

1 MARY F. CLARKE, Counsel (SBN 186744)  
2 BUREAU OF REAL ESTATE  
3 1651 Exposition Blvd.  
4 P. O. Box 137007  
5 Sacramento, CA 95813-7007

6 Telephone: (916) 263-8670 (Main Office)  
7 -or- (916) 263-7303 (Direct)  
8 -or- (916) 263-3767 (Fax)

**FILED**

AUG 27 2013

BUREAU OF REAL ESTATE

By K. Centenas

9 BEFORE THE BUREAU OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 )  
14 PENINSULA BUSINESS SALES, INC., )  
15 a Corporation, )  
16 MICHAEL ROBERT RUSSELL, and )  
17 JONATHAN WILLIAM SAPP, )  
18 Respondents. )

NO. H-2823 FR

FIRST AMENDED  
ACCUSATION

19 The Complainant, BRENDA SMITH, a Deputy Real Estate Commissioner of  
20 the State of California, for cause of First Amended Accusation against PENINSULA  
21 BUSINESS SALES, INC., (herein "PENINSULA") dba Carmel Business Sales,  
22 MICHAEL ROBERT RUSSELL (herein "RUSSELL"), and JONATHAN WILLIAM SAPP  
23 (herein "SAPP") (herein collectively "Respondents"), is informed and alleges as follows:

24 1

25 The Complainant makes this First Amended Accusation in her official capacity.

26 2

27 At all times herein mentioned, Respondents were and now are licensed and/or  
have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and  
Professions Code) (herein "the Code").

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

3

At all times herein mentioned, PENINSULA was and now is licensed by the State of California BUREAU of Real Estate (herein the "BUREAU") as a corporate real estate broker by and through SAPP as designated officer-broker of PENINSULA to qualify said corporation and to act for said corporation as a real estate broker.

4

At all times herein mentioned, SAPP was and now is licensed by the BUREAU as a real estate broker, individually and as designated officer-broker of PENINSULA. As said designated officer-broker, SAPP was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of PENINSULA for which a license is required.

5

At all times herein mentioned, RUSSELL was and now is licensed by the BUREAU as a real estate salesperson employed by PENINSULA, such license was restricted on or about April 24, 2007, described in Paragraph 13, below.

6

Whenever reference is made in an allegation in this First Amended Accusation to an act or omission of PENINSULA, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with PENINSULA committed such act or omission while engaged in the furtherance of the business or operations of such corporate respondent and while acting within the course and scope of their authority and employment.

7

At all times herein mentioned, PENINSULA, engaged in the business of, acted in the capacity of, advertised, or assumed to act as a corporate real estate broker within the State of California on behalf of others, for compensation or in expectation of compensation within the meaning of Section 10131(a) of the Code, including the operation and conduct of a

1 resale brokerage wherein PENINSULA sold or offered to sell, bought or offered to buy, solicited  
2 prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase,  
3 sale or exchange of real property or a business opportunity.

4 8

5 In so acting as real estate licensees, Respondents PENINSULA and RUSSELL  
6 accepted or received funds in trust (herein "trust funds") from or on behalf of sellers, buyers or  
7 others in connection with the sale of business opportunities described in Paragraph 7, above, and  
8 thereafter from time to time made disbursements of said trust funds.

9 9

10 The aforesaid trust funds accepted or received by Respondents PENINSULA and  
11 RUSSELL described in Paragraph 8, above, were deposited or caused to be deposited by  
12 Respondents PENINSULA and RUSSELL into one or more bank accounts (herein "trust fund  
13 accounts") maintained by Respondent RUSSELL for the handling of trust funds at the Carmel,  
14 California, branch of Monterey County Bank, including but not necessarily limited to "Peninsula  
15 Business Sales, Inc. DBA Carmel Business Sales", account number xxx7729 (herein "Bank #1").

