the prior history of discipline against La Peter's license. This conclusion is reached because La Peter took immediate corrective action, even before the Department had started its audit, and because there was no financial injury to any consumer. Therefore, even though La Peter has a prior history of discipline, the present violations do not establish that his license needs to be restricted in order to protect the public. A substantial fine and additional training should be a sufficient deterrent to any future violations.

ORDER

All licenses and licensing rights of Respondent Troystar and James Michael La Peter under the Real Estate Law are suspended for a period of 90 days from the effective date of this Decision; provided, however, that if Respondents petition, said suspension shall be stayed upon condition that:

1. Respondent James Michael La Peter and Respondent Troystar pay a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$100 for each day of the suspension for a total monetary penalty of \$9000. Both Respondents shall be jointly and individually liable for the \$9000 payment.
2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.
3. No further cause for disciplinary action against the real estate license of Respondents occurs within one year from the effective date of the Decision in this matter.
4. If Respondents fail to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondents shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.
5. If Respondents pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.
6. Respondent La Peter shall, within 120 days of the effective date of this Decision, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.
7. Respondent La Peter shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes, the examination.

DATED: May 21, 2008.



CHRIS RUIZ
Administrative Law Judge
Office of Administrative

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ELLIOTT MAC LENNAN, SBN 66674
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-or- (213) 576-6982 (office)

FILED

OCT 10 2007

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
TROYSTAR INVESTMENTS INC., doing)
business as Century 21 All Pro,)
and Century 21 Duncan & Associates,)
and JAMES MICHAEL LA PETER,)
individually and as designated)
officer of Troystar Investments)
Inc.)
)
Respondents.)
)
)
)

No. H-33975 LA
FIRST AMENDED
ACCUSATION

The Accusation filed on May 17, 2007, is amended in its entirety as follows:

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against TROYSTAR INVESTMENTS INC. dba doing business as Century 21 All Pro and Century 21 Duncan & Associates, and JAMES MICHAEL LA PETER, individually and as designated officer of Troystar Investments Inc., alleges as follows:

1.

1 The Complainant, Robin Trujillo, acting in her official
2 capacity as a Deputy Real Estate Commissioner of the State of
3 California, makes this Accusation against TROYSTAR INVESTMENTS
4 INC., and JAMES MICHAEL LA PETER.
5

2.

6
7 All references to the "Code" are to the California
8 Business and Professions Code and all references to "Regulations"
9 are to Title 10, Chapter 6, California Code of Regulations.
10

LICENSE HISTORY

3.

11
12 A. TROYSTAR INVESTMENTS INC. At all times mentioned,
13 TROYSTAR INVESTMENTS INC. ("TROYSTAR") was licensed or had
14 license rights issued by the Department of Real Estate
15 ("Department") as a real estate broker. On April 5, 1996,
16 TROYSTAR was originally licensed as a real estate broker.
17

18 B. JAMES MICHAEL LA PETER. At all times mentioned,
19 JAMES MICHAEL LA PETER ("LA PETER") was licensed or had license
20 rights issued by the Department of Real Estate (Department) as a
21 real estate broker. On April 8, 1980, LA PETER was originally
22 licensed as a real estate broker. On July 15, 2002, LA PETER was
23 licensed as the designated officer of TROYSTAR. LA PETER's real
24 estate broker license was disciplined in Case No. H-26009 LA and
25 H-29444 LA, as more fully set forth in Paragraphs 11 and 12,
26 below.
27

1 C. At all times material herein, TROYSTAR was licensed
2 by the Department of Real Estate of the State of California
3 (hereinafter "Department") as a corporate real estate broker by
4 and through LA PETER, as the designated officer and broker
5 responsible, pursuant to Code Section 10159.2 of the Business and
6 Professions Code for supervising the activities requiring a real
7 estate license conducted on behalf TROYSTAR of by TROYSTAR's
8 officers, agents and employees, including LA PETER.

9 BROKERAGE

10 TROYSTAR INVESTMENTS INC.

11 4.

