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FILED

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DEPARTMENT OF REAL ESTATE
By B. Nicholas

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

EB PREFERRED;

and

RALPH DOMENICO SCHIAVONE,
individually and as designated officer of EB
Preferred.,

Respondents.

No. H-3426 FR

ACCUSATION

The Complainant, BRENDA SMITH, a Supervising Special Investigator of the
State of California, for cause of Accusation against EB PREFERRED and RALPH DOMENICO
SCHIAVONE (collectively referred to as "Respondents"), is informed and alleges as follows:

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

PRELIMINARY ALLEGATIONS

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

At all times mentioned, Respondent EB PREFERRED (EB) was and is licensed by the Department as a real estate broker, License ID 01979445. EB was licensed by the Department as a real estate corporation on or about December 27, 2017. Unless renewed, EB's corporate broker license will expire December 26, 2021.

At all times mentioned between December 27, 2017, and May 18, 2021, RALPH DOMENICO SCHIAVONE was licensed by the Department as the designated broker officer of EB. As said designated officer-broker, SCHIAVONE was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of EB for which a license is required.

After May 18, 2021, the license status of EB was "No Broker Affiliation."

Effective October 26, 2020, in Case No. H-3249 FR before the Department, the Real Estate Commissioner issued an order suspending the real estate corporate broker license of EB for 30-days stayed upon terms and conditions, for violation of Business and Professions Code (Code) Sections 10177(d) and 10177(g).

At all times mentioned, restricted real estate salesperson Ethele Marie Barron was the 100 percent shareholder and Chief Executive Officer of EB. EB was registered as a corporation (#C3758084) with the California Secretary of State on or about February 18, 2015. Beginning on or about September 3, 2019, the corporate powers, rights and privileges of EB were forfeited pursuant to the provisions of the Revenue and Taxation Code.

At all times mentioned, Respondent RALPH DOMENICO SCHIAVONE (SCHIAVONE) was licensed by the Department individually as a real estate broker, License ID 01158966. SCHIAVONE was licensed as a real estate salesperson on April 27, 1993, and as a broker on September 7, 2001. Unless renewed, SCHIAVONE's broker license will expire September 6, 2025.

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1 SCHIAVONE is also licensed by the Department as the designated broker officer
2 of HLS Group Inc.

3 Effective October 26, 2020, in Case No. H-3249 FR before the Department, the
4 Real Estate Commissioner issued an order suspending the real estate broker license of
5 SCHIAVONE for 30-days stayed upon terms and conditions, for violation of Business and
6 Professions Code (Code) Section 10177(h).

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8 At all times mentioned, Ethele Marie Barron (Barron) was licensed by the
9 Department as a restricted real estate salesperson, License ID 01812075. Barron was originally
10 licensed as a real estate salesperson on September 19, 2007.

11 Effective February 5, 2015, in Case No. H-2872 FR before the Department, the
12 Real Estate Commissioner issued an ordering Barron's real estate salesperson license to be
13 revoked, granting the right to a restricted real estate salesperson license, for violation of Code
14 Section 10177(g) of the Code.

15 Effective October 26, 2020, in Case No. H-3249 FR before the Department, the
16 Real Estate Commissioner issued an order suspending the real estate broker license of Barron for
17 30-days stayed upon terms and conditions, for violation of Business and Professions Code
18 (Code) Sections 10177(d) and 10177(g).

19 From January 25, 2018, through May 17, 2021, Barron's real estate salesperson
20 license was affiliated under the brokerage of EB. On or about January 25, 2018, Barron
21 submitted to the Department a Restricted Real Estate Salesperson Change Application, which
22 included an Employing Broker Certification. SCHIAVONE signed the Employing Broker
23 Certification which provides in part:

24
25 "I hereby certify that I have read the Decision of the Real Estate Commissioner
26 referenced above, which provides for the issuance of a restricted real estate
27 salesperson license ... I will carefully review all transaction documents which the

1 restricted salesperson licensee prepares and will otherwise exercise close
2 supervision over the licensed activity of the above named salesperson ...”

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

9 AUDIT FR-20-0045

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11 On or about May 28, 2021, the Department completed its audit (FR-20-0045) of
12 the books and records of EB’s property management activities described in Paragraph 8. The
13 auditor herein examined the records for the period of December 1, 2019, through December 31,
14 2020.

15 8

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

23 As of the audit examination, Respondents managed thirty (30) one-to-four family
24 residences for fifteen (15) owners. Respondents collected approximately \$528,000 in trust funds
25 annually.

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Respondents' property management services include, but not limited to, collecting rents, paying expenses, and screening tenants. For such property management services, Respondents charged a management fee of 8 to 10 percent of collected rents.

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While acting as a real estate broker as described in Paragraph 8, Respondents accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

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

TRUST ACCOUNT # 1	
Bank Name and Location:	Bank of America Taft, California
Account No.:	XXXXXXXXX5565
Account Name:	EB Preferred Common Client Trust Account
Signatories:	Ralph Schiavone Ethele Barron
Purpose:	Trust Account #1 was used for the handling of trust funds from property management activities.

