

FILED

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BUREAU OF REAL ESTATE

By 

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8
9 **BEFORE THE BUREAU OF REAL ESTATE**
10 **STATE OF CALIFORNIA**

11 * * *

12 In the Matter of the Accusation of)
13 IRVINE PROPERTY MANAGEMENT) No. H- 39498 LA
14 INC.;) ACCUSATION
15 JEFFREY VERLYN JENSEN,)
16 individually and as designated officer)
17 of Irvine Property Management Inc.; and)
18 GARY FRANK SULLY,)
19 Respondents.)

20 The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the
21 State of California, Bureau of Real Estate ("Bureau") for cause of Accusation against IRVINE
22 PROPERTY MANAGEMENT INC. ("IPMI"), JEFFREY VERLYN JENSEN ("JENSEN,"
23 individually and as designated officer of Irvine Property Management Inc. and GARY FRANK
24 SULLY ("SULLY") (collectively "Respondents,") is informed and alleges as follows:

25 1.

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

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2.

From January 12, 2010, through the present, Respondent IPMI has been licensed as a corporate real estate broker. At all times relevant herein, IPMI was acting by and through Respondent JENSEN 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.a

Respondent JEFFREY VERLYN JENSEN was originally licensed as a real estate broker on July 17, 2006 and has been the designated officer of IPMI since inception.

3.b

Respondent GARY FRANK SULLY was originally licensed as a real estate salesperson on December 6, 1990 and has been employed by IPMI since inception.

Table: IPMI Management/Ownership Officer Structure

| Name | Licensee | Ownership/Title |
|-----------------------|-------------|-------------------------------|
| Jeffrey Verlyn Jensen | Broker | Designated Officer |
| James Nelson | Unlicensed | President; 50% owner |
| Gary Frank Sully | Salesperson | Operational Manager/50% owner |
| Karen Sully | Unlicensed | Corporate Secretary/50% owner |

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 JENSEN, and real estate salespersons Gary Frank Sully and Karen Sully.

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2 FIRST CAUSE OF ACCUSATION
3 (Property Management Audit)

4 5.

5 A. Code Section 10131(a). Respondents IPMI and JENSEN engaged in the
6 business of, acted in the capacity of, advertised or assumed to act as a real estate broker,
7 including the solicitation for listings of and the negotiation of the sale of real property as the
8 agent of others.

9 B. Code Section 10131(b). Respondents engaged in the business of, acted in the
10 capacity of, advertised or assumed to act as real estate brokers, including the operation and
11 conduct of a property management business with the public wherein, for or in expectation of
12 compensation, for another or others, Respondents leased or rented or offered to lease or rent, or
13 placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or
14 collected rents from real property, or improvements thereon.

15 C. Code Section 10132. Respondent SULLY is a real estate salesperson
16 employed by IPMI since its inception. IPMI is engaged in property management activity and
17 managed three hundred fifty (350) residential properties for approximately three hundred twenty
18 (320) owners. IPMI collects rents, pays expenses, and screens tenants for compensation.
19 Approximately \$11,700,000.00 in trust funds was handled during the last twelve (12) months.
20 IPMI charges monthly management fees in a range from one hundred twenty five (\$125) to
21 three hundred fifty dollars (\$350).
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Audit Examination

6.

On November 12, 2013, the Bureau completed an audit examination of the books and records of Respondent IPMI pertaining to the residential resales and property management activities described in Paragraph 5, which require a real estate license. The audit examination covered a period of time beginning on August 1, 2010 and ending on July 31, 2013. 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 130059 and LA 130073 and the exhibits and work papers attached thereto.

Trust Accounts

7.

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

Trust Account #1 (T/A 1)

Bank: First Republic Bank
111 Pine Street
San Francisco, CA 94111

Account Name: Irvine Property Management Inc
(Trust Account)

Account Number: xxxx-xxxx-7359

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Bank Account #1 (B/A 1)

Bank: First Republic Bank
111 Pine Street
San Francisco, CA 94111

Account Name: Irvine Property Management Inc
(Maintenance Account)

Account Number: xxxx-xxxx-2480

General #1 (GA 1)

Bank: First Republic Bank
111 Pine Street
San Francisco, CA 94111

Account Name: Irvine Property Management Inc
(Operating Account)

Account Number: xxxx-xxxx-7367

General #2 (GA 2)

Bank: First Republic Bank
111 Pine Street
San Francisco, CA 94111

Account Name: Irvine Property Management Inc
(Expense Account)

Account Number: xxxx-xxxx-9851

Violations of the Real Estate Law

8.

