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DEPT. OF REAL ESTATE

By John Aguirre

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-41488 LA
12 DLT LEGENDS REALTY, INC. and) ACCUSATION
13 MICHAEL ROBERT NAUDIN,)
14 individually and as designated officer)
15 of DLT Legends Realty, Inc.,)
Respondents.)

16 The Complainant, Maria Suarez, a Supervising Special Investigator for the
17 Department of Real Estate ("Department") of the State of California, for cause of Accusation
18 against DLT LEGENDS REALTY, INC. ("DLT") and MICHAEL ROBERT NAUDIN
19 ("NAUDIN") (collectively "Respondents"), alleges as follows:

- 20 1. The Complainant, Maria Suarez, acting in her official capacity as a Supervising
21 Special Investigator, makes this Accusation against Respondents.
22 2. All references to the "Code" are to the California Business and Professions Code
23 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

24 **LICENSE HISTORY**

25 3. Respondent DLT has been licensed by the Department as a real estate corporation,
26 License ID 01525791, from August 10, 2011 through the present, with DLT's license scheduled to
27 expire on November 9, 2019 unless renewed. On March 25, 2016, DLT's license was ordered
28 suspended for 30 days pursuant to Stipulation and Agreement under Department Case No.

1 H-39799-LA, which order was stayed for 2 years on certain terms and conditions. On June 14,
2 2016, DLT was released from the order in Case No. H-39799-LA. DLT is licensed through
3 NAUDIN's real estate broker ("REB") license, ID 01499067, and NAUDIN is the designated
4 officer ("D.O.").

5 4. Respondent NAUDIN has been licensed by the Department as a real estate broker,
6 from on or about May 17, 2005 through the present, with NAUDIN's license scheduled to expire
7 on May 16, 2021, unless renewed. On March 25, 2016, NAUDIN's license was ordered
8 suspended for 30 days pursuant to Stipulation and Agreement under Department Case No.
9 H-39799-LA, which order was stayed for 2 years on certain terms and conditions. On June 14,
10 2016, NAUDIN was released from the order in Case No. H-39799-LA.

11 5. On March 25, 2018, based on the terms of the Stipulation and Agreement in Case
12 No. H-39799-LA, the stay of DLT's and NAUDIN's suspensions became permanent.

13 **DEPARTMENT OF REAL ESTATE CASE NO. H-39799-LA**

14 6. On March 25, 2016, in Case No. H-39799-LA, the Real Estate Commissioner
15 entered an Order adopting a Stipulation and Agreement signed by the Department, DLT and
16 NAUDIN. Under the terms of the Stipulation and Agreement, DLT and NAUDIN chose not to
17 contest the factual allegations contained in the Accusation filed in that proceeding, and stipulated
18 and agreed that there was cause for the suspension or revocation of all real estate licenses and
19 license rights of Respondents for violation of Code section 10145 based on allegations that:

20 a. DLT and NAUDIN failed to maintain an accurate and complete control
21 record in the form of a columnar record kept in chronological order of trust funds received
22 but not deposited into DLT's trust account for rents;

23 b. DLT and NAUDIN failed to maintain an accurate and complete separate
24 record for each beneficiary or transaction, thereby failing to account for all trust funds
25 received, deposited and disbursed for DLT's trust account for rents;

26 c. DLT and NAUDIN failed to place trust funds, including rents, accepted on
27 behalf of another into the hands of the owner of the funds, a neutral escrow depository or
28 into a trust fund account in the name of the trustee at a bank or other financial institution

1 not later than three (3) business days following receipt of the funds from
2 RealPage/Propertyware. Rents collected through the instrumentality of property
3 management software, to wit, RealPage/Propertyware were deposited into DLT's trust
4 account for rents beyond three (3) business days of collection (the 3-Day Rule). In
5 addition, rents collected by RealPage/Propertyware were deposited into a
6 RealPage/Propertyware clearing account, a non-trust account, *before* funds received were
7 being transferred to DLT's trust account for rents.

8 d. DLT and NAUDIN:

9 (1) Permitted unlicensed RealPage/Propertyware to initiate debit/credit
10 and withdrawal of funds in DLT's bank account; and

11 (2) Permitted Kristina Ann De La Torre aka Kristina Delatorre, DLT's
12 CFO/Secretary and co-owner, an unlicensed and unbonded person, to make
13 withdrawals of funds in DLT's trust accounts for security deposits and rents; and

14 (3) NAUDIN was not a signatory on either of DLT's two trust accounts.