12 At all times mentioned, in the City of Anaheim Hills,
13 County of Orange, TROYSTAR acted as a real estate broker and
14 conducted licensed activities within the meaning of:

15 A. Code Section 10131(a). TROYSTAR operated a
16 residential resale brokerage dba Century 21 All Pro and Century
17 21 Duncan & Associates.

18 B. Code Section 10131(b). TROYSTAR operated a property
19 management brokerage, and

20 C. In addition, TROYSTAR conducted broker-controlled
21 escrows through its escrow division, under the exemption set
22 forth in California Financial Code Section 17006(a)(4) for real
23 estate brokers performing escrows incidental to a real estate
24 transaction where the broker is a party and where the broker is
25 performing acts for which a real estate license is required.
26
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AUDIT EXAMINATION

TROYSTAR INVESTMENTS INC.

5.

On October 31, 2005, the Department completed an audit examination of the books and records of TROYSTAR pertaining to the residential resale, property management and broker escrow activities described in Paragraph 4, that require a real estate license. The audit examination for the residential resale and, broker escrow covered a period of time beginning on July 1, 2002 to June 30, 2005, and the audit examination for property management covered a period of time beginning on June 1, 2003 to June 30 2005. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Reports LA 040331 and LA 050016 and the exhibits and workpapers attached to said audit report.

TRUST ACCOUNTS

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, TROYSTAR accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by TROYSTAR and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were

1 deposited and/or maintained by TROYSTAR in the bank accounts as
2 follows:

3 "Troystar Investments Inc.
4 Account No. 1891969436"
5 Commercia Bank - California ("T/A #1")
6 Inglewood, California

7 "Troystar Investments Inc.
8 Account No. 1891969626"
9 Commercia Bank - California ("T/A #2")
10 Inglewood, California

11 "Troystar Investments Inc.
12 Account No. 9120080609"
13 Union Bank of California ("T/A #3")
14 Los Angeles, California

15 "Troystar Investments Inc.
16 Account No. 1891471060"
17 Commercia Bank - California ("T/A #4")
18 El Segundo, California

19 VIOLATIONS OF THE REAL ESTATE LAW

20 7.

21 In the course of activities described in Paragraphs 4
22 and 6, above, and during the examination period described in
23 Paragraph 5, Respondents TROYSTAR and LA PETER, acted in
24 violation of the Code and the Regulations in that they:

25 (a) Permitted, allowed or caused the disbursement of
26 trust funds from T/A #1 and T/#3, the escrow trust accounts,
27 where the disbursement of funds reduced the total of aggregate
funds in T/A #1 and T/A #3, to an amount which, on June 30, 2005,
was \$31,557.76, less than the existing aggregate trust fund

1 liability of TROYSTAR to every principal who was an owner of said
2 funds, without first obtaining the prior written consent of the
3 owners of said funds, as required by Code Section 10145 and
4 Regulations 2832.1, 2950(d), 2950(g) and 2951.

5 (b) Permitted, allowed or caused the disbursement of
6 trust funds from T/A #4, the property management trust account,
7 where the disbursement of funds reduced the total of aggregate
8 funds in T/A #4, to an amount which, on June 30, 2005, was
9 \$31,476.11, less than the existing aggregate trust fund liability
10 of TROYSTAR to every principal who was an owner of said funds,
11 without first obtaining the prior written consent of the owners
12 of said funds, as required by Code Section 10145 and Regulations
13 2832.1, 2950(d), 2950(g) and 2951.

14 (c) Failed to maintain an accurate and complete control
15 record in the form of a columnar record in chronological order of
16 all trust funds received, deposited and disbursed by T/A #1
17 through T/A #4, as required by Code Section 10145 and Regulations
18 2831, 2950(d) and 2951.

19 (d) Failed to maintain an accurate and complete
20 separate record for each beneficiary or transaction, thereby
21 failing to account for all trust funds received, deposited into
22 and disbursed from by T/A #1 through T/A #4, as required by Code
23 Section 10145 and Regulation 2831.1, 2950(d) and 2951.

