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JAN 22 2013

DEPARTMENT OF REAL ESTATE

BY: 

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation

No. H-38666 LA

JAMES MYRON SETTLE, )  
individually, and doing )  
business as Gibraltar )  
Realty, )  
Respondent. )  
\_\_\_\_\_ )

A C C U S A T I O N

The Complainant, Robin Trujillo, a Deputy Real Estate  
Commissioner of the State of California, for cause of Accusation  
against JAMES MYRON SETTLE, individually, and doing business as  
Gibraltar Realty, is informed and alleges as follows:

1.

The Complainant, Robin Trujillo, a Deputy Real Estate  
Commissioner of the State of California, makes this Accusation in  
her official capacity.

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code") as a real estate broker. At all times relevant herein Respondent was authorized to use the fictitious business name Gibraltar Realty.

3.

At all times herein mentioned, Respondent, on behalf of others and in expectation of compensation, engaged in the business, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131 subpart (a) of the Code, including soliciting prospective sellers or purchasers of real property, and negotiating for the purchase, sale or exchange of real property.

4.

In or around January, 2010, Tiffani M. and Reginald Gregory M. (the "Owners") owned the real property at 8011 Canby Avenue, #4, Reseda, California 91335 (the "Property"). The Property was subject to short sale approval by Bank of America.

5.

In or around January, 2010, Tiffani M. contacted Respondent to list the Property for sale.

6.

On or about January 22, 2010, at Respondent's direction the Owners signed a residential listing agreement ("Listing

1 Agreement"), which included a short sale addendum, listing the  
2 Property for sale for \$200,000 and providing for a broker's  
3 commission of 7%. By the terms the Listing Agreement Respondent  
4 was the listing broker for the sale of the Property. On the same  
5 date, the Owners provided Respondent with the keys to the  
6 Property, as well as the associated gate opener and parking pass.  
7 Respondent failed to provide the Owners with a copy of the  
8 Listing Agreement.

9 7.

10 On or about January 22, 2010, Respondent entered into a  
11 short sale negotiation agreement with The Mortgage Solution  
12 Network ("Mortgage Solution"), a licensed real estate broker. By  
13 the terms of the foregoing agreement Mortgage Solution agreed to  
14 negotiate the short sale of the Property on behalf of the Owners.  
15

16 8.

17 On or about February 11, 2010, and again on March 19,  
18 2010, offers to purchase the Property were made by separate  
19 buyers acting through Urvish Patel ("Patel"), a licensed real  
20 estate salesperson using Respondent's fictitious business name,  
21 Gibraltar Realty. Each offer recited that Respondent, doing  
22 business as Gibraltar Realty, was the listing broker. Respondent  
23 failed to provide the Owners with copies of these offers or to  
24 disclose the existence of and obtain consent to the dual agency  
25 created by virtue of the Patel's representation of the buyers.  
26 Neither offer resulted in a sale of the Property.

27 9.

1 Without the Owners' knowledge or consent, Respondent  
2 thereafter entered into a referral agreement with LDT Investments  
3 Inc. ("LDT"), which was at that time a licensed real estate  
4 broker. By the terms of the referral agreement, Respondent was to  
5 receive a referral payment from LDT in exchange for its agreement  
6 to perform short sale negotiations for the Property's sale. On or  
7 about May 7, 2010, LDT issued a check in the amount of \$7,000  
8 made payable to Respondent pursuant to the foregoing referral  
9 agreement.

10 10.

11 Without the Owners' knowledge or consent, on or about  
12 May 22, 2010, Respondent delivered the keys, the gate opener and  
13 parking pass for the Property to an agent of LDT.

14 11.

15 On or about June 11, 2010, Respondent cancelled the  
16 short sale negotiation agreement earlier made with Mortgage  
17 Solution.

18 12.

19 On or about October 20, 2010, an offer to purchase the  
20 Property for \$180,000 was made. Though the offer was purportedly  
21 accepted by the Owners, the offer was not presented to them and  
22 they did not sign its acceptance. Neither did Respondent provide  
23 the Owners with a copy of the offer. The offer recited that the  
24 Owners were represented in the transaction by Vadim Barash  
25 ("Barash"), a licensed real estate broker, and that the buyer was  
26 O.K.D. Investments, Inc., represented by Adrian Hernandez, doing  
27

1 business as Pacific West Real Estate and Associates. The Owners  
2 never met with or spoke to Barash or authorized his  
3 representation of them. Neither did the Owners authorize Barash  
4 to represent them. The offer was submitted to Bank of America for  
5 short sale approval but was not approved.

6 13.

