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FILED

MAY -5 2011

DEPARTMENT OF REAL ESTATE

BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 To:)
12)
13 CARLSBERG REALTY (MARYLAND))
14 INC., CARLSBERG MANAGEMENT)
15 COMPANY and WILLIAM WARREN)
GEARY, JR.)

No. H-37253 LA

ORDER TO DESIST
AND REFRAIN

(B&P Code Section 10086)

16 The Commissioner ("Commissioner") of the California Department of Real Estate
17 ("Department") caused an investigation to be made of the activities of CARLSBERG REALTY
18 (MARYLAND) INC. ("CARLSBERG REALTY"), CARLSBERG MANAGEMENT
19 COMPANY ("CARLSBERG MANAGEMENT") and WILLIAM WARREN GEARY, JR.
20 ("GEARY"). Based on that investigation, the Commissioner has determined that (a)
21 CARLSBERG REALTY and GEARY have engaged in or are engaging in acts or are attempting
22 to engage in the business of, acting in the capacity of, and/or advertising or assuming to act as
23 real estate brokers in the State of California within the meaning of Business and Professions
24 Code Sections 10131(a) (solicitation, negotiation and/or sale real property as the agent of others)
25 and under the exemption in California Financial Code Section 17006(a)(4) (performing escrows
26 where the broker is a party, or the broker is performed acts requiring a real estate license ; and
27 (b) CARLSBERG MANAGEMENT and GEARY have engaged in or are engaging in acts or are

1 attempting to engage in the business of, acting in the capacity of, and/or advertising or assuming
2 to act as real estate brokers in the State of California within the meaning of Business and
3 Professions Code Sections 10131(b) (offer, lease, rent, or solicit listing for places to rent, or
4 collected rents as the agent of others);

5 Based on that investigation, the Commissioner has determined that CARLSBERG
6 REALTY, CARLSBERG MANAGEMENT and GEARY have engaged in or are engaging in
7 acts or are attempting to engage in practices constituting violations of the California Business
8 and Professions Code ("Code") and/or Title 10, California Code of Regulations ("Regulations").
9 Based on the findings of that investigation, set forth below, the Commissioner hereby issues the
10 following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the
11 authority of Section 10086 of the Code.

12 FINDINGS OF FACT

13 1. CARLSBERG REALTY was licensed or had license rights issued by the
14 Department as a corporate real estate broker. On December 5, 2005, CARLSBERG REALTY
15 was originally licensed as a corporate real estate broker.

16 2. At all times mentioned, CARLSBERG MANAGEMENT was licensed or had
17 license rights issued by the Department as a corporate real estate broker. On August 11, 1975,
18 CARLSBERG MANAGEMENT was originally licensed as a corporate real estate broker.

19 3. At all times mentioned, GEARY was licensed or had license rights issued by
20 the Department as a real estate broker. On December 5, 1977, GEARY was originally licensed
21 as a real estate broker.

22 4. At all times material herein, CARLSBERG REALTY and CARLSBERG
23 MANAGEMENT were licensed by the Department as a corporate real estate broker by and
24 through GEARY, as the designated officer and broker responsible, pursuant to Code Sections
25 10159.2 and 10211 of the Business and Professions Code for supervising the activities requiring
26 a real estate license conducted on behalf CARLSBERG REALTY and CARLSBERG
27 MANAGEMENT by their officers, agents and employees, including GEARY, as herein set forth.

1 5. CARLSBERG REALTY and CARLSBERG MANAGEMENT are owned by
2 GEARY, who is their president and treasurer.