24 (e) Failed to ^{maintain a complete and accurate} ~~perform~~ a monthly reconciliation of the
25 balance of all separate beneficiary or transaction records
26
27

1 maintained pursuant to Regulation 2831.1 with the record of all
2 trust funds received and disbursed by T/A #1 through T/A #4, as
3 required by Code Section 10145 and Regulation 2831.2.

4 (f) Permitted unlicensed and unbonded person, Naomi
5 Felamino, to be an authorized signatory on the trust accounts T/A
6 #1 through T/A #~~4~~³, and permitted Glenda Prentice, a real estate
7 salesperson who did not have a valid real estate license from
8 October 5, 2003 through March 22, 2005, to be an authorized
9 signatory on trust account T/A #4, in violation of Code Section
10 10145 and Regulation 2834.

11 (g) Received undisclosed compensation by means of an
12 earning credit agreement with the Bank of California. Bank
13 service charges were deducted from the earning credit from trust
14 accounts T/A #1 through T/A #~~4~~³ based on amount of trust fund
15 activity. The earnings credit arrangement was not disclosed by
16 ~~TROYSTAR~~
17 ~~NORRIS~~ to the borrowers, lenders or beneficiaries of the
18 ~~collection~~ ^{escrow T/A #3} trust account, in violation of Code Section 10176(g).

19 (h) Misrepresented to sellers that Respondents held
20 earnest money deposits for buyers Jimmie Lewis and William and
21 Loyce Price, thus not having the earnest money deposit on hand
22 when the offers were presented, in violation of Code Sections
23 10176(a) and/or 10177(g).

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1
2 The conduct of Respondents TROYSTAR and LA PETER,
3 described in Paragraph 7, above, violated the Code and the
4 Regulations as set forth below:

5 PARAGRAPH

PROVISIONS VIOLATED

6 7(a)

Code Section 10145 and Regulations
7 2832.1, 2950(d), 2950(g), and 2951
8

9
10 7(b)

Code Section 10145 and Regulations
11 2832.1, 2950(d), 2950(g), and 2951
12

13
14 7(c)

Code Section 10145 and Regulation
15 2831, 2950(d) and 2951
16

17
18 7(d)

Code Section 10145 and Regulation
19 2831.1, 2950(d) and 2951
20

21 7(e)

Code Section 10145 and Regulation
22 2831.2, 2950(d) and 2951
23

24 7(f)

Code Section 10145 and
25 Regulation 2834
26
27

1 7(g)

Code Section 10176(g)

2
3 7(h)

Code Section 10176(a) and/or

4 10177(g).

5 The foregoing violations constitutes cause for the suspension or
6 revocation of the real estate license and license rights of
7 TROYSTAR and LA PETER and FIERRO, under the provisions of Code
8 Sections 10176(a), 10176(g), 10177(d) and/or 10177(g).
9

10 9.

11 The overall conduct of Respondents TROYSTAR and LA
12 PETER constitutes negligence or incompetence. This conduct and
13 violation are cause for the suspension or revocation of the real
14 estate license and license rights of Respondents TROYSTAR and LA
15 PETER pursuant to Code Section 10177(g).
16

17 10.

18 The overall conduct of Respondent LA PETER constitutes
19 a failure on their part, as officer designated by a corporate
20 broker licensee, to exercise the reasonable supervision and
21 control over the licensed activities of TROYSTAR as required by
22 Code Section 10159.2, and to keep TROYSTAR in compliance with the
23 Real Estate Law, and is cause for the suspension or revocation of
24 the real estate license and license rights of LA PETER pursuant
25 to the provisions of Code Sections 10177(d), 10177(g) and
26 10177(h).
27

///

11.

