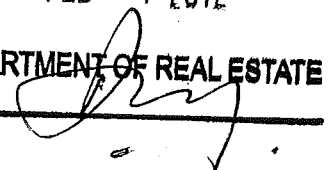


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2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

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FILED

FEB - 1 2012

DEPARTMENT OF REAL ESTATE
BY: 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13)
14 EINSTEIN MORTGAGE AND REALTY INC.) No. H- 37824 LA
15 doing business as Einstein Realty; and)
16 SALIM KABIR, individually and as designated)
17 officer of Einstein Mortgage and Realty Inc.) ACCUSATION
18 Respondents.)
19)
20)

21 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
22 of California, for cause of Accusation against EINSTEIN MORTGAGE AND REALTY INC.
23 doing business as Einstein Realty, and SALIM KABIR, alleges as follows:

24 1.

25 The Complainant, Maria Suarez, acting in her official capacity, makes this
26 Accusation.

27 2.

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

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3.

License Status

A. EINSTEIN MORTGAGE AND REALTY INC. (EMRI). At all times mentioned, Respondent EMRI was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On July 26, 2005, EMRI was originally licensed as a corporate real estate broker. Respondent EMRI was authorized to act by and through Respondent SALIM KABIR as EMRI's broker designated pursuant to Code Sections 10159.2 and 10211 to be responsible for ensuring compliance with the Real Estate Law.

B. SALIM KABIR. At all times mentioned, Respondent SALIM KABIR was licensed or had license rights issued by the Department as a real estate broker. On May 24, 2005, KABIR was originally licensed as a real estate broker. On July 26, 2005, became the designated officer of EMRI.

Brokerage

4.

At all times mentioned, in the City of Corona, County of Los Angeles, EMRI and KABIR acted as real estate brokers conducting licensed activities within the meaning of Code Section 10131(a). Respondents engaged in the business of a residential resale brokerage. Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker, including the solicitation for listings of and the negotiation of the sale of real property as the agent of others.

FIRST CAUSE OF ACCUSATION

(Audit)

5.

On August 17, 2011, the Department completed an audit examination of the books and records of EMRI pertaining to the residential resale and property management activities described in Paragraph 4, which require a real estate license. The audit examination covered a period of time beginning on January 1, 2009 and ending on April 30, 2011.

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Trust Accounts

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, EMRI accepted or received funds including funds in trust (hereinafter "trust funds"). Thereafter EMRI made unauthorized disbursements of such trust funds. From time to time herein mentioned during the investigative period, said trust funds were deposited and/or maintained by EMRI in the bank accounts as follows:

"Coast Property Management Group, LLC Trust Account
No. xxxxxx 2472
U S Bank
St. Paul, MN

(T/A 1)

"Coast Property Management Group, LLC Trust Account
No. xxxxxx 6418
Pacific Premier Bank
San Bernardino, CA

(T/A 2)

7.

In the course of activities described in Paragraphs 4 and 6, herein above, and during the audit examination period in Paragraph 5, Respondents EMRI and KABIR acted in violation of the Code and the Regulations in that Respondents:

(a) Permitted, allowed or caused the disbursement of trust funds from the combined escrow trust accounts T/A 1 and T/A 2, where the disbursement of funds reduced the total of aggregate funds in the trust accounts set forth below, to an amount which was less \$54,929.93 than the existing aggregate trust fund liability of EMRI 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 Regulation 2832.1. On May 26, 2011, the shortage in the trust accounts was repatriated.

1 (b)(1)Used the fictitious names of "Coast Property Management", "Coast Property
2 Management Group and "Coast Property Management Group LLC" to conduct licensed activities
3 including a property management brokerage, without first obtaining from the Department a
4 license bearing said fictitious business name, in violation of Code Section 10159.5 and
5 Regulation 2731.

6 (b)(2) Conducted property management activities at 2601 Del Rosa Ave., #200,
7 San Bernardino, California, prior to obtaining branch office licenses from the Department, in
8 violation of Code Section 10163 and Regulation 2715.

9 (c) Failed to maintain an accurate and complete control record in the form of a
10 columnar record in chronological order of all trusts funds received and disbursed by the property
11 management activity, in violation of Code Section 10145 and Regulation 2831.
12

13 (d) Failed to perform a monthly reconciliation of the balance of all separate
14 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all
15 trust funds received and disbursed by the escrow trust account, in violation of Code Section
16 10145 and Regulation 2831.2.
17

18 (e) T/A 1 and T/A 2 were not in the name of the broker as trustee at a bank or
19 other financial institution, nor designated as a trust account, in violation of Code Section 10145
20 of the Code and Regulation 2832(a).
21

22 (f)(1) Permitted four unlicensed and unbonded persons, to wit, Vickie Oppelt,
23 Scott Oppelt, Karrie Daugherty and Erika Flores to be an authorized signatories on trust accounts
24 T/A 1 and T/A 1, into which were deposited trust funds for buyers and sellers, in violation of
25 Code Section 10145 and Regulation 2834(a); and
26

27 ///

1 - (f)(2) KABIR was neither a signatory on T/A 1 nor T/A 2, in violation of Code
2 Section 2834(b).