15 7. DLT and NAUDIN stipulated to discipline in the Decision and Order ("Order"),
16 which is summarized in relevant part below:

17 a. All licenses and licensing rights of DLT and NAUDIN under the Real
18 Estate Law were suspended for a period of thirty (30) days from the effective date of the
19 Order ("Effective Date"), which was March 25, 2016 , provided, however, that:

20 (1) Thirty (30) days of the suspension would be stayed on condition that
21 DLT and NAUDIN petition pursuant to Code section 10175.2 at a rate of \$50 for
22 each day of the suspension for a total monetary penalty of \$1,500;

23 (a) No further cause for disciplinary action against the Real
24 Estate licenses of Respondents occurs within two (2) years from the
25 Effective Date;

26 (b) If Respondents pay the monetary penalty and if no further
27 cause for disciplinary action against Respondents occurs within two (2)
28

1 years from the Effective Date, the entire stay as granted pursuant to the
2 Order, as to DLT and NAUDIN only, shall become permanent;

3 (2) NAUDIN shall, within nine (9) months from the Effective Date,
4 present satisfactory evidence that he successfully completed the continuing
5 education requirements of Article 2.5 of Chapter 3 of the Real Estate Law;

6 (3) Pursuant to Code section 10148:

7 (a) Respondents shall pay \$5,764.40 for the Commissioner's
8 cost of the audit that led to this disciplinary action;

9 (b) Respondents shall pay the Commissioner's reasonable cost,
10 not to exceed \$5764, for an audit to determine if Respondents have
11 corrected the violations found in the Determination of Issues; and

12 (4) All license rights of NAUDIN are indefinitely suspended until
13 NAUDIN provides satisfactory proof of successfully completing the continuing
14 education course on trust fund accounting and handling specified in Code section
15 10170.5(a)(3).

16 8. As noted above, on June 14, 2016, DLT and NAUDIN were released from the
17 Order in Case No. H-39799-LA, however, these Respondents remained subject to the requirement
18 that no further cause for disciplinary action against the Real Estate licenses of Respondents occur
19 within two (2) years from the Effective Date. On March 25, 2018, because no further cause of
20 disciplinary action against Respondents' licenses occurred within two (2) years of the Effective
21 Date, the stay of suspension became permanent under the terms of the Stipulation and Agreement.

22 **BROKERAGE: DLT**

23 9. At all times mentioned, DLT has engaged in, is engaging in, attempting to engage
24 in, acting in the capacity of, and advertising and/or assuming to act as a corporate real estate
25 broker, within the meaning of Code section 10131(b) (leasing or renting, or soliciting prospective
26 tenants, or collecting rents on behalf of another or others). At all times relevant herein, DLT was
27 acting by and through NAUDIN as its designated officer pursuant to Code section 10159.2 who
28 was responsible for ensuring compliance with the Real Estate Law.

AUDIT: DLT, LA180050

10. On March 29, 2019, the Department completed an audit examination of the books and records of DLT's real estate activities that require a corporate real estate broker license under Code section 10131. The audit examination covered the time period March 25, 2016 to December 31, 2018 ("audit period"). The audit was limited to DLT's property management activities. During the audit period, DLT's designated officer and broker was NAUDIN.

11. The purpose of the audit examination was to determine whether DLT has complied with Code sections 10145, 10148, 10159.2, 10159.5, and 10164, and Regulations 2731, 2831, 2831.1, 2832(d), 2834(a), and 2834(b), as cited in Stipulation and Agreement in Case No. H-39799-LA, effective March 25, 2016. The violations found in that case were disclosed to NAUDIN in a prior audit completed on June 5, 2013 (Audit Report LA120192).

12. Based on the Department's licensing records for DLT, DLT maintains two (2) active fictitious business names: "Legends Property Management," and "Legends Realty." DLT does not maintain any branch offices. As of March 8, 2019, DLT had eighteen (18) licensed real estate salespersons ("RES").

13. Based on the Department's licensing records as of March 8, 2019, NAUDIN maintains no fictitious business names and no branch offices, and there are no salespersons licensed under NAUDIN's individual broker's license.