1 On December 13, 1994, as amended on August 23, 1995, in
2 Case No. H-26009 LA, an Accusation was filed against Respondent
3 JAMES MICHAEL LA PETER, that resulted in discipline by revocation
4 of his real estate broker license with right to a restricted real
5 estate broker license for violations of Sections 10137, 10145
6 10148, 10160, 10161.8, 10163, 10177(d) and 10177(h) of the
7 California Business and Professions Code and Sections 2726, 2731
8 and 2752 of Title 10, Chapter 6, California Code of Regulations,
9 effective February 20, 1996.
10

11 12.

12 On April 4, 2002, in Case No. H-29444 LA, an Accusation
13 was filed against Respondent JAMES MICHAEL LA PETER, that
14 resulted in discipline by a stayed suspension of his real estate
15 broker license Sections 10177(f) and 10177(j) of the California
16 Business and Professions Code, effective October 2, 2002.
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondents
5 TROYSTAR INVESTMENTS INC. and JAMES MICHAEL LA PETER, under the
6 Real Estate Law (Part 1 of Division 4 of the Business and
7 Professions Code) and for such other and further relief as may be
8 proper under other applicable provisions of law.

9 Dated at Los Angeles, California

10 this 10 day of October, 2007
11 
12 Deputy Real Estate Commissioner

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24 cc: Troystar Investments Inc.
25 c/o James Michael La Peter D.O.
26 Robin Trujillo
27 Sacto
Audits - Lisa Kwong

File to [unclear]

FILED
MAY 17 2007
DEPARTMENT OF REAL ESTATE

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

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[Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-33975 LA
12 TROYSTAR INVESTMENTS INC., doing)	<u>A C C U S A T I O N</u>
13 business as Century 21 All Pro,)	
14 and Century 21 Duncan & Associates,)	
15 and JAMES MICHAEL LA PETER,)	
16 individually and as designated)	
17 officer of Troystar Investments)	
18 Inc.)	
19 Respondents.)	

19 The Complainant, Janice Waddell, a Deputy Real Estate
20 Commissioner of the State of California, for cause of Accusation
21 against TROYSTAR INVESTMENTS INC. dba doing business as Century
22 21 All Pro and Century 21 Duncan & Associates, and JAMES MICHAEL
23 LA PETER, individually and as designated officer of Troystar
24 Investments Inc., alleges as follows:

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1.

1 The Complainant, Janice Waddell, acting in her official
2 capacity as a Deputy Real Estate Commissioner of the State of
3 California, makes this Accusation against TROYSTAR INVESTMENTS
4 INC., and JAMES MICHAEL LA PETER.
5

2.

6 All references to the "Code" are to the California
7 Business and Professions Code and all references to "Regulations"
8 are to Title 10, Chapter 6, California Code of Regulations.
9

10 LICENSE HISTORY

3.

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12 A. TROYSTAR INVESTMENTS INC. At all times mentioned,
13 TROYSTAR INVESTMENTS INC. ("TROYSTAR") was licensed or had
14 license rights issued by the Department of Real Estate
15 ("Department") as a real estate broker. On April 5, 1996,
16 TROYSTAR was originally licensed as a real estate broker.
17

18 B. JAMES MICHAEL LA PETER. At all times mentioned,
19 JAMES MICHAEL LA PETER ("LA PETER") was licensed or had license
20 rights issued by the Department of Real Estate (Department) as a
21 real estate broker. On April 8, 1980, LA PETER was originally
22 licensed as a real estate broker. On July 15, 2002, LA PETER was
23 licensed as the designated officer of TROYSTAR. LA PETER's real
24 estate broker license was disciplined in Case No. H-26009 LA and
25 H-29444 LA, as more fully set forth in Paragraphs 11 and 12,
26 below.
27

1 C. At all times material herein, TROYSTAR was licensed
2 by the Department of Real Estate of the State of California
3 (hereinafter "Department") as a corporate real estate broker by
4 and through LA PETER, as the designated officer and broker
5 responsible, pursuant to Code Section 10159.2 of the Business and
6 Professions Code for supervising the activities requiring a real
7 estate license conducted on behalf TROYSTAR of by TROYSTAR's
8 officers, agents and employees, including LA PETER and FIERRO.

