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FILED

MAY 14 2018

BUREAU OF REAL ESTATE

By John Alquist

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

10 * * *

11 In the Matter of the Accusation of)	No. H-04994 SD
)	
12 LARRY D.A. JUDGE II;)	
13 SUMMIT PROPERTY MANAGEMENT, INC.;)	<u>ACCUSATION</u>
14 and JOHN B. KISS, individually and as)	
15 designated officer of Summit Property)	
16 Management, Inc.,)	
)	
17 Respondents.)	

18 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
19 State of California, acting in her official capacity, for cause of Accusation against LARRY D.A.
20 JUDGE II ("JUDGE"), SUMMIT PROPERTY MANAGEMENT, INC. ("SPMI"), and JOHN
21 B. KISS ("KISS"), individually and as designated officer of Summit Property Management,
22 Inc., is informed and alleges as follows:

23 1.

24 The Complainant, Veronica Kilpatrick, acting in her official capacity as
25 Supervising Special Investigator of the State of California, makes this Accusation.

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All references to the "Code" are to the California Business and Professions Code, and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations unless otherwise specified.

3.

A. LARRY D.A. JUDGE II: Respondent JUDGE is presently licensed and/or has license rights issued by the Bureau of Real Estate as a real estate salesperson (license no. 01861855). JUDGE has been licensed as a real estate salesperson from on or about June 1, 2009 to May 31, 2013 and from September 17, 2014 through the present. From on or about September 17, 2014 to June 7, 2015, JUDGE's sponsoring broker was KISS.¹ From on or about June 8, 2015 through the present, JUDGE has not had a sponsoring broker. At no time mentioned herein has JUDGE had a fictitious business name registered with the Bureau of Real Estate.

B. SUMMIT PROPERTY MANAGEMENT, INC.: Respondent SPMI is presently licensed and/or has license rights issued by the Bureau of Real Estate as a corporate real estate broker (license no. 01199163). SPMI has been licensed as a corporate real estate broker from on or about August 4, 1995 to August 3, 1999 and September 5, 2014 through the present. At all times that SPMI has been licensed, SPMI's designated officer has been KISS. At no point in time mentioned herein has SPMI had a fictitious business name registered with the Bureau of Real Estate.

C. JOHN B. KISS: Respondent KISS is presently licensed and/or has license rights issued by the Bureau of Real Estate as a real estate broker (license no. 01187187). KISS has been licensed as a real estate broker from on or about May 18, 1995 through the present. Previously, from on or about October 24, 1994 to May 17, 1995, KISS was licensed as

¹ KISS terminated JUDGE's employment because JUDGE stole a check from him.

1 a real estate salesperson. At no point in time mentioned herein has KISS had a fictitious
2 business name registered with the Bureau of Real Estate.

3 4.

4 Whenever reference is made in an allegation in this Accusation to an act or
5 omission of "Respondents," such allegation shall be deemed to mean that the officers, directors,
6 employees, agents, and real estate licensees employed by or associated with Respondents
7 committed such act or omission while engaged in the furtherance of the business or operations
8 of Respondents and while acting within the course and scope of their corporate authority and
9 employment, including, but not limited to, JUDGE, SPMI, and KISS.

10 5.

11 At all times mentioned, in San Diego County, SPMI and KISS engaged in the
12 business of real estate brokers conducting licensed activities within the meaning of Code
13 section 10131(b). JUDGE, SPMI, and KISS engaged in operating a real property management
14 company by leasing, renting, and/or offering to rent places for rent, soliciting for prospective
15 tenants, and/or collecting rents from real property.

16
17 (JUDGE: Property Management)

18
19 *Check No. 2024*

20 6.

21 JUDGE embezzled trust funds from SPMI and KISS by stealing check no. 2024,
22 dating it May 26, 2015, forging KISS' signature, making the check out to himself for \$7,650.00,
23 and cashing the check.

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1 *Arnold L. 's Property: Gail Park Ln. Property*

2 7.