3 CARLSBERG REALTY (MARYLAND) INC.

4 Audit

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6 6. On September 2, 2010, the Department completed an audit examination of the
7 books and records of CARLSBERG REALTY pertaining to the real estate resales and broker-
8 controlled escrow activities described above. The audit examination covered a period of time
9 beginning on April 1, 2007 to February 28, 2010. The audit examination revealed violations of
10 the Code and the Regulations as set forth in the following paragraphs, and more fully discussed
11 in Audit Report LA 090208 & LA 090228 and the exhibits and work papers attached to said
12 audit report.
13

14 Trust Accounts

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16 7. At all times mentioned, in connection with the activities described in
17 Paragraph 4, above, CARLSBERG REALTY accepted or received funds including funds in trust
18 (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions
19 handled by CARLSBERG REALTY including property owners and tenants. CARLSBERG
20 REALTY maintained two trust accounts:

21 "Carlsberg Realty, Inc.,
22 Town & Country Escrow Division Trust Account
23 776020613"
24 First Regional Bank
25 Santa Monica, CA 90405
26 (T/A #1)

27 "Carlsberg Realty, Inc.,
Town & Country Escrow Division Trust Account
776020591"

1 First Regional Bank
2 Santa Monica, CA 90405
3 (T/A #2)

4 Violations of the Real Estate Law

5 8. In the course of activities and during the examination period described here in
6 above, Respondents CARLSBERG REALTY and GEARY, acted in violation of the Code and
7 the Regulations in that Respondents:

8 (a)(1) Permitted, allowed or caused the disbursement of trust funds from T/A #1,
9 where the disbursement of funds reduced the total of aggregate funds in T/A #1, to an amount
10 which, on February 28, 2010, the cutoff date of the audit examination, was \$100,606.22, less
11 than the existing aggregate trust fund liability to every principal who was an owner of said funds,
12 without first obtaining the prior written consent of the owners of said funds, in violation of Code
13 Section 10145 and Regulations 2832.1, 2950(g) and 2951.

14 (a)(2) Permitted, allowed or caused the disbursement of trust funds from T/A #2,
15 where the disbursement of funds reduced the total of aggregate funds in T/A #1, to an amount
16 which, on February 28, 2010, was \$36,596.90, less than the existing aggregate trust fund liability
17 to every principal who was an owner of said funds, without first obtaining the prior written
18 consent of the owners of said funds, in violation of Code Section 10145 and Regulations 2832.1,
19 2950(g) and 2951.

20 (b) Failed to maintain an accurate and complete control record in the form of a
21 columnar record in chronological order of all "Trust Funds Received - Not Placed In Broker's
22 Trust Account, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.

23 (c) Failed to place trust funds, including security deposits and tenant rents,
24 accepted on behalf of another into the hands of the owner of the funds, a neutral escrow
25 depository or into a trust fund account in the name of the trustee at a bank or other financial
26 institution not later than three business days following receipt of the funds by the broker or by
27 the broker's salesperson, in violation of Code Section 10145 and Regulation 2832(d), 2950(d)

1 and 2951.

2 (d) Misrepresented to sellers Jones, Luna and Engelhard that CARLSBERG
3 REALTY held their earnest money deposits, in violation of Code Section 10176(a).

4 (e) Failed to place trust funds from borrowers into a trust account in the name of
5 the broker as trustee at a bank or other financial institution in connection with CARLSBERG
6 REALTY 's escrow activities, in violation of Code Section 10145 and Regulations 2832(a),
7 2950(d) and 2951.

8 (f) Permitted Esther Cordero, an unlicensed and unbonded employee of
9 CARLSBERG REALTY, to be an authorized signatory on the trust accounts, into which were
10 deposited trust funds for buyers and sellers, in violation of Code Section 10145 and Regulations
11 2834(a), 2950(d) and 2951.

12 (g) Failed to maintain a separate record for each beneficiary or transaction,
13 thereby failing to account for all trust funds received, deposited and disbursed for the trust
14 accounts, in violation of Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

15 (h) While acting in the capacity of an escrow holder in two purchase and sale
16 transactions (escrow Numbers 3055 and 1458), failed to place trust funds, including earnest
17 money deposits, accepted on behalf of another into the hands of the owner of the funds, a neutral
18 escrow depository or into a trust fund account in the name of the broker at a bank or other
19 financial institution not later than the next business day following receipt of the funds by the
20 broker or by the broker's salesperson, in violation of Code Section 10145 and Regulations
21 2832(e), 2950(f) and 2951.

