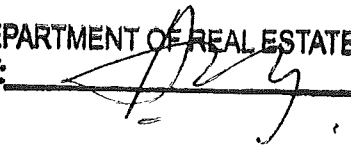


1 Elliott Mac Lennan, Counsel (SBN 66674)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6911

FILED

JUN 28 2013

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)
12)
13 ALL MOUNTAIN PROPERTY) No. H- 38930 LA
14 MANAGEMENT INC.; and)
15 CAROLYN MARIE CERWONKA,) ACCUSATION
16 individually and as designated officer)
17 of All Mountain Property)
18 Management Inc.,)
19 Respondents.)

20 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
21 of California, Department of Real Estate ("Department") for cause of Accusation against ALL
22 MOUNTAIN PROPERTY MANAGEMENT INC. ("AMPMI") and CAROLYN MARIE
23 CERWONKA ("CERWONKA"), individually and as designated officer of All Mountain
24 Property Management Inc. (collectively "Respondents"), is informed and alleges as follows:

25 1.

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

///

2.

From October 29, 2010, through the present, Respondent AMPMI has been licensed as a real estate corporation. At all times relevant herein, AMPMI was acting by and through Respondent CERWONKA as its designated broker-officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3.

Respondent CERWONKA was originally licensed as a real estate broker on May 3, 2001. CERWONKA's broker license expired on May 2, 2013. CERWONKA retains rights of renewal until May, 2015 pursuant to Code Sections 10201. The Department retains jurisdiction over lapsed licenses pursuant to Code Section 10103.

Table: Designated Officer Tenure

Designated Officers	Tenure
Carolyn Marie Cerwonka	Inception of AMPMI to date

4.

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents", such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondents committed such act or omission while engaged in the furtherance of the business or operations of Respondents and while acting within the course and scope of their corporate authority and employment, including CERWONKA.

FIRST CAUSE OF ACCUSATION

(Audit)

5.

At all times mentioned, in the City of Big Bear, County of San Bernardino, Respondents AMPMI and CERWONKA acted as a real estate brokers and conducted licensed

1 activities within the meaning of Code Section 10131(b) wherein they conducted a property
2 management brokerage.

3
4 Audit Examination

5 6.

6 On November 9, 2012, the Department completed an audit examination of the
7 books and records of Respondent AMPMI pertaining to the property management activities
8 described in Paragraph 5, which require a real estate license. The audit examination covered a
9 period of time beginning on May 1, 2009 and ending on April 30, 2012. The audit examination
10 revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations
11 ("Regulations") as alleged in the following paragraphs, and more fully set forth in Audit Report
12 LA 110292 and the exhibits and work papers attached thereto.

13 Trust Accounts

14 7.

15 At all times mentioned, in connection with the activities described in Paragraph
16 6, above, AMPMI accepted or received funds including funds in trust ("trust funds") from or on
17 behalf of property owners and tenants handled by AMPMI and thereafter made deposits and or
18 disbursements of such funds. From time to time herein mentioned, during the audit period and
19 thereafter, said trust funds were deposited and/or maintained by AMPMI in the accounts
20 described below.

21 ("BA 1")

22 "All Mountain Property Inc.

23 *****6571"

24 Union Bank

25 P.O. Box 512380

26 Los Angeles, CA 90051

(Property management account)

("BA 2")

1 "All Mountain Property Inc.

2 *****6601"

3 Union Bank

4 P.O. Box 512380

5 Los Angeles, CA 90051

6 (Property management account)

7 Violations of the Real Estate Law

8 8.

9 In the course of activities described in Paragraphs 5 and 7, above, and during the
10 examination period, described in Paragraph 6, Respondents AMPMI and CERWONKA acted in
11 violation of the Code and the Regulations in which Respondents:

12 (a) Permitted, allowed or caused the disbursement of trust funds from BA 1,
13 AMPMI's property management trust account for rent and security deposits collection, where
14 the disbursement of funds reduced the total of aggregate funds in BA 1, to an amount which, on
15 April 30, 2012, was at a minimum accountability of \$11,865.93, less than the existing aggregate
16 trust fund accountability of AMPMI to every principal who was an owner of said funds, without
17 first obtaining the prior written consent of the owners of said funds, in violation of Code Section
18 10145(a) and Regulation 2832.1.

