

**FILED**

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MAY 30 2013

DEPARTMENT OF REAL ESTATE  
BY: 

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7

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of	)	No. H- 38889 LA
12		)	
13	RANDAL WESLEY BANAGAS,	)	<u>ACCUSATION</u>
14	doing business as Starcrest Property	)	
15	Management, and Starcrest Properties,	)	
16	Ranbrea Realty & Loans, and	)	
17	Ranbrea Realty,	)	
		)	
	Respondent,	)	
		)	

18 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the  
19 State of California, for cause of Accusation against RANDAL WESLEY BANAGAS, doing  
20 business as Starcrest Property, and Starcrest Properties, Ranbrea Realty & Loans and Ranbrea  
21 Realty is informed and alleges as follows:

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

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

4 License Status

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6 3.

7 At all times mentioned, RANDAL WESLEY BANAGAS ("BANAGAS"), was  
8 licensed or had license rights issued by the Department of Real Estate ("Department") as a real  
9 estate broker. BANAGAS was originally licensed as a real estate broker on August 3, 2007.

10 Brokerage

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12 4.

13 At all times mentioned, in the City of Murrieta, County of Riverside, BANAGAS  
14 engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate  
15 broker, including the operation and conduct of a real estate sales and property management  
16 business within the meaning of:

17 A. Code Section 10131(a). Respondent BANAGAS engaged in the business of,  
18 acted in the capacity of, advertised or assumed to act as a real estate broker, including the  
19 solicitation for listings of and the negotiation of the sale of real property as the agent of others.

20  
21 B. Code Section 10131(b), with the public wherein, for or in expectation of  
22 compensation, for another or others, Respondent leased or rented or offered to lease or rent, or  
23 placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or  
24 collected rents from real property, or improvements thereon.

25 BANAGAS managed sixty five (65) properties for fifty eight (58) owners and  
26 collected about \$759,000.00 annually in trust funds for his property management activity.  
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FIRST CAUSE OF ACCUSATION  
(Audit Examination)

5.

On August 1, 2012 the Department completed an audit examination of the books and records of BANAGAS, pertaining to the real estate sales and property management activities described in Paragraph 4, that require a real estate license. The audit examination covered a period of time beginning on January 01, 2010 and ending on May 31, 2012. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Report SD 110064/SD110076 and the exhibits and work papers attached.

Bank Accounts

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, BANAGAS accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by BANAGAS, including property owners and tenants. BANAGAS maintained the following bank accounts:

1. BA 1

Account Name: Starcrest Property Management

Account No.: \*\*\*\*\*9156

Bank Name: Wells Fargo Bank

Bank Address: Murrieta, California

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2. BA 2

Account Name: Starcrest Property Management  
Account No.: \*\*\*\*\*9131  
Bank Name: Wells Fargo Bank  
Bank Address: Murrieta, California

3.. BA 3

Account Name: Starcrest Property Management  
Account No.: \*\*\*\*\*0489  
Bank Name: Wells Fargo Bank  
Bank Address: Murrieta, California

Violations of the Real Estate Law

7.

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

(a) Respondent BANAGAS performed acts for which a real estate license is required, including soliciting for prospective tenants and negotiating leases on real property and executing property management agreements with property owners for managing their real properties before Ironrod Group Inc. doing business as Averis Property management, managed by BANAGAS', license had issued, in violation of Code Section 10130. Between October 24, 2011 and June 26, 2012, BANAGAS conducted activities through and under the name "Ironrod Group Inc." ;

1 (b) Failed to perform a monthly reconciliation of the balance of all separate  
2 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all  
3 trust funds received and disbursed by Ironrod Group Inc., in violation of Code Section 10145 and  
4 Regulation 2831.2;

