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FILED

AUG 21 2014

BUREAU OF REAL ESTATE

By 

8 **BEFORE THE BUREAU OF REAL ESTATE**
9 **STATE OF CALIFORNIA**

10 *****

11 In the Matter of the Accusation of)	
12)	
13 EL BASHA INC.; doing business as)	No. H- 39582 LA
14 Real Property Management West)	
15 San Fernando Valley, and)	<u>ACCUSATION</u>
16 Vista Property Management; and)	
17)	
18 ADEL B. RAFAEL,)	
19 individually and as designated)	
20 officer of El Basha Inc.,)	
21)	
22 Respondents.)	
23)	

20 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
21 of California, Bureau of Real Estate ("Bureau") for cause of Accusation against EL BASHA
22 INC. ("EBI") and ADEL B. RAFAEL ("RAFAEL"), individually and as former designated
23 officer of El Basha Inc. (collectively "Respondents"), is informed and alleges as follows:

24 1.

25 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State
26 of California, makes this Accusation in her official capacity.

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2.

All references to the "Code" are to the Part 1 of Division 4 California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

Individuals and Entities

3.a

From September 22, 2009, through the present, Respondent EBI has been licensed as a real estate broker. At all times relevant herein, EBI was acting by and through Respondent RAFAEL as its designated officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3.b

Respondent ADEL B. RAFAEL ("RAFAEL") was originally licensed as a real estate broker on June 02, 2009, and previously as a real estate salesperson. From September 22, 2009 to date, RAFAEL has been and continues to be the broker - designated officer of EBI.

3.c

Table: El Basha Inc. Management Structure and Ownership

Name	License	Ownership/Title	
Adel B. Rafael	Broker/ Designated Officer	President	100%

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 RAFAEL.

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2 FIRST CAUSE OF ACCUSATION
3 (Property Management Audit)

4 5.

5 At all times mentioned, in the City of Chatsworth, County of Los Angeles,
6 Respondents EBI and RAFAEL acted as a real estate brokers and conducted licensed activities
7 within the meaning of Code Section 10131(b) wherein they conducted a property management
8 brokerage.

9 EBI is engaged in property management activity and managed 69 residential
10 properties totaling 75 units for approximately 62 owners. EBI collected rents, paid expenses,
11 and screened tenants for compensation. Approximately \$994,000 in trust funds was handled
12 during the last twelve (12) months. EBI charged a property management fee of 5.5% to 9%.

13
14 Audit Examination

15 6.

16 On November 20, 2013, the Bureau completed an audit examination of the books
17 and records of Respondent EBI pertaining to the property management activities described in
18 Paragraph 5, which require a real estate license. The audit examination covered a period of time
19 beginning on July 1, 2011 and ending on December 31, 2012. The audit examination revealed
20 violations of the Code and Regulations as alleged in the following paragraphs, and more fully
21 set forth in Audit Report LA 120221 and the exhibits and work papers attached thereto.

22 Bank Accounts

23 7.

24 At all times mentioned, in connection with the real estate activities described in
25 Paragraph 6, above, EBI accepted or received funds including funds in trust ("trust funds") from
26 or on behalf of property owners and tenants handled by EBI and thereafter made deposits and or
disbursements of such funds. From time to time herein mentioned, during the audit period and

1 thereafter, said trust funds were deposited and/or maintained by EBI in the bank accounts
2 described below:

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5 Bank Account 1 (B/A 1)

6 Bank: Wells Fargo Bank
7 1250 Mason Avenue
8 Chatsworth, CA 91311

9 Account Name: El Basha Inc.

10 Account Number: xxxx-xxxx-9273

11 Signatories: Adel B. Rafael

12
13 (BA-1 was used to handle deposits of rent receipts, accounting and disbursements related
14 to EBI's property management activity.)

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16 Bank Account 2 (B/A 2)

17 Bank: Wells Fargo Bank
18 1250 Mason Avenue
19 Chatsworth, CA 91311

20 Account Name: El Basha Inc.

21 Account Number: xxxx-xxxx-5662

22 Signatories: Adel B. Rafael

23 (BA-2 was an interest bearing accounts handling security deposits for property owners.)
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Violations of the Real Estate Law

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In the course of activities described in Paragraphs 5 and 7, above, and during the examination period, described in Paragraph 6, Respondents EBI and RAFAEL acted in violation of the Code and the Regulations in which Respondents:

(a) Permitted, allowed or caused the disbursement of trust funds from EBI's property management trust account into which trust funds in the form of rents and security deposit collection, and where the disbursement of funds reduced the total of aggregate funds in B/A 1 and B/A 2 combined to an amount which, on December 31, 2012, was at a minimum accountability of \$27,441.67, less than the existing aggregate trust fund accountability of EBI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145(a) and Regulation 2832.1. The shortage remains unrepatriated.