22 (i) CARLSBERG REALTY mixed and commingled trust funds and personal
23 funds and made unauthorized disbursements of beneficiary trust funds by transferring trust funds to
24 and from T/A #1 and T/A #2, and vice-versa, then transferring said trust funds to CARLSBERG
25 REALTY 's B/A #1, CARLSBERG REALTY's main bank account for its property management
26 activities issuing checks therefrom GEARY's operating expenses for several entities owned by
27

1 him, in violation of Code Sections 10145, 10176(e), 10176(i) and/or 10177(g) and Regulation
2 2950(g).

3 (j) CARLSBERG REALTY Failed to disclose in writing to all parties of
4 GEARY's financial interest and ownership of CARLSBERG REALTY's escrow division, in
5 violation of Code Sections 10145, 10176(g) and Regulation 2950(h).

6 (k) Used the fictitious name of "Town & Country Escrow Division", to conduct
7 licensed activities including realty resales and broker-controlled escrows without holding a
8 license bearing said fictitious business name, in violation of Code Section 10159.5 and
9 Regulation 2731.

10
11 CARLSBERG MANAGEMENT COMPANY

12 Audit

13 9. On September 30, 2010, the Department completed an audit examination of
14 the books and records of CMC pertaining to the property management activities described in
15 Paragraph 4, that require a real estate license. The audit examination covered a period of time
16 beginning on July 1, 2007 to April 30, 2010. The audit examination revealed violations of the
17 Code and the Regulations as set forth in the following paragraphs, and more fully discussed in
18 Audit Report LA 090257 and the exhibits and work papers attached to said audit report.

19 Trust Accounts

20 10. At all times mentioned, in connection with the activities described herein
21 above, CARLSBERG MANAGEMENT accepted or received funds including funds in trust
22 (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions,
23 handled by CARLSBERG MANAGEMENT including property owners and tenants, buyers and
24 sellers. CARLSBERG MANAGEMENT maintained eight trust accounts of which four are
25 scheduled below:

26 "CMC Realty Inc.,
27 776032115"

1 First Regional Bank

2 Santa Monica, CA 90405

3 (B/A #1)

4 "Carlsberg Management Company
5 CMC-Ocean Walk Shoppes
6 76012033"

7 First Regional Bank

8 Santa Monica, CA 90405

9 (B/A #2)

10 "Carlsberg Management Company/
11 AAF Rancho Carlsbad Golf Course
12 776028398"

13 First Regional Bank

14 Santa Monica, CA 90405

15 (B/A #3)

16 "Carlsberg Management Company
17 CMC-Price/O'Brien Apartments
18 776014079"

19 First Regional Bank

20 Santa Monica, CA 90405

21 (B/A #4)

22 11. In the course of activities and during the examination period described herein
23 above, Respondents CARLSBERG MANAGEMENT and GEARY, acted in violation of the
24 Code and the Regulations in that Respondents:

25 (a)(1) Permitted, allowed or caused the disbursement of trust funds from B/A #1,
26 where the disbursement of funds reduced the total of aggregate funds in B/A #1, to an amount
27 which, on April 30, 2010, the cutoff date of the audit examination, was \$2,588,107.37, less than

1 the existing aggregate trust fund liability to every principal who was an owner of said funds,
2 without first obtaining the prior written consent of the owners of said funds, in violation of Code
3 Sections 10145, 10176(i) and/or 10177(g) and Regulation 2832.1.

4 (a)(2) Caused a \$1,931,000.00 discrepancy to exist in B/A #2, the CARLSBERG
5 MANAGEMENT -Ocean Walk Shoppes trust account, where such discrepancy was caused by
6 the disbursement of trust funds from B/A #2 to B/A #1, without first obtaining the prior written
7 consent of the owners of said trust funds in B/A #2, in violation of Code Sections 10145,
8 10176(i) and/or 10177(g).

