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**FILED**

JUN 05 2018

BUREAU OF REAL ESTATE

By *[Signature]*

8 **BEFORE THE BUREAU OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 \* \* \*

11 In the Matter of the Accusation of )

No. H-03191 FR

12 CITYWIDE PROPERTY MANAGEMENT INC )

ACCUSATION

13 and )

14 OSCAR LINDSAY RUDNICK, individually )  
15 and as designated officer of Citywide Property )  
16 Management Inc )

17 )  
18 Respondents. )

19 The Complainant, Brenda Smith, a Supervising Special Investigator of the State  
20 of California, for cause of Accusation against CITYWIDE PROPERTY MANAGEMENT INC  
21 and OSCAR LINDSAY RUDNICK, alleges as follows:

22 1.

23 The Complainant, Brenda Smith, a Supervising Special Investigator of the State  
24 of California, makes this Accusation in her official capacity.

25 ///

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, California Code of Regulations.

**BRE LICENSE HISTORY**

3.

**CITYWIDE PROPERTY MANAGEMENT INC**

A. Respondent CITYWIDE PROPERTY MANAGEMENT INC ("CITYWIDE") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate broker (corporation), California Bureau of Real Estate ("BRE" or "Bureau" or "CalBRE") license ID 01294390.

B. CITYWIDE was originally licensed by the BRE on or about August 10, 2000.

C. CITYWIDE's BRE mailing and main address of record are the same: 1603 California Ave #122, Bakersfield, CA 93304 ("Bakersfield address").

D. According to BRE records to date, CITYWIDE has no active DBAs and no branch offices under its BRE license.

E. According to BRE records to date, CITYWIDE has one (1) real estate salesperson ("RES") under its BRE license, Katherine Legault, CalBRE license ID 01438705.

F. According to BRE licensing records, the designated officer ("D.O.") of record for CITYWIDE is OSCAR LINDSAY RUDNICK.

G. CITYWIDE's BRE license will expire on September 27, 2020.

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1 4.

2 OSCAR LINDSAY RUDNICK

3 A. Respondent OSCAR LINDSAY RUDNICK ("RUDNICK") is presently  
4 licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as  
5 a real estate broker ("REB"), CalBRE license ID 00852940.

6 B. RUDNICK was originally licensed by the BRE as a RES on or about  
7 November 4, 1983, and as a REB on or about January 14, 1988.

8 C. RUDNICK's BRE mailing and main address of record is CITYWIDE's  
9 Bakersfield address.<sup>1</sup>

10 D. According to BRE records to date, RUDNICK has no active DBAs and no  
11 branch offices under his BRE license.

12 E. RUDNICK is the D.O. of record for CITYWIDE until his officer expiration  
13 date of September 27, 2020.

14 F. RUDNICK's BRE license will expire on June 27, 2020.

15 APPLICABLE SECTIONS OF THE REAL ESTATE LAW

16 5.

17 Trust Fund Handling –

18 Code Section 10145 and Regulations 2831.2, 2832, and 2832.1

19 Pursuant to Code Section 10145:

20 (a)(1): "A real estate broker who accepts funds belonging to others in connection  
21 with a transaction subject to this part shall deposit all those funds that are not immediately placed  
22 into a neutral escrow depository or into the hands of the broker's principal, into a trust fund  
23

24  
25 <sup>1</sup> RUDNICK's BRE mailing and main address of record is 1603 California Ave Ste 122, Bakersfield, CA 93304.  
26  
27

1 account maintained by the broker in a bank or recognized depository in this state. All funds  
2 deposited by the broker in a trust account shall be maintained there until disbursed by the broker  
3 in accordance with instructions from the person entitled to the funds.

4 (2) Withdrawals may be made from a trust fund account of an individual broker  
5 only upon the signature of that broker, or in the case of a corporate broker, only upon the  
6 signature of an officer through whom the corporation is licensed pursuant to Section 10158 or  
7 10211, or one, or more, of the following persons if specifically authorized in writing by the  
8 individual broker or officer:

9 (A) A real estate salesperson licensed to the broker.