14. Based on a discussion between the Department's auditor and NAUDIN, and an examination of records, DLT's corporate structure as of January 16, 2019 was as follows:

<u>Name</u>	<u>Title</u>	<u>Licensed</u>	<u>Shareholder %</u>
Joe U. De La Torre	President	RES	51%
NAUDIN	Vice President	REB & D.O.	0%
Kristina De La Torre	CFO	Unlicensed	49%

15. Based on the documents examined and discussion between the Department's auditor and NAUDIN during the audit:

a. DLT performed property management activities, managing approximately 90 properties with approximately 105 units for 90 owners.

1 b. DLT collected approximately \$3,000,000.00 annually in trust funds during
2 the audit period in connection with its property management activity.

3 c. DLT charged a management fee of \$75-\$100 per unit, per month.

4 d. DLT maintained two (2) multi-beneficiary trust accounts at Citizen
5 Business Bank, referred to herein as "TA1" and "TA2." The signatories for both TA1 and
6 TA2 were: NAUDIN; Joe De La Torre, a real estate salesperson (License ID No.
7 01001150); and Robert D. Bolender III, a real estate broker (License ID No. 01488286).
8 The information for the two trust accounts, current during the audit period, is as follows:

9 Trust Account #1 ("TA1")

10 Bank: Citizen's Business Bank
11 300 S. Grand Ave., Ste 1100
 Los Angeles, CA 90071
12 Account Name: DLT Legends Realty Inc.
 DBA Legends Property Management
13 Property Management Trust Acct#1 – Security Deposit
14 Account #: XXXXXXXXXX0944
15 Signatories NAUDIN
 Joe Uriel De La Torre
16 Robert D. Bolender III

17 Trust Account #2 ("TA2")

18 Bank: Citizen's Business Bank
 300 S. Grand Ave., Ste 1100
19 Los Angeles, CA 90071
20 Account Name: DLT Legends Realty Inc.
 DBA Legends Property Management
 Property Management Trust Acct#2 – Rents
21 Account #: XXXXXXXXXX0987
22 Signatories NAUDIN
 Joe Uriel De La Torre
23 Robert D. Bolender III

24 16. The audit examination in Audit No. LA180050 revealed violations of the Code and
25 the Regulations as set forth in the following paragraphs, and as more fully discussed in Audit
26 Report LA180050 and the exhibits and work papers attached to the audit report.

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1 **AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW**

2 17. In the course of their real estate activities during the audit period of March 25, 2016
3 to December 31, 2018, Respondents DLT and NAUDIN acted in violation of the Code and the
4 Regulations as follows:

5 **Issue One (1). Code section 10145 and Regulation 2832.1: Trust Fund Handling for Multiple**
6 **Beneficiaries**

7 18. As of December 31, 2018, TA1 had a shortage of \$45.00. The shortage was caused
8 by unreimbursed bank fees of \$45.00 as of December 31, 2018.

9 19. As of December 31, 2018, TA2 had a shortage of \$14,668.73, calculated in
10 subparagraphs (a), (b), and (c) below:

11 a. Negative Property Balances:

<u>Property Address</u>	<u>Amount</u>
15063 Barnwall St	<\$200.00>
7377 Tomaso	<\$589.00>
9061 Catherine St	<\$2,800.00>
1940 E Wilson Ave	<\$1,766.67>
10908 Stamy Rd	<\$90.00>
6402 Eberle St	<\$378.00>
1450 Locust Ave Apt 207	<\$1,200.00>
2204 Mira Monte St	<\$1,775.00>
11870 Lyndora St	<\$1,850.00>
14654 Sunnymead Dr	<\$2,300.00>
<u>Total Negative Property Balances:</u>	<u><\$12,948.67></u>

20 b. Unreimbursed Bank Charges:

12/31/2015 Bank fees to be funded by DLT	<\$264.78>
12/31/2016 Bank fees to be funded by DLT	<\$18.37>
<u>Total Unreimbursed Bank Charges:</u>	<u><\$283.15></u>

23 c. Unauthorized Disbursements:

Propertyware fees	<\$1,086.99>
DLT's funds	<\$234.92>
10/11/14 "Dep 232 to be funded"	<\$115.00>
<u>Total Unauthorized Disbursements:</u>	<u><\$1,436.91></u>
Total Shortage for TA2 as of 12/31/2018:	<u><\$14,668.73></u>

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1 d. The negative property balances shown above in Paragraph 7(a) were caused
2 by disbursements related to properties when there were insufficient funds.