9 (a)(3) Caused a \$11,000.00 discrepancy to exist in B/A #3, the AAF Rancho
10 Carlsbad Gold Course trust account, where such discrepancy was caused by the disbursement of
11 trust funds from B/A #3 to B/A #1, without first obtaining the prior written consent of the owners
12 of said trust funds in B/A #3, in violation of Code Sections 10145, 10176(i) and/or 10177(g) and
13 Regulations 2950(g) and 2951.

14 (a)(4) Caused a \$1,100.00 discrepancy to exist in B/A #3, CARLSBERG
15 MANAGEMENT -Price/O'Brien Apartments trust account, where such discrepancy was caused
16 by the disbursement of trust funds from B/A #3 to B/A #1, without first obtaining the prior
17 written consent of the owners of said trust funds in B/A #4, in violation of Code Sections 10145,
18 10176(i) and/or 10177(g).

19 (b) Failed to maintain an accurate and complete control record in the form of a
20 columnar record in chronological order of all trust funds received, deposited and disbursed by
21 B/A #1 through B/A #4, in violation of Code Sections 10145, 10176(i) and/or 10177(g) and
22 Regulation 2831.

23 (c) Failed to perform a monthly reconciliation of the balance of all separate
24 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of
25 all trust funds received, deposited and disbursed by B/A #1, in violation of Code Section 10145
26 and Regulation 2831.2.

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1 (d) Failed to maintain a separate record for each beneficiary or transaction,
2 thereby failing to account for all trust funds received, deposited and disbursed for the trust
3 accounts, in violation of Code Section 10145 and Regulation 2831.1.

4 (e) Failed to place trust funds into a trust account in the name of the broker as
5 trustee at a bank or other financial institution in connection with CARLSBERG
6 MANAGEMENT 's property management activities, in violation of Code Section 10145 and
7 Regulation 2832(a). B/A #1 through B/A 4 were not designated as trust accounts. B/A #1 was
8 not in the name of the broker.

9 (f) Permitted Esther Cordero and Kathryn Schiebel, unlicensed and unbonded
10 employees of CARLSBERG MANAGEMENT, to be an authorized signatory on the trust
11 accounts and permitted Gerald Cockrell, an unlicensed and unbonded person, into which were
12 deposited trust funds for property owners and tenants, in violation of Code Section 10145 and
13 Regulation 2834(a).

14 (g) Trust funds, including but not limited to rents, that had been deposited into
15 CARLSBERG MANAGEMENT 's T/A #1 and T/A #2, and CMC's B/A #2 through B/A #4, and
16 subsequently transferred to B/A #1, CMC's and GEARY's operating account, it appeared that the
17 banks, American Patriot Bank (Acct. #6623512) and First Community Bank (Acct. #2011294)
18 were located in the states of Tennessee and Kansas respectively and the investors for the
19 corresponding out-of-state banks were not the exempt institutional investors, in violation of the
20 trust fund handling procedures of Code Section 10145(a).

21 (h) Failed to disclose that CARLSBERG MANAGEMENT charged property
22 owners service fees and charges for which no agreement or authorization existed. CARLSBERG
23 MANAGEMENT charged property owner Price Apt LLC a maintenance fee in the amount of
24 \$350.00 for use of CARLSBERG MANAGEMENT 's computer. CARLSBERG
25 MANAGEMENT also charged property owner Ocean Walk Shoppes a \$5,000.00 administration
26 fee for at the end of year where the administration fee was neither authorized nor contained in
27 the management agreement between CARLSBERG MANAGEMENT and Ocean Walk Shoppes,

1 in violation of Code Section 10176(g).

2 (i) CARLSBERG MANAGEMENT mixed and commingled trust funds and
3 personal funds and made unauthorized disbursements of beneficiary trust funds by transferring trust
4 funds to and from T/A #1 and T/A #2, and vice-versa, then transferring said trust funds to
5 CARLSBERG MANAGEMENT 's B/A #1, CARLSBERG MANAGEMENT 's main bank
6 account for its property management activities issuing checks therefrom GEARY's operating
7 expenses for several entities owned by him, in violation of Code Sections 10145, 10176(e),
8 10176(i) and/or 10177(g).

