



## FACTUAL FINDINGS

1.

On October 7, 2013, Maria Suarez made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed to Respondent's last known mailing addresses on file with the Bureau on October 9, 2013 and October 31, 2013, respectively by certified mail and by regular mail.

2.(a)

On April 28, 2014, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent CALPRO PROPERTY MANAGEMENT INC.'s ("CPMI") default was entered herein.

2.(b)

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

3.(a)

From June 16, 2010, through the present, Respondent CPMI has been licensed as a real estate broker. At all times relevant herein, CPMI was acting by and through Respondent YANN as its designated broker-officer pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law. On April 9, 2012, CPMI became Non-Broker Affiliated upon the cancellation of YANN's tenure as designated officer.

3.(b)

Respondent YANN was originally licensed as a real estate broker on May 8, 2009. On April 9, 2012, YANN cancelled his tenure as designated officer of CPMI.

Table: CalPro Property Management Inc. Officers

Officers	Title	License
Robert Gardner Yann	Designated Officer	Broker
Thomas Windham	CEO/CFO	No

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 YANN, and Thomas Windham.

#### Property Management Audit

5.

At all times mentioned, in the City of Seal Beach, County of Orange, Respondents CPMI and YANN engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate brokers, within the meaning of Code Section 10131(b). Respondents engaged in the business of a property management brokerage with the public wherein, for or in expectation of compensation, for another or others, Respondents leased; rented or offered to lease or rent; placed for rent; solicited listings of places for rent; solicited for prospective tenants, collected rents from real property, or improvements thereon.

#### Audit Examination:

6.

On July 2, 2012, the Bureau completed an audit examination of the books and records of Respondent CPMI pertaining to the property management activities described in Finding 5, which require a real estate license. The audit examination covered a period of time beginning on January 1, 2011 and ending March 31, 2012. The audit examination revealed violations of the Code and Title 10, Chapter 6, California Code of Regulations ("Regulations") as alleged in the following paragraphs, and more fully set forth in Audit Report LA 110247 and the exhibits and work papers attached thereto.

#### Bank Accounts

7.

At all times mentioned, in connection with the activities described in Finding 6, above, CPMI accepted or received funds including funds in trust ("trust funds") including security deposits and rental receipts from or on behalf of property owners and tenants handled by CPMI and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned, during the audit period and

thereafter, said trust funds were deposited and/or maintained by CPMI in the accounts located at the Bank of America in Seal Beach, California, described below:

TA 1

“CalPro Property Management Inc.  
\*\*\*\*8244”

TA 2

“CalPro Property Management Inc.  
\*\*\*\*8359”

BA 1

“CalPro Property Management Inc.  
\*\*\*\*7912”

BA 2

“CalPro Property Management Inc.  
\*\*\*\*7912”

#### Violations of the Real Estate Law

8.

In the course of activities described in Findings 5 and 7, above, and during the examination period, described in Finding 6, Respondents CPMI and YANN acted in violation of the Code and the Regulations in which Respondents:

(a) Failed to restore trust funds in amount of \$6,338.29 to trust fund beneficiaries Santucci and Ung in respective amounts of \$2,430 and \$3,908.25, totaling \$6,338.25, in violation of Code Sections 10145 and 10177(g);

(b) Failed to place trust funds, including rents and security deposits collected from tenants, into a trust fund account in the name of the broker as trustee at a bank or other financial, in violation of Code Section 10145 and Regulation 2832(a);

(c) Conducted licensed activities from CPMI's mailbox which was registered as CPMI's main office address, in violation of Code Section 10163 and Regulation 2715;

(d) Used the fictitious name of "CalPro Property Management," to conduct licensed activities without first obtaining from the Bureau a license bearing said fictitious business name, in violation of Code Section 10159.5 and 2731; and

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

Trust Fund Mishandling and Failure to Remit/Restore Rents to Property Owners

9.

On March 27, 2013, the Bureau completed an investigation of Respondents CPMI and YANN pertaining to their real estate property management brokerage described in Finding 5, which require a real estate license. The investigation covered a period of time beginning in 2010 and ending on March 27, 2013.

10.

Respondents CPMI and YANN acted in the capacity as property managers for the ten (10) property owners set forth in the table below with respect to each property owner tabled. Respondents' management duties and responsibilities included property management, maintenance, collection and disbursement of trust funds in the form of security deposits and rent, maintenance and other expenses pertaining to each property owner. Respondents mismanaged their aforesaid responsibilities to the said property owners which resulted in financial loss to them by Respondents' failure to provide accurate and complete trust fund handling reports and failure to pay over to the said property owners the correct net rents. These net rents remain due and owing in the amounts set forth in the table below in Finding 11:

11.

