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FILED

DEC 29 2021

DEPARTMENT OF REAL ESTATE
By B. Nicholas

10
11 BEFORE THE DEPARTMENT OF REAL ESTATE
12 STATE OF CALIFORNIA

13 * * *

14 In the Matter of the Accusation of)
15 ROSA LINDA APPODACA,) No. H-3409 FR
16 Respondent.) ACCUSATION

17 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
18 State of California, for cause of Accusation against ROSA LINDA APPODACA (Respondent),
19 is informed and alleges as follows:

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21 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
22 State of California, makes this Accusation in her official capacity.

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24 Respondent is presently licensed and/or has license rights under the Real Estate
25 Law, Part 1 of Division 4 of the Business and Professions Code (Code).

26 LICENSE HISTORY

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At all times mentioned, Respondent was and is licensed by the Department as a
real estate broker, License ID 01432484. Respondent was licensed by the Department as a real
estate salesperson on or about September 17, 2005, and as a real estate broker on or about

1 September 8, 2017. Unless renewed, Respondent's broker license will expire September 7,
2 2025.

3 Respondent was licensed to do business under the fictitious business names
4 "APM", and "Appodaca Property Management."

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6 At no time mentioned was Appodaca Realty, Inc., licensed by the Department in
7 any capacity.

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9 At no time mentioned was Joseph Jason Appodaca licensed by the Department in
10 any capacity.

11 AUDIT FR20-0033

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13 On or about July 30, 2021, the Department completed its audit (FR20-0033) of the
14 books and records of Respondent's property management activities described in Paragraph 7.

15 The auditor herein examined the records for the period of February 1, 2020, through January 31,
16 2021.

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

25 As of the audit examination, Respondent managed twenty-four (24) one-to-four
26 family residences with thirty-six (36) units, six (6) apartment complexes with one hundred and

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1 sixty-four (164) units, and three (3) commercial complexes with thirty-one (31) units for twenty-
2 six (26) owners. Respondent collected approximately \$1,541,700 in trust funds annually.

3 Respondent's property management services include, but not limited to, collecting
4 rents, paying expenses, and screening tenants. For such property management services,
5 Respondent charged a flat rate management fee between \$75 and \$500, as well as a percentage of
6 collected rents ranging between 4 and 6 percent. Respondent also charged a late fee of 10
7 percent of rent, an application fee of \$35, a non-sufficient fund fee of \$25, of which Respondent
8 keeps \$16, a \$35 fee to serve a legal notice, and a walk through inspection fee of \$75.

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10 While acting as a real estate broker as described in Paragraph 7, Respondent
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 The trust funds accepted or received by Respondent were deposited or caused to
16 be deposited by Respondent into accounts which were maintained by Respondent for the
17 handling of trust funds, and thereafter from time-to-time Respondent made disbursements of said
18 trust funds, identified as follows:

TRUST ACCOUNT # 1	
Bank Name and Location:	Union Bank 5400 Stockdale Highway Bakersfield, CA 93309
Account No.:	XXXX7520
Account Name:	Rosa Linda Appodaca Appodaca Property Management APM Trust Account
Signatories:	Rosa Linda Appodaca
Description:	Trust Account #1 was used for deposits and disbursements related to the management of rental properties. Deposits consisted of rents and security deposits collected from tenants.

	Disbursements consisted of payments for expenses related to the properties managed, transfers to Bank Account #4, Bank Account #5, Bank Account #6, and Bank Account #7 for expenses related to the properties managed, remittances to owners, and payments for management fees to Respondent.
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BANK ACCOUNT # 1	
Bank Name and Location:	Union Bank 5400 Stockdale Highway Bakersfield, CA 93309
Account No.:	XXXX1996
Account Name:	Appodaca Realty, Inc. Trust 1
Signatories:	Rosa Linda Appodaca Joseph Jason Appodaca
Description:	Bank Account #1 was used for deposits and disbursements related to the management of rental properties. Deposits consisted of rents and security deposits collected from tenants and funds transferred from Bank Account #2 and Bank Account #3. Disbursements consisted of payments for expenses related to the properties managed, transfers to Bank Account #2 and Bank Account #3, remittances to owners, and payments for management fees to Respondent.

