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FILED

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BUREAU OF REAL ESTATE

By *Ch. Delois*

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

No. H- 40161 LA

12 HERE THERE AND EVERYWHERE INC.; and

ACCUSATION

13 WAYNE LEO BETTAREL, individually and as
14 designated officer of Here There And
15 Everywhere Inc.,

16 Respondents.

17 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
18 State of California, for cause of Accusation against HERE THERE AND EVERYWHERE INC.
19 and WAYNE LEO BETTAREL, individually and as designated officer of Here There And
20 Everywhere Inc., alleges as follows:

21 1.

22 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
23 State of California, makes this Accusation in her official capacity.

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27 CalBRE Accusation – Here There And Everywhere Inc. and Wayne Leo Bettarel

1 2.

2 All references to the "Code" are to the California Business and Professions Code
3 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

4 LICENSE HISTORY

5 3.

6 Respondent HERE THERE AND EVERYWHERE INC. (hereinafter "HTAEI")
7 is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of
8 the Code) as a corporation, real estate broker license ID 01507987. Respondent HTAEI was
9 originally licensed by the Bureau (then "Department") of Real Estate (hereinafter "Bureau") on
10 or about June 15, 2005. Respondent HTAEI's current main office address of record and mailing
11 address of record are the same: 27645 Jefferson Ave., Suite 116, Temecula, CA 92590. HTAEI
12 maintains three DBAs: Escrowsmart (active as of October 11, 2005); Homesmart Legends
13 (active as of September 17, 2013); and Home Smart Real Estate of California (active as of June
14 15, 2005). HTAEI maintains two licensed branch offices and employs 149 salespersons.

15 4.

16 Respondent WAYNE LEO BETTAREL (hereinafter "BETTAREL") is presently
17 licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as
18 a real estate broker, license ID 00380923. Respondent BETTAREL was originally licensed by
19 the Bureau as a salesperson on April 7, 1980, and as a broker on July 17, 1987. Respondent
20 BETTAREL maintains one DBA, Starwood Real Estate (active as of December 4, 2008).
21 Respondent BETTAREL's current main office address of record is the same as that of HTAEI,
22 and his current mailing address of record is 29915 Camino Cristal, Menifee, CA 92584.
23 Respondent BETTAREL is the designated officer of record for HTAEI until June 14, 2017.

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1 BROKERAGE

2 5.

3 At all times mentioned in Temecula, California, Respondent HTAEI acted as a
4 real estate broker, and ordered, caused, authorized or participated in licensed activities within the
5 meaning of: (1) Code Section 10131(a), by selling or offering to sell, buying or offering to buy,
6 soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, or negotiating
7 the purchase, sale or exchange of real property or a business opportunity (“real estate sales”);
8 (2) Code Section 10131(b), wherein HTAEI engaged in property management activities, and
9 leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for
10 rent, or solicited for prospective tenants, or negotiated the sale, purchase or exchanges of leases
11 on real property, or on a business opportunity, or collected rent from real property, or
12 improvements thereon, or from business opportunities (“property management”); and (3)
13 California Financial Code Section 17006(a)(4), wherein HTAEI conducted broker-controlled
14 escrows under the exemption set forth in California Financial Code Section 17006(a)(4) for real
15 estate brokers performing escrows incidental to a real estate transaction where the broker was a
16 party and where the broker was performing acts for which a real estate license is required.

17 6.

18 According to BETTAREL and the records examined during the audit examination
19 period:

20 a. HTAEI closed approximately two hundred fifteen (215) escrow transactions
21 and collected approximately \$38.8 million in escrow trust funds;

22 b. HTAEI closed about seven hundred eleven (711) real estate sales transactions
23 and collected \$420,000 in Earnest Money Deposits (hereinafter “EMDs”); and

24 c. HTAEI did not maintain any trust accounts for its real estate activities.

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1 7.

2 According to BETTERAL, HTAEI did not conduct any property management
3 activity during the audit examination period.

4 8.

5 According to BETTERAL, as of September 30, 2013, the owners of HTAEI are
6 WAYNE LEON BETTAREL (Chief Executive Officer/Designated Officer), fifty percent (50%)
7 and Luis Jubany (Chief Financial Officer/Secretary, BRE License ID 01396147, fifty percent
8 (50%).

