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FILED

DEC 16 2013

DEPARTMENT OF REAL ESTATE
BY: 

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 OPEN MARKET REALTY CORP; and) No. H- 39199 LA
14)
15 CRAIG MARTIN SHULTS, individually) ACCUSATION
16 and as designated officer of Open Market)
17 Realty Corp.,)
18 Respondents,)
19)
20)
21)
22)
23)
24)
25)
26)

18 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
19 of California, for cause of Accusation against OPEN MARKET REALTY CORP ("OMRC")
20 and CRAIG MARTIN SHULTS ("SHULTS"), individually and as designated officer of Open
21 Market Realty Corp (collectively "Respondents"), is informed and alleges as follows:
22

23 1.

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

1 License Status

2
3 2.

4 From February 25, 2010, Respondent OMRC has been licensed as a real estate
5 corporation. At all times relevant herein, OMRC was acting by and through Respondent
6 SHULTS as its designated broker-officer from February 25, 2010, pursuant to Business and
7 Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the
8 Real Estate Law. On October 19, 2012, OMRC became Non Broker Affiliated due to the
9 California Financial Code Section 17250 suspension of Respondent SHULTS.

10 3.

11 At all times mentioned, CRAIG MARTIN SHULTS ("SHULTS"), was licensed
12 or had license rights issued by the Bureau of Real Estate ("Bureau") as a real estate broker.
13 On June 7, 2000, Respondent SHULTS was originally licensed as a real estate salesperson. On
14 August 21, 2005, SHULTS was originally licensed as a real estate broker. On October 19, 2012,
15 SHULT's broker license was suspended for violation of California Financial Code Section
16 17250. On August 20, 2013, SHULT's broker license expired with renewal rights.

17
18 4.

19 OMRC is owned SHULTS, its Chief Executive Officer.

20 5.

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

1 FIRST CAUSE OF ACCUSATION
2 (Audit of Open Market Realty Corp)

3 6.

4 At all times mentioned, in the City of Costa Mesa, County of Orange,
5 Respondents OMRC and SHULTS acted as real estate brokers and conducted licensed activities
6 within the meaning of Code Section 10131(a). Respondents engaged in the business of a
7 residential resale brokerage and acted in the capacity of, advertised or assumed to act as real
8 estate brokers, including the solicitation and negotiation of the sale of real property as the agent
9 of others.

10 7.

11 On May 1, 2012, the Bureau completed an audit examination of the books and
12 records of Respondent OMRC pertaining to the residential resale activities described in
13 Paragraph 6, which require a real estate license. The audit examination covered a period of time
14 beginning on August 4, 2009 and ending on February 29, 2012. The audit examination revealed
15 violations of the Code and Title 10, Chapter 6, California Code of Regulations ("Regulations")
16 as set forth in the following paragraphs, and more fully discussed in Audit Report LA 110286
17 and the exhibits and work papers attached.

18 Trust Account

19 8.

20 OMRC did not maintain a trust account during the audit period.

21 Violations of the Real Estate Law

22 9.

23 In the course of activities described in Paragraph 6, above, and during the
24 examination period described in Paragraph 7, Respondents OMRC and SHULTS acted in
25 violation of the Code and the Regulations in which Respondents:
26

1 (a) Failed to timely notify the Bureau timely regarding the change of principal
2 place of business, in violation of Code Section 10162 and Regulation 2715;

3 (b) Failed to disclose OMRC's real estate license identification number on the
4 solicitation materials used in its real estate sales activity for first point of contact with consumers,
5 to wit, under "http://www.openmarketrealty.com," the unlicensed fictitious business name/website
6 "Open Market Realty" in violation of Code Section 10140.6(b) and Regulation 2773; and
7

8 (c) Used the fictitious name/website of "http://www.openmarketrealty.com," to
9 conduct licensed activity, without first obtaining from the Department a license bearing said
10 fictitious business name, in violation of Code Section 10159.5 and Regulation 2731.

11 10.

12 The conduct of Respondents OMRC and SHULTS, described in Paragraph 9,
13 above, violated the Code and the Regulations as set forth below:
14

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
15 9(a)	Code Section 10162 and Regulations 2715
16 9(b)	Code Section 10140.6(b) and Regulation 2773
17 9(c)	Code Section 10159.5 and Regulation 2731

18 The foregoing violations constitute cause for discipline of the real estate licenses and license
19 rights of Respondents OMRC and SHULTS under the provisions of Code Sections 10177(d) and
20 10177(g).
21

22 SECOND CAUSE OF ACCUSATION
(Negligence)

23 11.

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

1 THIRD CAUSE OF ACCUSATION
2 (Fiduciary Duty)

3 12.

4 The conduct, acts and omissions of Respondents OMRC and SHULTS constitute
5 a breach of fiduciary duty, owed to OMRC's clients and trust fund beneficiaries of good faith,
6 trust, confidence and candor, within the scope of their brokerage relationship, in violation of
7 Code Section 10177(g) and constitutes cause for discipline of the real estate license and license
8 rights of said Respondents pursuant to the provisions of said Code Sections.

9 FOURTH CAUSE OF ACCUSATION
10 (Supervision and Compliance)

11 13.

12 The overall conduct of Respondent SHULTS constitutes a failure on said
13 Respondent's part, as officer designated by a corporate broker licensee, to exercise the
14 reasonable supervision and control over the licensed activities of OMRC as required by and in
15 violation of Code Section 10159.2 and Regulation 2725, and to keep OMRC in compliance with
16 the Real Estate Law, and is cause for discipline of the real estate license and license rights of
17 Respondents pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

18 14.

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

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2 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
3 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondents OPEN MARKET REALTY
5 CORP and CRAIG MARTIN SHULTS, individually and as designated officer of Open Market
6 Realty Corp. under the Real Estate Law (Part 1 of Division 4 of the California Business and
7 Professions Code) and for such other and further relief as may be proper under other applicable
8 provisions of law, including, but not limited to, costs, investigation and enforcement.
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11 Dated at Los Angeles, California.

12
13 this 3rd day of December 2013.

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15 
16 MARIA SUAREZ
17 Deputy Real Estate Commissioner
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23 cc: Open Market Realty Corp
24 Craig Martin Shults
25 Maria Suarez
26 Audits – Chona T. Soriano
Sacto