BANK ACCOUNT # 2	
Bank Name and Location:	Union Bank 5400 Stockdale Highway Bakersfield, CA 93309
Account No.:	XXXXXX4622
Account Name:	Appodaca Realty, Inc. APM Trust 2
Signatories:	Rosa Linda Appodaca Joseph Jason Appodaca
Description:	Bank Account #2 was used for deposits and disbursements related to the management of rental properties. Deposits consisted of rents and security deposits collected from tenants and funds transferred from Bank Account #1 and Bank Account #3. Disbursements consisted of payments for expenses related to the properties managed, transfers to Bank Account #1 and Bank Account #3, remittances to owners, and payments for management fees to Respondent.

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BANK ACCOUNT # 3	
Bank Name and Location:	Union Bank 5400 Stockdale Highway Bakersfield, CA 93309
Account No.:	XXXXXX4671
Account Name:	Appodaca Realty, Inc. Tyni Trust APM
Signatories:	Rosa Linda Appodaca Joseph Jason Appodaca
Description:	Bank Account #3 was used for deposits and disbursements related to the management of rental properties. Deposits consisted of rents and security deposits collected from tenants and funds transferred from Bank Account #1 and Bank Account #2. Disbursements consisted of payments for expenses related to the properties managed, transfers to Bank Account #1 and Bank Account #2, remittances to owners, and payments for management fees to Respondent.

BANK ACCOUNT # 4	
Bank Name and Location:	Union Bank 5400 Stockdale Highway Bakersfield, CA 93309
Account No.:	XXXXXX7865
Account Name:	Rosa Linda Appodaca
Signatories:	No signature card was provided.
Description:	Deposits consisted of transfers from Trust Account #1, Bank Account #5, Bank Account #6, and Bank Account #7. Disbursements consisted of expenses related to properties managed and personal/business expenses.

BANK ACCOUNT # 5	
Bank Name and Location:	Union Bank 5400 Stockdale Highway Bakersfield, CA 93309
Account No.:	XXXX6749
Account Name:	Rosa Linda Appodaca APM Maintenance
Signatories:	No signature card was provided.
Description:	Deposits consisted of transfers from Trust Account #1 and Bank Account #6. Disbursements consisted of transfers to

	Bank Account #4 and Bank Account #6. According to Respondent, disbursements consisted of expenses related to properties managed. However, disbursements also appeared to include personal/business expenses.
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BANK ACCOUNT # 6	
Bank Name and Location:	Union Bank 5400 Stockdale Highway Bakersfield, CA 93309
Account No.:	XXXXXX5812
Account Name:	Rosa Linda Appodaca Appodaca Property Management General Account Trust Account
Signatories:	No signature card was provided.
Description:	Deposits consisted of transfers from Trust Account #1, Bank Account #5, Bank Account #7, and series of "Office Deposits". Disbursements consisted of transfers to Bank Account #4, Bank Account #5, and Bank Account #7. According to Respondent, disbursements consisted of maintenance expenses. However, disbursements appeared to also include personal/business expenses.

BANK ACCOUNT # 7	
Bank Name and Location:	Union Bank 5400 Stockdale Highway Bakersfield, CA 93309
Account No.:	XXXX6714
Account Name:	Rosa Linda Appodaca Appodaca Property Management APM Trust II
Signatories:	No signature card was provided.
Description:	Deposits consisted of transfers from Trust Account #1 and Bank Account #6. Disbursements consisted of transfers to Bank Account #4 and Bank Account #6. According to Respondent, disbursements consisted of maintenance expenses.

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In the course of the property management activities described in Paragraph 7, and during the audit examination period described in Paragraph 6, Respondent violated the Code and Regulations described below:

Trust Account Accountability and Balances

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Based on the records provided during the audit, a bank reconciliation was prepared for as of December 31, 2020:

Trust Account #1. A shortage of \$11,873.99 was found in Trust Account #1 as of December 31, 2020. Of the shortage, \$1,560 was caused by a bank deficit, and the remaining shortage of \$10,313.99 was unidentified.

Bank Account #1. A shortage of \$15,993.21 was found in Bank Account #1 as of December 31, 2020. Of the shortage, \$526.10 was caused by a bank deficit, \$527.52 was caused by negative balances in two property's accounts, \$12,632.71 was caused by a negative balance in Respondent's account, which was used to record transfers between Bank Account #2 and Bank Account #3, and the remaining shortage of \$2,306.88 was unidentified.

