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FILED

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DEPT. OF REAL ESTATE

By *Zmi-Ja*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation against	)	No. H-41532 LA
	)	
JOHN FREDERICK BRISCOE, JR, doing	)	<u>ACCUSATION</u>
business as Crestwave Property Management,	)	
	)	
Respondent.	)	
	)	
	)	

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, for cause of Accusation against JOHN FREDERICK BRISCOE, JR ("Respondent") alleges as follows:

1.

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

2.

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

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ACCUSATION

1 LICENSE HISTORY

2 3.

3 a. Respondent JOHN FREDERICK BRISCOE, JR is presently licensed and/or
4 has license rights under the Code, as a real estate broker, Department of Real Estate
5 ("Department") license ID 01129041.

6 b. The Department originally issued Respondent's broker license on May 15,
7 1992. Respondent's broker license is scheduled to expire on May 14, 2020, unless renewed.

8 c. Respondent's main office address is 375 Atlantic Avenue, Suite 101, Long
9 Beach, California.

10 d. According to the Department's records to date, Respondent maintains the
11 fictitious business "Crestwave Property Management" with the Department.

12 CAUSE FOR ACCUSATION

13 (AUDIT EXAMINATION – AUDIT NO. LA170219)

14 4.

15 At all times relevant herein Respondent was engaged in the business of a real
16 estate broker within the meaning of Section 10131(b) of the Code. Respondent's activities
17 included the leasing or renting of real property and the collection of rents and security deposits
18 for real property on behalf of others for compensation or in expectation of compensation.

19 5.

20 On or about November 27, 2018, the Department completed an audit
21 examination of the books and records of Respondent pertaining to the real estate activities
22 described in Paragraph 4 above. The audit examination covered the period of time from
23 May 1, 2017, through June 30, 2018 ("audit period"). The primary purpose of the examination
24 was to determine Respondent's compliance with the Real Estate Law. The audit examination
25 revealed violations of the Code and the Regulations as set forth in the following paragraphs,
26 and more fully discussed in Audit No. LA170219 and the exhibits and work papers attached to
27 said audit report.

ACCUSATION

6.

According to Respondent and the documents examined, Respondent managed fifty-five (55) properties for sixty-two (62) owners during the audit period. Respondent collected and deposited rents, and made disbursements for compensation. Respondent charged a property management fee of 7% of the monthly gross receipts.

7.

At all times mentioned herein, and in connection with the property management activities described in Paragraph 4, above, Respondent accepted or received funds during the audit period, including funds in trust ("trust funds") from or on behalf of the owners of the properties managed by Respondent, and thereafter made deposits and/or disbursements of such funds. According to Respondent, he maintained one (1) bank account for handling of the receipts and disbursements of rents during the audit period in connection with his property management activity. The bank account is as follows:

Bank Account 1 ("BA1")

Bank: Farmers & Merchants Bank
Account Name: Crestwave Property Management
Account Number: xxxx270
Signatories: Debbie F.B. Briscoe, John F. Briscoe

Violations

8.

The audit examination revealed violations of the Code and the Regulations, as set forth in the following paragraphs, and more fully discussed in Audit No. LA170219 and the exhibits and work papers attached to the audit report:

(a) Handling of Trust Funds/Trust Fund Handling for Multiple Beneficiaries (Code section 10145 and Regulations section 2832.1). As of May 31, 2017, there was a trust fund shortage of \$6,557.72 in BA1. The minimum shortage of \$6,555.72 was caused by a minimum negative property balance of \$2,482.50 and minimum identified shortage of

\$4,075.22. Respondent failed to provide evidence that the owners of the trust funds had given their written consent to allow Respondent to reduce the balance of the funds in BA1 to an amount less than the existing aggregate trust fund liabilities. For example, the minimum negative balances of \$2,482.50 were as follows:

Property Address	Amount
3131 Iroquois	\$2,000.00
3032 E. 8 th	\$482.50
Total:	\$2,482.50

(b) Handling of Trust Funds/Trust Fund Records to be Maintained (Code section 10145 and Regulations section 2831). Respondent failed to maintain accurate and complete record of all trust funds received and disbursed ("control record") for BA1. The control record contained only one date which was the date trust funds were received and failed to include the date of deposits. The control record was not in chronological order by date. In addition, the control record did not reflect an accurate running daily balance. For example:

Date Received	Tenant	Property	Recorded Date of Deposit	Amount	Actual Date of Deposit
6/4/2018	R.C.	4321-4327 E. 4 th	Not recorded	\$1,275.00	6/8/2018
4/30/2018	K.B.	4321-4327 E. 4 th	Not recorded	\$1,275.00	5/7/2018
6/6/2018	T.J.	252 Esperanza	Not recorded	\$125.00	6/12/2018
3/5/2018	D.W.	252 Esperanza	Not recorded	\$975.00	3/12/2018
4/2/2018	N.S.	47 Bennet	Not recorded	\$1,030.00	4/6/2018

(c) Handling of Trust Funds/Separate Record for Each Beneficiary of Transaction (Code section 10145 and Regulations section 2831.1). Respondent failed to maintain accurate and complete separate records for BA1. The separate records did not reflect accurate dates of deposits. The separate records were not in chronological order by date and did not reflect a balance after posting transactions on any date. Furthermore, Respondent failed to maintain a separate record of the receipt and disposition of all trust funds deposited into BA1

1 resulting in BA1 containing unidentified/unaccounted for funds of \$22,835.05 as of June 30,
2 2018.