9 BROKERAGE

10 TROYSTAR INVESTMENTS INC.

11 4.

12 At all times mentioned, in the City of Anaheim Hills,
13 County of Orange, TROYSTAR acted as a real estate broker and
14 conducted licensed activities within the meaning of:
15

16 A. Code Section 10131(a). TROYSTAR operated a
17 residential resale brokerage dba Century 21 All Pro and Century
18 21 Duncan & Associates.

19 B. Code Section 10131(b). TROYSTAR operated a property
20 management brokerage, and

21 C. In addition, TROYSTAR conducted broker-controlled
22 escrows through its escrow division, under the exemption set
23 forth in California Financial Code Section 17006(a)(4) for real
24 estate brokers performing escrows incidental to a real estate
25 transaction where the broker is a party and where the broker is
26 performing acts for which a real estate license is required.
27

AUDIT EXAMINATION

TROYSTAR INVESTMENTS INC.

5.

On October 31, 2005, the Department completed an audit examination of the books and records of TROYSTAR pertaining to the residential resale, property management and broker escrow activities described in Paragraph 4, that require a real estate license. The audit examination for the residential resale and, broker escrow covered a period of time beginning on July 1, 2002 to June 30, 2005, and the audit examination for property management covered a period of time beginning on June 1, 2003 to June 30 2005. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Reports LA 040331 and LA 050016 and the exhibits and workpapers attached to said audit report.

TRUST ACCOUNTS

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, TROYSTAR accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by TROYSTAR and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were

1 deposited and/or maintained by TROYSTAR in the bank accounts as
2 follows:

3 "Troystar Investments Inc.
4 Account No. 1891969436"
5 Commercica Bank - California
6 Inglewood, California ("T/A #1")

7 "Troystar Investments Inc.
8 Account No. 1891969626"
9 Commercica Bank - California
10 Inglewood, California ("T/A #2")

11 "Troystar Investments Inc.
12 Account No. 9120080609"
13 Union Bank of California
14 Los Angeles, California ("T/A #3")

15 "Troystar Investments Inc.
16 Account No. 1891471060"
17 Commercica Bank - California
18 El Segundo, California ("T/A #4")

19 VIOLATIONS OF THE REAL ESTATE LAW

20 7.

21 In the course of activities described in Paragraphs 4
22 and 6, above, and during the examination period described in
23 Paragraph 5, Respondents TROYSTAR and LA PETER, acted in
24 violation of the Code and the Regulations in that they:

25 (a) Permitted, allowed or caused the disbursement of
26 trust funds from T/A #1 and T/#3, where the disbursement of funds
27 reduced the total of aggregate funds in T/A #1 and T/A #3, to an
amount which, on June 30, 2005, was \$31,557.76, less than the
existing aggregate trust fund liability of TROYSTAR to every

1 principal who was an owner of said funds, without first obtaining
2 the prior written consent of the owners of said funds, as
3 required by Code Section 10145 and Regulations 2832.1, 2950(d),
4 2950(g) and 2951.

5 (b) Failed to maintain an accurate and complete control
6 record in the form of a columnar record in chronological order of
7 all trust funds received, deposited and disbursed by T/A #1
8 through T/A #4, as required by Code Section 10145 and Regulations
9 2831, 2950(d) and 2951.

10 (c) Failed to maintain an accurate and complete
11 separate record for each beneficiary or transaction, thereby
12 failing to account for all trust funds received, deposited into
13 and disbursed from by T/A #1 through T/A #4, as required by Code
14 Section 10145 and Regulation 2831.1, 2950(d) and 2951.

15 (d) Failed to perform a monthly reconciliation of the
16 balance of all separate beneficiary or transaction records
17 maintained pursuant to Regulation 2831.1 with the record of all
18 trust funds received and disbursed by T/A #1 through T/A #4, as
19 required by Code Section 10145 and Regulation 2831.2.