10 (B) Another broker acting pursuant to a written agreement with the  
11 individual broker that conforms to the requirements of this part and any regulations promulgated  
12 pursuant to this part.

13 (C) An unlicensed employee of the individual broker, if the broker has  
14 fidelity bond coverage equal to at least the maximum amount of the trust funds to which the  
15 unlicensed employee has access at any time. For purposes of this section, bonds providing  
16 coverage may be written with a deductible of up to 5 percent of the coverage amount. For bonds  
17 with a deductible, the employing broker shall have evidence of financial responsibility that is  
18 sufficient to protect members of the public against a loss subject to the deductible amount.

19 Evidence of financial responsibility shall include one or more of the following:

20 (i) Separate fidelity bond coverage adequate to cover the amount  
21 of the fidelity bond deductible.

22 (ii) A cash deposit held in a separate account, apart from other  
23 funds of the broker, the broker's employees, or the broker's  
24 principals, in a bank or recognized depository in this state adequate  
25

1 to cover the amount of the fidelity bond deductible and held  
2 exclusively and solely for the purpose of paying the fidelity bond  
3 deductible amount.

4 (iii) Any other evidence of financial responsibility approved by the  
5 commissioner.

6 (3) An arrangement under which a person enumerated in subparagraph (A),(B),  
7 or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of a broker  
8 shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from  
9 responsibility or liability as provided by law in handling trust funds in the broker's custody.

10 . . .

11 (b) A real estate broker acting as a principal pursuant to Section 10131.1<sup>2</sup> shall  
12 place all funds received from others for the purchase of real property sales contracts or  
13 promissory notes secured directly or collaterally by liens on real property in a neutral escrow  
14 depository unless delivery of the contract or notes is made simultaneously with the receipt of the  
15 purchase funds.

16 . . .

17 (g) The broker shall maintain a separate record of the receipt and disposition of all  
18 funds described in subdivisions (a) and (b), including any interest earned on the funds..."

19 6.

20 Pursuant to Regulation 2831.2, "The balance of all separate beneficiary or  
21 transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled  
22 with the record of all trust funds received and disbursed required by Section 2831, at least once a  
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24 <sup>2</sup>Code Section 10131.1 states, "(a) A real state broker within the meaning of this part is also a person who engages as  
25 a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property  
26 sales contracts or promissory notes secured directly or collaterally by liens on real property..."

1 month, except in those months when the bank account did not have any activities. A record of  
2 the reconciliation must be maintained, and it must identify the bank account name and number,  
3 the date of the reconciliation, the account number or name of the principals or beneficiaries or  
4 transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or  
5 transactions.”

6 7.

7 Pursuant to Regulation 2832:

8 “(a) Compliance with Section 10145 of the Code requires that the broker place  
9 funds accepted on behalf of another into the hands of the owner of the funds, into a neutral  
10 escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if  
11 the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other  
12 financial institution not later than three business days following receipt of the funds by the broker  
13 or by the broker's salesperson.

14 (b) Except as expressly provided by subdivision (d) of Section 10145 of the Code  
15 or by a regulation in this article, the account into which the trust funds are deposited shall not be  
16 an interest-bearing account for which prior written notice can by law or regulation be required by  
17 the financial institution as a condition to the withdrawal of funds.

18 (c) A check received from the offeror may be held uncashed by the broker until  
19 acceptance of the offer if

20 (1) the check by its terms is not negotiable by the broker or if the offeror  
21 has given written instructions that the check shall not be deposited nor cashed  
22 until acceptance of the offer and

23 (2) the offeree is informed that the check is being so held before or at the  
24 time the offer is presented for acceptance.

1 (d) In these circumstances if the offeror's check was held by the broker in  
2 accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a  
3 neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and  
4 offeree expressly so provide in writing, not later than three business days following acceptance of  
5 the offer unless the broker receives written authorization from the offeree to continue to hold the  
6 check.

