

FILED

MAY 21 2014

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
9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

11 In the Matter of the Accusation of)
12)
12 BEACH COMMUNITY ESCROW INC.,) No. H- 39465 LA
13 doing business as Beach Community Escrow;)
13 and) ACCUSATION
14)
14 KENNETH WAYNE SHISHIDO,)
15 individually and as designated officer of)
15 Beach Community Escrow Inc.,)
16)
16 Respondents,)
17)

18 The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State
19 of California, for cause of Accusation against BEACH COMMUNITY ESCROW (“BCEI”) dba
20 business Beach Community Escrow and KENNETH WAYNE SHISHIDO (“SHISHIDO”),
21 individually and as designated officer of Beach Community Escrow Inc. (collectively
22 “Respondents”), is informed and alleges as follows:
23

24 1.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

2.

From September 26, 2006, Respondent BCEI has been licensed as a real estate corporation. At all times relevant herein, BCEI was acting by and through Respondent SHISHIDO as its designated broker-officer from inception to date pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3.

From June 7, 1985, through the present, Respondent SHISHIDO has been licensed as a real estate broker. Effective April 5, 2012, in Case No. H-37425 LA, SHISHIDO's broker license was publicly reprovod on terms and conditions as set forth in Paragraph 16, below.

4.

Ownership and management of BCEI is set forth in the table below:

Table: Ownership, Tenure and License Status

Name	Ownership	License	Office
Shishido Family Trust	75%	None	
Richard Daskam	25%	Broker	Secretary
Tammy Newland-Shishido	0%	Salesperson	President/CEO
Kenneth Wayne Shishido	0%	D.O.	VP/CFO

5.

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

1 Respondents and while acting within the course and scope of their corporate authority and
2 employment including Craig Trolli and Joseph Broderick, and SHISHIDO.

3
4 FIRST CAUSE OF ACCUSATION
(Audit of Beach Community Escrow Inc.)

5
6 6.

7 At all times mentioned, in the City of Los Alamitos, County of Orange,
8 Respondents BCEI and SHISHIDO acted as real estate brokers wherein BCEI conducted broker-
9 controlled escrows requiring a real estate license through BCEI's escrow division under the
10 exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers
11 performing escrows incidental to a real estate transaction where the broker is a party and where
12 the broker is performing acts for which a real estate license is required.

13 BCEI provides escrow services to the transactions generated by OC Real Estate
14 Consultants Inc. dba Keller William Realty Consultants Inc., and South Bay Passive Income Inc.

15
16 7.

17 On February 6, 2013, the Bureau completed an audit examination of the books and
18 records of Respondent BCEI pertaining to the residential resale and broker-controlled escrow
19 activities described in Paragraph 6, which require a real estate license. The audit examination
20 covered a period of time beginning on September 1, 2009 and ending on August 31, 2012,
21 (broker escrow audit – LA 120047). The audit examination revealed violations of the Code and
22 Title 10, Chapter 6, California Code of Regulations ("Regulations") as set forth in the following
23 paragraphs, and more fully set forth in said Audit Reports and the exhibits and work papers
24 attached thereto.

25 ///

26 ///

1 Trust Account

2 8.

3 At all times mentioned, in connection with the activities described in Paragraph 6,
4 above, BCEI accepted or received funds including funds in trust (hereinafter "trust funds") from
5 or on behalf of actual or prospective parties to real estate transactions, including escrow services
6 provided in-house by BCEI's escrow division. Thereafter BCEI made deposits and or
7 disbursements of such trust funds. From time to time herein mentioned during the audit period,
8 said trust funds were deposited and/or maintained by BCEI in the trust account herein set forth.

9
10
11 1. TA 1

12 Bank Name: Commerica Bank
13 Bank Address: El Segundo, CA 90245
14 Account No.: XXXXX-3710
15 Account Name: Beach Community Escrow Inc. Trust Account
16 Signatories: Kenneth Shishido, Tammy Newland-Shishido, Kathy
17 Cooper, Marciela Gonzales

18
19
20
21 2. TA 2

22 Bank Name: East West Bank
23 Bank Address: Los Angeles, CA 90067
24 Account No.: XXXXX-5408
25 Account Name: Beach Community Escrow Inc. Trust Account
26 Signatories: Tammy Newland-Shishido, Kathy Cooper,
Marciela Gonzales

27
28
29
30 3. TA 3

31 Bank Name: Commerica Bank
32 Bank Address: El Segundo, CA 90245
33 Account No.: XXXXX-1337
34 Account Name: Beach Community Escrow II Inc. Trust Account
35 Signatories: Tammy Newland-Shishido, Kathy Cooper,
36 Marciela Gonzales et al.,

1 depository or into a trust fund account in the name of the broker at a bank or other financial
2 institution not later than the next business day following receipt of the funds by the broker or by
3 the broker's salesperson, in violation of Code Section 10145 and Regulations 2832(e), 2950(f)
4 and 2951;

5 (c) Failed to maintain an accurate and complete control record in the form of a
6 columnar record in chronological order for TA 2 and TA 4, in violation of Code Section 10145
7 and Regulations 2831, 2950(d) and 2951;

8 (d) Failed to maintain an accurate and complete separate record for each
9 beneficiary or transaction for TA 1 and TA 3, in violation of Code Section 10145 and
10 Regulations 2831.1, 2950(d) and 2951;

11 (e) Failed to perform a monthly reconciliation of the balance of all separate
12 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of
13 all trust funds received and disbursed by the escrow trust account for TA 1 through TA 4, in
14 violation of Code Section 10145 and Regulations 2831.2, 2950(d) and 2951;

