

FILED

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BUREAU OF REAL ESTATE

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9 BEFORE THE
10 BUREAU OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of)
14 AMERICAN MARKETING)
15 SYSTEMS, INC., a Corporation, and) NO. H-11715 SF
16 ZOYA LEE SMITHTON,)
17 Respondents.) ACCUSATION

18 The Complainant, ROBIN TANNER, a Deputy Real Estate Commissioner of the
19 State of California, makes this Accusation in her official capacity against AMERICAN
20 MARKETING SYSTEMS, INC. (herein "AMSI") and ZOYA LEE SMITHTON (herein
21 "SMITHTON") (herein collectively "Respondents"), and is informed and alleges as follows:

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

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27 At all times herein mentioned, AMSI 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

1 through SMITHTON, as designated officer-broker of AMSI to qualify said corporation and to
2 act for said corporation as a real estate broker.

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4 At all times herein mentioned, SMITHTON was and now is licensed by the
5 Bureau as a real estate broker individually and as designated officer-broker of AMSI. As
6 said designated officer-broker, SMITHTON was at all times mentioned herein responsible
7 pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers,
8 agents, real estate licensees, and employees of AMSI, for which a license is required.

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

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17 At all times herein mentioned Respondents engaged in the business of, acted in
18 the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others,
19 for compensation or in expectation of compensation within the State of California within the
20 meaning of Sections:

21 (a) 10131(a) of the Code, including the operation and conduct of a real estate
22 brokerage with the public wherein Respondents sold or offered to sell, bought
23 or offered to buy, solicited prospective sellers or purchasers of, solicited or
24 obtained listings of, or negotiated the purchase, sale or exchange of real
25 property or a business opportunity; and,

26 (b) 10131(b) of the Code in the operation of a property management business with
27 the public wherein Respondents leased or rented or offered to lease or rent,

1 placed for rent, or solicited listings of places for rent, or solicited for
2 prospective tenants, or negotiated the sale, purchase or exchanges of leases on
3 real property, or on a business opportunity, or collected rents from real
4 property or improvements thereon or from business opportunities.

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6 In so acting as real estate brokers, as described in Paragraph 5 above, Respondents
7 accepted or received funds in trust (herein "trust funds") from or on behalf of sellers, purchasers,
8 owners, tenants and others in connection with Respondents' mortgage loan brokerage activities,
9 and thereafter from time to time made disbursements of said trust funds.

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11 The aforesaid trust funds accepted or received by Respondents were deposited
12 or caused to be deposited by Respondents into one or more bank accounts (herein "trust fund
13 accounts") maintained by Respondents for the handling of trust funds at the following branch
14 of Bank of America Merrill Lynch in San Francisco, California:

- 15 (a) "American Marketing Systems Inc Unfurnished Rental Trust
16 Account," account number xxxxxxxx5272 (herein "Trust Account
17 #1"); and,
18 (b) "American Marketing Systems Inc Unfurnished Rental Trust
19 Account," account number xxxxxxxx7738 (herein "Trust Account
20 #2").

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22 Between about October 1, 2010 and July 31, 2012, Respondents, in connection
23 with the property management activities described in Paragraphs 5 through 7, above:

- 24 (a) failed to keep a columnar record in chronological sequence of all trust
25 funds received and disbursed from Trust Account #1 containing all the
26 information required by Section 2831 (control record) of the
27 Regulations;

1 (b) failed to keep a separate record for each beneficiary or transaction for
2 Trust Account #1 containing all the information required by Section
3 10145 (trust fund handling) of the Code and Section 2831.1 (separate
4 records) of the Regulations, such that Trust Account #1 contained
5 \$6,870.66 in Unidentified/Unaccounted for Funds on July 31, 2012;

6
7 (c) Represented that Respondents collected earnest money deposits from the
8 following purchasers, when in fact, Respondents had not collected any
9 such earnest money deposits, in violation of Section 10176(a) (substantial
10 misrepresentation) of the Code:

<u>Purchaser:</u>	<u>Property:</u>	<u>Date of Offer:</u>	<u>Amount:</u>
Rejean B.	Greenhill Road	11/29/11	\$22,000;
Mir M. A.	Shelterwood Place	1/30/12	\$27,000; and

13 (d) failed to the disclose license identification numbers on their website and
14 business cards in violation of Section 10140.6(b) (license identification
15 number disclosure) of the Code and Section 2773 (license identification
16 number disclosure) of the Regulations.

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

21 (a) as to Paragraph 8(a), under Section 2831 of the Regulations, in
22 conjunction with Section 10177(d) of the Code;

23 (b) as to Paragraph 8(b), under Section 10145 of the Code and Section 2831.1
24 of the Regulations, in conjunction with Section 10177(d) of the Code;

25 (c) as to Paragraph 8(c), under Section 10176(a) of the Code; and

26 (d) as to Paragraph 8(d), under Section 10140.6 of the Code and Section 2773
27 of the Regulations, in conjunction with Section 10177(d) of the Code.

1 PRIOR DISCIPLINE

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3 Effective March 16, 2000, in Case No. H-7729 SF, the Real Estate Commissioner
4 restricted Respondent ZOYA LEE SMITHTON's real estate broker license for violating Sections
5 10176(e) and 10177(d) of the Code.

6 COST RECOVERY

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8 Audit Costs

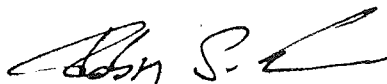
9 The acts and/or omissions of Respondents as alleged above entitle the Bureau to
10 reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

11 12

12 Investigation and Enforcement Costs

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

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

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24 ROBIN TANNER
25 Deputy Real Estate Commissioner

26 Dated at Oakland, California
27 this 9th day of June, 2014.

1 DISCOVERY DEMAND

2 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the
3 Bureau of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in
4 the *Administrative Procedure Act*. Failure to provide Discovery to the Bureau of Real Estate
5 may result in the exclusion of witnesses and documents at the hearing or other sanctions that the
6 Office of Administrative Hearings deems appropriate.

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