

FILED

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BUREAU OF REAL ESTATE

By Cal Delouis

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8 BEFORE THE BUREAU OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H- 40720 LA  
12 )  
13 PACIFIC SHORES REAL ESTATE, )  
14 INC. doing business as Cornerstone )  
15 Coast Escrow a non independent )  
16 broker escrow; and DAVID )  
17 EDWARD BABIRACKI, individually )  
18 and as Designated Officer of )  
19 Pacific Shores Real Estate, Inc., )  
20 Respondents. )

21 The Complainant, Maria Suarez, a Supervising Special Investigator of the State of  
22 California, acting in her official capacity, for cause of Accusation against PACIFIC SHORES  
23 REAL ESTATE, INC. doing business as Cornerstone Coast Escrow a non independent broker  
24 escrow, and DAVID EDWARD BABIRACKI, individually and as Designated Officer of Pacific  
25 Shores Real Estate, Inc. (sometimes collectively referred to as "Respondents"), is informed and  
26 alleges as follows:

27 1.

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

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2.

Respondent PACIFIC SHORES REAL ESTATE, INC. ("PSREI") is presently licensed or has license rights under the Real Estate Law as a corporate real estate broker. Respondent PSREI was originally licensed as a corporate real estate broker by the Bureau on or about October 22, 2009. Beginning on that date and continuing to February 13, 2017, Respondent DAVID EDWARD BABIRACKI was the Designated Officer of PSREI. Since February 13, 2017, PSREI has had no designated officer and, as such, it may not currently engage in real estate activities. Beginning June 7, 2010, and continuing to February 13, 2017, Respondent PSREI maintained the licensed fictitious business name of "Cornerstone Coast Escrow a non independent broker escrow," and four other fictitious business names. Respondent PSREI's corporate real estate broker license is due to expire on October 21, 2017.

3.

Respondent DAVID EDWARD BABIRACKI ("BABIRACKI") is licensed by the Bureau of Real Estate ("Bureau") as a real estate broker. Respondent was originally licensed as a real estate salesperson on December 13, 1985, and as a real estate broker on February 11, 2000. Respondent's real estate broker license is due to expire on February 10, 2020.

4.

At all times herein relevant, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Code Section 10131(a), including the solicitation for listings of and the negotiation of the purchase and sale of real property as the agent of others for or in expectation of compensation and the conducting of broker-controlled escrow activities under the real estate broker license of Respondent PSREI pursuant to Financial Code Section 17006(a)(4).

5.

On April 28, 2017, the Bureau completed an audit examination of the books and records of Respondent PSREI pertaining to the broker controlled escrow activities described in paragraph 4, above. The audit examination covered the period of time from December 1, 2014,

1 to June 30, 2016. The primary purpose of the examination was to determine Respondents'  
2 compliance with the Real Estate Law. The audit examination revealed numerous violations of  
3 the Code and the Regulations as set forth in the following paragraphs, and more fully discussed  
4 in Audit Report LA150162 and the exhibits and work papers attached to said audit report.

5 Bank and Trust Accounts

6 6.

7 At all times herein relevant, in connection with the activities described in  
8 Paragraph 4, above, Respondents accepted or received funds including funds to be held in trust  
9 (hereinafter "trust funds") from or on behalf of actual or prospective parties in connection with  
10 broker controlled escrow activities. Thereafter Respondents made deposits and or disbursements  
11 of such trust funds. From time to time herein mentioned during the audit period, said trust funds  
12 were deposited and/or maintained by Respondents in the following bank account:

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14 Pacific Shores Real Estate, Inc.  
15 DBA Cornerstone Coast Escrow Trust Account  
16 Account No. 53XXXX (Redacted for security)  
17 Citizens Business Bank  
18 Laguna Niguel, California

19 (TA 1 – trust account for the receipt and disbursal of trust funds)

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21 Violations

22 7.