20 (e) Permitted unlicensed and unbonded person, Naomi
21 Felamino, to be an authorized signatory on the trust accounts T/A
22 #1 through T/A #4, and permitted Glenda Prentice, a real estate
23 salesperson who did not have a valid real estate license from
24 October 5, 2003 through March 22, 2005, to be an authorized
25 signatory on trust account T/A #4, in violation of Code Section
26
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10145 and Regulation 2834.

(f) Received undisclosed compensation by means of an earning credit agreement with the Bank of California. Bank service charges were deducted from the earning credit from trust accounts T/A #1 through T/A #4 based on amount of trust fund activity. The earnings credit arrangement was not disclosed by NORRIS to the borrowers, lenders or beneficiaries of the collection trust account, in violation of Code Section 10176(g).

(g) Misrepresented to sellers that Respondents held earnest money deposits for buyers Jimmie Lewis and William and Loyce Price, thus not having the earnest money deposit on hand when the offers were presented, in violation of Code Sections 10176(a) and/or 10177(g).

8.

The conduct of Respondents TROYSTAR and LA PETER, described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7(a)	Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g), and 2951
7(b)	Code Section 10145 and Regulation 2831

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7(c) Code Section 10145 and Regulation
2831.1

7(d) Code Section 10145 and Regulation
2831.2

7(e) Code Section 10145 and
Regulation 2834

7(f) Code Section 10176(g)

7(g) Code Section 10176(a) and/or
10177(g).

The foregoing violations constitutes cause for the suspension or
revocation of the real estate license and license rights of
TROYSTAR and LA PETER and FIERRO, under the provisions of Code
Sections 10176(a), 10176(g), 10177(d) and/or 10177(g).

9.

The overall conduct of Respondents TROYSTAR and LA
PETER constitutes negligence or incompetence. This conduct and
violation are cause for the suspension or revocation of the real
estate license and license rights of Respondents TROYSTAR and LA
PETER pursuant to Code Section 10177(g).

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2 The overall conduct of Respondent LA PETER constitutes
3 a failure on their part, as officer designated by a corporate
4 broker licensee, to exercise the reasonable supervision and
5 control over the licensed activities of TROYSTAR as required by
6 Code Section 10159.2, and to keep TROYSTAR in compliance with the
7 Real Estate Law, and is cause for the suspension or revocation of
8 the real estate license and license rights of LA PETER pursuant
9 to the provisions of Code Sections 10177(d), 10177(g) and
10 10177(h).

11 11.

12 On December 13, 1994, as amended on August 23, 1995, in
13 Case No. H-26009 LA, an Accusation was filed against Respondent
14 JAMES MICHAEL LA PETER, that resulted in discipline by revocation
15 of his real estate broker license with right to a restricted real
16 estate broker license for violations of Sections 10137, 10145
17 10148, 10160, 10161.8, 10163, 10177(d) and 10177(h) of the
18 California Business and Professions Code and Sections 2726, 2731
19 and 2752 of Title 10, Chapter 6, California Code of Regulations,
20 effective February 20, 1996.

22 12.

23 On April 4, 2002, in Case No. H-29444 LA, an Accusation
24 was filed against Respondent JAMES MICHAEL LA PETER, that
25 resulted in discipline by a stayed suspension of his real estate
26 broker license Sections 10177(f) and 10177(j) of the California
27

1 Business and Professions Code, effective October 2, 2002.

2 WHEREFORE, Complainant prays that a hearing be
3 conducted on the allegations of this Accusation and that upon
4 proof thereof, a decision be rendered imposing disciplinary
5 action against the license and license rights of Respondents
6 TROYSTAR INVESTMENTS INC. and JAMES MICHAEL LA PETER, under the
7 Real Estate Law (Part 1 of Division 4 of the Business and
8 Professions Code) and for such other and further relief as may be
9 proper under other applicable provisions of law.

10 Dated at Los Angeles, California

11 this

11 August 2006


12 Deputy Real Estate Commissioner

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24 cc: Troystar Investments Inc.
25 c/o James Michael La Peter D.O.
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