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In the course of the property management activities described in Paragraph 8, and during the audit examination period described in Paragraph 7, Respondents violated the Code and Regulations described below:

Trust Account Accountability and Balances

Based on the records provided during the audit, a bank reconciliation for Trust Account #1 was prepared for as of December 31, 2020. The adjusted bank balance of Trust Account #1 as of December 31, 2020, was compared to the beneficiaries' accountability for Trust Account #1 as of December 31, 2020.

Adjusted Bank Balance	\$5,500.20
Accountability	<u>\$17,264.64</u>
Trust Fund Shortage	<u>(\$11,764.44)</u>

A shortage of \$11,764.44 was found in Trust Account #1 as of December 31, 2020. The trust fund shortage was caused by Bank Fees of \$316, and unidentified shortage of \$11,448.44.

Respondents provided no evidence that the owners of the trust funds had given their written consent to allow Respondents to reduce the balance of the funds in Trust Account #1 to an amount less than the existing aggregate trust fund liabilities, in violation of Section 10145 of the Code and Section 2832.1 of Title 10, Chapter 6, California Code of Regulations (Regulations).

Trust Account Reconciliation

Respondent 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

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1 failed to maintain a record of such reconciliations for each bank account holding
2 trust funds as required by Section 2831.2 of the Regulations.

3 SUSPENDED CORPORATE STATUS

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5 During the audit period, EB, while forfeited by the Secretary of State, in course of
6 the real estate resale brokerage activities described in Paragraph 8, solicited prospective tenants
7 for, negotiated rental agreements for and collected rents from real properties owned by another or
8 others, for approximately 30 one-to-four family residences for fifteen owners, including but not
9 limited to:

10 OWNER	PROPERTY ADDRESS
11 Keitha D.	121 Center 137 Center 139 Center 14 505 3 rd 15 300 Lucard, Apartment B 16 304 Lucard
17 Andrew H.	18 309 A Street 529 D Street
19 Richard D.	20 508 Buchanan 510 Buchanan
21 Scott W./The Williams Family Trust	22 514 Lucard 23 210 Jefferson 514 ½ Lucard
24 Tracy N.	25 312 Shattuck 26 421 Taylor 27 27598 Maple

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	520 Philippine 216 Suzanne 304 Fillmore
Steve M.	406 Buchanan 406 ½ Buchanan
FR Properties LLC	531 ½ D Street 418 ½ San Emidio 611 Front 609 Front 420 ½ San Emidio 101 Buchanan 232 Olive 420 San Emidio 531 D Street
Richard D.	510 Buchanan 508 Buchanan
Richard F.	501 Van Buren
Jason B.	123 Asher Way 314 Tyler
J. Landers	106 E. Kern Street
Joseph V.	623 Lucard
John & Joy B.	615 Harrison
Larry & Virginia R.	327 E Street
Mark M.	142 Kern Street 128 E. 2 nd 130 E. 2 nd

	708 Lucard
	301 Montview
Maverick Property LLC	539 Philippine
	514 ½ Lierly
	28133 Chaparral
	108 E. Kern
	514 Lierly
	410 ½ S. 7 th
	501 Philippine
	702 N. Lincoln
Positive Property LLC	225 Woodrow

FAILURE TO SUPERVISE

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Respondent SCHIAVONE failed to exercise reasonable supervision over the acts of EB in such a manner as to allow the acts and events described above to occur. SCHIAVONE told the auditor that he was unaware of having a shortage in Trust Account #1, and that it was due to his lack of oversight. SCHIAVONE also stated he is only a broker on record and there has been lack of oversight in the property management.

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

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

As to Paragraph 12, under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 2831.2 of the Regulations.

The acts and/or omissions of EB as alleged in Paragraph 13 constitute grounds for the suspension or revocation of all licenses and license rights of EB, pursuant to Section 2742(c) of the Regulations in conjunction with Sections 10177(d) and/or 10177(g) of the Code.

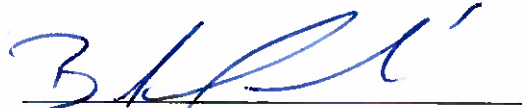
The acts and/or omissions of SCHIAVONE as alleged in Paragraphs 14 and 15 constitute grounds for the suspension or revocation of all licenses and license rights of SCHIAVONE under Sections 10177(g) and/or 10177(h) of the Code, and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

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The acts and/or omissions of Respondents as alleged above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

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.

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondent under the Code, for the cost of
4 investigation and enforcement as permitted by law, and for such other and further relief as may
5 be proper under the provisions of law.

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8 BREND A SMITH
9 Supervising Special Investigator

10 Dated at Fresno, California,
11 this 10th day of February, 2022
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21 DISCOVERY DEMAND
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23 Pursuant to Sections 11507.6, *et seq.* of the *Government Code*, the Department of
24 Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the
25 *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate
26 may result in the exclusion of witnesses and documents at the hearing or other sanctions that the
27 Office of Administrative Hearings deems appropriate.