In the course of activities described in Paragraphs 5 and 7 above, and during the examination period, described in Paragraph 6, Respondents IPMI and JENSEN acted in violation of the Code and the Regulations in which Respondents:

1 (a) IPMI and JENSEN. Permitted, allowed or caused the disbursement of trust
2 funds from IPMI's property management trust account into which trust funds in the form of rents
3 and security deposits collection, and where the disbursement of funds reduced the total of
4 aggregate funds in T/A 1 to an amount which, on July 31, 2013, was at a combined minimum
5 accountability of \$124,816.93, less than the existing aggregate trust fund accountability of IPMI
6 to every principal who was an owner of said funds, without first obtaining the prior written
7 consent of the owners of said funds, in violation of Code Section 10145(a) and Regulation
8 2832.1. On October 17, 2013, IPMI restored the shortage of \$124,816.93.

10 (b) IPMI and SULLY. Business Practice of IPMI's Property Management
11 Activity - Handling of Trust Funds/Secret Profits/Fraud and Dishonest Dealing.

12 Subsequent to IPMI's purchase its property management business from Larkin
13 Property Management Inc. in 2010, IMPI's general account G/A1's bank statement showed that
14 IPMI deposited at least \$16,813.93, in funds received from two of IMPI's third party vendors,
15 into G/A 1 from the period of February 2, 2012 to March 13, 2013.

17 A review of G/A1's deposit records revealed that there were twelve (12) checks
18 totaling \$2,877.89 issued from Sulzer Inc. (Sulzer Plumbing) to IMPI during the period from
19 March 27, 2012 to March 13, 2013. Moreover, twelve (12) checks totaling \$13,935.50 issued
20 from H/L Restoration (Thomas the Handyman) to IMPI during the period from February 2, 2012
21 to January 10, 2013. Said checks were deposited into (G/A1).

23 Sulzer Plumbing and Thomas the Handyman were the third party vendors
24 providing repair and maintenance services to properties managed by IPMI. The aforesaid
25 twenty four checks were the so-called "Volume Discount" paid by these vendors to IPMI for the
26 business referred to them by IPMI. A review of the Vendor Ledger showed that IPMI paid,

1 from T/A1 on behalf of the property owners \$137,401.21 to Sulzer Plumbing and \$281,936.78
2 to Thomas the Handyman from August 1, 2010 to July 31, 2013 for the services rendered on the
3 properties managed by IPMI.

4 The property management agreement did not show that IPMI was allowed to
5 charge property owners for maintenance mark-ups. Nor disclose to property owners in writing
6 was that IPMI would receive funds (Volume Discount) from IPMI's vendor in connection to the
7 services provided by said vendors, in violation of Code Section 10145, 10176(g), 10176(i)
8 and/or 10177(j).

9
10 (c) IPMI and JENSEN. Failed to place trust funds received from tenants and
11 property owners into a trust account in the name of the broker as trustee at a bank or other
12 financial institution in connection with IPMI's property management activities, in violation of
13 Code Section 10145 and Regulation 2832(a). B/A 1, into which trust funds from tenants and
14 property owners were placed after collection through the instrumentality of credit account
15 payments was a merchant account and not a trust account.

16
17 (d) Permitted James Nelson, president and owner of IPMI, and Karen Sully,
18 unlicensed and unbonded persons, to be authorized signatories on T/A 1 and B/A 1, in violation
19 of Code Section 10145 and Regulation 2834. This violation was corrected on September 24,
20 2013.

21 (e) IPMI and JENSEN. Failed to disburse from T/A 1 four mistakenly deposited
22 checks for (1) leasing commissions earned by IPMI on July 25, 2013 fees totaling \$7,367.06,
23 and (2) retained \$3,240.58 of IPMI's funds remained in T/A 1 as of July 31, 2013, in violation
24 of Code Sections 10145 and 10176(e) and Regulation 2835.
25
26

1 (f) IPMI. Received undisclosed compensation by means of an earning credit
 2 agreement with First Republic Bank for T/A 1, B/A 1, G/A 1 and G/A 2. The earnings credit
 3 was based on and calculated by trust fund activity in the aforesaid account. The monthly
 4 earning credits were used to offset combined bank service charges in Bank service charges were
 5 deducted from the earning credit accrued from T/A 1, B/A 1, G/A 1 and G/A 2 account thus
 6 reducing IPMI's cost of doing business, with the primary portion of the funds available for the
 7 earning credit calculation was from T/A 1. The earnings credit arrangement was not disclosed
 8 by IMMI or JENSEN to the beneficiaries of the T/A 1 or B/A 1, in violation of Code Sections
 9 10176(a) and 10176(g).
 10

11 (g) IPMI and SULLY. T/A 1 reflected a negative balance with respect to the
 12 property located at 52 Kittredge Terrace, San Francisco of \$27,088.99 of which two (2)
 13 disbursements, checks Nos. #5644 (November 15, 2010) in the amount of \$205.00 and #6884
 14 (February 7, 2011) in the amount of \$1,000 without the invoices/receipts to validate such
 15 disbursements, in violation of Code Sections 10145 and 10177(g). As of January 1, 2010 the
 16 said negative balance was carried forward to July 31, 2013, the audit cutoff date. Both checks
 17 had been made payable to SULLY.
 18