16 10

17 Between about January 1, 2010 and October 2011, in connection with the  
18 collection and disbursement of said trust funds:

- 19 (a) PENINSULA and RUSSELL collected advanced fees, prior to  
20 submission to the BUREAU of any or all materials used in advanced  
21 fee agreements from the following sellers, in violation of Sections  
22 10085 (advance fee materials) and 10085.6 (collecting advance fees)  
23 of the Code and Section 2970 (advance fee materials) of Chapter 6,  
24 Title 10, California Code of Regulations (herein "the Regulations"):

<u>Seller</u>	<u>Amount</u>	<u>Date Collected</u>	<u>Date Deposited</u>
TL Florist & Gifts	\$500	3/27/10	4/29/10
	\$500	unknown	5/25/10

1	(Continued)	<u>Seller</u>	<u>Amount</u>	<u>Date Collected</u>	<u>Date Deposited</u>
2		Mucky D.	\$2,000	4/7/10	5/27/10
3		Dixon C.	\$1,000	1/25/10	5/25/10
4		SW Natural Foods	\$2,000	1/31/11	1/31/11
5		SC Billiards	\$100	8/15/11	9/28/11

7 (b) PENINSULA failed to place entrusted trust funds into the hands of a  
8 principal on whose behalf the funds were received, into a neutral escrow  
9 depository, or into a trust fund account in the name of PENINSULA as  
10 trustee at a bank or other financial institution, in conformance with the  
11 requirements of Sections 10145 (trust account) or 10146 (advance fee  
12 trust account) of the Code and Sections 2832 (trust account) or 2972  
13 (advance fee trust account) of the Regulations, in that PENINSULA  
14 placed such funds in Bank #1, not a designated trust account;

15 (c) RUSSELL failed to immediately deliver trust funds to Respondent  
16 SAPP, broker of record for PENINSULA or failed to deliver the funds  
17 into the custody of the broker's principal or into a neutral escrow  
18 depository or into the broker's trust fund account, in violation of  
19 Section 10145(c) of the Code;

20 (d) PENINSULA failed to keep a columnar record in chronological  
21 sequence of all trust funds received and disbursed from Bank #1  
22 containing all the information required by Section 2831 (columnar  
23 records) of the Regulations;

24 (e) PENINSULA failed to keep a separate record for each beneficiary or  
25 transaction for Bank #1 containing all the information required by  
26 Section 10145(g) (separate records) of the Code and Section 2831.1  
27 (separate records) of the Regulations;

- 1 (f) PENINSULA failed to reconcile, at least once a month, the balance  
2 of all separate beneficiary or transaction records with Bank #1, as  
3 required by Section 2831.2 (monthly reconciliation) of the  
4 Regulations;
- 5 (g) PENINSULA failed to provide quarterly accountings of advanced  
6 fees to sellers, in violation of Section 2972 (quarterly accounting) of  
7 the Regulations; and
- 8 (h) PENINSULA and RUSSELL caused, suffered or permitted money of  
9 others which was received and held by Respondent PENINSULA in  
10 Bank#1 to be commingled with Respondent PENINSULA's own  
11 money, in violation of Section 10176(e) (commingling) of the Code  
12 and Section 2835 (commingling) of the Regulations.

13 11

14 On about August 12, 2010, Respondent PENINSULA dba Carmel Business Sales  
15 and owner/seller Jim M. (Seller) of Jam Pak, Inc. (Jam Pak), entered into an Exclusive Right to  
16 Sell - Listing Agreement (Listing Agreement), authorized by Respondent SAPP, wherein the  
17 parties agreed that "Compensation to Broker" (Item 6 of the Listing) was to be "12% of the  
18 purchase price including inventory ..."

19 12

20 On about February 18, 2011, a Business Purchase Agreement and Joint Escrow  
21 Instructions (Purchase Agreement) was entered into by purchasers Jonathan and Irene M.  
22 (Purchasers) for the purchase of Jam Pak in the amount of about \$1,060,000.00.

23 13

24 On about March 8, 2011, Seller and Purchasers entered into an Early Possession  
25 Agreement for Possession of the Assets of Jam Pak and on about March 11, 2011, Respondent  
26 PENINSULA received and cashed a commission check for \$123,056.54, based on the purchase  
27 price of about \$1,060,000.00, pursuant to the Listing Agreement.

