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FILED

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DEPARTMENT OF REAL ESTATE

By B. Nicholas

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 KLEMM REAL ESTATE INC. and JACK)
13 CALVIN KLEMM,)

14 Respondents.)

No. H-7004 SAC

ACCUSATION

15 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
16 of the State of California, for cause of Accusation against KLEMM REAL ESTATE INC. and
17 JACK CALVIN KLEMM (collectively "Respondents"), are informed and allege as follows:

18 PRELIMINARY ALLEGATIONS

19 1

20 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
21 of the State of California, makes this Accusation in her official capacity.

22 2

23 Respondents are presently licensed and/or have license rights under the Real
24 Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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1 3

2 At all times mentioned, Respondent KLEMM REAL ESTATE INC. (KREI) was
3 and is licensed by the State of California Department of Real Estate (Department) as a real estate
4 broker corporation.

5 4

6 At all times mentioned, Respondent JACK CALVIN KLEMM (KLEMM) was
7 and is licensed by the Department individually as a real estate broker, and as the designated
8 broker officer of KREI. As said designated broker officer, KLEMM was responsible pursuant to
9 Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real
10 estate licensees, and employees of KREI for which a license is required.

11 5

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

17 6

18 At all times mentioned, Respondents engaged in the business of, acted in the
19 capacity of, advertised, or assumed to act as real estate brokers in the State of California, within
20 the meaning of Section 10131(b) of the Code in the operation and conduct of a property
21 management business with the public wherein, on behalf of others, for compensation or in
22 expectation of compensation, Respondents leased or rented and offered to lease or rent, and
23 placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of
24 real property or improvements thereon, and collected rents from real property or improvements
25 thereon.

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1 FIRST CAUSE OF ACTION

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3 Each and every allegation in Paragraphs 1 through 6, inclusive, is incorporated by
4 this reference as if fully set forth herein.

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6 On or about July 19, 2019, through May 19, 2020, an audit was conducted of the
7 records of KREI. The auditor herein examined the records for the period of May 1, 2018,
8 through May 31, 2019.

9 9

10 While acting as a real estate broker as described in Paragraph 6, Respondents
11 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in
12 connection with the leasing, renting, and collection of rents on real property or improvements
13 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust
14 funds.

15 10

16 The trust funds accepted or received by Respondents as described in Paragraph 9
17 were deposited or caused to be deposited by Respondents into trust accounts which were
18 maintained by Respondents for the handling of trust funds, and thereafter from time-to-time
19 Respondents made disbursements of said trust funds, identified as follows:

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ACCOUNT # 1	
Bank Name and Location:	Wells Fargo Bank 1900 W 11 th Street Tracy, CA 95376
Account No.:	XXXXXX7146
Entitled:	Klemm Real Estate Inc. Trust Fund Account

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ACCOUNT # 2	
Bank Name and Location:	Wells Fargo Bank 1900 W 11 th Street Tracy, CA 95376
Account No.:	Xxxxxx5629
Entitled:	Klemm Real Estate, Inc. Rental Trust Account

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In the course of the activities described in Paragraph 6, Respondents:

(a) caused, suffered, or permitted the combined balance of funds in Account #1 and 2 to be reduced to an amount which, as of May 31, 2019, was approximately \$61,179.60 less than the aggregate combined liability of Account #1 and 2 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of Title 10, Chapter 6, of the California Code of Regulations (Regulations);

(b) failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for Account #1 and 2 as required by Section 2831.2 of the Regulations; and

(c) failed to keep accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into Account #1 and 2 containing all of the information required by Section 2831.1 of the Regulations.

12

The facts alleged in the First Cause of Action are grounds for the suspension or revocation of Respondents' licenses and license rights under the following Sections of the Code and Regulations:

As to Paragraph 11(a), under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

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1 As to Paragraph 11(b), under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations; and

3 As to Paragraph 11(c), under Sections 10177(d) and/or 10177(g) of the Code in
4 conjunction with Section 10145 of the Code and Section 2831.1 of the Regulations.

5 SECOND CAUSE OF ACTION

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7 Each and every allegation in Paragraphs 1 through 12, inclusive, above are
8 incorporated by this reference as if fully set forth herein.

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10 Respondent KLEMM failed to exercise reasonable supervision over the acts of
11 KREI in such a manner as to allow the acts and events described above to occur.

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13 The acts and/or omissions of KLEMM as described in Paragraph 14, constitutes
14 failure on the part of KLEMM, as designated broker-officer for KREI, to exercise reasonable
15 supervision and control over the licensed activities of KREI as required by Section 10159.2 of
16 the Code and Section 2725 of the Regulations.

17 16

18 The facts described above as to the Second Cause of Action constitute cause for
19 the suspension or revocation of the licenses and license rights of Respondent KLEMM under
20 Section 10177(g) and/or Section 10177(h) of the Code, and Section 10159.2 of the Code in
21 conjunction with Section 10177(d) of the Code.

22 COST RECOVERY

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24 The acts and/or omissions of Respondents as alleged above, entitle the
25 Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs
26 for trust fund handling violation) of the Code.

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

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing discipline on all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of the investigation and enforcement of this case as permitted by law, for the cost of the Department's audit as permitted by law, and for such other and further relief as may be proper under the provisions of law.



TRICIA D. PARKHURST
Supervising Special Investigator

Dated at Sacramento, California,
this 16th day of October, 2020

DISCOVERY DEMAND

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