23 With respect to the licensed activities referred to in Paragraph 4, and the audit  
24 examination including the exhibits and work papers referenced in Paragraph 5, it is alleged that  
25 Respondents:

26 (a) Permitted, allowed or caused the disbursement of trust funds from bank  
27 account TA 1 to be reduced to an amount which, on June 30, 2016, was \$240,942.50 less than  
the existing aggregate trust fund liability to the owners of said funds, without first obtaining the  
prior written consent of the owners of said funds in violation of Code Section 10145 and

1 Regulations 2832.1, 2950(g), and 2951;

2 (b) Disbursed escrow trust funds without authorization from the owner of those  
3 funds in violation of Code Section 10145(a) and Regulations 2950(g), and 2951;

4 (c) Failed to maintain a control record of all trust funds received and disbursed in  
5 violation of Code Section 10145 and Regulations 2831, 2950(d), and 2951;

6 (d) Failed to maintain a separate record of the receipt and disbursement of trust  
7 funds in violation of Code Section 10145 and Regulations 2831.1, 2950(d), and 2951;

8 (e) Failed to perform and maintain a monthly reconciliation of the separate record  
9 to the control record of trust funds handled through TA 1 in violation of Code Section 10145 and  
10 Regulations 2831.2, 2950(d), and 2951;

11 (f) Commingled escrow trust funds with the broker's own funds in violation of  
12 Code Sections 10145, and 10176(e), and Regulations 2832, and 2951;

13 (g) Made unauthorized disbursements of trust funds to the broker's general  
14 account and converted trust funds to the broker's own use in violation of Code Sections 10145,  
15 10176(i), and 10177(j);

16 (h) Failed to retain records and provide them upon request to the Real Estate  
17 Commissioner's representative, to wit: the auditor, in violation of Code Section 10148; and

18 (i) As to BABIRACKI, failed to exercise reasonable supervision over the  
19 activities of his employees, to ensure compliance with the Real Estate Laws and the  
20 Commissioner's Regulations in violation of Code Sections 10159.2 and 10177(h) and Regulation  
21 2725.

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The conduct of Respondents as described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7(a)	Code Section 10145 Regulations 2832.1, 2950(g), and 2951
7(b)	Code Section 10145 Regulations 2950(g), and 2951
7(c)	Code Section 10145 Regulations 2831, 2950(d), and 2951
7(d)	Code Section 10145 Regulations 2831.1, 2950(d), and 2951
7(e)	Code Section 10145 Regulations 2831.2, 2950(d), and 2951
7(f)	Code Sections 10145 and 10176(e) Regulations 2832 and 2951
7(g)	Code Sections 10145, 10176(i), and 10177(j)
7(h)	Code Section 10148

1 7(i)

Code Sections 10159.2 and 10177(h)

2 Regulation 2725

3  
4 Each of the foregoing violations constitute cause for the suspension or revocation  
5 of the real estate license and license rights of Respondents under the provisions of Code Sections  
6 10176(e), 10176(i), 10177(d), 10177(g) and/or 10177(h) (BABIRACKI).

7 9.

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

12 10.

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

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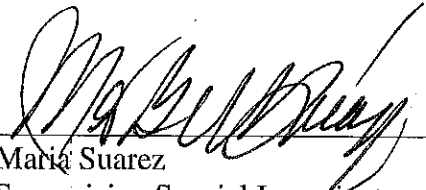
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1                    WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
3 action against the license and license rights of Respondents PACIFIC SHORES REAL ESTATE,  
4 INC. and DAVID EDWARD BABIRACKI under the Real Estate Law, for the costs of  
5 investigation and enforcement as provided by law, for costs of the audit, and for such other and  
6 further relief as may be proper under other applicable provisions of law.

7                    Dated at Los Angeles, California: 13 July 2017.

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11                    Maria Suarez  
12                    Supervising Special Investigator

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24                    cc: Pacific Shores Real Estate, Inc.  
25                    David Edward Babiracki  
26                    Maria Suarez  
27                    Sacto  
                     Audits – Isabel Beltran