9 GROUND FOR DISCIPLINE BASED ON AUDITS OF

10 HERE THERE AND EVERYWHERE INC.

11 (Audit SD 130006 & Audit SD 130008)

12 9.

13 On December 30, 2013, the Bureau completed an audit examination of the books
14 and records of Respondent HTAEI pertaining to the property management (Audit SD 130006)
15 and broker escrow (Audit SD 130008) activities described in Paragraphs 5 and 6, above, which
16 require a real estate license. The audit examination covered a period of time beginning on
17 September 1, 2012 and ending on September 30, 2013 (hereinafter "audit examination period"),
18 and records were examined between October 16, 2013 and November 8, 2013 (hereinafter "field
19 work period"). The final report of December 30, 2013 revealed violations of the Code and the
20 Regulations as set forth in the following paragraphs, and more fully discussed in Audit Reports
21 SD 130006 and SD 130008.

22 Bank Accounts

23 10.

24 During the audit examination period described in Paragraph 9 above, Respondent
25 HTAEI accepted or received funds including funds in trust (hereinafter "trust funds") from or on
26

1 behalf of actual or prospective parties, and thereafter made deposits or disbursements of such
2 funds relating to its broker escrow activities in one (1) bank at BBVA Compass Bank. The BRE
3 Auditor examined the following account:

4 HTAEI Bank Account 1 ("B/A 1" or "broker escrow account B/A 1")

- 5 * Account Name: HERE THERE AND EVERYWHERE INC.
- 6 * Bank: BBVA Compass Bank, 40440 Margarita Road, Temecula, CA 92591
- 7 * Account # xxxxxx4764
- 8 * Signatories: WAYNE L. BETTAREL, Jennifer Miller, and Luis Jubany
- 9 * Number of signatures required for withdrawals: one (1)

10 B/A 1 was maintained for the receipts and disbursements of trust funds received in
11 connection with HTAEI's broker escrow activity.

12 11.

13 In conjunction with the examination of B/A 1, the BRE Auditor also examined bank
14 statements for HTAEI's general business bank account:

15 HTAEI Bank Account 2 ("B/A 2")

- 16 * Account Name: HERE THERE AND EVERYWHERE INC.
- 17 * Bank: BBVA Compass Bank, 40440 Margarita Road, Temecula, CA 92591
- 18 * Account # xxxxxx5707

19 B/A 2 was a checking account utilized by HTAEI for transferring funds from B/A 1.

20 Violations of the Real Estate Law

21 12.

22 In the course of activities as described in Paragraphs 5 and 6, above, and during
23 the examination period described in Paragraph 9, Respondents acted in violation of the Code and
24 the Regulations, as described below:

25 **A. Trust Fund Handling for Multiple Beneficiaries**

26 1. According to bank records and separate provided by HTAEI and the bank
27 reconciliation prepared as of the cutoff date of September 30, 2013 for B/A 1, there was a

1 minimum shortage discovered in B/A 1. As of September 30, 2013, B/A 1 had a **minimum trust**
2 **fund shortage of <\$39,848.29>**:

3	(a) Adjusted bank balance as of 09/30/13	\$ 305,568.48
4	(b) Trust fund accountability as of 09/30/13	<u>\$ <345,416.77></u>
5	(c) Trust fund shortage as of 09/30/13	\$ < 39,848.29>

6 The <\$39,848.29> shortage was caused by commingling/conversion of trust
7 funds.

8 2. According to the records provided by HTAEI during the audit examination,
9 there was no evidence that the owners of the trust funds consented to HTAEI's or BETTAREL's
10 reduction of the balance of the funds in trust account B/A 1. HTAEI, in its broker escrow
11 activities, reduced the balance in B/A 1 an amount less than the existing aggregate trust fund
12 liabilities without first obtaining written authorization from the owners of the trust funds, in
13 violation of **Code Section 10145(a) and Regulations 2832.1, 2950(d), and 2951.**

14 3. On October 23, 2013, subsequent to the audit cutoff date, BETTAREL made a
15 deposit of \$10,000.00 into B/A 1 to cure part of the shortage caused by commingling/conversion
16 of trust funds; the remaining <\$29,848.29> shortage remains unidentified.

