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DEPT. OF REAL ESTATE

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9 **BEFORE THE DEPARTMENT OF REAL ESTATE**
10 **STATE OF CALIFORNIA**

11 * * *

12 In the Matter of the Accusation against
13 EL BASHA INC. and ADEL B. RAFAEL,
14 individually, and as designated officer for
15 El Basha Inc.,
16 Respondents.

DRE No. H-41728 LA
ACCUSATION

17 The Complainant, Maria Suarez, a Supervising Special Investigator for the Department of
18 Real Estate ("Department") of the State of California, for cause of Accusation against EL
19 BASHA INC. and ADEL B. RAFAEL, individually, and as designated officer for El Basha Inc.
(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 all references to the "Real Estate Law" are to Part 1 of Division 4 of the Code, and all references
24

1 to "Regulations" are to the Regulations of the Real Estate Commissioner, Title 10, Chapter 6,
2 California Code of Regulations.

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

5 4. On September 22, 2009, the Department issued a real estate corporation license to
6 Respondent EL BASHA INC. ("EBI"), License ID 01869228. Respondent EBI's license is
7 scheduled to expire on September 21, 2021. Respondent has renewal rights pursuant to Code
8 section 10201. The Department retains jurisdiction pursuant to Code section 10103.

9 5. On June 2, 2009, the Department issued a real estate broker license to Respondent
10 ADEL B. RAFAEL ("RAFAEL"), License ID 00910636. Respondent RAFAEL's broker
11 license is scheduled to expire on June 1, 2021. Respondent has renewal rights pursuant to Code
12 section 10201. The Department retains jurisdiction pursuant to Code section 10103.

13 6. Respondent RAFAEL was formerly licensed as a real estate salesperson from
14 approximately February 7, 1986 through June 1, 2009.

15 7. At all times relevant herein, EBI was licensed as a real estate corporation, by and
16 through Respondent RAFAEL as designated officer-broker of Respondent EBI to qualify said
17 corporation and to act for said corporation as a real estate broker.

18 8. At all times relevant herein, Respondent RAFAEL has been licensed as the
19 designated officer-broker for Respondent EBI, pursuant to section 10211 of the Code. As said
20 designated officer-broker, Respondent RAFAEL was at all times mentioned herein responsible
21 pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers,
22 agents, real estate licensees, and employees of Respondent EBI for which a license is required.

23 9. Whenever reference is made in an allegation in this Accusation to an act or
24 omission of Respondent EBI, such allegation shall be deemed to mean that the officers,

1 directors, employees, agents and/or real estate licensees employed by or associated with
2 Respondent EBI committed such act or omission while engaged in the furtherance of the
3 business or operations of such corporate respondent and while acting within the course and
4 scope of their authority and employment.

5 10. At all times relevant herein, in the State of California, Respondents engaged in
6 activities that require a real estate broker license within the meaning of Code section 10131,
7 subdivision (b). Respondents' activities included soliciting or offering to negotiate the sale,
8 purchase or exchange of leases for real property and the collection of rents or security deposits
9 on real property or on a business opportunity for others, for compensation or in expectation of
10 compensation.

11 Prior Discipline

12 11. On August 21, 2014, the Department filed an Accusation in Department Case No.
13 H-39582LA against Respondents. The Accusation was based on allegations of trust fund
14 violations found during an audit of Respondents' property management activities in Audit No.
15 LA120221.

16 12. On or about March 30, 2016, Respondents and the Department entered into a
17 Stipulation and Agreement to settle the Accusation in Case No. H-39582 LA. Under the
18 Determination of Issues of the Stipulation and Agreement, Respondents were determined to be in
19 violation of Code section 10145 and Regulations 2831, 2831.1.,2831.2, 2832, and 2834 and
20 Respondent RAFAEL was in violation of Code section 10177, subdivisions (d) and (h).

21 13. Under the Stipulation and Agreement in Case No. H-39582 LA, Respondents'
22 licenses were suspended for sixty (60) days, which was stayed under certain terms and
23 conditions including paying the costs (not to exceed \$11,641.89) of an audit to determine if
24 Respondents have corrected the violations found in Audit No. LA120221.

