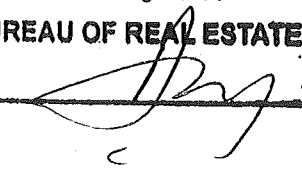


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FILED

AUG - 8 2014
BUREAU OF REAL ESTATE
By 

8 BEFORE THE BUREAU¹ OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of)
12 MESA MANAGEMENT INC.; and) No. H- 39572 LA
13 CORTNEY ARTHUR ENSIGN,) ACCUSATION
14 individually and as designated)
15 officer of Mesa Management Inc.,)
16 Respondents.)

17 The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the
18 State of California, Bureau of Real Estate ("Bureau") for cause of Accusation against MESA
19 MANAGEMENT INC. ("MMI") and CORTNEY ARTHUR ENSIGN ("ENSIGN,")
20 individually and as former designated officer of Mesa Management Inc. (collectively
21 "Respondents,") is informed and alleges as follows:

22 1.

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

26 ¹ Effective July 1, 2013, the California Department of Real Estate became the Department of Consumer Affairs, Bureau of Real Estate ("Bureau"). References in this Accusation are to the successor entity.

2.

All references to the "Code" are to the Part 1 of Division 4 California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

Individuals and Entities

3.a

From June 22, 1990, through the present, Respondent MMI has been licensed as a corporate real estate broker. At all times relevant herein, MMI was acting by and through Respondent ENSIGN as its designated officer pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3.b

Respondent ENSIGN was originally licensed as a real estate broker on December 5, 1990 and is the designated officer-broker of MMI.

3.c

Table: Mesa Management Inc. Management Structure and Ownership

Name	License	Ownership/Title
Cortney Arthur Ensign	Broker	Designated Officer 0%
Steven Mensinger	Expired Licensee	President 0%
David James Gianulias	Expired Licensee	Chairman/Secretary 100%
Sara D'Elia	Salesperson	Former President 0%
Shawn Conderty	Non-Licensee	Former CFO/Controller 49%

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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 ENSIGN, Steven Mensinger, David James Gianulias, Sara D'Elia, and Shawn Conderty.

FIRST CAUSE OF ACCUSATION
(Property Management Audit)

5.

At all times mentioned, in the Newport Beach, Orange County, Respondents MMI and ENSIGN 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.

MMI is engaged in property management activity and manages twenty four (24) apartment complexes and seven (7) commercial properties for thirty one (31) owners. MMI collects rents, pays expenses, and screens tenants for compensation. Approximately \$57,350,000 in trust funds were handled during the last twelve (12) months. MMI charged a property management fee of approximately 5%.

Audit Examination

6.

On April 30, 2014, the Bureau completed an audit examination of the books and records of Respondent MMI 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 January 1, 2012 and ending on January 20, 2014. The audit examination revealed

1 violations of the Code and Regulations as alleged in the following paragraphs, and more fully
2 set forth in Audit Report LA 130154 and the exhibits and work papers attached thereto.

3
4 Bank Account

5 7.

6 At all times mentioned, in connection with the real estate activities described in
7 Paragraph 6, above, MMI accepted or received funds including funds in trust ("trust funds")
8 from or on behalf of property owners and tenants handled by MMI and thereafter made deposits
9 and or disbursements of such funds. From time to time herein mentioned, during the audit
10 period and thereafter, said trust funds were deposited and/or maintained by MMI in the thirty
11 four (34) single beneficiary bank accounts and one (1) multiple beneficiary account of which six
12 (6) bank accounts were audited located at the bank set forth and as described below:

13 Bank Account 1 (B/A 1)

14 Bank: American Security Bank
15 1401 Dove St., Suite 100
16 Newport Beach, CA 92660

17 Account Name: Mesa Management Inc.
18 Agent for The Arches at Regional Center West

19 Account Number: xxxx-xxxx-8975

20
21 Bank Account 2 (B/A 2)

22 Bank: American Security Bank
23 1401 Dove St., Suite 100
24 Newport Beach, CA 92660

25 Account Name: Mesa Management Inc.
26 Agent for Water Crest at the Polo Fields

Account Number: xxxx-xxxx-8983

1 Bank Account 3 (B/A 3)

2 Bank: American Security Bank
3 1401 Dove St., Suite 100
4 Newport Beach, CA 92660

5 Account Name: Quail Business Center Owner's Association

6 Account Number: xxxx-xxxx-8538

7
8 Bank Account 4 (B/A 4)