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1 **B. Trust Fund Handling - Control Records**

2 HTAEI did not maintain accurate and complete control records (receipts and
3 disbursements reports) for B/A 1: the control record was missing the daily balance; some checks
4 that had been voided were recorded as valid checks on the disbursements reports; and some
5 receipts that were deposited into B/A 1 were not recorded on the receipts report:

6 B/A 1 checks voided but recorded as valid checks on the disbursements report:

<u>Date</u>	<u>Check No.</u>	<u>Amount</u>	<u>Escrow No.</u>
09/19/13	18069	\$ 1,170.00	2724-JM
09/19/13	18077	\$ 10,010.00	2731-JM
09/20/13	18080	\$ 745.56	2656-JM

11 B/A 1 receipts deposited but not recorded on the receipts report:

<u>Date</u>	<u>Amount</u>	<u>Escrow No.</u>
09/19/13	\$ 1,349.25	2489-JM
09/20/13	\$ 745.56	2656-JM

15 HTAEI, in its broker escrow activities, failed to maintain for B/A 1 accurate and
16 complete control records, in violation of **Code Section 10145 and Regulations 2831, 2950(d),**
17 **and 2951.**

18 **C. Trust Fund Handling – Separate Records for Each Beneficiary or**
19 **Transaction**

20 The records maintained by HTAEI for B/A 1 were inaccurate. In addition to the
21 inaccuracies described in Paragraph 12B., above, a receipt in the amount of \$154,481.63 was
22 recorded, but not received, on September 17, 2013 for escrow No. 2735-JM. HTAEI, in its
23 broker escrow activities, did not maintain adequate or accurate separate records for each
24 beneficiary or transaction for B/A 1, in violation of **Code Section 10145 and Regulations**
25 **2831.1, 2950(d) and 2951.**

1 **D. Trust Fund Handling - Monthly Written Reconciliation for Separate**
2 **Records.**

3 HTAEI did not maintain a monthly written reconciliation of all separate record
4 balances to the control record of all trust funds received and disbursed in connection with its
5 broker escrow activities, in violation of **Code Section 10145 and Regulations 2831.2, 2950(d),**
6 **and 2951.**

7 **E. Trust Fund Handling -Account Designation**

8 According to the bank records provided for B/A 1, utilized for trust funds received
9 and disbursed by HTAEI for broker escrow activities, B/A 1 was not designated as a trust
10 accounts, in violation of **Code Section 10145 and Regulations 2832, 2950(d), and 2951.** On
11 November 6, 2013, subsequent to the audit cutoff date, B/A 1 was updated and the account name
12 changed to "HERE THERE AND EVERYWHERE INC. dba Escrowsmart, Trust Account."

13 **F. Trust Fund Handling - Account Withdrawals**

14 According to the bank records provided for B/A 1 and in particular, the signature
15 card for B/A 1, HTAEI permitted non-licensee Jennifer Miller (hereinafter "Miller") as a
16 signatory allowed to make withdrawals from B/A 1 without maintaining fidelity bond coverage
17 for Miller, in violation of **Code Section 10145 and Regulations 2834, 2950(d), and 2951.** On
18 November 6, 2013, subsequent to the audit cutoff date, the signature card for B/A 1 was updated
19 and excluded Miller as a signatory on the account.

20 **G. Trust Fund Handling – Commingling**

21 On or about May 16, 2013, HTAEI transferred and commingled trust funds
22 totaling \$10,000.00 from B/A 1 with its funds in its general business account B/A 2, and
23 converted trust funds for company expenses, which caused a reduction in the B/A 2 balance to an
24 amount less than the amount of trust funds deposited into B/A 2, in violation of **Code Section**
25 **10145 and Regulation 2835, Code Sections 10176(e), 10177(j), and Regulation 2950(g).**

1 During the time the \$10,000.00 trust funds were in B/A 2, the balance of B/A 2 was as low as:

<u>Date</u>	<u>Balance</u>
06/04/13	\$ 9,041.72
07/29/13	\$ 5,480.70
08/05/13	\$4,250.15

6 **H. False or Fictitious Business Name**

7 According to the records provided for the audit examination, HTAEI used
8 unlicensed the fictitious business names "Homesmart" and "Homesmart Real Estate" on business
9 cards, policy manuals, company letterheads, purchase agreements, listing agreements,
10 commission instructions, and related disclosures in connection with its real estate activities
11 without first obtaining licenses from the Bureau bearing such fictitious business names, in
12 violation of **Code Section 10159.5 and Regulation 2731.**