1 Causes of Accusation

2 Audit LA180054

3 14. On or about April 22, 2019, the Department completed an audit examination of
4 the books and records of Respondent EBI's property management activities, which require a real
5 estate license pursuant to Code section 10131, subdivision (b), to determine if Respondents have
6 corrected the violations determined in the Stipulation and Agreement in Department No. H-
7 39582 LA.

8 15. The audit examination covered the period from April 20, 2016 through November
9 30, 2018 ("audit period").

10 16. The audit examination revealed violations of the Code and the Regulations as set
11 forth in the following paragraphs, and more fully discussed in Audit Report LA180054 and the
12 exhibits and work papers attached to said audit report.

13 17. According to Respondents, RAFAEL is the sole owner and shareowner of EBI.
14 During the audit period, Respondents managed approximately 280 properties with approximately
15 300 units for 250 property owners. Respondents charged a management fee of five to seven and
16 a half percent (5% - 7.5%) of monthly collected rents.

17 18. According to Respondents, they maintained two multi-beneficiary bank accounts
18 for Respondents' property management activities during the audit period:

19 A. Trust Account #1 (T/A 1)

20 Bank: Wells Fargo Bank

21 Account #: xxxxx3045

22 B. Trust Account #2 (T/A 2)

23 Bank: JP Morgan Chase Bank

24 Account #: xxxxx1338

1 19. According to Respondents, Darryl Michael Thomas ("Thomas") is EBI's
2 compliance officer, real estate broker license ID 0194467.

3 Violations

4 20. In the course of its property management activities during the audit period,
5 Respondents acted in violation of the Code and the Regulations as follows:

6 Code section 10145(a) and Regulation 2832.1. Trust fund handling for multiple beneficiaries.

7 21. Respondents combined records of all trust fund receipts and disbursements
8 (control records/general ledger) in T/A 1 and T/A 2 for rents collected and security deposits.
9 The trust accounts balances accountability, and cause of trust fund discrepancies were combined
10 as of November 30, 2018.

11 22. As of November 30, 2018, T/A 1 and T/A 2 had a combined shortage of
12 <\$1,976.97>. The combined shortage was caused by negative property balances of <\$1,918.99>,
13 unreimbursed bank charges of <\$32.00>, and unauthorized disbursements of <\$25.98>, as of
14 November 30, 2018.

15 23. The properties with negative balances were caused by disbursements when there
16 were insufficient funds. The properties with negative balances were: 41105 Chaco Canyon
17 <\$1,874.00> and 5228 Lindley Ave. #1 <\$44.99>.

18 24. T/A 1 incurred bank service charges that were not reimbursed by EBI, which
19 consisted of a document copy fee of <\$5.00> on September 28, 2018, and a bank transaction fee
20 for <\$27.00> on October 31, 2018.

21 25. The <\$25.98> unauthorized disbursements related to RAFAEL's Chase credit
22 card payments.

23 26. Respondents failed to provide any evidence that the owners of the trust funds in
24 T/A 1 and T/A 2 had given their written consent to allow EBI to reduce the balance of the funds

1 in T/A 1 and T/A 2 to an amount less than the existing aggregate trust fund liabilities, in
2 violation of Code section 10145 and Regulation 2832.1.

3 Code section 10145(a). Handling of trust funds.

4 27. A report for the trust account balance as of November 30, 2018 was provided to
5 the Department's auditor for examination. The report listed ten properties for nine property
6 owners' trust funds maintained in T/A 2. The report failed to list the date when trust funds were
7 received and deposited, and from whom said trust funds were received.

8 28. According to the examination of the bank statements for T/A 1, check no. 11047
9 was cleared from T/A 1 on August 22, 2018. According to EBI's compliance officer Thomas,
10 account T/A 2 was opened on August 21, 2018. Trust funds consisting of prepaid rents and
11 security deposits totaling \$100,000.00 were transferred from T/A 1 to T/A 2. EBI withdrew trust
12 funds from T/A 1 and deposited into T/A 2 without instructions from the beneficiaries (property
13 owners) entitled to the funds, in violation of Code section 10145(a). No additional activity was
14 noted in T/A 2 after August 22, 2018.

