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FEB 26 2013

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DEPARTMENT OF REAL ESTATE

BY: 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H- 38732 LA
)	.
12 DARYL ANTHONY SMITH,)	
13 doing business as Daryl Smith)	<u>ACCUSATION</u>
14 Team, Smith & Associates, and)	
15 Smith & Associates Realty,)	
)	
16 Respondent,)	
)	

17 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
18 of California acting in her official capacity, for cause of Accusation against DARYL ANTHONY
19 SMITH doing business as Daryl Smith Team, Smith & Associates, and Smith & Associates
20 Realty, is informed and alleges as follows:
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22 1.

23 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
24 of California, makes this Accusation in her official capacity.

25 2.

26 All references to the "Code" are to the California Business and Professions Code
27

1 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

2 License Status

3 3.

4 At all times mentioned, DARYL ANTHONY SMITH (SMITH), was licensed or
5 had license rights issued by the Department of Real Estate (Department) as a real estate broker.
6 SMITH was originally licensed as a real estate salesperson on May 28, 2002, and as a real estate
7 broker on October 15, 2008.
8

9 Brokerage

10 4.

11 At all times mentioned, in the City of Victorville, County of San Bernardino,
12 Respondent SMITH engaged in the business of, acted in the capacity of, advertised or assumed to
13 act as a real estate broker, including the operation and conduct of a property management
14 business within the meaning of Code Section 10131(b), with the public wherein, for or in
15 expectation of compensation, for another or others, Respondent leased or rented or offered to
16 lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective
17 tenants, or collected rents from real property, or improvements thereon.
18

19 Respondent SMITH managed forty-seven (47) residential properties for forty-five
20 (45) owners and collected \$25,000 monthly in trust funds through his property management
21 brokerage, charging a management fee of six (6% to eight (8%) percent of the gross rentals
22 collected.
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1 FIRST CAUSE OF ACCUSATION

2 (Audit Examination)

3 5.

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5 On May 29, 2012 the Department completed an audit examination of the books
6 and records of SMITH, pertaining to the property management activities described in Paragraph
7 3, that require a real estate license. The audit examination covered a period of time beginning on
8 November 1, 2008 and ending on October 31, 2011. The audit examination revealed violations
9 of the Code and the Regulations as set forth below, and more fully discussed in Audit Report LA
10 110055 and the exhibits and work papers attached.

11 Trust Accounts

12 6.

13
14 At all times mentioned, in connection with the activities described in Paragraph 4,
15 above, Respondent SMITH accepted or received funds including funds in trust (hereinafter "trust
16 funds") from or on behalf of actual or prospective parties to transactions handled by SMITH.
17 including property owners and tenants. SMITH maintained the following bank accounts:
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19
20
21 1. B/A 1

22 Account Name: Daryl Anthony Smith dba Smith & Associates Realty

23 Account No.: *****6986

24 Bank Name: JP Morgan Chase Bank

25 Bank Address: Amargosa Road
26 Victorville,, CA 92392
27

1 who was an owner of said funds, without first obtaining the prior written consent of the owners
2 of said funds, in violation of Code Section 10145 and Regulation 2832.1.;

3 (b) Mixed and commingled trust funds and personal funds, in violation of Code
4 Sections 10145 and 10176(e) and Regulation 2832. Respondent SMITH collected trust funds in
5 the form of property rentals in connection with properties under management and deposited said
6 rents into Respondent's general accounts instead of B/A 1 and B/A 2;

7
8 (c) Converted trust funds through the instrumentality of making unauthorized
9 withdrawals of by disbursing trust funds from B/A 1 and B/A 2 for personal use, in violation of
10 Code Sections 10145 and 10176(i)and/or 10177(j);

11 (d)(1) Failed to place trust funds from borrowers into a trust account in the name
12 of the broker as trustee at a bank or other financial institution in connection with Respondent's
13 property management activities, in violation of Code Section 10145 of the Code and Regulation
14 2832(a); and,

