

FILED

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DEPARTMENT OF REAL ESTATE
BY: 

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	
LANDVIEW PROPERTIES INC.;)	No. H- 38627 LA
and MARVIN HERSHEL BATT,)	
individually and as designated officer)	<u>ACCUSATION</u>
of Landview Properties Inc.,)	
)	
Respondents.)	
)	

The Complainant, Howard Alston, a Deputy Real Estate Commissioner of the State of California, Department of Real Estate ("Department") for cause of Accusation against LANDVIEW PROPERTIES INC. ("LPI") and MARVIN HERSHEL BATT ("BATT"), individually and as designated officer of Landview Properties Inc. (collectively "Respondents"), is informed and alleges as follows:

1.

The Complainant, Howard Alston, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

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2.

From July 19, 1989, through the present, Respondent LPI has been licensed as a real estate corporation. At all times relevant herein, LPI was acting by and through Respondent BATT as its designated broker-officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3.

Respondent BATT was originally licensed as a real estate broker on November 26, 1968. Harrison K. Smalley is also licensed as a broker and is LPI's vice president and operational manager.

Table: Designated Officer Tenure

Designated Officers	Tenure
Marvin Hershel Batt	July 19, 1989 to date

4.

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

FIRST CAUSE OF ACCUSATION

(Audit)

5.

At all times mentioned, in the State of California, Respondents LPI and BATT acted as a real estate brokers and conducted licensed activities within the meaning of Code Section 10131(b) wherein they conducted a real estate and property management brokerage.

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2 Audit Examination

3 6.

4 On February 7, 2012, the Department completed an audit examination of the
5 books and records of Respondent LPI pertaining to the real estate and property management
6 activities described in Paragraph 5, which require a real estate license. The audit examination
7 covered a period of time beginning on July 1, 2008 to May 23, 2011. The audit examination
8 revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations
9 ("Regulations") as alleged in the following paragraphs, and more fully set forth in Audit Report
10 LA 100142 and the exhibits and work papers attached thereto.

11 Trust Accounts

12 7.

13 At all times mentioned, in connection with the activities described in Paragraph
14 6, above, LPI accepted or received funds including funds in trust ("trust funds") from or on
15 behalf of property owners and tenants handled by LPI and thereafter made deposits and or
16 disbursements of such funds. From time to time herein mentioned, during the audit period and
17 thereafter, said trust funds were deposited and/or maintained by LPI in the accounts described
18 below.

19 ("T/A 1")

20 "Landview Properties Inc. Trust Account.

21 02419*****"

22 Bank of America

23 Glendora, CA 91740

24 (Property management account)

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1 ("T/A 2")

2 "Landview Properties Inc. Tilbury Properties Trust Account.

3 12188*****"

4 Bank of America

5 Glendora, CA 91740

6 (Property management account for Tilbury Properties)

7 Violations of the Real Estate Law

8 8.

9 In the course of activities described in Paragraph 5, above, and during the
10 examination period, described in Paragraph 6, Respondents LPI and BATT acted in violation of
11 the Code and the Regulations in which Respondents:

12 (a) Permitted, allowed or caused the disbursement of trust funds from T/A 1,
13 LPI's property management trust account for rent and security deposits collection, where the
14 disbursement of funds reduced the total of aggregate funds in T/A 1, to an amount which, on
15 December 23, 2009, was at a minimum accountability of \$117,320.38, less than the existing
16 aggregate trust fund accountability of LPI to every principal who was an owner of said funds,
17 without first obtaining the prior written consent of the owners of said funds, in violation of Code
18 Section 10145(a) and Regulation 2832.1. The shortage was caused by the embezzlement of
19 Crystal Renfrow, LPI's former employee and accountant. The shortage was reduced to
20 \$2,780.08 on January 11, 2012 by a deposit of \$114,540.30;

22 (b) Conversion, by Crystal Renfrow, of trust funds in the amounts as set forth
23 below, which the balance in T/A 1, to an amount that was less than the amount of trust funds
24 deposited into said accounts, in violation of Code Sections 10145 and 10176(i)/10177(j) and
25 2832:
26