15 Code section 10145 and Regulation 2831. Trust fund records to be maintained.

16 29. During the audit period, Respondent EBI failed to maintain accurate or complete
17 records of trust funds received and disbursed (control record) for T/A 1, in violation of Code
18 section 10145 and Regulation 2381.

19 30. The control record (general ledger) for T/A 1 provided for the audit examination
20 did not have an accurate running daily balance as of November 30, 2018. According to bank
21 statements examined, the combined accountabilities for T/A 1 and T/A 2, and adjusted bank
22 balance as of November 30, 2018 was \$928,399.04. Trust funds totaling \$100,000 were
23 transferred from T/A 1 to T/A 2 on August 21, 2018 and were maintained in T/A 2 without any
24 activity; thereby, leaving an adjusted bank balance of \$828,399.04 in T/A 1. There was a

1 difference of \$35,315.27 between the control record and the auditor's reconstructed general
2 ledger balance as of November 30, 2018.

3	31. Control record balance as of 11/30/2018	= \$863,714.31
4	Auditor's reconstructed general ledger balance as of 11/30/2018	= <u>\$828,399.04</u>
5		\$35,315.27

6 32. Some of the disbursements made from T/A 1 were not recorded on the bank
7 account activity (control record) of T/A 1 provided for the audit examination. Examples include
8 the following, without limitation:

9	<u>Date</u>	<u>Description</u>	<u>Amount</u>	<u>Control Record</u>
10	10/19/2018	Chase CC Payment/RAFAEL	<\$13.99>	Not recorded
11	10/15/2018	Chase CC Payment/RAFAEL	<\$11.99>	Not recorded
12	10/31/2018	Transaction fee	<\$27.00>	Not recorded
13	09/28/2018	Document copy fee	<\$5.00>	Not recorded
14		Total	<u><\$57.98></u>	

15 Code section 10145, subdivision (g) and Regulation 2831.1. Separate records for each
16 beneficiary or transaction

17 33. During the audit period, Respondent EBI failed to maintain accurate separate
18 records for each beneficiary or transaction (separate records) for T/A 1, in violation of Code
19 section 10145(g) and Regulation 2831.1.

20 34. Balances of separate records provided for the audit examination did not include
21 the security deposits and prepaid rent amounts; therefore, T/A 1 did not have an accurate balance
22 after posting transactions on any date. Examples include the following, without limitation:

Property	Balance per separate records provided	Security deposit per balance sheet	Prepaid rent balance sheet	Reconstructed balance for separate records
18307 Burbank Blvd. #75	<\$655.00>	\$1,500.00	\$1,509.50	\$ 2,354.50
632 Meyer Ln. #D	<\$245.84>	\$4,200.00	\$4,209.50	\$ 8,163.66
4612 Vista Del Mar#3	\$776.00	\$3,200.00	\$ 877.00	\$ 4,853.00
12524 Lithuanian	\$535.00	\$5,000.00	\$5,009.50	\$10,544.50
22100 Burbank #214B	\$355.00	\$1,600.00	\$1,499.50	\$ 3,434.50

Code section 10145 and Regulation 2831.2. Trust account reconciliation

35. During the audit period, EBI failed to maintain complete and accurate monthly reconciliations comparing the balance of all separate beneficiary or transaction records (separate records) to the balance of all trust funds received and disbursed (control record) for T/A 1 and T/A 2, in violation of Code section 10145 and Regulation 2831.2.

Code sections 10145 and 10176(i). Handling of trust funds/Unauthorized disbursements

36. In October of 2018, Respondents disbursed trust funds from T/A 1 to make payments credit card payments totaling \$25.98 for RAFAEL's Chase Bank credit card without written consent of the owners of the trust funds, in violation of Code sections 10145 and 10176, subdivision (i).

Code section 10176(g) and Regulation 2830. Undisclosed compensation/Broker placement of trust funds with financial institutions.