15 (f) (1) Permitted the unlicensed and unbonded persons tabled below, and Tammy
16 Newland-Shishido, real estate salesperson not licensed to BCEI, to be authorized signatories on
17 A 1, in violation of Code Section 10145 and Regulation 2834(a); and

18 ///

19 ///

20 ///

21 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Comerica Bank

<u>Account Number</u>	<u>Signatories</u>	<u>License</u>
1892383710 (TA # 1)	Newland-Shishido, Tammy	Salesperson not licensed to BCEI
	Cooper, Kathy	Not licensed
	Gonzales, Maricela	Not licensed

Comerica Bank

<u>Account Number</u>	<u>Signatories</u>	<u>License</u>
1894251337 (TA # 3)	Newland-Shishido, Tammy	Salesperson not licensed to BCEI
	Rime, Steven	Not licensed
	Grening, Kay	Not licensed
	Flagg, Valerie	RES, Not licensed to BCE
	Garcia, Lisa	Not licensed
	Hayden, Linda	Not licensed

(f) (2) SHISHIDO was not a signatory on TA 2 and TA 4, in violation of Code Section 10145 and Regulation 2834(b);

(g) Used the fictitious names of "Beach Community Escrow II Inc.," and "Broker Community Escrow II" to conduct licensed activities without first obtaining from the Bureau a license bearing said fictitious business names, in violation of Code Section 10159.5 and Regulation 2731;

1 (h) Failed to maintain on file with the Bureau the address of its principal place of
2 business for BCEI's brokerage activities including its escrow services, in violation of Code
3 Section 10162 and Regulation 2715.

4 (i) Respondent SHISHIDO failed to exercise reasonable control and supervision
5 over the activities conducted by BCEI's employees and/or licensees as necessary to secure full
6 compliance with the Real Estate laws, as required under Code Section 10159.2 and Regulation
7 2725, in violation of Code Section 10177(h).
8

9 10.

10 The conduct of Respondents BCEI and SHISHIDO, described in Paragraph 9,
11 above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
13 9(a)	Code Section 10145 and Regulations 2832.1, 2950(g) and 2951
14 9(b)	Code Section 10145 and Regulations 2832(e), 2950(f) and 2951
15 9(c)	Code Section 10145 and Regulations 2831, 2950(d) and 2951
16 9(d)	Code Section 10145 and Regulations 2831.1, 2950(d) and 2951
17 9(e)	Code Section 10145 and Regulations 2831.2, 2950(d) and 2951
18 9(f)	Code Section 10145 and Regulations 2834, 2950(d) and 2951
19 9(g)	Code Section 10159.5 and Regulation 2731
20 9(h)	Code Section 10162 and Regulations 2715
20 9(i)	Code Sections 10177(h) and 10159.2 and Regulation 2725 (SHISHIDO)

21 The foregoing violations constitute cause for discipline of the real estate licenses and license
22 rights of Respondents BCEI and SHISHIDO under the provisions of Code Sections 10177(d)
23 and/or 10177(g), and 10177(h) (SHISHIDO).

24 ///

25 ///

26 ///

1
2 SECOND CAUSE OF ACCUSATION
3 (Negligence)

4 11.

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

8 THIRD CAUSE OF ACCUSATION
9 (Fiduciary Duty)

10 12.

11 The conduct, acts and omissions of Respondents BCEI and SHISHIDO
12 constitutes a breach of fiduciary duty owed to BCEI's clients and trust fund beneficiaries of
13 good faith, trust, confidence and candor, within the scope of their brokerage and escrow
14 relationship, in violation of Code Section 10177(g) and is cause for discipline of the real estate
15 license and license rights of said Respondents pursuant to the provisions of said Code Section.

16 FOURTH CAUSE OF ACCUSATION
17 (Supervision and Compliance)

18 13.

19 The overall conduct of Respondent SHISHIDO constitutes a failure on said
20 Respondent's part as officer designated by a corporate broker licensee, to exercise the reasonable
21 supervision and control over the licensed activities of BCEI as required by Code Section
22 10159.2 and Regulation 2725, and to keep BCEI in compliance with the Real Estate Law, and is
23 cause for discipline of the real estate license and license rights of Respondents pursuant to the
24 provisions of Code Sections 10177(d), 10177(g) and 10177(h).

25 ///
26 ///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

14.

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

15.

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

PRIOR BUREAU ACTION

16.

On August 4, 2011, in Case No. H-37425 LA, an Accusation was filed against Respondent KENNETH WAYNE SHISHIDO, inter alia, which resulted in discipline effective April 5, 2012, including a Public Reproval on terms and conditions including successful completion of the Professional Responsibility Examination for said Respondent for violations of Code Sections 10177(a) and 10177(g) of the California Business and Professions Code.

///
///
///
///
///

1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
3 disciplinary action against all licenses and/or license rights of Respondents BEACH
4 COMMUNITY ESCROW INC. dba Beach Community Escrow and KENNETH WAYNE
5 SHISHIDO, individually and as designated officer of Beach Community Escrow Inc., under the
6 Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) and for
7 such other and further relief as may be proper under other applicable provisions of law,
8 including, but not limited to proof of restoration of the shortage of 11,733.07, restitution, costs
9 of audit in amount of \$10,536.40, costs of investigation and enforcement.

10
11 Dated at Los Angeles, California.

12
13 this 20 day of May, 2014

14
15 
16 ROBIN TRUJILLO
17 Deputy Real Estate Commissioner

18
19
20
21 cc: Beach Community Escrow Inc.
22 Kenneth Wayne Shishido
23 Robin Trujillo
24 Audits – Chona Picayo
25 Sacto
26