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FILED

JAN 15 2015

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU¹ OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H- 39711 LA
	)	
EDDIE HAM CASARES,	)	<u>ACCUSATION</u>
doing business as Pacific Coast Realty/ESC	)	
Preferred Services/Mortgage Express,	)	
	)	
Respondent,	)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California acting in her official capacity, for cause of Accusation against EDDIE HAM CASARES doing business as Pacific Coast Realty/ESC Preferred Services/Mortgage Express, is informed and alleges as follows:

1.

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

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 Part 1 of Division 4 of the California Business and Professions Code ("Real Estate Law") and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

License Status

3.

At all times mentioned, EDDIE HAM CASARES ("CASARES") was licensed or had license rights issued by the Bureau of Real Estate ("Bureau") as a real estate broker.

CASARES was originally licensed as a real estate broker on February 20, 1996 and previously as a salesperson. On June 7, 2011, in Case No. H-37321 LA, an Accusation was filed against Respondent EDDIE HAM CASARES, which resulted in discipline effective February 2, 2012, as more fully set forth below in Paragraph 19.

Brokerage

4.

At all times mentioned, in the City of Redlands, San Bernardino County, Respondent CASARES engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker, including the operation and conduct of a property management business within the meaning of Code Section 10131(b).

Respondent leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or collected rents from real property, or improvements thereon.

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Respondent CASARES is engaged in property management activity and manages fifty two (52) real properties for forty two (42) owners. CASARES collects rents, pays expenses, and screens tenants for compensation. Approximately \$1,000,000 in trust funds is collected annually.

FIRST CAUSE OF ACCUSATION
(Audit Examination)

5.

On June 3, 2014 the Bureau completed an audit examination of the books and records of CASARES, pertaining to the property management activities of his brokerage described in Paragraph 4, that require a real estate license. The audit examination covered a period of time beginning on February 2, 2012 and ending on February 28, 2014. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Report LA 130197 and the exhibits and work papers attached.

Bank Accounts

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, CASARES accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by CASARES, including property owners and tenants. CASARES maintained the following bank accounts for his property management brokerage:

1. BA 1

Bank: JPMorgan Chase

Account Name: Eddie H. Casares dba Pacific Coast Realty

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Account No.: *****6150

2. BA 2

Bank: JPMorgan Chase

Account Name: Eddie H. Casares dba Pacific Coast Realty, LLC

Account No.: *****0506

3. BA 3

Bank: Wells Fargo Bank

Account Name: Eddie H. Casares dba Pacific Coast Realty

Account No.: *****1941

4. BA 4

Bank: JPMorgan Chase

Account Name: Dulce Busine dba Pacific Coast Realty

Account No.: *****0918

5. BA 5

Bank: Wells Fargo Bank

Account Name: Dulce Busine dba Pacific Coast Realty

Account No.: *****8895

6. BA 6

Bank: Wells Fargo Bank

Account Name: Pacific Coast Realty, LLC

Account No.: *****1616

7. BA 7

Bank: Bank of America

Account Name: Pacific Coast Realty, LLC

Account No.: *****1147

8. BA 8

Bank: Citibank

Account Name: Pacific Coast Realty, LLC

Account No.: *****6171

Violations of the Real Estate Law

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the audit examination period described in Paragraph 5, Respondent CASARES acted in violation of the Code and the Regulations in which CASARES:

(a) (1) Permitted, allowed or caused the disbursement of trust funds from the bank accounts BA 1 and BA 2, where the disbursement of funds reduced the total of aggregate funds in the trust accounts set forth below, to an amount which on February 28, 2014, was \$53,564.76 less than the existing aggregate trust fund liability of Respondent CASARES 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 and Regulation 2832.1:

(a) (2) Permitted, allowed or caused the disbursement of trust funds from the bank accounts BA 1, BA 2, BA 4, BA 7, and BA 8, where the disbursement of funds reduced the total

1 of aggregate funds in the trust accounts set forth below, to an amount which on June 28, 2013,
2 was \$51,439.98 less than the existing aggregate trust fund liability of Respondent CASARES to
3 every principal who was an owner of said funds, without first obtaining the prior written consent
4 of the owners of said funds, as required by Code Section 10145 and Regulation 2832.1:

