

FILED

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DEPARTMENT OF REAL ESTATE
BY: 

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

4 Telephone: (213) 576-6982
5 Direct: (213) 576-6911
6 Facsimile: (213) 576-6917

7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
12 KMSM INC.; doing business as) No. H- 39356 LA
13 The Kennedy Group; and)
13) ACCUSATION
14 MICHAEL DAVID FERRAIZ,)
14 individually and as designated officer)
15 of KMSM Inc.,)
16)
16 Respondents.)

17
18 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
19 of California, Bureau of Real Estate ("Bureau") for cause of Accusation against KMSM INC.
20 ("KMSMI") and MICHAEL DAVID FERRAIZ ("FERRAIZ"), individually and as designated
21 officer of KMSM Inc. (collectively "Respondents"), is informed and alleges as follows:

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 From May 24, 2006, through the present, Respondent KMSMI has been licensed
as a real estate corporation. At all times relevant herein, KMSMI was acting by and through

1 Respondent FERRAIZ as its designated officer pursuant to Business and Professions Code
2 (“Code”) Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

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4 3.

5 Respondent FERRAIZ was originally licensed as a real estate broker on
6 November 3, 2001.

7 Table: Designated Officer Tenure

Designated Officer(s)	Tenure
Michael David Ferraiz	Inception of KMSMI to present

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9
10 4.

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

17 FIRST CAUSE OF ACCUSATION
18 (Audit)

19 5.

20 At all times mentioned, in the City of Los Alamitos, County of Orange,
21 Respondents KMSMI and FERRAIZ acted as a real estate brokers and conducted licensed
22 activities within the meaning of Code Section 10131(b) wherein they conducted a property
23 management brokerage.

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Audit Examination

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On May 7, 2013, the Bureau completed an audit examination of the books and records of Respondent KMSMI pertaining to the property management activities described in Paragraph 5, which require a real estate license. The audit examination covered a period of time beginning on October 1, 2010 and ending on September 28, 2012. The audit examination revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations ("Regulations") as alleged in the following paragraphs, and more fully set forth in Audit Report LA 120099 and the exhibits and work papers attached thereto.

Bank Accounts

7.

At all times mentioned, in connection with the activities described in Paragraph 6, above, KMSMI accepted or received funds including funds in trust ("trust funds") from or on behalf of property owners and tenants handled by KMSMI 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 KMSMI in the bank accounts described below:

 ("BA 1")

 "KMSM Inc. dba Kennedy Real Estate

 *****6797"

 JP Morgan Chase Bank

 P.O. Box 3502 Katella Ave.

 Los Alamitos, CA 90720

 (Rent depository account)

1 (“BA 2”)

2 “KMSM Inc. dba Kennedy Real Estate
3 *****0179”

4 JP Morgan Chase Bank
5 P.O. Box 3502 Katella Ave.
6 Los Alamitos, CA 90720
(Security deposit account)

7 (“BA 3”)

8 “KMSM Inc. dba Kennedy Real Estate
9 *****9365”

10 JP Morgan Chase Bank
11 P.O. Box 3502 Katella Ave.
12 Los Alamitos, CA 90720
13 (Rent collection account)

14 Violations of the Real Estate Law

15 8.

16
17 In the course of activities described in Paragraphs 5 and 7, above, and during the
18 examination period, described in Paragraph 6, Respondents KMSMI and FERRAIZ acted in
19 violation of the Code and the Regulations in which Respondents:

20 (a) Permitted, allowed or caused the disbursement of trust funds from BA 1,
21 KMSMI's property management bank account for rent and security deposits collection, where
22 the disbursement of funds reduced the total of aggregate funds in BA 1 to an amount which, on
23 September 28, 2012, was at a minimum accountability of \$96,121.77, less than the existing
24 aggregate trust fund accountability of KMSMI to every principal who was an owner of said
25 funds, without first obtaining the prior written consent of the owners of said funds, in violation
26

1 of Code Section 10145(a) and Regulation 2832.1. On May 11, 2013, \$23,522.86 was restored to
2 partially cure the shortage, leaving a balance of \$72,598.91;

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

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

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

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

18 (f) Mixed and commingled trust funds and personal funds of KMSMI by
19 transferring trust funds from BA 1 and BA 2 into KMSMI's general account, in violation of Code
20 Section 10176(e) and Regulation 2832;

21 (g) (1) 10145(d) Benefited from interest earned and inured to BA 1 that KMSMI
22 failed to designate as an interest bearing account, in violation of Code Section 10145(d); and
23

1 (g)(2) Deposited trust funds into an interest-bearing account without written
2 authorization from owner-beneficiaries, in violation of Code Section 10145(e);

3 (h) Failed to disclose to trust fund owner-beneficiaries \$254.00 in interest earned
4 on BA 2 and transferred to KMSMI's general account for its own use, in violation of Code
5 Sections 10176(a) and 10176(g);

6
7 (i) Changed its address in from 10403 Los Alamitos Blvd., Los Alamitos,
8 California to 1454 Cerritos Ave., Los Alamitos, California, without notification to the Bureau, in
9 violation of Code Section 10162 and Regulation 2715;

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11 (j) Failed to retain all records of Respondent KMSMI's activity requiring a real
12 estate license during the audit period requiring a real estate broker license, in violation of Code
13 Section 10148;

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

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

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
8(a)	Code Section 10145 and Regulation 2832.1
8(b)	Code Section 10145 and Regulation 2831
8(c)	Code Section 10145 and Regulation 2831.1
8(d)	Code Section 10145 and Regulation 2831.2
8(e)	Code Section 10145 and Regulation and 2832(d)
8(f)	Code Sections 10145 and 10176(e) and Regulation 2832
8(g)	Code Section 10145(d) and (e)
8(h)	Code Sections 10145 and 10176(e)
8(i)	Code Section 10162 and Regulation 2715
8(j)	Code Section 10148
8(k)	Code Sections 10159.2 and 10177(h) and Regulation 2725 (FERRAIZ)

The foregoing violations constitute cause for the discipline of the real estate licenses and license rights of Respondents KMSMI and FERRAIZ under the provisions of Code Sections 10145, 10176(e), 10176(g), 10177(d), 10177(g), and 10177(h) for FERRAIZ.

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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 all licenses and/or license rights of Respondents KMSM INC. and MICHAEL
4 DAVID FERRAIZ, individually and as designated officer of The Kennedy Group., under the
5 Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) and for
6 such other and further relief as may be proper under other applicable provisions of law,
7 including but not limited to, proof of cure of the shortage, and costs of investigation,
8 enforcement and audit.

9 Dated at Los Angeles, California.

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11 this 7th day of January, 2017.

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15 MARIA SUAREZ
16 Deputy Real Estate Commissioner

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22 cc: KMSM Inc.
23 Michael David Ferraiz
24 Maria Suarez
25 Isabel Beltran - Audits
26 Sacto