

1 JASON D. LAZARK, Counsel (SBN 263714)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Office: (916) 227-0789
6 Direct: (916) 227-0822
7 Fax: (916) 227-9458

FILED

APR 27 2012

DEPARTMENT OF REAL ESTATE

By K. Conteras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 JAMES ANASTASY KILPATRICK,) H-11364 SF
13 Respondent.) ACCUSATION
14)

15 The Complainant, E. J. HABERER II, in his official capacity as a Deputy Real
16 Estate Commissioner of the State of California, for cause of Accusation against JAMES
17 ANASTASY KILPATRICK (hereinafter "Respondent") is informed and alleges as follows:

18 1.

19 Respondent is presently licensed by the State of California Department of Real
20 Estate (hereinafter the "Department") and/or has license rights under the Real Estate Law, Part 1
21 of Division 4 of the Business and Professions Code (hereinafter "the Code") as a real estate
22 broker.

23 2.

24 At all times herein mentioned, Respondent engaged in the business of, acted in
25 the capacity of, advertised, or assumed to act as a real estate broker within the State of
26 California for or in expectation of compensation, for which a real estate license is required
27 under section 10131(b) of the Code, including the operation and conduct of a property

1 management business with the public wherein, on behalf of others, for compensation, leased or
2 rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or
3 solicited for prospective tenant, or negotiated for sale, purchase or exchanges of leases on real
4 property, or on a business opportunity, or collected rent from real property, or improvements
5 thereon, or from business opportunities.

6 FIRST CAUSE OF ACTION

7 Audit Violations

8 3.

9 Each and every allegation contained above in Paragraphs 1 and 2 inclusive, is
10 incorporated by this reference as if fully set forth herein.

11 4.

12 Beginning on April 30, 2010 and continuing intermittently through June 23, 2010,
13 the Department conducted an audit at Respondent's main office located on 3645 Grand Avenue,
14 Suite 303, Oakland, CA 94610-2009, where the auditor examined records for the period of
15 June 1, 2009 to March 31, 2010 (hereinafter "the audit period").

16 5.

17 While acting as a real estate broker as described above in Paragraph 2, and within
18 the audit period, Respondent accepted or received funds in trust (hereinafter "trust funds") from
19 or on behalf of owners, tenants and others in connection with the rental or lease of residential
20 property, for or in expectation of compensation, as alleged herein, and thereafter from time-to-
21 time made disbursements of said trust funds.

22 6.

23 The trust funds accepted or received by Respondent as described in Paragraph 5,
24 above, were deposited or caused to be deposited by Respondent into three bank accounts which
25 were maintained by Respondent for the handling of trust funds, and thereafter from time-to-time
26 Respondent made disbursements of said trust funds, identified as follows:

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

TRUST ACCOUNT # 1	
Bank Name and Location:	Bank of America, San Francisco Main Office, PO Box 37176, San Francisco, CA 94137-0001
Account No.:	XXXXXX-X7809
Entitled:	"Highview Property Management Co. Trust Account 'LeConte'"
Signatories:	James Kilpatrick, REB
No. of Signatures Required:	One
Description:	Used for property management activities related to the property located at 2510 LeConte.

TRUST ACCOUNT # 2	
Bank Name and Location:	Bank of America, San Francisco Main Office, PO Box 37176, San Francisco, CA 94137-0001
Account No.:	XXXXXX-X8036
Entitled:	"Highview Property Management Co. Trust Account 'Spruce'"
Signatories:	James Kilpatrick, REB
No. of Signatures Required:	One
Description:	Used for property management activities related to the property located at 1433 and 1455 Spruce Street.

TRUST ACCOUNT # 3	
Bank Name and Location:	Bank of America, San Francisco Main Office, PO Box 37176, San Francisco, CA 94137-0001
Account No.:	XXXXXX-X7809
Entitled:	"Highview Property Management Co. Trust Account 'Karol T'"
Signatories:	James Kilpatrick, REB
No. of Signatures Required:	One
Description:	Used for property management activities related to the property known as Karol.