5 On March 20, 26, and 28, 2014, Respondent CASARES deposited \$57,000.00
6 into BA 3 (sic) to restore the shortages of 7(a)(1) and & (a)(2);
7

8 (b) Failed to maintain a control record in the form of a columnar record in
9 chronological order of trust funds received, deposited into and disbursed from BA 1 through
10 BA 8, in violation of Code Section 10145 and Regulation 2831;

11 (c) Failed to maintain accurate, adequate and complete separate record for each
12 beneficiary or transaction, thereby failing to account for all trust funds received, deposited and
13 disbursed by and through BA 1 through BA 8, in violation of Code Section 10145 and
14 Regulation 2831.1;
15

16 (d) Failed to perform a monthly reconciliation of the balance of all separate
17 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all
18 trust funds received and disbursed by BA 1 through BA 8, in violation of Code Section 10145
19 and Regulation 2831.2;
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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, in violation of Code
24 Section 10145 and Regulation 2832(a). BA 1 through BA 8 were used for trust fund handling
25 of security deposits and rental receipts but were not designated as trust accounts;
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1 (f) (1) Permitted Dulce Busine, wife of CASARES, an unlicensed and unbonded
2 person, to be an authorized signatory on trust accounts BA 4 through BA 8, in violation of Code
3 Section 10145 and Regulation 2834(a); and

4 (f)(2) CASARES was not a signatory on trust accounts BA 4 through BA 8, in
5 violation of Code Section 10145 and Regulation 2834(b);

6 (g) Converted trust funds from BA 1 by disbursing the excess of management fees
7 totaling \$18,189.05 on February 28, 2014 and totaling \$1,731.71 from BA 1 as of June 28, 2013,
8 in violation of Code Sections 10145 and 10176(i). Casares used the trust funds in BA 1 to pay
9 for his personal and financial obligations against the management fees earned/collected;
10

11 Recapitulated:

12 \$18,189.05 from BA 1 on February 28, 2014, Unauthorized Disbursement
13 \$ 1,731.71 from BA 1 as of June 28, 2013
14

15 (h) Permitted and/or caused the disbursement of trust funds to him and/or third
16 party providers on the representation that these amounts were needed to pay for maintenance
17 services or management fees thereon, which payments exceeded the actual costs of these services
18 by Respondent. Respondent did not disclose these "mark-ups" to the beneficiaries of said trust
19 funds, did not obtain their consent to these "mark-ups" and paid himself the difference between
20 the amounts paid and the actual costs of the services, in violation of Code Section 10176(g). The
21 total amount of the maintenance/repair fee markup is \$1,003.31; and
22

23 (i) CASARES Failed to adequately supervise and control the property
24 management activity conducted under his real estate broker license. Additionally, CASARES
25 had no system in place for regularly monitoring his compliance with the Real Estate Law
26 especially in regard to establishing, systems, policies and procedures to review trust fund
27

1 handling, and to keep himself in compliance with the Real Estate Law, in violation of Code
2 10177(h) and Regulation 2725.

3 Disciplinary Statutes and Regulations

4 8.

5 The conduct of Respondent CASARES, as alleged and described in Paragraph 7,
6 above, violated the Code and the Regulations as set forth below:
7

8 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9 7(a)	Code Section 10145 and Regulation 2832.1
10 7(b)	Code Section 10145 and Regulation 2831
11 7(c)	Code Section 10145 and Regulation 2831.1
12 7(d)	Code Section 10145 and Regulation 2831.2
13 7(e)	Code Section 10145 and Regulation 2832(a)
14 7(f)	Code Section 10145 and Regulation 2834(a) & (b)
15 7(g)	Code Sections 10145 and 10176(i)
16 7(h)	Code Section 10176(g)
17 7(i)	Code Section 10177(h) and Regulation 2725

18 The foregoing violations constitute cause for the suspension or revocation of the real estate license
19 and license rights of Respondent CASARES, under the provisions of Code Sections 10176(i),
20 10177(d), 10177(g) and 10177(h).

