

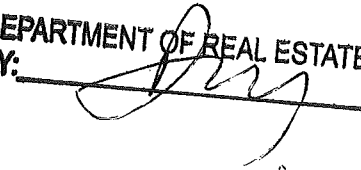
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FILED

APR 20 2014

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 KMSM INC.; doing business as)
14 The Kennedy Group; and)
15 MICHAEL DAVID FERRAIZ,)
16 individually and as designated officer)
17 of KMSM Inc.,)
18 Respondents.)

No. H-39356

FIRST AMENDED ACCUSATION

18 The Accusation filed March 7, 2014 is hereby amended in its entirety as follows:

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

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.

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2.

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

3.

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

Table: Designated Officer Tenure

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

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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 FERRAIZ.

FIRST CAUSE OF ACCUSATION

(Audit)

5.

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

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
7 (Security deposit account)

8 ("BA 3")
9 "KMSM Inc. dba Kennedy Real Estate
10 *****9365"
11 JP Morgan Chase Bank
12 P.O. Box 3502 Katella Ave.
13 Los Alamitos, CA 90720
14 (Rent collection account)

15 Violations of the Real Estate Law

16 8.

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)(1) Permitted, allowed or caused the disbursement of trust funds from BA 1,
21 KMSMI's property management bank account for rent collection, where the disbursement of
22 funds reduced the total of aggregate funds in BA 1 to an amount which, on September 28, 2012,
23 was at a minimum accountability of \$96,121.77, less than the existing aggregate trust fund
24 accountability of KMSMI to every principal who was an owner of said funds, without first
25 obtaining the prior written consent of the owners of said funds, in violation of Code Section
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1 10145(a) and Regulation 2832.1. On May 11, 2013, \$23,522.86 was restored to partially cure
2 the shortage, leaving a balance of \$72,598.91. On May 11, 2013, \$23,522.86 was restored to
3 partially cure the shortage in BA 1, leaving a balance of \$72,598.91 and;

4 (a)(2) Permitted, allowed or caused the disbursement of trust funds from BA 2,
5 KMSMI's property management bank account for security deposit collection, where the
6 disbursement of funds reduced the total of aggregate funds in BA 2 to an amount which, on
7 September 28, 2012, was at a minimum accountability of \$23,522.86, less than the existing
8 aggregate trust fund accountability of KMSMI to every principal who was an owner of said
9 funds, without first obtaining the prior written consent of the owners of said funds, in violation
10 of Code Section 10145(a) and Regulation 2832.1;

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

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

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

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

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

6
7 (g) (1) 10145(d) Benefited from interest earned and inured to BA 1 that KMSMI
8 failed to designate as an interest bearing account, in violation of Code Section 10145(d); and

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

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

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

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

20 (k) FERRAIZ failed to adequately supervise and control the real estate and
21 property management activity conducted under KMSMI's real estate broker license.

22 Additionally, Respondent FERRAIZ had no system in place for regularly monitoring KMSMI's
23 compliance with the Real Estate Law especially in regard to establishing, systems, policies and
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1 procedures to review trust fund handling, and to keep KMSMI in compliance with the Real Estate
2 Law, in violation of Code Sections 10159.2, 10177(h) and Regulation 2725.

3 9.

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

6 <u>PARAGRAPH</u>	7 <u>PROVISIONS VIOLATED</u>
8 8(a)	Code Section 10145 and Regulation 2832.1
9 8(b)	Code Section 10145 and Regulation 2831
10 8(c)	Code Section 10145 and Regulation 2831.1
11 8(d)	Code Section 10145 and Regulation 2831.2
12 8(e)	Code Section 10145 and Regulation and 2832(d)
13 8(f)	Code Sections 10145 and 10176(e) and Regulation 2832
14 8(g)	Code Section 10145(d) and (e)
15 8(h)	Code Sections 10145 and 10176(e)
16 8(i)	Code Section 10162 and Regulation 2715
17 8(j)	Code Section 10148
18 8(k)	Code Sections 10159.2 and 10177(h) and 19 Regulation 2725 (FERRAIZ) 20

21 The foregoing violations constitute cause for the discipline of the real estate licenses and license
22 rights of Respondents KMSMI and FERRAIZ under the provisions of Code Sections 10145,
23 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 of \$96,121,77, costs of investigation,
8 enforcement and audit.

9 Dated at Los Angeles, California.

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11 this 25th day of April, 2014.

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15 MARIA SUAREZ
16 Deputy Real Estate Commissioner
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23 cc: KMSM Inc.
24 Michael David Ferraiz
25 Maria Suarez
26 Isabel Beltran - Audits
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