9 Slush Fund

10 12. Respondents CARLSBERG REALTY (MARYLAND) INC., CARLSBERG
11 MANAGEMENT COMPANY and WILLIAM WARREN GEARY JR., made unauthorized
12 transfers of trust funds from protected beneficiary trust accounts to fund Respondents' personal,
13 business and investment ventures, accompanied by falsification of trust funds records to deceive
14 the trust fund owner-beneficiaries as to the true status of their defalcated trust funds, which
15 constitutes the use of client trust funds as a slush fund.
16

17 CONCLUSIONS OF LAW

18 13. The conduct of Respondents CARLSBERG REALTY and GEARY, as
19 alleged and described in Finding 8, violated the Code and the Regulations as set forth below:
20

21 PARAGRAPH

PROVISIONS VIOLATED

- | | |
|--------|---|
| 22 (a) | Code Section 10145 and Regulations 2832.1,
2950(g) and 2951 |
| 23 (b) | Code Section 10145 and Regulations 2831, 2950(d)
24 and 2951 |
| 25 (c) | Code Section 10145 and Regulations 2832(d),
2950(d) and 2951 |
| 26 (d) | Code Section 10176(a) |

- 1 (e) Code Section 10145 and Regulation 2832(a),
2950(d) and 2951
- 2 (f) Code Section 10145 and Regulations 2834(a),
2950(d) and 2951
- 3 (g) Code Section 10145 and Regulation 2831.1,
4 2950(d) and 2951
- 5 (h) Code Section 10145 and Regulations 2832(e),
2950(f) and 2951
- 6 (i) Code Sections 10145, 10176(e), 10176(i) and/or
7 10177(g)
- 8 (j) Code Section 10145, 10176(g) and Regulation
2950(h)
- 9 (k) Code Section 10159.5 and Regulation 2731

11
12 14. The conduct of Respondents CARLSBERG MANAGEMENT and GEARY,
13 as alleged and described in Paragraph 11, above, violated the Code and the Regulations as set
14 forth below:

15	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
16	(a)	Code Sections 10145, 10176(i) and/or 10177(g) and
17		Regulation 2832.1
18	(b)	Code Section 10145, 10176(i) and/or 10177(g) and
19		Regulation 2831
20	(c)	Code Section 10145, 10176(i) and/or 10177(g) and
21		Regulation 2831.2
22	(d)	Code Sections 10145, 10176(a) and Regulation
23		2831.1
24	(e)	Code Sections 10145, 10176(i) and/or 10177(g) and
25		Regulation 2832(a)
26	(f)	Code Section 10145 and Regulations 2834(a)
27	(g)	Code Section 10145(a)
	(h)	Code Section 10176(g)

1 (i)

Code Sections 10145, 10176(e), 10176(i) and/or
10177(g)

2
3 15. The use of client trust funds as a slush fund is in violation of, and would be
4 cause for disciplinary action pursuant to Code Sections:

5 (a) 10176(a) for substantial misrepresentation.

6 (b) 10176(b) for making false promises of a character likely to influence,
7 persuade or induce buyers and sellers, property owners and renters into believing their escrowed
8 funds, deposits and rents maintained in bona fide trust accounts.

9 (c) 10176(e) for commingling beneficiary trust funds.

10 (d) 10176(i) for fraud and dishonest dealing in connection with the ongoing
11 systematic scheme to convert client-beneficiary trust funds for use as a private banking reserve
12 fund for Respondents' own purposes.

13 (e) 10176(i) for conversion of trust funds.

14 (f) 10176(i) for concealment of trust fund status by falsification of trust fund
15 accounting records.

16 (g). 10176(i) for fraud in concealment the conversion of trust funds by classifying
17 \$1,931,000.00 as a loan to Respondents.

18 (h) 10177(i) for breach of fiduciary for the slush fund defalcation scheme; and

19 (i) 10177(g) for negligence or incompetence in exposing client trust funds to
20 seizure for by federal and California tax authorities and general creditors by Respondents,
21 transfer to unprotected non trust fund accounts.

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