7 (e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker  
8 who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when  
9 acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan  
10 transaction in which the broker is performing acts for which a real estate license is required shall  
11 place all funds accepted on behalf of another into the hands of the owner of the funds, into a  
12 neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious  
13 name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or  
14 other financial institution not later than the next business day following receipt of the funds by  
15 the broker or by the broker's salesperson."

16 8.

17 Pursuant to Regulation 2832.1, "The written consent of every principal who is an  
18 owner of the funds in the account shall be obtained by a real estate broker prior to each  
19 disbursement if such a disbursement will reduce the balance of the funds in the account to an  
20 amount less than the existing aggregate trust fund liability of the broker to all owners of the  
21 funds."

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1 **Responsibility of Corporate Officer in Charge – Code Section 10159.2 and Regulation 2725**

2 9.

3 Pursuant to Code Section 10159.2 (a), "The officer designed by a corporate broker  
4 license pursuant to Section 10211 shall be responsible for the supervision and control of the  
5 activities conducted on behalf of the corporation by its officers and employees as necessary to  
6 secure full compliance with the provisions of this division, including supervision of salespersons  
7 licensed to the corporation in the performance of acts for which a real estate license is  
8 required..."

9 10.

10 Pursuant to Regulation 2725, "A broker shall exercise reasonable supervision over  
11 the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the  
12 establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- 13 a) Transactions requiring a real estate license.  
14 b) Documents which may have a material effect upon the rights or obligations of  
15 a party to the transaction.  
16 c) Filing, storage and maintenance of such documents.  
17 d) The handling of trust funds.  
18 e) Advertising of any service for which a license is required.  
19 f) Familiarizing salespersons with the requirements of federal and state laws  
20 relating to the prohibition of discrimination.  
21 g) Regular and consistent reports of licensed activities of salespersons.

22 The form and extent of such policies, rules, procedures and systems shall take into  
23 consideration the number of salespersons employed and the number and location of branch  
24 offices.



1 A broker shall establish a system for monitoring compliance with such policies,  
2 rules, procedures and systems. A broker may use the services of brokers and salespersons to  
3 assist in administering the provisions of this section so long as the broker does not relinquish  
4 overall responsibility for supervision of the acts of salespersons licensed to the broker.”

5 **Grounds for Revocation or Suspension – Code Section 10176**

6 11.

7 Pursuant to Code Section 10176, “The commissioner may, upon his or her own  
8 motion, and shall, upon the verified complaint in writing of any person, investigate the actions of  
9 any person engaged in the business or acting in the capacity of a real estate licensee within this  
10 state, and he or she may temporarily suspend or permanently revoke a real estate license at any  
11 time where the licensee, while a real estate licensee, in performing or attempting to perform any  
12 of the acts within the scope of this chapter has been guilty of any of the following:

13 ...  
14  
15 (g) The claiming or taking by a licensee of any secret or undisclosed amount of  
16 compensation, commission, or profit or the failure of a licensee to reveal to the employer of the  
17 licensee the full amount of the licensee s compensation, commission, or profit under any  
18 agreement authorizing or employing the licensee to do any acts for which a license is required  
19 under this chapter for compensation or commission prior to or coincident with the signing of an  
20 agreement evidencing the meeting of the minds of the contracting parties, regardless of the form  
21 of the agreement, whether evidenced by documents in an escrow or by any other or different  
22 procedure.”

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1 Further Grounds for Disciplinary Action – Code Section 10177

2 12.

3 Pursuant to Code Section 10177, “The commissioner may suspend or revoke the  
4 license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the  
5 issuance of a license to an applicant, who has done any of the following:

6 ...

7 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing  
8 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and  
9 regulations of the commissioner for the administration and enforcement of the Real Estate Law  
10 and Chapter 1 (commencing with Section 11000) of Part 2.”

11 ...

12 (g) Demonstrated negligence or incompetence in performing an act for which he  
13 or she is required to hold a license.

14 (h) As a broker licensee, failed to exercise reasonable supervision over the  
15 activities of his or her salespersons, or, as the officer designated by a corporate broker licensee,  
16 failed to exercise reasonable supervision and control of the activities of the corporation for which  
17 a real estate license is required...”