3 (g) KABIR had no system in place for regularly monitoring EMRI's compliance
4 with the Real Estate Law especially in regard to establishing policies to review and handle (1)
5 trust funding handling procedures; and (2) unlicensed persons, to wit, Vickie Oppelt and Scott
6 Oppelt performing activities requiring a real estate license, in violation of Code Sections 10159.2
7 and 10177(h) and Regulation 2725.

8 (h) Failed to retain all records of EMRI's activity during the in period requiring a
9 real estate broker license, including the consolidated general ledger of T/A 2, cancelled checks
10 for T/A 2 and the management agreement for the real property located a 1107 E. 35th Street, in
11 violation of Code Section 10148.

12 (i) Failed to retain the salesperson license certificate for Michael Mueting, in
13 violation of Code Section 10160 and Regulation 2753.

14 Disciplinary Statutes and Regulations

15 8.

16 The conduct of Respondents EMRI and KABIR, as alleged and described in
17 Paragraph 7, above, violated the Code and the Regulations as set forth below:

18 PARAGRAPH

19 PROVISIONS VIOLATED

20 7(a)

21 Code Section 10145 and Regulation 2832.1

22 7(b)

23 Code Section 10159.5 and Regulation 2731 and
24 Code Section 10163 and Regulation 2715
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7(c) Code Section 10145 and Regulation 2831

7(d) Code Section 10145 and Regulation 2831.2

7(e) Code Section 10145 and Regulation 2832(a)

7(f) Code Section 10145 and Regulation 2834

7(g) Code Sections 10159.2, 10177(h) and Regulation 2725 (KABIR)

7(h) Code Section 10148

7(i) Code Section 10160 and Regulation 2753

The foregoing violations constitute cause for discipline of the real estate license and license rights of Respondents EMRI and KABIR under the provisions of Code Sections 10177(d), and/or 10177(g).

SECOND CAUSE OF ACCUSATION
(Employment/Compensation of Unlicensed Persons)

9.

KABIR employed and compensated Vickie Oppelt and Scott Oppelt, as property management agents who KABIR knew were not licensed by the Department as a real estate broker or as a real estate salesperson employed by a real estate broker, for performing acts for which a real estate license is required, including conducting an unlicensed property management brokerage operating under the names of "Coast Property Management", "Coast Property Management Group and "Coast Property Management Group LLC", in violation of Code Section 10137.

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THIRD CAUSE OF ACCUSATION
(Negligence)

10.

The overall conduct of Respondent EMRI and KABIR constitutes negligence and is cause for discipline of the real estate license and license rights of said Respondent pursuant to the provisions of Code Section 10177(g).

FOURTH CAUSE OF ACCUSATION
(Breach of Fiduciary Duty)

11.

The overall conduct, acts and omissions of Respondent KABIR constitutes a breach of fiduciary duty owed his real estate clientele of buyers and sellers and owners, property owners and tenants, and trust fund beneficiaries for KABIR's real estate brokerage services, of good faith, trust, confidence and candor, within the scope of his relationship with his clientele agreed relationship, in violation of Code Section 10177(g). Additionally, by failing to deposit rental receipts and security deposits into a protected trust accounts, as set in Paragraph 7(f), above, KABIR exposed trust funds to the taxing authorities, including the Internal Revenue Service and Franchise Tax Board and exposed trust funds belonging to property owners and renters to the general creditors of all his real estate clientele.

FIFTH CAUSE OF ACCUSATION
(Supervision and Compliance)

12.

The overall conduct of Respondent KABIR constitutes a pretermission on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of EMRI as required by Code Section 10159.2 and Regulation 2725, and to keep EMRI in compliance with the Real Estate Law, with specific regard to management, property management, trust fund handling, and for permitting unlicensed persons, Vickie Oppelt and Scott Oppelt, to conduct property management activities including permitting the Oppelt's to being signatories of EMRI's trust accounts, T/A 1 and T/A 2,

1 while Respondent KABIR himself was not a signatory, and is cause for discipline of the real
2 estate license and license right of Respondent KABIR, pursuant to the provisions of Code
3 Sections 10177(d), 10177(g) and 10177(h).

4
5 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
6 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
7 action against the license and license rights of Respondents EINSTEIN MORTGAGE AND
8 REALTY INC. and SALIM KABIR, under the Real Estate Law (Part 1 of vision 4 of the
9 Business and Professions Code) and for such other and further relief as may be proper under
10 other applicable provisions of law including but not limited to costs of audit and restitution.

11 Dated at Los Angeles, California

12
13 this 4 January 2012.

14 
15 Deputy Real Estate Commissioner

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23 cc: Einstein Mortgage and Realty Inc.
24 c/o Salim Kabir D.O.
25 Maria Suarez
26 Sacto
27 Audits – Lisa Kwong