(b) Failed to place trust funds in the form of rent receipts, accepted on behalf of another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund account in the name of the trustee at a bank or other financial institution, in violation of Code Section 10145 and Regulation 2832(a). B/A 1 and B/A 2 were used for trust fund handling but not designated as trust accounts;

(c) Failed to maintain an accurate and complete control record in the form of a columnar record in chronological order of trust funds received but not deposited into B/A 1, in violation of Code Section 10145 and Regulation 2831;

1 (d) Failed to maintain an accurate and complete separate record for each
2 beneficiary or transaction, thereby failing to account for all trust funds received, deposited and
3 disbursed for B/A 1, in violation of Code Section 10145 and Regulation 2831.1;

4 (e) Failed to perform an accurate and complete monthly reconciliation of the
5 balance of all separate beneficiary or transaction records maintained pursuant to Regulation
6 2831.1 with the record of all trust funds received and disbursed by B/A 1, in violation of Code
7 Section 10145 and Regulation 2831.2;

8 (f) Permitted unlicensed RealPage/Propertyware to initiate debit/credit and
9 withdrawal of funds in EBI's bank account, in violation of Code Section 10145 and Regulation
10 2834(a);

11 (g) Deposited trust funds into an interest-bearing account, B/A 2, without written
12 authorization, in violation of Code Section 10145(d)(4).

13 (h) Mixed, commingled, and converted trust funds and personal funds by
14 depositing \$91,586.94, in trust funds received from tenants and property owners into EBI's and
15 RAFAEL's personal bank amounts, without written authorization form the owners of the funds,
16 in violation of Code Sections 10145(a), 10176(e) and 10176(i); and

17 (i) Used the fictitious name of "Real Property Management" to conduct licensed
18 activities without first obtaining from the Bureau a license bearing said fictitious business name,
19 in violation of Code Section 10159.5 and Regulation 2731;

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22 9.

23 The conduct of Respondents EBI and RAFAEL, described in Paragraph 8,
24 above, violated the Code and the Regulations as set forth below:

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26 ///

1 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
2 8(a)	Code Section 10145 and Regulation 2832.1
3 8(b)	Code Section 10145 and Regulation 2832(a)
4 8(c)	Code Section 10145 and Regulation 2831
5 8(d)	Code Section 10145 and Regulation 2831.1
6 8(e)	Code Section 10145 and Regulation 2831.2
7 8(f)	Code Section 10145 and Regulation 2834
8 8(g)	Code Section 10145(d)
9 8(h)	Code Sections 10145(a) and 10176(e) and 10176(i)
10 8(i)	Code Section 10159.5 and Regulation 2831

11 The foregoing violations constitute cause for the discipline of the real estate licenses and license
12 rights of Respondents EBI and RAFAEL under the provisions of Code Sections 10145,
13 10176(e), 10176(i), 10177(d), and 10177(g).
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16 SECOND CAUSE OF ACCUSATION
17 (Negligence)

18 11.

19 The overall conduct of Respondents EBI and RAFAEL constitutes negligence
20 and is cause for discipline of the real estate license and license rights of said Respondents
21 pursuant to the provisions of Code Section 10177(g).
22

23 THIRD CAUSE OF ACCUSATION
24 (Fiduciary Duty)

25 12.

26 The conduct, acts and omissions of Respondents EBI and RAFAEL constitute a
breach of fiduciary duty owed to EBI's clients and trust fund beneficiaries of good faith, trust,
confidence and candor, within the scope of their brokerage, in violation of Code Sections

1 10177(g) and 10176(i) and/or 10177(j) and constitutes cause for discipline of the real estate
2 license and license rights of said Respondents pursuant to the provisions of said Code Sections.

3 In particular, Respondents by not designating B/A 1 and B/A 2 as a trust accounts
4 unnecessarily exposed the trust funds contained therein and exposed each and every borrower-
5 beneficiary of said trust funds to suit, attachment, levy and seizure by:

- 6 (1) the general creditors of each trust fund beneficiary;
7
8 (2) the federal and state taxing authorities, including but not limited to the
9 Internal Revenue Service, the California Franchise Tax Board, and the
10 California State Board of Equalization;
11 (3) the United States Bankruptcy Court; and
12 (4) to a lack of recourse and recompense to said beneficiaries for having an
13 unlicensed and unbonded person as signatory on EBI's bank accounts.

14 FOURTH CAUSE OF ACCUSATION
(Supervision and Compliance)

15 13.

16 The overall conduct of Respondent RAFAEL constitutes a failure on her part, as
17 former officer designated by a corporate broker licensee, to exercise the reasonable supervision
18 and control over the licensed activities of EBI in violation of Code Section 10159.2 and
19 Regulation 2725, and to keep EBI in compliance with the Real Estate Law. Said conduct, acts
20 and omissions are cause for the suspension or revocation of the real estate license and license
21 rights of RAFAEL pursuant to the provisions of Code Section 10177(h).

22 14.

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


2 15.

3 Code Section 10148(b) provides, in pertinent part the Commissioner shall charge
4 a real estate broker for the cost of any audit, if the commissioner has found in a final decision
5 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation
6 or rule of the commissioner interpreting said section.
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8 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
9 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
10 action against all licenses and/or license rights of Respondents EL BASHA INC. and ADEL B.
11 RAFAEL, individually and as former designated officer of El Basha Inc., under the Real Estate
12 Law (Part 1 of Division 4 of the California Business and Professions Code) and for such other
13 and further relief as may be proper under other applicable provisions of law, including but not
14 limited to, proof of cure of the shortage, restitution, and costs of investigation, enforcement and
15 audit.
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17 Dated at Los Angeles, California

18 This 18th day of August, 2014.

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21 
22 MARIA SUAREZ
Deputy Real Estate Commissioner

23
24 cc: El Basha Inc.
25 Adel B. Rafael
26 Maria Suarez
Manijeh Khazrai - Audits
Sacto