18 BRE AUDIT OF CITYWIDE PROPERTY MANAGEMENT INC’s PROPERTY  
19 MANAGEMENT ACTIVITY (FR 160021)

20 13.

21 On February 9, 2017, the BRE completed its audit examinations of the books and  
22 records of Respondent CITYWIDE pertaining to its property management activity (FR 160021)  
23 described in Paragraphs 14A. through 14D., below, which require a real estate license. The audit  
24 examination covered a period of time beginning on December 1, 2015 and ending on November  
25  
26  
27

1 30, 2016 (“audit examination period” or “audit period”), and was performed during the period  
2 December 5, 2016 through January 20, 2017 (“audit field work period”). The final report of  
3 February 9, 2017 revealed violations of the Code and the Regulations as set forth in the following  
4 paragraphs, and more fully discussed in Audit Report FR 160021.

5 14.

6 Business Activities

7 A. At all times mentioned in Bakersfield, California, Respondent CITYWIDE  
8 acted as a REB, and ordered, caused, authorized or participated in licensed activities within the  
9 meaning of Code Section 10131(b), wherein CITYWIDE engaged in property management  
10 activities, and leased or rented or offered to lease or rent, or placed for rent, or solicited listings  
11 of places for rent, or solicited for prospective tenants, or negotiated the sale, purchase or  
12 exchanges of leases on real property, or on a business opportunity, or collected rent from real  
13 property, or improvements thereon, or from business opportunities (“property management”).

14 B. According to D.O. RUDNICK, as of the audit examination, CITYWIDE  
15 managed approximately 182 properties with 269 units for 146 owners. In connection with its  
16 property management activities, CITYWIDE collected approximately \$3,878,280 in trust funds  
17 annually.

18 C. According to D.O. RUDNICK, CITYWIDE’s property management activities  
19 included collecting rents and security deposits for real property; soliciting for tenants; advertising  
20 properties; making mortgage, property tax and insurance payments; and overseeing repairs and  
21 maintenance. For such property management services, CITYWIDE charged management fees  
22 between \$35.00 and \$600.00, or between six (6%) to ten (10%) percent of rents collected per unit  
23 per month. CITYWIDE also charged ten percent (10%) of the first month’s rent as a lease  
24 execution fee for new leases.

1 D. As of October 31, 2016, CITYWIDE handled its property management trust  
2 funds through one (1) account at Wells Fargo.

3 15.

4 Bank Account

5 According to D.O. RUDNICK, CITYWIDE maintained the following bank  
6 account to handle trust funds in connection with its property management activities during the  
7 audit period:

8 Bank Account # 1

9 \* Account Name: "CITYWIDE PROPERTY MANAGEMENT INC"

10 \* Bank: Wells Fargo, 1300 22<sup>nd</sup> St., Bakersfield, CA 93301

11 \* Account No. #####9521

12 \* Signatories: RUDNICK

13 CITYWIDE maintained Bank Account #1 as a bank account for handling trust  
14 funds for its property management activities. Deposits to Bank Account #1 consisted of rent and  
15 security deposit payments and owner contributions; disbursements from Bank Account #1  
16 consisted mainly of owner proceeds, security deposit disposition, repairs and maintenance  
17 payments, and management fees. The BRE Auditor prepared a bank account reconciliation for  
18 Bank Account #1. The adjusted bank balance was calculated by using the ending bank balance  
19 per the bank statements provided, plus deposits in transit, minus outstanding checks as identified  
20 from the Record of Trust Funds Received and Disbursed ("control record"). The adjusted bank  
21 balance was then compared with the corresponding sum of all the separate records for each  
22 beneficiary ("separate records") for each account.

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19.