7 On or about January 19, 2011, another offer was made on  
8 the Property. This offer involved the same parties as described  
9 in Paragraph 12, above, except that the buyer was identified as  
10 Omar Jimenez. The purchase price was \$145,000. As is alleged in  
11 the transaction described in Paragraph 12, above, the Owners had  
12 no knowledge of the offer at the time it was made and did not  
13 execute an acceptance of its terms. Respondent failed to provide  
14 the Owners with a copy of the offer. The Owners did not know  
15 Barash or authorize his representation of them. The offer was  
16 presented to Bank of America for short sale approval but was not  
17 approved.  
18

19 14.

20 Subsequent to the presentation of the short sale offers  
21 to Bank of America which are described in Paragraphs 12 and 13,  
22 above, the Owners learned that LDT had repeatedly failed to  
23 provide items that Bank of America demanded as part of the short  
24 sale process. On or about April 22, 2011, the Owners and the  
25 Respondent agreed in writing with LDT to cancel the short sale  
26 negotiation agreement. The cancelation agreement provided that  
27 LDT pay the Owners the sum of \$1,500, which it did on April 27,

2011.

15.

On or about June 23, 2011, an offer to purchase the Property for \$150,000 was received from a buyer represented by Vicky Menzies using Respondent's fictitious business name Gibraltar Realty. The offer correctly showed Respondent as the listing broker. Though Respondent verbally advised the Owners of the existence of the foregoing offer, the Owners did not execute an acceptance of the offer or receive a copy of the agreement from Respondent. The offer was submitted to Bank of American for short sale approval.

16.

On or about June 24, 2011, Tiffani M. signed an agreement authorizing Respondent to negotiate the short sale of the Property with Bank of America.

17.

On or about September 9, 2011, the Owners notified Respondent that they were terminating Respondent's services effective September 10, 2011. Along with the notification the Owners requested that Respondent return the keys, gate opener and parking pass for the Property to them. At that time Respondent informed the Owners for the first time of the following: (a) LDT was in possession of the keys, the gate opener and the parking pass; (b) LDT had been acting as both broker and buyer for the Property; and (c) the Property was being occupied by a tenant. The Owners had at no time given Respondent authorization to give

1 the keys and other items to LDT, or to anyone else, and, further,  
2 had not authorized the rental of the Property by anyone.

3 18.

4 On or about September 12, 2011, the Owners requested  
5 that Respondent provide them with a copy of the listing agreement  
6 entered into in January, 2010. Respondent failed and refused to  
7 provide the requested copy.

8 19.

9 On or about September 21, 2011, the Owners filed an  
10 unlawful detainer action to evict the tenants who were occupying  
11 the Property without their knowledge or consent. The action  
12 failed to result in the eviction of the tenants.

13 20.

14 On or about January 31, 2012, the Property was  
15 foreclosed by Bank of America.

16 21.

17 The conduct, acts and/or omissions of Respondent, as  
18 described herein above, constitutes a violation of Code Sections  
19 10142, 10176(a), 10176(d), 10176(g), 10176(i) and 10177(j), and  
20 is cause for the suspension or revocation of all real estate  
21 licenses and license rights of Respondent under the provisions of  
22 said Code Sections as well as of Code Sections 10177(d) and/or  
23 10177(g).

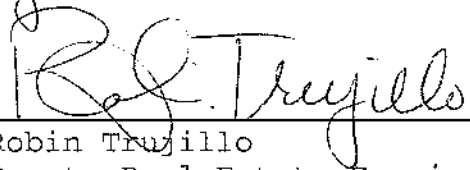
24 Code Section 10106 provides, in pertinent part, that in  
25 any order issued in resolution of a disciplinary proceeding  
26 before the department, the Commissioner may request the  
27

1 administrative law judge to direct a licensee found to have  
2 committed a violation of this part to pay a sum not to exceed the  
3 reasonable costs of investigation and enforcement of the case.

4 WHEREFORE, Complainant prays that a hearing be  
5 conducted on the allegations of this Accusation and that upon  
6 proof thereof, a decision be rendered imposing disciplinary  
7 action against all the licenses and license rights of Respondent  
8 JAMES MYRON SETTLE under the Real Estate Law, for the cost of  
9 investigation and enforcement as permitted by law, and for such  
10 other and further relief as may be proper under other applicable  
11 provisions of law.

12 Dated at Los Angeles, California

13 this 22 day of January 2013.

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16 Robin Trujillo  
17 Deputy Real Estate Commissioner

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19  
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23  
24  
25 cc: JAMES MYRON SETTLE  
26 Robin Trujillo  
27 Sacto.