15
16 (d)(2) Failed to place trust funds in the forms of rents accepted on behalf of
17 another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund
18 account in the name of the trustee at a bank or other financial institution not later than three
19 business days following receipt of the funds by the broker or by the broker's salesperson, in
20 violation of Code Section 10145 and Regulation 2832(d);

21
22 (e) Failed to maintain an accurate control record in the form of a columnar record
23 in chronological order of all trust funds including security deposits and rental receipts received,
24 deposited and disbursed for all properties managed through B/A 1 and B/A 2, in violation of
25 Code Section 10145 and Regulation 2831;

26
27 ///

1 (f) Failed to maintain an accurate separate record for each beneficiary or
2 transaction, thereby failing to account for all trust funds including security deposits and rental
3 receipts received, deposited and disbursed for each property managed through B/A 1 and B/A 2,
4 in violation of Code Section 10145 and Regulation 2831.1;

5 (g) Failed to perform a monthly reconciliation of the balance of all separate
6 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all
7 trust funds received and disbursed by B/A 1 and B/A 2, in violation of Code Section 10145 and
8 Regulation 2831.2;

9 (h) Used the fictitious names of " Daryl Smith Team", "Smith & Associates", and
10 "Smith & Associates Realty", to conduct licensed activities including a property management
11 activities, without first obtaining from the Department a license bearing said fictitious business
12 names, in violation of Code Section 10159.5 and Regulation 2731; and

13 (i) Failed to retain all records of Respondents SMITH's activity during the audit
14 period requiring a real estate broker license, in violation of Code Section 10148.

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18 Disciplinary Statures and Regulations

19 8.

20 The conduct of Respondent SMITH, as alleged and described in Paragraph 7,
21 above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
24 7(a)	Code Section 10145 and Regulation 2832.1
25 7(b)	Code Sections 10145, 10176(e) and Regulation 2932(d)
26 7(c)	Code Sections 10145, 10176(i) and/or 10177(j)
27 7(d)	Code Section 10145 and Regulations 2832(a)

- 1 7(e) Code Section 10145 and Regulation 2831
- 2 7(f) Code Section 10145 and Regulation 2831.1
- 3 7(g) Code Section 10145 and Regulation 2831.2
- 4 7(h) Code Section 10159.5 and Regulation 2731
- 5 7(i) Code Section 10148

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7 The foregoing violations constitute cause for discipline of the real estate license and license rights
8 of Respondent SMITH, under the provisions of Code Sections 10176(i) and/or 10177(j),
9 10177(d), 10177(g), and 10177(h).

10 SECOND CAUSE OF ACCUSATION

11 (Negligence)

12 9.

13 The overall conduct of Respondent SMITH. constitutes negligence or
14 incompetence. This conduct and violation are cause for discipline of the real estate license and
15 license rights of Respondent pursuant to Code Section 10177(g).
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17 THIRD CAUSE OF ACCUSATION

18 (Breach of Fiduciary Duty)

19 10.

20 The conduct, acts and omissions of Respondent SMITH constitute a breach of
21 fiduciary duty, of good faith, trust, confidence and candor, within the scope of Respondent's
22 fiduciary relationship owed to real estate consumers and his property management clientele. This
23 conduct and violation are cause for discipline of the real estate license and license rights of
24 Respondent SMITH pursuant to Code Section 10177(g).
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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against the license and license rights of Respondent DARYL ANTHONY SMITH, under
4 the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such
5 other and further relief as may be proper under other applicable provisions of law including, but
6 not limited to, but not limited to: (1) restorral of trust fund shortage (2) restitution, where
7 applicable (3) costs of audit pursuant to Code Section 10148; and (4) costs of investigation and
8 enforcement pursuant to Code Section 10106, and as pursuant to applicable provisions of the
9 California Administrative Procedure Act.

10 Dated at Los Angeles, California

11
12 this *22 February 2013.*


Deputy Real Estate Commissioner

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24 cc: Daryl Anthony Smith
25 Maria Suarez
26 Audits – Chona Picayo
27 Sacto