**Trust Funds Not Deposited Within Three Days**

**(Code Section 10145 and Regulation 2832)**

As of October 31, 2016, CITYWIDE failed to deposit into Bank Account #1 all trust fund receipts within three (3) business days, in violation of **Code Section 10145 and Regulation 2832**. The BRE Auditor reviewed the deposit ledger and discovered that 409 different receipts totaling \$295,256.07 were held longer than one week and of those deposits, 74 different receipts of trust funds totaling \$51,177.99 appear to have been held over one month.

20.

**Trust Fund Handling – Trust Account Reconciliation**

**(Code Section 10145 and Regulation 2831.2)**

As of October 31, 2016, CITYWIDE failed to perform and maintain a monthly reconciliation comparing the balance of all the separate beneficiary or transaction records (separate records) to the balance of the record of all trust funds received and disbursed (control record) for Bank Account #1 in connection with its property management activities, in violation of **Code Section 10145 and Regulation 2831.2**.

21.

**Undisclosed Ownership**

**(Code Section 10176(g))**

During the audit period, CITYWIDE failed to disclose that its separately owned business, named "CPM Maintenance," was providing maintenance and repairs on the properties managed, in violation of **Code Section 10176(g)**. During the audit, a sample of invoices was obtained that show the maintenance and repairs were provided by CPM Maintenance. Copies of

1 the property management agreements show that no disclosures were made to the property owners  
2 regarding maintenance and repair services provided by CPM Maintenance.

3 22.

4 **Undisclosed Income**

5 **(Code Section 10176(g))**

6 During the audit period, CITYWIDE failed to obtain appropriate authorization to  
7 increase the management fees charged to properties it managed, in violation of **Code Section**  
8 **10176(g)**. During the audit, a review of the management fees taken in by CITYWIDE revealed  
9 that CITYWIDE had increased its fees on the majority of the properties managed. A review of  
10 the associated property management agreements revealed that CITYWIDE never obtained  
11 written authorization from the property owners agreeing to the higher management fees.

12 23.

13 **Responsibility of Corporate Officer in Charge/Broker Supervision**

14 **(Code Sections 10159.2 and 10177(h) and Regulation 2725)**

15 The acts and/or omissions of RUDNICK, as the D.O. of CITYWIDE PROPERTY  
16 MANAGEMENT INC during the audit period, demonstrate a failure to adequately supervise the  
17 real estate activities of CITYWIDE PROPERTY MANAGEMENT INC and its salespersons and  
18 employees to ensure compliance with the Real Estate Law and Regulations. RUDNICK failed  
19 to maintain and establish policies, rules, procedures, and systems for the review, inspection and  
20 management of transactions which required a real estate license and the handling of trust funds.  
21 The acts and/or failures to act constitute grounds for the suspension or revocation of the license  
22 and license rights of Respondent RUDNICK under the provisions of **Code Sections 10159.2 and**  
23 **10177(h) and Regulation 2725.**

24 ///

1 **Additional Violations of the Real Estate Law**

2 24.

3 The overall conduct of Respondents CITYWIDE PROPERTY MANAGEMENT  
4 INC and RUDNICK is violative of the Real Estate Law and constitutes cause for the suspension  
5 or revocation of both real estate licenses and license rights under the provisions of Code Section  
6 10177(g) for negligence and Code Section 10177(d) for willful disregard of the Real Estate Law.

7 **COSTS**

8 **Investigation and Enforcement Costs**

9 25.

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

15 **Audit Costs**

16 26.

17 Code Section 10148(b) provides, in pertinent part, the Commissioner shall charge  
18 a real estate broker for the cost of any audit, if the Commissioner has found in a final decision  
19 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation  
20 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 licenses and license rights of Respondents CITYWIDE PROPERTY  
4 MANAGEMENT INC and OSCAR LINDSAY RUDNICK 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.

8                   Dated at Fresno, California

9                   this 25 day of May, 2018.

11  
12                     
13                   Brenda Smith  
14                   Supervising Special Investigator

15  
16 cc:   CITYWIDE PROPERTY MANAGEMENT INC  
17       OSCAR LINDSAY RUDNICK  
18       Enforcement – R. Coronado, B. Smith  
19       Audits – J. Matkin, M. Rivera  
20       Sacto.