1 7.

2 In the course of the activities described above in Paragraph 2, in connection with
3 the collection and disbursement of trust funds, Respondent:

4 (a) Caused, suffered or permitted the balance of funds in Trust Account #1 to
5 be reduced to an amount which, as of March 31, 2010, was approximately \$275.55 less than the
6 aggregate liability of Trust Account #1 to all owners of such funds, without the prior written
7 consent of each and every owner of such funds, in violation of section 10145 of the Code and
8 section 2832.1, California Code of Regulations (herein "the Regulations");

9 (b) Caused, suffered or permitted the balance of funds in Trust Account #2 to
10 be reduced to an amount which, as of March 31, 2010, was approximately \$83.79 less than the
11 aggregate liability of Trust Account #2 to all owners of such funds, without the prior written
12 consent of each and every owner of such funds, in violation of section 10145 of the Code and
13 section 2832.1 of the Regulations;

14 (c) Caused, suffered or permitted the balance of funds in Trust Account #3 to
15 be reduced to an amount which, as of March 31, 2010, was approximately \$172.60 less than the
16 aggregate liability of Trust Account #3 to all owners of such funds, without the prior written
17 consent of each and every owner of such funds, in violation of section 10145 of the Code and
18 section 2832.1 of the Regulations;

19 (d) Maintained control records for Trust Account #3 that was inaccurate and
20 incomplete in violation of section 10145 of the Code and section 2831 of the Regulations.

21 8.

22 The acts and/or omissions of Respondent, as alleged above in Paragraph 7, are
23 grounds for discipline under sections 10177(d) and 10177(g) of the Code.

24 9.

25 The acts and/or omissions of Respondent as alleged above in Paragraph 8,
26 entitle the Department to reimbursement of the costs of its audit pursuant to section 10148 of
27 the Code.

1 UNLICENSED ACTIVITY

2 (As to Respondent James Anastasy Kilpatrick)

3 10.

4 Each and every allegation above in Paragraphs 1 through 9, inclusive, is
5 incorporated by this reference as if fully set fourth herein

6 11.

7 Between May 18, 2009 through July 16, 2009, Respondent's real estate broker's
8 license and license rights were suspended by the Department.

9 12.

10 Between May 18, 2009 through July 16, 2009, while his license was suspended,
11 Respondent operated and conducted a property management business with the public wherein,
12 on behalf of others, for compensation, he leased or rented or offered to lease or rent, or placed
13 for rent, or solicited listings of places for rent, or solicited for prospective tenant, or negotiated
14 for sale, purchase or exchange of leases on real property, or on a business opportunity, or
15 collected rent from real property, or improvements thereon, or from business opportunities, as
16 defined by section 10131(b) of the Code.

17 13.

18 The acts and omissions of Respondent, as described above, in Paragraphs 11
19 and 12, violate section 10130 of the Code and constitute cause for the suspension or revocation
20 of all license and license rights of Respondent JAMES ANASTASY KILPATRICK under
21 section 10177(d) of the Code.

22 PREVIOUS DISCIPLINARY ACTION

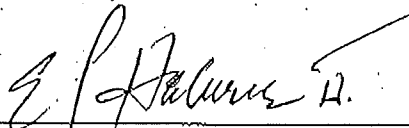
23 14.

24 Effective May 18, 2009, in Case No. H-10512 SF, the Real Estate Commissioner
25 (hereinafter the "Commissioner") suspended Respondent's real estate broker license for violating
26 sections of the Code, including but not limited to sections 10145 and 10177(d), and violating
27 sections of the Commissioner's Regulations.

COST RECOVERY

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 revoking all licenses and license rights of Respondent, under Part 1 of Division 4 of the Business and Professions Code, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under the provisions of law.



E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 27 day of April, 2012.