Table: CalPro Restitution to Property Owner Complainants

Complainant	Case No.	Loss/Restitution Due	Date
Mike U.	712-0319-002	\$28,000	July 1, 2011
Dean B.	712-0327-003	\$10,000	July 12, 2010
Vijay S.	712-0504-017	\$4,380	July 11, 2011
Joselito G.	712-0504-017	\$6,530	July 2010
Richard S.	712-0525-008	\$6,088	August 10, 2010
Ronald S.	712-052-003	\$2,340	2010
Danie S.	712-0625-005	\$6,193	March, April August 2012
Kendra G.	712-0727-001	\$4,175	2010 to December 2, 2011
Saul M.	712-0613-003	\$2,095	March 1, 2012
Gloria B.	712-0228-002	\$6,953.52	January-March 2012
Total Restitution Due		<u>\$76,754.20</u>	

12.

The conduct of Respondents CPMI and YANN, as alleged and described in Findings 5, 9, 10 and 11, above, violated the Code and the Regulations hereunder, under the provisions as set forth below:

- (a) 10176(a) for substantial misrepresentation.
- (b) 10176(b) for false promises of a character likely to influence, persuade, or induce.
- (c) 10176(c) for a continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.
- (d) 10176(g) for undisclosed compensation and for taking secret profits.
- (e) 10176(i) for conversion, fraud/dishonest dealing of rental receipts.
- (f) 10177(j) for diversion and defalcation of trust funds.
- (g) 10145 for trust fund mishandling handling.

(Negligence)

13.

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

(Fiduciary Duty)

14.

The conduct, acts and omissions of Respondents CPMI and YANN constitute a breach of fiduciary duty, owed to CPMI's clientele of good faith, trust, confidence and candor, within the scope of their relationship, in violation of Code Section 10177(g) and constitutes cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

## DETERMINATION OF ISSUES

1.

The conduct of Respondent CPMI described in Finding 7, above, violated the Code and the Regulations as set forth below:

<u>Finding</u>	<u>Provisions Violated</u>
8(a)	Code Section <u>10145</u> and <u>10177(g)</u>
8(b)	Code Section 10145 and Regulation <u>2832(a)</u>
8(c)	Code Section <u>10162</u> and Regulation <u>2715</u>
8(d)	Code Section <u>10159.5</u> and Regulation <u>2731</u>
8(e)	Code Section <u>10148</u>

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

2.

The conduct of Respondent CPMI described in Findings 5, 9, 10, 11, above, violated the Code and the Regulations as set forth below:

<u>Finding</u>	<u>Provisions Violated</u>
12(a)	<u>10176(a)</u> for substantial misrepresentation.
12(b)	<u>10176(b)</u> for false promises of a character likely to influence, persuade, or induce.
12(c)	<u>10176(c)</u> for a continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.
12(d)	<u>10176(g)</u> for undisclosed compensation and for taking secret profits.

12(e) 10176(i) for fraud and dishonest dealing and conversion of rental receipts.

12(f) 10177(j) for diversion and defalcation of trust funds.

12(g) 10145 for trust fund mishandling handling.

3.

The conduct of Respondent CPMI described in Finding 13, above, violated the Code and the Regulations as set forth below:

<u>Finding</u>	<u>Provisions Violated</u>
13(a)	Code Section 10177(g)

4.

The conduct of Respondent CPMI described in Finding 14, above, violated the Code and the Regulations as set forth below:

<u>Finding</u>	<u>Provisions Violated</u>
14(a)	Code Section 10177(g)

5.

The standard of proof applied was clear and convincing proof to a reasonable certainty.



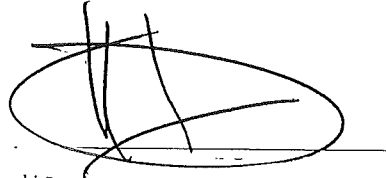
ORDER

The real estate license and license rights of Respondent CALPRO  
PROPERTY MANAGEMENT INC. under the provisions of Part I of Division 4 of the  
Business and Professions Code is revoked.

This Decision shall become effective at 12 o'clock noon on JUN 25 2014, 2014

DATED: MAY 14, 2014

Real Estate Commissioner

A handwritten signature in black ink, appearing to read "JEFFREY MASON", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

**JEFFREY MASON**  
Chief Deputy Commissioner