3 On or about October 1, 2014, JUDGE and Arnold L. entered into a Property
4 Management Agreement wherein JUDGE would provide property management services for
5 Arnold L.'s property at 14754 Gail Park Lane, Poway, CA 92064 ("Gail Park Ln. Property")
6 from October 1, 2014 to August 31, 2015. Therein, JUDGE agreed to disburse the rent, minus
7 any charges and expenses, to Arnold L. aka "Bud", by the last day of each month. JUDGE also
8 agreed to hold any reserves and the security deposit in a non-interest bearing trust account. In
9 return, Arnold L. agreed to pay six (6) percent of monies collected, half of the late fees, and \$25
10 for pre-inspection when tenants vacate.

11 8.

12 In or about May 2015, JUDGE collected \$1,750.00 in rent from the tenant in
13 Gail Park Ln. Property, and was supposed to disburse \$1,600.00 of the \$1,750.00 to Arnold L.
14 However, to date, JUDGE has failed to disburse the \$1,600.00 to Arnold L.

15 9.

16 In or about June 2015, JUDGE collected \$1,750.00 in rent from the tenant in
17 Gail Park Ln. Property, and was supposed to disburse \$1,600.00 of the \$1,750.00 to Arnold L.
18 However, to date, JUDGE has failed to disburse the \$1,600.00 to Arnold L.

19 10.

20 To date, JUDGE had failed to give rental receipts for both May 2015 and June
21 2015 for the Gail Park Ln. Property to Arnold L.

22
23 *Unlicensed Fictitious Business Name*

24 11.

25 From on or about June 12, 2014 until at least June 2015, JUDGE used the
26 unlicensed fictitious business name of "Judge & Rose Management & Consulting, LLC" to
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1 conduct licensed activities, including property management services, without holding a license
2 bearing that fictitious business name, in violation of Code section 10159.5 and Regulations
3 section 2731. For example, JUDGE collected and disbursed rent monies using Judge & Rose
4 Management & Consulting, LLC's bank account. These property management services
5 included, but are not limited to, the Gail Park Ln. Property, Olive Meadows Pl. Property, and
6 Lamont St. Property.

7
8 *Unlicensed Activities*

9 12.

10 From on or about June 8, 2015 to at least September 31, 2015, JUDGE acted as
11 a real estate broker by conducting licensed activities as a real estate salesperson without a
12 sponsoring broker, in violation of Code section 10130.

13 13.

14 JUDGE's conduct, acts, and/or omissions as described above in paragraphs 6 to
15 12 constitute making substantial misrepresentations and fraud and/or dishonest dealing, and are
16 cause for the suspension or revocation of all real estate licenses and license rights of JUDGE
17 under the provisions of Code sections 10176(a) (misrepresentation), 10177(d) (disregard or
18 violate Real Estate Law), 10177(g) (negligence), and 10176(i) and 10177(j) (fraud or dishonest
19 dealing).

20
21 (Trust Fund Audit)

22 14.

23 On or about July 28, 2017, the Bureau of Real Estate completed an audit
24 examination of the books and records of SPMI to determine whether SPMI handled and
25 accounted for trust funds and conducted its real estate activities in accordance with the Real
26 Estate Law and Regulations. The audit examination covered a period of time beginning on July
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1, 2014 and ended on November 30, 2016. The audit examination revealed violations of the Code and the Regulations set forth in the following paragraphs, and more fully discussed in Audit Report SD160024 and the exhibits and work papers attached to said audit report.

Bank Accounts/Trust Accounts

15.