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1 **I. Trust Fund Handling - Secret Profits**

2 According to the Account Analysis Statements provided by BBVA Compass
3 Bank for the audit examination, HTAEI did not disclose in writing to the owners of the trust
4 funds of B/A 1 and B/A 2 that HTAEI was engaged in an earnings credit relationship with BBVA
5 Compass Bank wherein HTAEI received earnings credit from the funds combined and available
6 in B/A 1 and B/A 2 maintained in the name of HTAEI to offset combined bank service charges
7 incurred in B/A 1 and B/A 2, in violation of **Code Sections 10145, 10176(g) and Regulations**
8 **2830, 2950(d), and 2951.**

9 Examples of undisclosed earnings received by HTAEI include:

<u>Period</u>	<u>Amount Earned</u>
April 2013	\$ 152.62
June 2013	\$ 147.31
August 2013	\$ 242.04
January 2013	\$ 77.37
March 2013	\$ 109.15
May 2013	\$ 123.45
July 2013	\$ 193.61
September 2013	\$ 180.51

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19 **J. Exemptions from Escrow Law/Third Party Escrow**

20 HTAEI acted as the escrow agent in transactions to which it was not a party, and
21 performed escrows for refinance loan transactions negotiated by different mortgage loan
22 brokers, a violation of the exemption qualification requirement of **Financial Code Section**
23 **17006(a)(4)**, *under which it may perform escrows incidental to a real estate transaction where it*
24 *is a party and performing acts for which a real estate license is required.*

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Examples of transactions in which HTAEI was a non-party and performed
escrows:

<u>Escrow No.</u>	<u>Borrower Name</u>	<u>Date Escrow Closed</u>
2575-JM	Steven & Carolyn A.	03/26/13
2625-JM	Larry & Linda C.	05/31/13
2659-JM	Sarah L. M.	07/24/13

K. Responsibility of Corporate Officer– Failure to Supervise (BETTAREL)

The acts and/or omissions of Respondent BETTAREL, as described in Paragraphs 12A. through 12J., above, demonstrate a failure to adequately supervise the real estate activities of HTAEI to secure HTAEI’s full compliance with the provisions of the Real Estate Law. Respondent BETTAREL failed to establish policies, rules, procedures and systems to review, oversee, inspect and manage HTAEI and HTAEI’s brokers; and salespersons; handling of trust funds. BETTAREL allowed Miller, an unlicensed employee, to be a signatory on B/A 1 without maintaining fidelity bond coverage. BETTAREL used the unlicensed fictitious business names “Homesmart” and “Homesmart Real Estate” during the audit period. BETTAREL commingled and converted trust funds. BETTAREL performed escrows in transactions to which HTAEI was not a party to the transaction. BETTAREL’s acts and/or failures to act to supervise and control the activities conducted by HTAEI constitute grounds for the suspension or revocation of the licenses and license rights of Respondent **BETTAREL** under the provisions of **Code Sections 10159.2 and 10177(h) and Regulation 2725.**

ADDITIONAL GROUNDS FOR DISCIPLINE

13.

The overall conduct of Respondents is in violation of the Real Estate Law and constitutes cause for the suspension or revocation of the real estate licenses and license rights of **HERE THERE AND EVERYWHERE INC.** and **WAYNE LEO BETTAREL** under the

1 provisions of **Code Sections 10177(g)** for negligence; **10176(i)** and **10177(j)** for breach of
2 fiduciary duty and/or dishonest dealing; and **10177(d)** for willful disregard of the Real Estate
3 Law.

4 COSTS

5 14.

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

11 15.

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.

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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 Respondents **HERE THERE AND**
4 **EVERYWHERE INC.** and **WAYNE LEO BETTAREL** under the Real Estate Law (Part 1 of
5 vision 4 of the Business and Professions Code), for the cost of investigation and enforcement as
6 permitted by law, and for such other and further relief as may be proper under other provisions of
7 law, and for costs of audit.
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9 Dated at San Diego, California

10 this 2nd day of March, 2016.

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13 _____
14 Veronica Kilpatrick
15 Deputy Real Estate Commissioner
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22 cc: Here There And Everywhere Inc.
23 Wayne Leo Bettarel
24 Sacto.
25 Audits – Zaky Wanis
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