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FILED

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1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, CA 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

DEPARTMENT OF REAL ESTATE
BY: *K. Mederhals*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 ALICIA PARK REAL ESTATE, INC.;)
14 and HOWARD ERWIN HARMATZ)
15 individually and as)
16 designated officer of)
17 Alicia Park Real Estate, Inc.,)
18 Respondents,)

No. H- 38234 LA
FIRST AMENDED
ACCUSATION

19 This Accusation amends the Accusation filed on
20 July 3, 2012.

21 The Complainant, Maria Suarez, a Deputy Real Estate
22 Commissioner of the State of California, for cause of accusation
23 against ALICIA PARK REAL ESTATE, INC., and HOWARD ERWIN HARMATZ
24 individually and as designated officer of Alicia Park Real
25 Estate, Inc., alleges as follows:

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1 1. The Complainant, Maria Suarez, acting in her
2 official capacity as a Deputy Real Estate Commissioner of the
3 State of California, makes this Accusation against ALICIA PARK
4 REAL ESTATE, INC., and HOWARD ERWIN HARMATZ.

5 2. ALICIA PARK REAL ESTATE, INC., and HOWARD ERWIN
6 HARMATZ individually and as designated officer of Alicia Park
7 Real Estate, Inc. (hereinafter referred to as "Respondents") are
8 presently licensed and/or have license rights under the Real
9 Estate Law (Part 1 of Division 4 of the Business and Professions
10 Code, hereinafter Code).

11 3. At all times herein mentioned, Respondents ALICIA
12 PARK REAL ESTATE, INC., and HOWARD ERWIN HARMATZ were licensed as
13 a real estate broker. Respondent HARMATZ was the designated
14 officer and pursuant to Code Section 10159.2 was responsible for
15 the supervision and control of the activities conducted on behalf
16 of the corporation by its officers and employees as necessary to
17 secure full compliance with the provisions of the real estate law
18 including supervision of salespersons licensed to the corporation
19 in the performance of acts for which a real estate license is
20 required.

21 4. At all times material herein, Respondents engaged
22 in the business of, acted in the capacity of, advertised or
23 assumed to act as a real estate broker in the State of California
24 within the meaning of Sections 10131(a) and (d) of the Code
25 including soliciting buyers and sellers, negotiating the sale of
26 real property, and negotiating loans on real property.
27 Respondent performed real estate broker escrows for principals

1 where it was acting as an agent in the transaction pursuant to
2 Financial Code Section 17006(a)(4).

3 5. On or about February 22, 2012, the Department
4 completed an examination of Respondent ALICIA PARK REAL ESTATE,
5 INC.'s books and records, pertaining to the activities described
6 in Paragraph 4 above, covering a period from January 1, 2009,
7 through November 30, 2011, which examination revealed violations
8 of the Code and of Title 10, Chapter 6, California Code of
9 Regulations (hereinafter Regulations) as set forth below.

10 6. The examination described in Paragraph 5, above,
11 determined that, in connection with the activities described in
12 Paragraph 4 above, Respondent accepted or received funds,
13 including funds in trust (hereinafter "trust funds") from or on
14 behalf of principals, and thereafter made deposit or disbursement
15 of such funds.

16 7. In the course of activities described in Paragraphs
17 4 through 6 and during the examination period described in
18 Paragraph 5, Respondents ALICIA PARK REAL ESTATE, INC., and
19 HOWARD ERWIN HARMATZ acted in violation of the Code and the
20 Regulations as follows, and as more specifically set forth in
21 Audit Reports Nos. LA 100292, 110132, and 110133, and related
22 exhibits:

23 a. Violated Code Section 10145 and Regulation 2832.1
24 by maintaining as of November 30, 2011 a trust account shortage
25 of \$6,823.24 in trust account 1891.....

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1 b. Violated Code Section 10176(g) and Regulation 2951
2 by depositing overcharged credit report fees into an account
3 which was not a trust account.

4 c. Violated Code Sections 10145, 10176(e) and
5 Regulation 2832 by depositing overcharged credit report fees into
6 an which was not a trust account.

7 d. Violated Code Section 10145 and Regulation 2834 by
8 allowing signatories that were not licensed or bonded.
9 Respondent HARMATZ was not an authorized signatory on all trust
10 accounts.

11 e. Violated Code Section 10145 and Regulation 2831 by
12 maintaining a control record that was not accurate and complete.

13 f. Violated Code Section 10145 and Regulation 2831.1
14 by maintaining separate records that were not accurate and
15 complete.

16 g. Violated Code Section 10145 and Regulation 2831.2
17 by not maintaining complete and accurate monthly reconciliations
18 of all the separate records to the control record for the escrow
19 activity.

20 h. Violated Code Section 10240 and Regulation 2840 by
21 not maintaining a copy of the Mortgage Loan Disclosure Statement
22 in each file. The MLDS was not always delivered to the borrower
23 in a timely manner. Not all MLDSs were signed by the borrower.

24 j. Violated Code Section 10166.02(a) by not notifying
25 the Department of Real Estate when real estate salesperson David
26 H. acted in the capacity of a mortgage loan originator.

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1 8. The conduct, acts and/or omissions of Respondents
2 ALICIA PARK REAL ESTATE, INC., and HOWARD ERWIN HARMATZ, as
3 alleged above, subjects their real estate licenses and license
4 rights to suspension or revocation pursuant to Sections 10176(e),
5 10176(g), 10177(d), and/or 10177(g) of the Code.

6
7 FAILURE TO SUPERVISE

8 9. The conduct, acts and/or omissions of Respondent
9 HARMATZ, in failing to ensure full compliance with the Real
10 Estate Law is in violation of Code Section 10159.2 and subjects
11 his real estate licenses and license rights to suspension or
12 revocation pursuant to Sections 10177(d), 10177(g), and/or
13 10177(h) of the Code.

14 COST RECOVERY

15 Code Section 10106 provides, in pertinent part, that in
16 any order issued in resolution of a disciplinary proceeding
17 before the department, the commissioner may request the
18 administrative law judge to direct a licensee found to have
19 committed a violation of this part to pay a sum not to exceed the
20 reasonable costs of the investigation and enforcement of the
21 case.

22 WHEREFORE, Complainant prays that a hearing be
23 conducted on the allegations of this Accusation and that upon
24 proof thereof, a decision be rendered imposing disciplinary
25 action against all licenses and license rights of Respondents
26 ALICIA PARK REAL ESTATE, INC., and HOWARD ERWIN HARMATZ
27 individually and as designated officer of Alicia Park Real
Estate, Inc. under the Real Estate Law (Part 1 of Division 4 of

1 the Business and Professions Code), for the cost of investigation
2 and enforcement as permitted by law, and for such other and
3 further relief as may be proper under other applicable provisions
4 of law.

5 Dated at Los Angeles, California

6 this 7th day of January, 2013.

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10 MARIA SUAREZ
11 Deputy Real Estate Commissioner
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24 cc: Alicia Park Real Estate, Inc.
25 Howard Erwin Harmatz
26 Maria Suarez
27 Sacto.