Bank Account #2. A shortage of \$6,315.36 was found in Bank Account #2 as of December 31, 2020. Of the shortage, \$1,325.36 was caused by a bank deficit, \$1,000 was caused by a negative balance in one property account, and the remaining shortage of \$3,990 was caused by a negative balance in Respondent's account, which was used to record transfers between Bank Account #1 and Bank Account #3.

Bank Account #3. A shortage of \$1,958.47 was found in Bank Account #3 as of December 31, 2020. Of the shortage, \$345.27 was caused by a bank deficit, \$1,268.47 was caused by a negative balance in one property account, and the remaining shortage of \$344.73 was unidentified.

Respondent provided no evidence that the owners of the trust funds had given their written consent to allow Respondent to reduce the balance of the funds in Trust Account #1,

1 Bank Account #1, Bank Account #2, and/or Bank Account #3 to an amount less than the existing
2 aggregate trust fund liabilities, in violation of Section 10145 of the Code and Section 2832.1 of
3 Title 10, Chapter 6, California Code of Regulations (Regulations).

4 Trust Account Designation

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6 During the audit period, Bank Account #1, Bank Account #2, and/or Bank
7 Account #3, accounts used to hold trust funds, were not designated as trust accounts in the name
8 of the broker or the broker's fictitious business name as trustee, in violation of Section 10145 of
9 the Code and Section 2832 of the Regulations. The accounts were titled as "trusts" accounts;
10 however, they were under Respondent's unlicensed corporation, "Appodaca Realty, Inc."

11 Separate Records

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13 Respondent failed to maintain accurate separate records for each beneficiary or
14 transaction, accounting therein for all funds which were deposited into Bank Account #2
15 containing all of the information required by Section 2831.1 of the Regulations. Respondent
16 failed to maintain a separate record for the "unidentified/unaccounted for funds" of \$680.04 held
17 in Bank Account #2.

18 Trust Account Reconciliation

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20 Respondent failed to reconcile the balance of separate beneficiary or transaction
21 records with the control record of trust funds received and disbursed at least once a month, and/or
22 failed to maintain a record of such reconciliations for Bank Account #2 as required by Section
23 2831.2 of the Regulations.

24 Trust Account Signatory

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26 Respondent caused, permitted, and/or allowed, the possible withdrawal of trust
27 funds from Bank Account #1, Bank Account #2, and/or Bank Account #3, by Joseph Jason

1 Appodaca, who was not licensed by the Department and not covered by a fidelity bond in
2 violation of Section 10145 of the Code and Section 2834 of the Regulations.

3 **Commingling**

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5 Respondent commingled with its own money or property, the money or property
6 of others which was received or held by Respondent in trust in violation of Section 10176(e) of
7 the Code. As of December 31, 2020, there was \$625.54 of broker's funds in Trust Account #1,
8 in excess of the \$200 permitted under Section 2835 of the Regulations.

9 **GROUNDS FOR DISCIPLINE**

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11 The acts and/or omissions of Respondent as alleged above constitute grounds for
12 the suspension or revocation of all licenses and license rights of Respondent, pursuant to the
13 following provisions of the Code and Regulations:

14 As to Paragraph 10, under Sections 10177(d) and/or 10177(g) of the Code in
15 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

16 As to Paragraph 11, under Sections 10177(d) and/or 10177(g) of the Code in
17 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

18 As to Paragraph 12, under Sections 10177(d) and/or 10177(g) of the Code in
19 conjunction with Section 10145 of the Code and Section 2831.1 of the Regulations;

20 As to Paragraph 13, under Sections 10177(d) and/or 10177(g) of the Code in
21 conjunction with Section 2831.2 of the Regulations;

22 As to Paragraph 14, under Sections 10177(d) and/or 10177(g) of the Code in
23 conjunction with Section 10145 of the Code and Section 2834 of the Regulations; and

24 As to Paragraph 11, under Section 10176(e) of the Code.

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COST RECOVERY


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The acts and/or omissions of Respondent as alleged above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs 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 disciplinary action against all licenses and license rights of Respondent under the Code, for the cost of investigation and enforcement as permitted by law, for the cost of the audit, and for such other and further relief as may be proper under other provisions of law.


BREND A SMITH
Supervising Special Investigator

Dated at Fresno, California,
this 17 day of December, 2021

DISCOVERY DEMAND

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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.