At all times mentioned, in connection with the activities described in Paragraph 5, above, SPMI accepted or received funds including funds in trust ("trust funds") from or on behalf of actual or prospective parties, such as owners of real property, involved in property management services, and thereafter made deposits and/or disbursements of such funds. From time to time herein mentioned, during the audit period, said trust funds were deposited and/or maintained by SPMI in the bank accounts as follows:

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California Bank and Trust
P.O. Box 489
Lawndale, CA 90260-0489

(BA 1)

*****9634

California Bank and Trust
P.O. Box 489
Lawndale, CA 90260-0489

(BA 2)

*****5761

California Bank and Trust
P.O. Box 489
Lawndale, CA 90260-0489

(BA 3)

*****5841

California Bank and Trust
P.O. Box 489
Lawndale, CA 90260-0489

(BA 4)

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1
2 In the course of activities described in Paragraphs 5 and 15, above, and during
3 the audit examination period in Paragraph 14, above, Respondents SPMI and KISS acted in
4 violation of the Code and the Regulations as set forth below:

5 (a)(1) Permitted, allowed, or caused the disbursement of trust funds from the
6 bank account BA 1 where the disbursement of funds reduced the total of aggregate funds in BA
7 1, to an amount which, on November 30, 2016, was at least \$18,966.85 less than the existing
8 aggregate trust fund liability to every principal who was an owner of said funds, without first
9 obtaining the prior written consent of the owners of said funds, in violation of Code section
10 10145 and Regulations section 2832.1.

11 (a)(2) Permitted, allowed, or caused the disbursement of trust funds from the
12 bank account BA 2 where the disbursement of funds reduced the total of aggregate funds in BA
13 2, to an amount which, on November 30, 2016, was at least \$9,421.07 less than the existing
14 aggregate trust fund liability to every principal who was an owner of said funds, without first
15 obtaining the prior written consent of the owners of said funds, in violation of Code section
16 10145 and Regulations section 2832.1.

17 (a)(3) Permitted, allowed, or caused the disbursement of trust funds from the
18 bank account BA 3 where the disbursement of funds reduced the total of aggregate funds in BA
19 3, to an amount which, on November 30, 2016, was at least \$8,399.59 less than the existing
20 aggregate trust fund liability to every principal who was an owner of said funds, without first
21 obtaining the prior written consent of the owners of said funds, in violation of Code section
22 10145 and Regulations section 2832.1.

23 (a)(4) Permitted, allowed, or caused the disbursement of trust funds from the
24 bank account BA 4 where the disbursement of funds reduced the total of aggregate funds in BA
25 4, to an amount which, on October 30, 2015, was at least \$5,673.12 less than the existing
26 aggregate trust fund liability to every principal who was an owner of said funds, without first
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1 obtaining the prior written consent of the owners of said funds, in violation of Code section
2 10145 and Regulations section 2832.1.

3 (b) Failed to maintain accurate and complete control records in the form of a
4 columnar record in chronological order of all trust funds received, deposited, and disbursed
5 from BA 1, BA 2, BA 3, and BA 4, in violation of Code section 10145 and Regulations section
6 2831.

7 (c)(1) Failed to maintain an accurate and complete separate record for each
8 beneficiary or transaction, thereby failing to account for all trust funds received, deposited, and
9 disbursed from BA 1, BA 2, BA 3, and BA 4, in violation of Code section 10145 and
10 Regulations section 2831.1.

11 (c)(2) Failed to maintain a separate record for the unidentified and unaccounted
12 for funds of \$884.25 in BA 3 as of October 30, 2015 and \$884.25 in BA 1 as of November 30,
13 2016, in violation of Code section 10145 and Regulations section 2831.1.

14 (d) Failed to perform and maintain a monthly reconciliation comparing the
15 balance of all separate records to the balance of the record of all trust funds received and
16 disbursed (control record) for BA 1, BA 2, BA 3, and BA 4, in violation of Code section 10145
17 and Regulations section 2831.2.

18 (e)(1) Deposited trust funds received in connection with property management
19 activities into BA 1, BA 2, BA 3, and BA 4, which were not designated trust fund accounts, in
20 violation of Code section 10145 and Regulations section 2832.

