

FILED

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DEPARTMENT OF REAL ESTATE
BY: CR

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-38541 LA
12 RICHARD GARCIA,) A C C U S A T I O N
13)
14 Respondent.)
15)

16 The Complainant, Veronica Kilpatrick, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against RICHARD GARCIA ("Respondent"), is informed
19 and alleges as follows:

20 1.

21 The Complainant, Veronica Kilpatrick, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation in her official capacity.

24 2.

25 From January 7, 1972, through the present, Respondent
26 has been licensed by the Department of Real Estate
27 ("Department") as a real estate broker, Department ID 00340994.
28 Respondent is licensed to do business as Citizens National Real

1 Estate Co. and Citizens National Financial Services.

2 3.

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

7 4.

8 Pursuant to Code Section 10131, a real estate broker
9 is defined as a person who: (b) leases or rents or offers to
10 lease or rent, or places for rent, or solicits listings of
11 places for rent, or solicits prospective tenants, or negotiates
12 the sale, purchase, or exchange of leases on real property, or
13 on a business opportunity, or collects rents from real property,
14 or improvements thereon, or from business opportunities.

15 5.

16 Code Section 10131.2 defines a real estate broker as a
17 person who engages in the business of claiming, demanding,
18 charging, receiving, collecting or contracting for the
19 collection of an advance fee in connection with any employment
20 undertaken to promote the sale or lease of real property or of a
21 business opportunity by advance fee listing, advertisement or
22 other offering to sell, lease, exchange or rent property or a
23 business opportunity, or to obtain a loan or loans thereon.

24 6.

25 Code Section 10167(a) defines a prepaid rental listing
26 service as the business of supplying prospective tenants with
27 listings of residential real properties for real tenancy, by
28 publication or otherwise, pursuant to an arrangement under which

1 the prospective tenants are required to pay an advance or
2 contemporaneous fee (1) specifically to obtain listings or (2)
3 to purchase any other product or service in order to obtain
4 listings, but which does not otherwise involve the negotiation
5 of rentals by the person conducting the service.

6 FIRST CAUSE OF ACCUSATION

7 (Audit SD 110051)

8 7.

9 At all times mentioned, in the State of California,
10 Respondent acted as a real estate broker and conducted licensed
11 activities within the meaning of:

12 A. Code Section 10131(b). Respondent performed
13 property management services, solicited places to rent, and/or
14 solicited prospective tenants.

15 B. Code Section 10167. Respondent operated a prepaid
16 rental listing service.

17 AUDIT OF RICHARD GARCIA

18 8.

19
20 On April 23, 2012, the Department completed an audit
21 examination of the books and records of Respondent pertaining to
22 the (1) property management and (2) prepaid rental listing
23 service activities described in Paragraph 7, that require a real
24 estate license. The audit examination covered a period of time
25 beginning on April 1, 2009 to March 31, 2012. The audit
26 examination revealed violations of the Code and the Regulations
27 as set forth in the following paragraphs, and more fully set
28

1 forth in Audit Report SD 110051 and the exhibits and work papers
2 attached thereto.

3 TRUST ACCOUNT

4 9.

5 During the audit period mentioned in Paragraph 8,
6 above, in connection with the property management activities
7 described in Paragraph 7, above, Respondent engaged in managing
8 real properties for others for compensation. Respondent
9 collected rents and security deposits for real property for
10 others. Respondent did not maintain a trust account during all
11 times mentioned.
12

13
14 VIOLATIONS OF THE REAL ESTATE LAW

15 10.

16
17 In the course of activities described in Paragraph 7,
18 above, and during the examination period described in
19 Paragraph 8, Respondent acted in violation of the Code and the
20 Regulations in that he:
21

22 Property Management

23 (a) Failed to maintain accurate and complete records
24 of trust funds received and not placed in broker's trust account
25 in connection with the property management activity, in
26 violation of Code Section 10145 and Regulation 2831.

27 ///

1 Prepaid Rental Listing Service

2 (b) Respondent provided prospective tenants Melanie
3 G. and Stephanie A. with written contracts entitled "Application
4 for the purpose of pre-qualification to purchase, rent or lease
5 a property or to obtain a real estate loan" prior to, or
6 contemporaneously with, charging and accepting a \$195 cash fee
7 from the prospective tenants to obtain rental listings. Said
8 written contracts were not filed with the Department prior to
9 use and did not contain the required "right to refund"
10 provisions, in violation of Code Sections 10167.9 and 10167.10.
11

12 (c) Respondent failed to retain all records and
13 documents related to his prepaid rental listing service
14 activities, in violation of Code sections 10167.9(b)(1) and
15 10148.
16

17 Business and Mailing Address

18 (d) Respondent failed to timely notify the Department
19 that the location and address of his principle place of business
20 and mailing address had changed, in violation of Code Section
21 10162 and Regulation 2715.
22

23 11.