5 (c) Failed to place trust funds, including security deposits and rent receipts  
6 accepted on behalf of another into the hands of the owner of the funds, a neutral escrow  
7 depository or into a trust fund account in the name of the trustee at a bank or other financial  
8 institution for BA 1 BA 2, BA 3, and Ironrod Group Inc., in violation of Code Section 10145  
9 and Regulation 2832(a);

10 (d) Permitted and/or caused the disbursement of trust funds to himself and/or third  
11 party providers on the representation that these amounts were needed to pay for maintenance  
12 services, which payments exceeded the actual costs of these services by Respondent.  
13 Respondent did not disclose these "mark-ups" to the beneficiaries of said trust funds, did not  
14 obtain their consent to these "mark-ups" and paid himself the difference between the amounts  
15 paid and the actual costs of the services, in violation of Code Section 10176(g), as set forth  
16 below:  
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<u>Invoice</u>	<u>Amount</u>	<u>Mark-Up</u>	<u>Mark-Up</u>	<u>Owner</u>
<u>Amount</u>	<u>Charged</u>	<u>Amount</u>	<u>Disclosed</u>	<u>Name</u>
\$ 50.00	\$100.00	\$ 50.00	No	Ma, H.
\$220.00	\$320.00	\$100.00	No	P.Carol
\$195.00	\$250.00	\$ 55.00	No	P.Carol
\$225.00	\$280.00	\$ 55.00	No	Ron C.
\$120.00	\$165.00	\$ 45.00	No	Ray S.
\$112.00	\$175.00	\$63.00	No	Doug R.
\$225.00	\$275.00	\$50.00	No	Andy L.

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25 (e) Misrepresented that he held earnest money deposits ("EMD") from buyers  
26 herein set forth, in violation of Code Section 10176(a).  
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<u>Buyer Name</u>	<u>EMD</u>	<u>Property Address</u>
Luis del la C.	\$ 1,000.00	1482 Avila Drive, Perris, CA 92571
Palencia / L.	\$ 7,070.00	25859 Marco Polo St., Murrieta, CA 92563
Chi Bich N.	\$ 1,000.00	25743 Barclay Dr., Murrieta, CA 92563
Jaime M., Jr.	\$10,000.00	14223 Pintail Loop, Corona, CA 92880
Silva / Miller	\$ 3,000.00	4851 Aliano Plaza, Yorba Linda, CA 92886

Disciplinary Statures and Regulations

8.

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

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7(a)	Code Section 10130
7(b)	Code Section 10145 and Regulation 2831.2
7(c)	Code Section 10145 and Regulation 2832
7(d)	Code Section 10176(g)
7(e)	Code Section 10176(a)

The foregoing violations constitute cause for discipline of the real estate license and license rights of Respondent BANAGAS, under the provisions of Code Sections 10176(a), 10176(g), 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION  
(Negligence)

9.

The overall conduct of Respondent BANAGAS. constitutes negligence or incompetence. This conduct and violation are cause for discipline of the real estate license and license rights of Respondent pursuant to Code Section 10177(g).

THIRD CAUSE OF ACCUSATION  
(Breach of Fiduciary Duty)

10.

The conduct, acts and omissions of Respondent BANAGAS constitutes a breach of fiduciary duty of good faith, trust, confidence and candor, within the scope of their contractual relationship, owed to Respondent BANAGAS' real estate consumers and property management clientele. This conduct and violation are cause for discipline of the real estate license and license rights of Respondent BANAGAS pursuant to Code Section 10177(g).

FOURTH CAUSE OF ACCUSATION  
(Supervision)

11.

The overall conduct of Respondent BANAGAS constitutes a failure on his part to exercise reasonable supervision and control over the licensed activities his brokerage, in violation of Code Section 10177(h) and Regulation 2725. Respondent BANAGAS failed to keep his brokerage in compliance with the Real Estate Law, and is cause for discipline of the real estate license and license rights of Respondent BANAGAS. pursuant to the provisions of Code Sections 10177(d), 10177(g) and/or 10177(h).

12.

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