1 (c) T/A 1 was not in the name of the broker as trustee at a bank or other financial
2 institution, nor designated as a trust account, in violation of Code Section 10145 of the Code and
3 Regulation 2832(a);

4 (d) Failed to maintain an adequate control record in the form of a columnar record
5 in chronological order of trust funds received but not deposited into T/A 1 and T/A 2, received in
6 chronological order, in violation of Code Section 10145 and Regulation 2831;

7 (e) Failed to maintain an adequate control record, separate record and
8 reconciliation therewith for T/A 1, with respect to trust fund handling, monitoring and
9 management and with regard to mis-posting account data, in violation of Code Section 10145 and
10 Regulation 2831.1;

11 (f) Failed to perform a monthly reconciliation of the balance of all separate
12 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of
13 all trust funds received and disbursed by T/A 1 in violation of Code Section 10145 and
14 Regulations 2831.2;

15 (g) Failed to retain all records of LPI's activity during the audit period requiring a
16 real estate broker license, in violation of Code Section 10148; and

17 (h) BATT failed to adequately supervise and control the real estate and property
18 management activity conducted under LPI's real estate broker license. Additionally, Respondents
19 had no system in place for regularly monitoring LPI's compliance with the Real Estate Law
20 especially in regard to establishing, systems, policies and procedures to review trust fund
21 handling, and to keep LPI in compliance with the Real Estate Law, in violation of Code Sections
22 10159.2, 10177(h) and Regulation 2725.
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9.

The conduct of Respondents LPI and BATT, described in Paragraph 8, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
8(a)	Code Section 10145 and Regulation 2832.1
8(b)	Code Sections 10145 and 10176(i)/10177(j) and 2832
8(c)	Code Section 10145 and Regulation 2832(a)
8(d)	Code Section 10145 and Regulation 2831
8(e)	Code Section 10145 and Regulation 2831.1
8(f)	Code Section 10145 and Regulation 2831.2
8(g)	Code Section 10148
8(h)	Code Sections 1059.2 and 10177(h) and Regulation 2725(BATT)

The foregoing violations constitute cause for the discipline of the real estate licenses and license rights of Respondents LPI and BATT under the provisions of Code Sections 10145, 10176(i) and/or 10177(j), 10177(d), and 10177(g) and 10177(h) for BATT.

SECOND CAUSE OF ACCUSATION
(Negligence)

10.

The overall conduct of Respondents LPI and BATT constitutes negligence and is cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

THIRD CAUSE OF ACCUSATION
(Fiduciary Duty)

11.

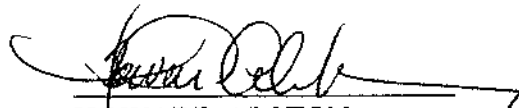
The conduct, acts and omissions of Respondents LPI and BATT constitute a breach of fiduciary duty, owed to LPI's clients, of good faith, trust, confidence and candor,

1 within the scope of their contracted property management relationship with landlords and
2 tenants, in violation of Code Section 10177(g) and constitutes cause for discipline of the real
3 estate license and license rights of said Respondents pursuant to the provisions of Code Section
4 10177(g).
5

6 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
7 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
8 action against all licenses and/or license rights of Respondents LANDVIEW PROPERTIES
9 INC. and MARVIN HERSHEL BATT, individually and as designated officer of Landview
10 Properties Inc., under the Real Estate Law (Part 1 of Division 4 of the California Business and
11 Professions Code) and for such other and further relief as may be proper under other applicable
12 provisions of law, including but not limited to, proof of cure of the shortage, and costs
13 investigation, enforcement and audit.

14 Dated at Los Angeles, California.

15 this 26th day of December, 2012.
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18 
19 HOWARD ALSTON
20 Deputy Real Estate Commissioner
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23 cc: Landview Properties Inc.
24 Marvin Hershel Batt
25 Howard Alston
26 Andy Chen
Sacto