9 Bank: American Security Bank
10 1401 Dove St., Suite 100
11 Newport Beach, CA 92660

12 Account Name: Placentia 422, LP

13 Account Number: xxxx-xxxx-8470

14
15 Bank Account 5 (B/A 5)

16 Bank: Wells Fargo Bank
17 P.O. Box 6995
18 Portland, OR 97228-6995

19 Account Name: Placentia 422, LP

20 Account Number: xxxx-xxxx-3844

21
22 Bank Account 6 (B/A 6)

23 Bank: American Security Bank
24 1401 Dove St., Suite 100
25 Newport Beach, CA 92660

26 Account Name: Mesa Management Inc. (Concentration Account)

 Account Number: xxxx-xxxx-8306

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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 MMI and ENSIGN acted in violation of the Code and the Regulations in which Respondents:

(a) Permitted, allowed or caused the disbursement of trust funds from MMI's property management trust account B/A 6 into which trust funds in the form of rents and security deposit were placed, and where the disbursement of funds reduced the total of aggregate funds in B/A 1 to an amount which, on January 20, 2014, was at a minimum accountability of \$152,260.27, less than the existing aggregate trust fund accountability of MMI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145(a) and Regulation 2832.1. To date, the shortage remains unrepatriated. B/A 6 shortage was caused by unauthorized disbursements, negative property balances, and unidentified deficits;

(b) B/A 6's reflected an unauthorized disbursement of \$88,297.20, as of January 20, 2014, in violation of Code Sections 10145 and 10176(i)(10177(j)).

(c) Failed to perform an accurate and complete monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by B/A 1, in violation of Code Section 10145 and Regulation 2831.2;

(d) Failed to maintain an accurate and complete separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed for B/A 6, in violation of Code Section 10145 and Regulation 2831.1;

1 (e) Failed to maintain an accurate and complete control record in the form of a
2 columnar record in chronological order of trust funds received but not deposited into B/A 6, in
3 violation of Code Section 10145 and Regulation 2831;

4 (f) Failed to place trust funds in the form of rent receipts, accepted on behalf of
5 another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund
6 account in the name of the trustee at a bank or other financial institution, in violation of Code
7 Section 10145 and Regulation 2832(a):

- 9 • B/A 3, B/A 4, B/A 5, used to hold trust funds, were maintained in the
10 name of various property owners; and
- 11 • B/A 1, B/A 2 and B/A 6, used to hold trust funds, were not designated
12 as trust accounts;

13
14 (g) (1) Permitted James Gianulias, an expired broker, and Chairman /Secretary of
15 MMI, and R. McFadden, Shawn Conerty, and Carla P. Frakes, unlicensed and unbonded
16 persons, to be authorized signatories on the property management bank accounts B/A – B/A 6,
17 into which trust funds in the form of collected rents and security deposits were placed, in
18 violation of Code Section 10145 and Regulation 2834(a); and

19 (g) (2) ENSIGN was not a signatory on B/A 1 – B/A 6, in violation of Code
20 Section 10145 and Regulation 2834(b);

21 (h) Received undisclosed compensation by means of an earning credit agreement
22 with American Security Bank. The earnings credit was based on and calculated by trust fund
23 activity in B/A 1, B/A 2, B/A 3, B/A 4 and B/A 6. Bank service charges in the amount of
24 \$7,650.92, were deducted from the earning credit accrued on the five bank accounts into which
25 trust funds were placed, thus reducing MMI's cost of doing business. The earnings credit
26

1 arrangement was not disclosed by MMI or ENSIGN to the beneficiaries of the said bank
2 accounts, in violation of Code Sections 10176(a) and 10176(g).

3 (i) Conducted property management activities at 1451 Quail St. in Newport
4 Beach, and 41771 Aviv St., Murrieta, California and, prior to obtaining branch office licenses
5 from the Bureau, in violation of Code Section 10163 and Regulation 2715;

6 (j) Failed to disclose MMI or ENSIGN's real estate license identification
7 numbers and Mortgage Loan Originator number(s) on the Nationwide Mortgage Licensing
8 System Registry identification numbers on ENSIGN's business card, in violation of Code
9 Section 10140.6(b)(1) and Regulation 2773; and

10 (k) Failed to notify the Bureau of the employment of salesperson Sara D'Elia, in
11 violation of Code Section 10161.8 and Regulation 2752.

12
13 9.