19 (h) SULLY. In three (3) property management agreements SULLY, a
 20 salesperson, represented himself as broker, in violation of Sections 10130, 10176(a) and
 21 10176(i):
 22

| Property Owner | Property Name | Date | Misrepresentation |
|-----------------|------------------|---------------|-------------------|
| Pete/Karen V. | 5 Locust, Irvine | May 7, 2013 | "Broker" |
| Time Investment | All Properties | June 14, 2012 | "Broker" |

| | | | |
|-------------|---------------------------------------|-------------|----------|
| Virginia R. | 52 Kittredge Terrace San Francisco | May 5, 2009 | "Broker" |
|-------------|---------------------------------------|-------------|----------|

(i) IPMI and JENSEN. Failed to maintain an accurate and complete control record in the form of a columnar record in chronological order of trust funds received in the form of earnest money deposits (EMD) but not placed into a trust account, in violation of Code Section 10145 and Regulation 2831. The EMD's set forth in the table below were not posted to the "Trust fund Received – Not Placed in Broker's Trust Account.";

| Buyer | Property Name | EMD | Date |
|---------------------|---------------------------------------|----------|---------------|
| S&L P. | 28761 Peach Blossom | \$17,700 | July 27, 2011 |
| J.F. | 31271 Via Sonora | \$10,000 | June 21, 2011 |
| The Andrea S. Trust | 52 Kittredge Terrace San Francisco | \$25,000 | June 21, 2011 |

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

9.

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

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1 PARAGRAPH

PROVISIONS VIOLATED

- 2 8(a) Code Section 10145 and Regulation 2832.1
- 3 8(b) Code Sections 10145, 10176(g), 10176(i)/10177(j) and Regulation 2831
- 4 8(c) Code Section 10145 and Regulation and 2832(a)
- 5 8(d) Code Section 10145 and Regulation and 2834
- 6 8(e) Code Sections 10145 and 10176(e) and Regulation 2835
- 7 8(f) Code Sections 10145 and 10176(e)
- 8 8(g) Code Sections 10145 and 10177(g)(SULLY)
- 9 8(h) Code Sections 10130, 10176(a) and 10176(i)(SULLY)
- 10 8(i) Code Section 10145 and Regulation 2831
- 11 8(j) Code Sections 10159.2 and 10177(h) and Regulation 2725 (JENSEN)

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14 The foregoing violations constitute cause for the discipline of the real estate licenses and license

15 rights of Respondents IPMI, JENSEN and SULLY, as the case may be, under the provisions of

16 Code Sections 10145, 10159.2, 10176(i) and/or 10177(j), 10177(d), 10177(g), and 10177(h)

17 (JENSEN).

18 SECOND CAUSE OF ACCUSATION

(Negligence)

19 10.

20 The overall conduct of Respondents IPMI, JENSEN and SULLY constitutes

21 negligence and is cause for discipline of the real estate license and license rights of said

22 Respondents pursuant to the provisions of Code Section 10177(g).

23 THIRD CAUSE OF ACCUSATION

(Fiduciary Duty)

24 11.

25 The conduct, acts and omissions of Respondents IPMI and SULLY

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1 constitutes a breach of fiduciary duty owed to IPMI's clients of good faith, trust, confidence and
2 candor, within the scope of their property management relationship with property owners and
3 tenants, in violation of Code Section 10177(g) and 10176(i) and constitutes cause for discipline
4 of the real estate license and license rights of said Respondents pursuant to the provisions of
5 Code Section 10177(g). Respondent SULLY's misrepresenting himself to the public as a real
6 estate broker, receiving checks payable from trust funds without standard accounting validity,
7 engaging in an earning credit arrangement with the First Republic Bank whereby IMPI's
8 operating expenses were defrayed, and receiving via IPMI \$419,337.99 through the
9 instrumentality of a secret and undisclosed arrangement via "Volume Discounts" from third
10 party vendors for business referred constitutes a breach of fiduciary duty.

11 12.

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

16 17.

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

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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 IRVINE PROPERTY
4 MANAGEMENT INC., JEFFREY VERLYN JENSEN, individually and as designated officer
5 of Irvine Property Management Inc., and GARY FRANK SULLY, under the Real Estate Law
6 (Part 1 of Division 4 of the California Business and Professions Code) and for such other and
7 further relief as may be proper under other applicable provisions of law, including but not
8 limited to restitution, costs of investigation, enforcement and audit.
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10 Dated at Los Angeles, California

11 this 18 day of June, 2014.
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15 ROBIN TRUJILLO
16 Deputy Real Estate Commissioner
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23 cc: Irvine Property Management Inc.
24 Jeffrey Verlyn Jensen
25 Gary Frank Sully
26 Robin Trujillo
Gina King - Audits
Sacto