21 SECOND CAUSE OF ACCUSATION
22 (Negligence)

23 9.

24 The overall conduct of Respondent CASARES constitutes negligence or
25 incompetence. This conduct and violation is cause for the suspension or revocation of the real
26 estate license and license rights of Respondent pursuant to Code Section 10177(g).
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THIRD CAUSE OF ACCUSATION
(Breach of Fiduciary Duty)

10.

The conduct, acts and omissions of Respondent CASARES constitutes a breach of fiduciary duty of good faith, trust, confidence and candor, within the scope of his property management brokerage relationship owed to Respondent's property management clientele. This conduct and violation is cause for the suspension or revocation of the real estate license and license rights of Respondent pursuant to Code Section 10177(g).

In particular, Respondent CASARES, by not designating BA 1 through BA 8 as a trust accounts unnecessarily exposed the trust funds contained therein and exposed each beneficiary of said trust funds, the 42 property owners, to law suit, judgment, attachment, levy and seizure by:

- (1) the general creditors of each trust fund beneficiary;
- (2) the federal and state taxing authorities, including but not limited to the Internal Revenue Service and the California Franchise Tax Board;
- (3) the United States Bankruptcy Court; and
- (4) to a lack of pecuniary recourse and recompense to said beneficiaries.

FOURTH CAUSE OF ACCUSATION
(Supervision)

11.

The overall conduct of Respondent CASARES constitutes a failure on his part to exercise reasonable supervision and control over the licensed activities his property management brokerage, in violation of Code Section 10177(h) and Regulation 2725. Respondent CASARES

1 failed to keep his brokerage in compliance with the Real Estate Law, and as such, is cause for the
2 suspension or revocation of the real estate license and license rights of Respondent pursuant to
3 the provisions of Code Section 10177(h).

4 12.

5 Code Section 10106 provides, in pertinent part, that in any order issued in
6 resolution of a disciplinary proceeding before the Bureau of Real Estate, the Commissioner may
7 request the administrative law judge to direct a licensee found to have committed a violation of
8 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
9 the case.
10

11 13.

12 Code Section 10148(b) provides, in pertinent part, the Commissioner shall charge
13 a real estate broker for the cost of any audit, if the Commissioner has found in a final decision
14 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation
15 or rule of the Commissioner interpreting said section.
16

17 PRIOR BUREAU ACTION

18 14.

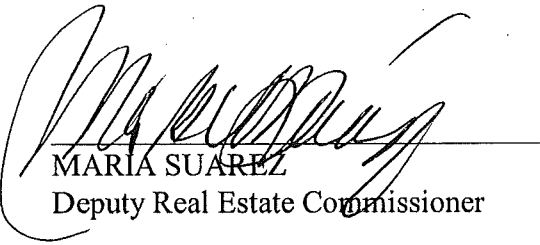
19 On June 7, 2011, in Case No. H-37321 LA, an Accusation was filed against
20 Respondent EDDIE HAM CASARES, which resulted in discipline effective February 2, 2012,
21 including a stayed suspension for thirty days on terms and conditions including successful
22 completion of the Professional Responsibility Examination, for said Respondent for violations of
23 Sections 10177(d) and 10177(g) and 10177(h) of the California Business and Professions Code.
24 Said suspension was released on July 10, 2012.
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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 the license and license rights of Respondent EDDIE HAM CASARES under the
4 Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other
5 and further relief as may be proper under other applicable provisions of law including, but not
6 limited to (1) repatriation and verification of \$56,564.76 trust fund shortage restorral; (2) cost of
7 audit pursuant to Code Section 10148(b); (3) costs of investigation and enforcement pursuant to
8 Code Section 10106; (4) restitution; and (5) as pursuant to applicable provisions of the
9 California Administrative Procedure Act.

10 Dated at Los Angeles, California

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12 This 7th day of Jan., 2015

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15 MARIA SUAREZ
16 Deputy Real Estate Commissioner
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22 cc: Eddie Ham Casares
23 Maria Suarez
24 Audits – Zaky Wanis
25 Sacto
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