14 The conduct of Respondents MMI and ENSIGN, described in Paragraph 8,
15 above, violated the Code and the Regulations as set forth below:

16 <u>PARAGRAPH</u>	17 <u>PROVISIONS VIOLATED</u>
18 8(a)	Code Section 10145 and Regulation 2832.1
19 8(b)	Code Section 10145 and Regulation 2832
20 8(c)	Code Section 10145 and Regulation 2834
21 8(d)	Code Section 10145 and Regulation 2831
22 8(e)	Code Section 10145 and Regulation 2831.1
23 8(f)	Code Section 10145 and Regulation 2831.2
24 8(g)	Code Sections 10145 and 10176(e) and Regulation 2832
25 8(h)	Code Sections 10176(a) and 10176(g)
26 8(i)	Code Section 10163 and Regulation 2715

1 8(j) Code Section 10140.6(b)(1) and Regulation 2773

2 8(k) Code Section 10161.8 and Regulation 2752

3
4
5 The foregoing violations constitute cause for the discipline of the real estate licenses and license
6 rights of Respondents MMI and ENSIGN under the provisions of Code Sections 10145,
7 10159.2, 10176(a), 10176(e), 10176(g), 10176(i) and/or 10177(j), 10177(d), and 10177(g).

8 SECOND CAUSE OF ACCUSATION
9 (Negligence)

10 11.

11 The overall conduct of Respondents MMI and ENSIGN constitutes negligence
12 and is cause for discipline of the real estate license and license rights of said Respondents
13 pursuant to the provisions of Code Section 10177(g).

14 THIRD CAUSE OF ACCUSATION
15 (Fiduciary Duty)

16 12.

17 The conduct, acts and omissions of Respondents MMI and ENSIGN constitute a
18 breach of fiduciary duty, owed to MMI's clients and trust fund beneficiaries of good faith, trust,
19 confidence and candor, within the scope of their brokerage, in violation of Code Sections
20 10177(g) and 10176(i) and constitutes cause for discipline of the real estate license and license
rights of said Respondents pursuant to the provisions of said Code Sections.

21 In particular, Respondents by not designating B/A 1 through B/A 6 as a trust
22 accounts unnecessarily exposed the trust funds therein and exposed each and every borrower-
23 beneficiary of said trust funds contained therein, to suit, attachment, levy and seizure by

24 (1) the general creditors of any trust fund beneficiary

25 (2) the federal and state taxing authorities, including but not limited to the

26 Internal Revenue Service, the California Franchise Tax Board, and the

1 California State Board of Equalization

2 (3) the United States Bankruptcy Court,

3 (4) to a lack of recourse and recompense to said beneficiaries for having an
4 unlicensed and unbonded persons as signatories on B/A 1 - B/A 6; and

5 (5) for not having ENSIGN as a signatory on MMI's bank accounts, B/A 1
6 through B/A 6, into which trust funds were deposited.

7
8 FOURTH CAUSE OF ACCUSATION

9 (Supervision and Compliance with the Real Estate Law)

10 13.

11 The overall conduct of Respondent ENSIGN constitutes a failure on his part, as
12 officer designated by a corporate broker licensee, to exercise the reasonable supervision and
13 control over the licensed activities of MMI in violation of Code Section 10159.2 and
14 Regulation 2725, and to keep MMI in compliance with the Real Estate Law. Said conduct, acts
15 and omissions are cause for the suspension or revocation of the real estate license and license
16 rights of ENSIGN pursuant to the provisions of Code Section 10177(h). ENSIGN failed to
17 exercise reasonable care and supervision over trust fund handling. Nor did ENSIGN have
18 policies and procedures in place to maintain and monitor MMI's compliance with the Real
19 Estate Law. Nor was ENSIGN a signatory on MMI's bank accounts, into which trust funds
20 were deposited.

21 14.

22 Code Section 10106 provides, in part, that in any order issued in resolution of a
23 disciplinary proceeding before the Bureau of Real Estate, the Commissioner may request the
24 administrative law judge to direct a licensee found to have committed a violation of this part to
25 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
26

Code Section 10148(b) provides, in pertinent part the Commissioner 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.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights of Respondents MESA MANAGEMENT INC. and CORTNEY ARTHUR ENSIGN, individually and as designated officer of Mesa Management Inc. under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law, including but not limited to, proof of cure of the \$152,260.47 shortage, restitution, and costs of investigation, enforcement and audit.

Dated at Los Angeles, California

This 28 day of July, 2014.


ROBIN TRUJILLO
Deputy Real Estate Commissioner

cc: Mesa Management Inc.
Cortney Arthur Ensign
Robin Trujillo
Gina King - Audits
Sacto