3 e. The bank service charges shown above in Paragraph 7(b) were not
4 reimbursed by DLT, and were based on an examination of bank statements and DLT's
5 "Trust Account Reconciliation Summary" covering the period December 31, 2015 to
6 December 31, 2016.

7 f. The unauthorized disbursements shown above in Paragraph 7(c) were
8 caused by DLT's Propertyware fees totaling \$1,086.99 during the time period from
9 December 31, 2016 to December 18, 2018, and were described as "Propertyware fee to be
10 funded by Legends," other adjustments described as "Dep 232 to be funded" in the amount
11 of \$115.00 on October 11, 2014, and DLT's negative funds of \$234.92.

12 g. DLT provided no evidence that the owners of the trust funds had given their
13 written consent to allow DLT to reduce the balance of the funds in TA2 to an amount less
14 than the existing aggregate trust fund liabilities.

15 20. DLT's failure to obtain the written consent of the owners of the trust funds to
16 reduce the balance of the funds in TA2 to an amount less than the existing aggregate trust fund
17 liabilities was in violation of **Code section 10145 and Regulation 2832.1.**

18 **Issue Two (2). Code section 10145 and Regulation 2831: Trust Fund Records to be**
19 **Maintained**

20 21. DLT failed to maintain complete and accurate records of all trust fund receipts and
21 disbursements (control record) for TA1 and TA2. There were instances where the trust fund
22 disbursements were recorded to the control records for TA1, but were not actually disbursed.
23 There were instances where the trust funds were recorded received but not actually received and
24 deposited into TA2. As a result, the records for TA1 and TA2 had inaccurate running daily
25 balances. Examples of inaccurate running daily balances appear below under Issue Three (3) and
26 are hereby incorporated by reference with the same force and effect as though fully set forth
27 herein.

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22. DLT's failure to maintain complete and accurate records of all trust funds received and disbursed for TA1 and TA2 was in violation of Code section 10145 and Regulation 2831.

Issue Three (3). Code section 10145 and Regulation 2831.1: Separate Record for Each Beneficiary or Transaction

23. Based on an examination of separate records provided for the audit examination, DLT failed to maintain complete and accurate separate records for TA1. There were instances where the trust fund disbursements were inaccurately posted to the separate records for TA1 and the disbursements were not issued. Thus, the balance after posting transactions on any date was inaccurate. The following are examples of inaccurate postings to separate records for TA1:

<u>Property Address</u>	<u>Recorded Date of Disbursement</u>	<u>Actual Date of Disbursement</u>	<u>Amount</u>
1450 Locust Ave Apt 207	12/31/2016	Not Issued	\$ 1,200.00
2204 Mira Monte St	12/31/2016	Not Issued	\$ 1,775.00
11870 Lyndora Street	12/31/2016	Not Issued	\$ 1,850.00
14654 Sunnymead Drive	12/31/2016	Not Issued	\$ 2,300.00
Total			<u>\$ 7,125.00</u>

24. Also based on an examination of separate records provided for the audit examination, DLT failed to maintain complete and accurate separate records for TA2. There were instances where the trust funds received were inaccurately posted to the separate records, but not actually received/deposited into TA2. Thus the balance after posting transactions on any date was inaccurate. The following are examples of inaccurate postings to separate records for TA2:

<u>Property Address</u>	<u>Date of Deposit</u>	<u>Recorded Date of Receipt</u>	<u>Amount</u>
1450 Locust Ave Apt 207	Not Received	12/31/2016	\$ 1,200.00
2204 Mira Monte St	Not Received	12/31/2016	\$ 1,775.00
11870 Lyndora Street	Not Received	12/31/2016	\$ 1,850.00
14654 Sunnymead Drive	Not Received	12/31/2016	\$ 2,300.00
Total			<u>\$ 7,125.00</u>

25. DLT's failure to maintain complete and accurate separate records for TA1 and TA2 was in violation of Code section 10145 and Regulation 2831.1.