24 Respondent's conduct, as described in Paragraph 10,
25 above, violated the Code and the Regulations as set forth below:
26

27 ///

28 ///

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
10(a)	Code Section 10145 and Regulation 2831
10(b)	Code Sections 10167.9 and 10167.10
10(c)	Code Section 10167.9(b)(1) and 10148
10(d)	Code Section 10162 and Regulation 2715

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of Respondent RICHARD GARCIA under the provisions of Code Sections 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION
(Dishonest Dealing or Fraud)

12.

There is hereby incorporated in this Second, separate Cause of Accusation, all of the allegations contained in Paragraphs 1 through 11, above, with the same force and effect as if herein fully set forth.

13.

Stephanie A.

On July 7, 2010, prospective tenant Stephanie A. contacted Respondent, who was doing business as Citizens National Real Estate Co., in response to Respondent's advertisement for rental properties available in Riverside County. Respondent provided Stephanie A. with a written agreement and charged and collected a \$195 fee from Stephanie A. for a rental listing of properties that purportedly met

1 Stephanie A.'s required specifications for a rental property.
2 The rental listing that Respondent provided to Stephanie A.
3 failed to meet her specifications including the availability of
4 the property and the maximum acceptable monthly rental.
5 Stephanie A. contacted owners of some of the properties on the
6 rental listing given to her by Respondent and discovered that
7 Respondent was not authorized to list the properties on behalf
8 of the owners, managers or any authorized agents. Respondent
9 failed to refund the \$195 fee to Stephanie A. despite her
10 request for a refund.

11 14.

12 Melanie G.

13 On October 23, 2010, prospective tenant Melanie G.
14 contacted Respondent, who was doing business as Citizens
15 National Real Estate Co., in response to Respondent's
16 advertisement for rental properties available in San Bernardino
17 and Riverside counties. Respondent provided Melanie G. with a
18 written agreement and charged and collected a \$195 fee from
19 Melanie G. for a rental listing of properties that purportedly
20 met Melanie G.'s required specifications for a rental property.
21 The rental listing that Respondent provided to Melanie G. failed
22 to meet her specifications including the number of bedrooms
23 required and the maximum acceptable monthly rental. Melanie G.
24 contacted owners of some of the properties on the rental listing
25 given to her by Respondent and learned that Respondent was not
26 authorized to list the properties on behalf of the owners,
27 managers or any authorized agents. Respondent failed to refund
28 the \$195 fee to Melanie G. despite her request for a refund.

1 15.

2 The conduct, acts and/or omissions of Respondent as
3 described in Paragraphs 13 and 14, above, are in violation of
4 Code Sections 10167.10 and 10167.11, and are grounds for the
5 suspension or revocation of the real estate license and license
6 rights of Respondent under the provisions of Code Section
7 10167.12(a)(1).

8 16.

9 Business and Professions Code Section 10167.10(e)
10 provides that "[I]f the licensee fails to make a refund as
11 provided in this section and if the denial or delay in making
12 the refund is found to have been done in bad faith, a court of
13 appropriate jurisdiction, including a small claims court, shall
14 be empowered to award damages to the plaintiff in an amount not
15 to exceed one thousand dollars (\$1,000) in addition to actual
16 damages sustained by the plaintiff. If the licensee refuses or
17 is unable to pay the damages awarded by the court, the award may
18 be satisfied out of the security required under Section
19 10167.7."

20 17.

21 Code Section 10106 provides, in pertinent part, that
22 in any order issued in resolution of a disciplinary proceeding
23 before the Department of Real Estate, the Commissioner may
24 request the administrative law judge to direct a licensee found
25 to have committed a violation of this part to pay a sum not to
26 exceed the reasonable costs of the investigation and enforcement
27 of the case.
28

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 all licenses and/or license rights of Respondent
5 RICHARD GARCIA under the Real Estate Law (Part 1 of Division 4
6 of the Business and Professions Code), for the cost of
7 investigation and enforcement as permitted by law, and for such
8 other and further relief as may be proper under other provisions
9 of law.

10 Dated at San Diego, California

11 this 6 day of November, 2012.

12
13 
14 VERONICA KILPATRICK
15 Deputy Real Estate Commissioner

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22
23 cc: Richard Garcia
24 Veronica Kilpatrick
25 Sacto
26
27
28