37. Based on an examination of EBI's bank statements for T/A 1 and T/A 2, during the audit period, EBI maintained earnings credit relationship with Wells Fargo and Chase banks without disclosure to the trust fund owners, in violation of Code section 10176(g) and Regulation 2830. At least \$175.00 of standard monthly service fees were waived by Wells Fargo and Chase

1 from June 2018 through November 2018. Examples of the service fees include the following,
 2 without limitation:

3	<u>Fee Period</u>	<u>Standard Monthly Service Fee</u>	<u>Amount paid</u>	<u>Bank account</u>
4	11/1/18 to 11/30/18	\$14.00	\$0	T/A 1
5	11/1/18 to 11/30/18	\$95.00	\$0	T/A 2
6	10/1/18 to 10/31/18	\$10.00	\$0	T/A 1
7	9/1/18 to 9/30/18	\$14.00	\$0	T/A 1
8	8/1/18 to 8/31/18	\$14.00	\$0	T/A 1
9	7/1/18 to 7/31/18	\$14.00	\$0	T/A 1
10	6/1/18 to 6/30/18	<u>\$14.00</u>	\$0	T/A 1
11	Total	\$175.00		

12 38. The conduct of Respondent EBI as described above in Paragraphs 21 through 37,
 13 violated the Code and the Regulations as set forth below:

14	<u>Paragraph(s)</u>	<u>Violations</u>
15	21 - 26	Code section 10145 and Regulation 2832.1
16	27 & 28	Code section 10145(a)
17	29 - 32	Code section 10145 and Regulation 2831
18	33 & 34	Code section 10145 and Regulation 2831.1
19	35	Code section 10145 and Regulation 2831.2
20	36	Code section 10145 and 10176(i)
21	37	Code section 10176(g), and Regulation 2830

22
 23 39. The foregoing violations, as described above in Paragraphs 21 through 37,
 24 constitute cause for the suspension or revocation of the real estate licenses and license rights of

1 Respondent EBI under the provisions of Code section 10176, subdivisions (g) and (i) and Code
2 section 10177, subdivision (d) and/or (g).

3 Respondent RAFAEL– Officer - Broker Supervision

4 Code sections 10159.2, 10177(h), and Regulation 2725. Broker supervision.

5 40. The conduct, acts and/or omissions of Respondent RAFAEL constitutes a failure
6 to exercise the supervision and control over the activities of EBI to ensure compliance with the
7 Real Estate Law and Regulations, as is required by Code section 10159.2 and Regulation 2725.
8 Said conduct, acts, or omissions constitute cause to suspend or revoke the real estate licenses and
9 license rights of Respondent RAFAEL pursuant to Code section 10177, subdivisions (h), (d)
10 and/or (g).

11 Audit Costs

12 41. Code section 10148(b) provides, in pertinent part, that the Commissioner shall
13 charge a real estate broker for the cost of any audit, if the Commissioner has found in a final
14 decision following a disciplinary hearing that the broker has violated Code section 10145 or a
15 regulation or rule of the Commissioner interpreting said section.

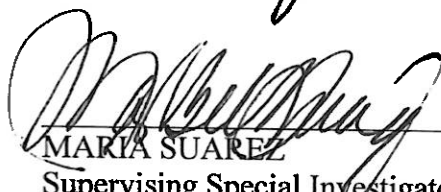
16 Investigation/Enforcement Costs

17 42. Code section 10106 provides, in pertinent part, that in any order issued in
18 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner
19 may request the administrative law judge to direct a licensee found to have committed a violation
20 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement
21 of the case.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
2 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
3 against all licenses and/or license rights of Respondents under the Real Estate Law (Part 1 of
4 Division 4 of the Business and Professions Code), for the costs of the audit, investigation, and
5 enforcement as permitted by law, and for such other and further relief as may be proper under
6 other provisions of law.

7 Dated at Los Angeles, California this 18th day of June, 2020.

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11 _____
12 MARIA SUAREZ
13 Supervising Special Investigator

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15
16 cc: El Basha Inc.
17 Adel B. Rafael
18 Maria Suarez
19 Sacto
20 Audits/Anna Hartoonian

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