

1 LISSETE GARCIA, SBN (211552)  
2 Department of Real Estate  
3 320 West Fourth Street, Ste. 350  
4 Los Angeles, California 90013  
5 Telephone: (213) 576-6982  
6 Direct: (213) 576-6914  
7 Fax: (213) 576-6917  
8 *Attorney for Complainant*

**FILED**

**NOV 28 2018**

**DEPT. OF REAL ESTATE**

By *John C. Jenkins*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \*

11 In the Matter of the Accusation against

DRE No. H-41222 LA

12 MERRILL & ASSOCIATES REAL ESTATE,  
13 CASSANDRA ANNE MERRILL, and  
14 ANDREW BERRY,

ACCUSATION

15 Respondents.

16 The Complainant, Brenda Smith, a Supervising Special Investigator of the State  
17 of California, acting in her official capacity for cause of Accusation against MERRILL &  
18 ASSOCIATES REAL ESTATE, CASSANDRA ANNE MERRILL, individually and as  
19 designated officer of Merrill & Associates, and ANDREW BERRY alleges as follows:

20 1.

21 All references to the "Code" are to the California Business and Professions Code,  
22 all references to the "Real Estate Law" are to Part 1 of Division 4 of the California Business and  
23 Professions Code, and all references to "Regulations" are to Title 10, Chapter 6, California Code  
24 of Regulations.

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2.

Respondent MERRILL & ASSOCIATES REAL ESTATE (“MERRILL & ASSOCIATES”) is presently licensed and/or has license rights under the Real Estate Law as a corporate real estate broker. Respondent MERRILL & ASSOCIATES was originally licensed as a corporate real estate broker by the Department of Real Estate (“Department”) on or about April 21, 2009, License ID 01862762. Since that date and continuing to the present, Respondent CASSANDRA ANNE MERRILL (“C. MERRILL”) has been the designated officer of MERRILL & ASSOCIATES.

3.

Respondent C. MERRILL is licensed by the Department as a real estate broker. Respondent C. MERRILL was originally licensed as a real estate broker on April 21, 2009, License ID 01333095. Respondent C. MERRILL was previously licensed as a real estate salesperson from March 20, 2002, through April 20, 2009.

4.

Respondent ANDREW BERRY (“A. BERRY”) is licensed by the Department as a real estate salesperson, License ID 01857081. Respondent A. BERRY was originally licensed as a real estate salesperson on December 29, 2008. A. BERRY was licensed under the employment of broker MERRILL & ASSOCIATES from January 4, 2013, through May 3, 2018.

5.

At all times relevant herein, Kleck Road, LLC, was the current owner or subdivider of a subdivision of real property as defined in Section 11010 of the Code and described as Tract 2805 Kleck Road (Hidden Oaks), Lots 1 through 13, situated in or near the city of Paso Robles, San Luis Obispo County, California (“subdivision”). Scott Berry, a relative of Respondent A. BERRY, is the managing member of Kleck Road, LLC.

6.

At all times relevant herein, Respondent MERRILL & ASSOCIATES engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the

1 State of California within the meaning of Code Sections 10131(a). Its activities included the  
2 solicitation for listings of and the negotiation of the purchase and sale of real property for and on  
3 behalf of others for compensation.

4 7.

5 Beginning in or around June of 2015, Respondents MERRILL & ASSOCIATES  
6 and A. BERRY began soliciting prospective purchasers, offering for sale or lease or sold lots,  
7 units or parcels in said subdivision, on behalf of Kleck Road, LLC.

8 8.

9 On or about June 23, 2015, Kleck Road, LLC offered for sale 2024 Kleck Road,  
10 Paso Robles<sup>1</sup>, California in said subdivision to L.C and S.C.<sup>2</sup> Respondents MERRILL &  
11 ASSOCIATES and A. BERRY represented the seller and buyers as dual agents.

12 9.

13 On or about December 13, 2016, Kleck Road, LLC sold 2021 Kleck Road, Paso  
14 Robles, California in said subdivision to The S. Revocable Trust. Respondents MERRILL &  
15 ASSOCIATES and A. BERRY represented the seller and buyers as dual agents.

16 10.

17 Respondents MERRILL & ASSOCIATES and A. BERRY, acting on behalf of Kleck  
18 Road, LLC, charged, demanded, claimed, collected, received, and contracted for fees, options,  
19 and upgrades that contained a non-refundable clause in the purchase agreements with the afore-  
20 mentioned buyers.

21 11.

22 Prior to close of escrow, MERRILL & ASSOCIATES and A. BERRY, acting on behalf  
23 of Kleck Road, LLC, charged, demanded, claimed, collected, or received professional fees and  
24 purchase monies from the afore-mentioned buyers. Respondents failed to place the funds  
25

26 <sup>1</sup> 2024 Kleck Road was originally identified as 2023 Kleck Road by the City of Paso Robles.

27 <sup>2</sup> Initials are used in place of individuals' full names to protect their privacy. Documents containing individuals' full names will be provided during the discovery phase of this case to Respondent(s) and/or their attorneys, after service of a timely and proper request for discovery on Complainant's counsel.

1 received or collected from the buyers in an escrow account or obtain a bond to assure protection  
2 of the buyers' funds. Respondents instructed the buyers to pay some of the funds directly to the  
3 seller or to third parties outside of escrow. Respondents and Kleck Road, LLC failed to comply  
4 with the purchase money handling procedures required pursuant to Code sections 11013.2 or  
5 11013.4.

6 12.

7 Kleck Road, LLC sold or offered for sale lots, units or parcels in said subdivision  
8 without having filed with the Department a notice of intention and completed questionnaire in  
9 violation of Section 11010 of the Code without having first obtained a public report in violation  
10 of Section 11018.2 of the Code.

11 13.

12 Said subdivision is not subject to the exemption of Code section 11010.4. The  
13 purchase funds collected by Respondents, were not handled according to Code sections 11013  
14 through 11013.4.

15 14.

16 The conduct of Respondents MERRILL & ASSOCIATES and A. BERRY, as  
17 alleged above, subjects the real estate licenses and license rights of Respondents MERRILL &  
18 ASSOCIATES and A. BERRY to suspension or revocation pursuant to Code sections 10177(d)  
19 and/or 10177(g) for violation of Code sections 11010, 11018.2, Regulations 2791, 2791.1,  
20 2791.2, and 2792.13.

21 15.

22 The conduct, acts and/or omissions of Respondent C. MERRILL in allowing MERRILL  
23 & ASSOCIATES and A. BERRY to violate the Real Estate Law, as set forth above, constitutes a  
24 failure by Respondent C. MERRILL to exercise the supervision and control over the activities of  
25 Respondents as required by Code section 10159.2 and Regulation 2725, and is cause to suspend  
26 or revoke the real estate license and license rights of Respondent C. MERRILL under Code  
27 sections 10177(h), 10177(d), and/or 10177(g).

1 Investigation and Enforcement Costs

2 16.

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

7 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
8 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
9 action against all licenses and license rights of Respondents MERRILL & ASSOCIATES REAL  
10 ESTATE, CASSANDRA ANNE MERRILL, individually and as designated officer of Merrill &  
11 Associates, and ANDREW BERRY the Real Estate Law, for the costs of investigation and  
12 enforcement as provided by law, and for such other and further relief as may be proper under  
13 other applicable provisions of law.

14 Dated at Fresno, California, on 11-7-18, 2018.

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18 Brenda Smith  
19 Supervising Special Investigator

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22  
23 cc: Merrill & Associates Real Estate  
24 Cassandra Anne Merrill  
25 Andrew Berry  
26 Brenda Smith  
27 Sacto.