21 (e)(2) Failed to deposit trust funds received in connection with property
22 management activities within three (3) business days for BA 1 and BA 2, in violation of Code
23 section 10145 and Regulations section 2832.

24 (f) Failed to deposit trust funds received from tenants in cash into BA 1, BA
25 2, BA 3, or BA 4, in violation of Code section 10145(a). Instead, the cash was held by the
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1 property manager, Linda Houghton, or deposited into SPMI's corporate bank account and then
2 a check for that amount would be deposited into BA 1, BA 2, BA 3, or BA 4.

3 (g) Failed to timely notify the Bureau of Real Estate of the employment of
4 JUDGE and Jennifer Rimer, both salespersons, in violation of Code section 10161.8 and
5 Regulations section 2752.

6 (h) Failed to disclose SPMI's real estate license number on SPMI's website,
7 in violation of Code section 10140.6 and Regulations section 2773.

8 (i) Used the then-unlicensed fictitious business name of "Summit Property
9 Management" prior to registering it with the Bureau of Real Estate, in violation of Code section
10 10159.5 and Regulations section 2731.

11 (j) Failed to produce some records and documents requested for the audit
12 period of July 1, 2014 to November 30, 2016, in violation of Code section 10148.

13 (k) Failed to have notify the Bureau of Real Estate that it appointed real
14 estate salesperson Jennifer Rimer was its officer manager, in violation of Code section 10164.

15 (l) Failed to maintain a broker-salesperson relationship agreement with
16 JUDGE, in violation of Regulations section 2726.

17 (m) KISS failed to exercise reasonable control and supervision over the
18 activities conducted on behalf of SPMI as necessary to secure full compliance with the Real
19 Estate Laws, including, but not limited to, establishing policies, rules, procedures, and systems
20 to review, oversee, and inspect the handling of trust funds, in violation of Code sections
21 10159.2 and 10177(h) and Regulations section 2725. Since on or about November 2, 2015,
22 KISS has resided in Tennessee.

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The conduct of Respondents SPMI and KISS described in Paragraph 8, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
16(a)	Code section 10145 and Regulations section 2832.1
16(b)	Code section 10145 and Regulations section 2831
16(c)	Code section 10145 and Regulations section 2831.1
16(d)	Code section 10145 and Regulations section 2831.2
16(e)	Code section 10145 and Regulations section 2832
16(f)	Code section 10145(a)
16(g)	Code section 10161.8 and Regulations section 2752
16(h)	Code section 10140.6 and Regulations section 2773
16(i)	Code section 10159.5 and Regulations section 2731
16(j)	Code section 10148
16(k)	Code section 10164
16(l)	Regulations section 2726
16(m)	Code sections 10159.2 and 10177(h) and Regulations section 2725

The foregoing violations constitute cause for discipline of the real estate license and license rights of SPMI and KISS under the provisions of Code sections 10177(d), 10177(g), 10177(h), and 10176(i)/10177(j) and Regulations section 2725.

COSTS

Code section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the bureau, the Commissioner may request the

1 administrative law judge to direct a licensee found to have committed a violation of this part to
2 pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

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

7 WHEREFORE, Complainant prays that a hearing be conducted on the
8 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
9 disciplinary action against all licenses and/or license rights under the Real Estate Law (Part 1 of
10 Division 4 of the California Business and Professions Code) of Respondents LARRY D.A.
11 JUDGE II, SUMMIT PROPERTY MANAGEMENT, INC., and JOHN B. KISS, individually
12 and as designated officer of Summit Property Management, Inc., for the cost of investigation
13 and enforcement as permitted by law, audit costs as permitted by law, and for such other and
14 further relief as may be proper under applicable provisions of law.

15 Dated at San Diego, California: May 9, 2018.

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18 Veronica Kilpatrick
19 Supervising Special Investigator
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23 cc: Larry D.A. Judge II
24 Summit Property Management, Inc.
25 John B. Kiss
26 Veronica Kilpatrick
27 Sacto
Enforcement
Audits – Linda Davies