3 (d) **Trust Account Reconciliation (Code section 10145 and Regulations**
4 **section 2831.2).** During the audit period, Respondent failed to perform and maintain a monthly
5 reconciliation comparing the balance of all separate beneficiary or transaction records (separate
6 records) to the balance of the record for all trust funds received and disbursed (control record)
7 for BA1.

8 (e) **Trust Fund Handling (Code section 10145 and Regulations section**
9 **2832).** According to the bank signature card maintained for BA1 dated October 13, 1999, BA1
10 was not designated as a trust account. In addition, some trust fund receipts were not deposited
11 into BA1 within three (3) business days following receipt of the funds by Respondent. For
12 example:

Date Received	Tenant	Property	Recorded Date of Deposit	Amount	Actual Date of Deposit
6/4/2018	R.C.	4321-4327 E. 4 th	Not recorded	\$1,275.00	6/8/2018
4/30/2018	K.B.	4321-4327 E. 4 th	Not recorded	\$1,275.00	5/7/2018
6/6/2018	T.J.	252 Esperanza	Not recorded	\$125.00	6/12/2018
3/5/2018	D.W.	252 Esperanza	Not recorded	\$975.00	3/12/2018
4/2/2018	N.S.	47 Bennet	Not recorded	\$1,030.00	4/6/2018

20 (f) **Trust Account Withdrawal (Code section 10145 and Regulation section**
21 **2834).** According to the bank signature card maintained for BA1 dated October 13, 1999,
22 Respondent allowed Debbie Briscoe to sign and make withdrawals on BA1 without being a real
23 estate salesperson licensed to Respondent or an unlicensed employee of Respondent.
24 Respondent also allowed Trudy Briscoe, a real estate salesperson (License ID 00598405), to
25 sign and make withdrawals on BA1 during the audit period while Respondent was not Trudy
26 Briscoe's responsible broker. From June 29, 2009, through July 31, 2018, which includes the
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audit period, Trudy Briscoe was employed by Rossmore Realtors Inc, a licensed corporate real estate broker (License ID 01157065).

(g) **Handling of Trust Funds/Commingling (Code sections 10145 and 10176(e))**. As of June 30, 2018, funds totaling \$14,959.39 belonging to Respondent were commingled with trust funds in BA1. For example:

Property Address	Property Code	Date	Amount
375 Atlantic Ave.	C000	6/30/2018	\$11,066.92
354 Chestnut #31 (loan)	C1010	6/30/2018	\$1,782.67
354 Chestnut #32 (loan)	CX1011	6/30/2018	\$466.67
354 Chestnut #33 (loan)	C1012	6/30/2018	\$1,169.00
354 Chestnut #9 (loan)	C1013	6/30/2018	\$474.13
Total:			\$14,959.39

(h) **Licensed Required (Code section 10130)**. During the audit period, Debbie Briscoe, co-owner and wife of Respondent, while not licensed by the Department in any capacity, negotiated and acted as a real estate person without first obtaining a license from the Department. Based on an examination of the records, Debbie Briscoe signed property management agreements and rental lease agreements on behalf of Respondent. For example:

Property Address	Date of Agreement
4134 Fountain Street, #4	1/2/2018
252 Esperanza	2/12/1996
4321-4327 E. 4th	8/14/2001
3101 Corto Place	6/1/1990

(i) **Disclosure of Licensed Status in Advertising/Disclosure of License Identification Number on Solicitation Materials – First Point of Contact with Consumers (Code section 10140.6 and Regulation section 2773)**. Respondent failed to disclose his Department license number on his business cards intended to be the first point of contact with consumers.

1 9.

2 Each of the foregoing violations in Paragraphs 8(a)-(i) above constitute cause for
3 the suspension or revocation of the real estate license and/or license rights of Respondent under
4 the provisions of Code sections 10177(d) and/or 10177(g).

5 COSTS

6 (AUDIT COSTS)

7 10.

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

13 (INVESTIGATION AND ENFORCEMENT COSTS)

14 11.

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

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ACCUSATION

1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
3 disciplinary action against all the licenses and/or license rights of Respondent JOHN
4 FREDERICK BRISCOE, JR, doing business as Crestwave Property Management, under the
5 Real Estate Law, for the costs of investigation and enforcement as permitted by law, for the cost
6 of the audit, and for such other and further relief as may be proper under other applicable
7 provisions of law.

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9 Dated at Los Angeles, California this 28th day of October, 2019.

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12 _____
13 Maria Suarez
14 Supervising Special Investigator
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25 cc: JOHN FREDERICK BRISCOE
26 Maria Suarez
27 Sacto.
Audits – Mandeep Sidhu