1  
2 On about August 3, 2011, Seller and Purchasers entered into a Settlement  
3 Agreement and Third Amendment to the Purchase and Sale Agreement For the Assets of Jam  
4 Pak (Addendum) wherein the purchase price was reduced to \$422,000.00; however, Respondents  
5 PENINSULA and RUSSELL insisted and kept the \$123,056.63 commission, which had been  
6 based on the original purchase price as reflected in the Purchase Agreement, rather than the  
7 reduced and final purchase price reflected in the August 3<sup>rd</sup> Addendum, in violation of the  
8 Listing Agreement, violating Sections 10176(i) (fraud or dishonest dealing) and/or 10177(g)  
9 (negligence) and/or 10177(j) (fraud or dishonest dealing) of the Code.

10  
11 At all times mentioned herein, Respondent SAPP failed to exercise reasonable  
12 supervision over the acts of Respondents PENINSULA and RUSSELL and its agents and  
13 employees in such a manner as to allow the acts and omissions on the part of PENINSULA and  
14 RUSSELL, described above, to occur in violation of Sections 10159.2 (broker supervision,  
15 corporation), 10177(g) (negligence) and (h) (broker supervision) of the Code and Section 2725  
16 (reasonable supervision) of the Regulations.

17  
18 The facts alleged above are grounds for the suspension or revocation of the  
19 license and license rights of Respondents under the following provisions of the Code and/or the  
20 Regulations:

- 21 (a) as to Paragraph 10 (a) and Respondents PENINSULA and  
22 RUSSELL under Sections 10085 and 10085.6 of the Code and  
23 Section 2970 of the Regulations in conjunction with Section  
24 10177(d) of the Code;
- 25 (b) as to Paragraph 10 (b) and Respondent PENINSULA under Sections  
26 10145 or 10146 of the Code and Sections 2832 or 2972 of the  
27 Regulations in conjunction with Section 10177(d) of the Code;

- 1 (c) as to Paragraph 10 (c) and Respondent RUSSELL under Section  
2 10145(c) of the Code in conjunction with Section 10177(d) of the  
3 Code;
- 4 (d) as to Paragraph 10 (d) and Respondent PENINSULA under Section  
5 2831 of the Regulations in conjunction with Section 10177(d) of the  
6 Code;
- 7 (e) as to Paragraph 10 (e) and Respondent PENINSULA under Section  
8 10145(g) of the Code and Section 2831.1 of the Regulations in  
9 conjunction with Section 10177(d) of the Code;
- 10 (f) as to Paragraph 10 (f) and Respondent PENINSULA under Section  
11 2831.2 of the Regulations in conjunction with Section 10177(d) of  
12 the Code;
- 13 (g) as to Paragraph 10 (g) and Respondent PENINSULA under Section  
14 2872 of the Regulations in conjunction with Section 10177(d) of the  
15 Code;
- 16 (h) as to Paragraph 10 (h) and Respondents PENINSULA and  
17 RUSSELL under Section 10176(e) of the Code and Section 2835 of  
18 the Regulations in conjunction with Section 10177(d) of the Code;
- 19 (i) as to Paragraph 14 and Respondents PENINSULA and RUSSELL  
20 under Sections 10176(i) and/or 10177(g) and/or (j) of the Code; and  
21 (j) as to Paragraph 15 and Respondent SAPP under Sections 10159.2  
22 and 10177(g) and (h) of the Code and Section 2725 of the  
23 Regulations in conjunction with Section 10177(d) of the Code.

24 PRIOR DISCIPLINE

25 17

26 Effective April 24, 2007, in Case No. H-2016 FRESNO, the Real Estate  
27 Commissioner issued Respondent a restricted real estate salesperson license.

1 COST RECOVERY

2 18

3 Audit Costs

4 The acts and/or omissions of Respondents as alleged above, entitle the Bureau to  
5 reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

6 19

7 Investigation and Enforcement Costs

8 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
9 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the  
10 Administrative Law Judge to direct a licensee found to have committed a violation of this part to  
11 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

12 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
13 of this First Amended Accusation and that upon proof thereof, a decision be rendered imposing  
14 disciplinary action against all licenses and license rights of Respondents under the Real Estate  
15 Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of the investigation  
16 and enforcement as permitted by law, and for such other and further relief as may be proper  
17 under other applicable provisions of law.

18  
19 

20 BREND A SMITH  
21 Deputy Real Estate Commissioner

22 Dated at Fresno, California  
23 this 14 day of August, 2013.