19
20 (b) BA 1 and BA 2 were not in the name of the broker as trustee at a bank or
21 other financial institution, nor designated as a trust account, in violation of Code Section 10145
22 of the Code and Regulation 2832(a);

23 (c) Permitted Richard Lowder an unlicensed and unbonded person, and Jaclyn
24 Mihoan, a real estate salesperson not employed by AMPMI, to be authorized signatories on the
25 BA 1 and BA 2, in violation of Code Section 10145 and Regulation 2834(a);
26

(d) Failed to maintain an adequate control record in the form of a columnar record in chronological order of trust funds received but not deposited into BA 1 and BA 2, received in chronological order, in violation of Code Section 10145 and Regulation 2831;

(e) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed for BA 1 and BA 2, in violation of Code Section 10145 and Regulation 2831.1;

(f) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by BA 1 and BA 2 in violation of Code Section 10145 and Regulations 2831.2;

(g) CERWONKA failed to adequately supervise and control the real estate and property management activity conducted under AMPMI's real estate broker license. Additionally, Respondents had no system in place for regularly monitoring AMPMI's compliance with the Real Estate Law especially in regard to establishing, systems, policies and procedures to review trust fund handling, and to keep AMPMI in compliance with the Real Estate Law, in violation of Code Sections 10159.2, 10177(h) and Regulation 2725.

9.

The conduct of Respondents AMPMI and CERWONKA, described in Paragraph 8, above, violated the Code and the Regulations as set forth below:

PARAGRAPH

PROVISIONS VIOLATED

8(a)	Code Section 10145 and Regulation 2832.1
8(b)	Code Section 10145 and Regulation and 2832(a)
8(c)	Code Section 10145 and Regulation 2834
8(d)	Code Section 10145 and Regulation 2831

- 1 8(e) Code Section 10145 and Regulation 2831.1
2 8(f) Code Section 10145 and Regulation 2831.2
3 8(g) Code Sections 10159.2 and 10177(h) and
4 Regulation 2725 (CERWONKA)

5 The foregoing violations constitute cause for the discipline of the real estate licenses and license
6 rights of Respondents AMPMI and CERWONKA under the provisions of Code Sections 10145,
7 10177(d), and 10177(g), and 10177(h) for CERWONKA.

8 SECOND CAUSE OF ACCUSATION
9 (Negligence)

10 10.

11 The overall conduct of Respondents AMPMI and CERWONKA constitutes
12 negligence and is cause for discipline of the real estate license and license rights of said
13 Respondents pursuant to the provisions of Code Section 10177(g).

14 THIRD CAUSE OF ACCUSATION
15 (Fiduciary Duty)

16 11.

17 The conduct, acts and omissions of Respondents AMPMI and CERWONKA
18 constitute a breach of fiduciary duty, owed to AMPMI's clients, of good faith, trust, confidence
19 and candor, within the scope of their contracted property management relationship with
20 landlords and tenants, in violation of Code Section 10177(g) and constitutes cause for discipline
21 of the real estate license and license rights of said Respondents pursuant to the provisions of
22 Code Section 10177(g).

23 12.

24 Code Section 10106 provides, in part, that in any order issued in resolution of a
25 disciplinary proceeding before the Department of Real Estate, the Commissioner may request the
26 administrative law judge to direct a licensee found to have committed a violation of this part to

1 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

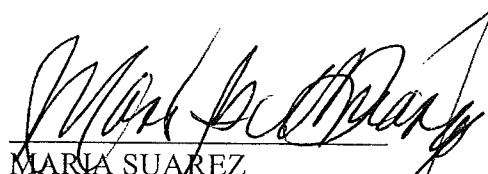
2 13.

3 Code Section 10148(b) provides, in pertinent part the Commissioner shall charge a
4 real estate broker for the cost of any audit, if the commissioner has found in a final decision
5 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation
6 or rule of the commissioner interpreting said section.
7

8 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
9 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
10 action against all licenses and/or license rights of Respondents ALL MOUNTAIN PROPERTY
11 MANAGEMENT INC. and CAROLYN MARIE CERWONKA, individually and as designated
12 officer of All Mountain Property Management Inc., under the Real Estate Law (Part 1 of
13 Division 4 of the California Business and Professions Code) and for such other and further relief
14 as may be proper under other applicable provisions of law, including but not limited to, proof of
15 cure of the shortage, and costs investigation, enforcement and audit.

16 Dated at Los Angeles, California.

17
18 this 6th day of June, 2013.

19
20
21 
22 MARIA SUAREZ
Deputy Real Estate Commissioner

23
24 cc: All Mountain Property Management Inc.
25 Carolyn Marie Cerwonka
26 Maria Suarez
Darryl M. Thomas - Audits
Sacto