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1 **Issue Four (4). Code sections 10145 and 10176(i): Unauthorized Disbursements/Handling of**
2 **Trust Funds**

3 26. Based on an examination of records, DLT was charged Propertyware fees from
4 December 31, 2016 to December 31, 2018, and had a negative broker funds balance. It was
5 recorded on the "CALBRE Trust Account Reconciliation Summary" in the "Other Adjustments"
6 section and stated as "Propertyware fee to be funded by Legends," and there were other
7 adjustments described as "Dep 232 to be funded" of \$115.00 on October 11, 2014, and there was a
8 negative DLT funds balance of \$234.92. DLT's records revealed that DLT made unauthorized
9 disbursements of \$1,436.91 from TA2 without written authorization from the owners of trust
10 funds in TA2, as shown in the table below:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
12/31/2016	Propertyware to be funded by Legends as of 12/31/16	<\$226.63>
12/31/2017	Propertyware to be funded by Legends as of 12/31/17	<\$278.83>
1/18/2018	1/18/18 Propertyware fee to be funded by Legends	<\$11.70>
2/18/2018	2/18/18 Propertyware fee to be funded by Legends	<\$13.25>
3/18/2018	3/18/18 Propertyware fee to be funded by Legends	<\$5.71>
4/18/2018	4/18/18 Propertyware fee to be funded by Legends	<\$14.21>
5/18/2018	5/18/18 Propertyware fee to be funded by Legends	<\$24.89>
6/18/2018	6/18/18 Propertyware fee to be funded by Legends	<\$23.46>
7/18/2018	7/18/18 Propertyware fee to be funded by Legends	<\$23.28>
8/18/2018	8/18/18 Propertyware fee to be funded by Legends	<\$19.58>
9/18/2018	9/18/18 Propertyware fee to be funded by Legends	<\$245.59>
10/18/2018	10/18/18 Propertyware fee to be funded by Legends	<\$174.59>
11/18/2018	11/18/18 Propertyware fee to be funded by Legends	<\$12.26>
12/18/2018	12/18/18 Propertyware fee to be funded by Legends	<\$13.01>
10/11/2014	Dep 232 to be funded	<\$115.00>
12/31/2018	Legends Property Management Balance	<\$234.92>
Total		<\$1,436.91>

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25 27. The above listed fees, funds, and negative broker funds balance were not
26 reimbursed to TA2 by DLT.

27 28. DLT's unauthorized disbursements from TA2 without written authorization from
28 the owners of the trust funds were in violation of Code sections 10145 and 10176(i).

1 **Issue Five (5). Code sections 10159.2 and 10177(h) and Regulation 2725: Responsibility of**
2 **Corporate Officer in Charge / Broker Supervision**

3 29. Based on the above audit findings in Issues 1 through 4 above, as the broker and
4 designated officer of DLT:

5 a. NAUDIN failed to adequately supervise and control DLT's real estate
6 activities conducted by DLT's salespersons and its employees; and

7 b. NAUDIN failed to establish policies, rules, procedures, and systems to
8 review, oversee, inspect, and manage transactions requiring a real estate license and the
9 handling of trust funds.

10 30. NAUDIN's acts and/or omissions, as alleged above in paragraphs 26(a) and (b)
11 were in violation of Code sections 10159.2 and 10177(h), and Regulation 2725.

12 **ADDITIONAL VIOLATIONS OF THE REAL ESTATE LAW**

13 **NEGLIGENCE AND WILLFUL DISREGARD OF THE REAL ESTATE LAW**

14 31. The Complainant realleges and incorporates by reference all of the allegations
15 contained in paragraphs 1 through 30 above, with the same force and effect as though fully set
16 forth herein.

17 32. The overall conduct of DLT and NAUDIN is violative of the Real Estate Law and
18 constitutes cause for the suspension or revocation of the real estate licenses and license rights of
19 DLT and NAUDIN under the provisions of Code sections 10177(g) for negligence and 10177(d)
20 for willful disregard of the Real Estate Law.

21 **INVESTIGATION AND ENFORCEMENT COSTS**

22 33. Code section 10106 provides, in pertinent part, that in any order issued in
23 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner
24 may request the administrative law judge to direct a licensee found to have committed a violation
25 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
26 the case.

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