

FILED

JUN 11 2019

DEPT. OF REAL ESTATE  
By Cal Selorio

1 JUDITH B. VASAN, Counsel (SBN 278115)  
2 Department of Real Estate  
3 320 West 4th Street, Suite 350  
4 Los Angeles, California 90013-1105  
5 Telephone: (213) 576-6982  
6 Direct: (213) 576-6904  
7 Fax: (213) 576-6917  
8 *Attorney for Complainant*

9 BEFORE THE DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of ) No. H-05068 SD  
13 KEVIN CHARLES CHURCHILL, ) ACCUSATION  
14 )  
15 Respondent. )  
16 )

17 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the  
18 State of California, for cause of Accusation against KEVIN CHARLES CHURCHILL  
19 (“Respondent”) alleges as follows:

20 1.

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

23 2.

24 All references to the “Code” are to the California Business and Professions Code  
25 and all references to “Regulations” are to Title 10, Chapter 6, of the California Code of  
26 Regulations.

27 ///

1 LICENSE HISTORY

2 3.

3 a. Respondent KEVIN CHARLES CHURCHILL is presently licensed and/or has  
4 license rights under the Code, as a restricted real estate broker, Department of Real Estate<sup>1</sup>  
5 (“Department”) license ID 01218785.

6 b. The Department originally issued Respondent a real estate salesperson license  
7 on or about April 16, 1997. The Department issued Respondent’s broker license on November  
8 20, 2001. Respondent’s license is scheduled to expire on March 11, 2021, unless renewed.

9 c. According to the Department’s records to date, Respondent employs two (2)  
10 salespersons under his restricted real estate broker license, Kimberley Keyte Churchill (license  
11 ID 01202429) and Loren Castleman Field (license ID 01152181).

12 d. According to the Department’s records to date, Respondent does not maintain  
13 any authorized fictitious business with the Department.

14 (PRIOR LICENSE DISCIPLINE)

15 4.

16 On or about February 16, 2013, in Department Case No. H-4105 SD, the Real  
17 Estate Commissioner revoked Respondent’s real estate broker license pursuant to Code section  
18 10177(g) (negligence or incompetence). The revocation of Respondent’s broker license became  
19 effective on March 12, 2013, and was subject to his right to apply for and be issued a restricted  
20 real estate broker license on the terms and conditions specified in the Commissioner’s Decision.  
21 On March 12, 2013, Respondent was issued a restricted real estate broker license.

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26  
27 <sup>1</sup> Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

1 CAUSE FOR ACCUSATION

2 (AUDIT)

3 5.

4 At all times relevant herein Respondent was engaged in the business of a real  
5 estate broker within the meaning of Section 10131(b) of the Code. Respondent's activities  
6 included the leasing or renting of real property and the collection of rents and security deposits  
7 for real property on behalf of others for compensation or in expectation of compensation.

8 6.

9 On or about February 28, 2018, the Department completed an audit examination  
10 of the books and records of Respondent pertaining to the real estate activities described in  
11 Paragraph 5 above. The audit examination covered the period of time from  
12 January 1, 2015, through October 31, 2017 ("audit period"). The primary purpose of the  
13 examination was to determine Respondent's compliance with the Real Estate Law. Although  
14 Respondent performed real estate sales activity during the audit period, this audit was limited to  
15 Respondent's property management activity. The audit examination revealed violations of the  
16 Code and the Regulations as set forth in the following paragraphs, and more fully discussed in  
17 Audit No. SD170009 and the exhibits and work papers attached to said audit report.

18 7.

19 The Department auditor interviewed Respondent on November 9, 2017.  
20 According to Respondent and the documents examined, Respondent ten (10) one-to-four unit  
21 residential properties with a total of ten (10) units for seven (7) owners.

22 8.

23 At all times mentioned herein, and in connection with the property management  
24 activities described in Paragraph 5, above, Respondent accepted or received funds, including  
25 funds in trust ("trust funds") from or on behalf of the owners of the properties managed by  
26 Respondent, and thereafter made deposits and/or disbursements of such funds. According to  
27 Respondent, he maintained one (1) bank account for handling of the receipts and disbursements

1 of rents during the audit period in connection with his property management activity. The bank  
2 account is as follows:

3 Bank Account 1 ("BA 1")

4 Bank: Bank of America  
5 Account Name: Kevin C. Churchill, Churchill Property Management  
6 Account Number: xxxxxxxx3758  
7 Signatories: Kevin C. Churchill, Kim K. Churchill

8 Violations

9 9.

10 The audit examination revealed violations of the Code and the Regulations, as  
11 set forth in the following paragraphs, and more fully discussed in Audit No. SD170009 and the  
12 exhibits and work papers attached to the audit report:

13 (a) Trust Fund Records to Be Maintained (Code section 10145 and  
14 Regulations section 2831). Respondent did not maintain a Record of Trust Funds  
15 Received/Disbursed for BA 1 during the audit period. The only records made available were  
16 deposit slips, check draft copies, and cancelled check copies.

17 (b) Separate Record for Each Beneficiary (Code section 10145 and  
18 Regulations section 2831.1). The separate records of trust funds received and disbursed while  
19 conducting property management activity for BA 1 were not accurate nor complete. The BA 1  
20 separate records did not include dates trust funds were deposited or disbursed, check numbers  
21 of disbursements, identification to/from whom trust funds were disbursed or received, and did  
22 not have a daily balance of trust funds in the account. There was no separate record maintained  
23 for broker's funds in BA 1.

24 On August 21, 2017, the tenant at 7502 Parkway Dr. #209 paid rent in the  
25 amount of \$1,320.00. Respondent, however, recorded \$1,295.00 in the separate record.

26 As of October 31, 2017, Respondent did not maintain a separate record for the  
27 unidentified and unaccounted for funds of \$4,015.91 held in BA 1.

1                                   (c) **Trust Account Reconciliation (Code section 10145 and Regulations**  
 2 **section 2831.2)**. During the audit period, the reconciliation of all the separate records to the  
 3 balance of all trust funds received and disbursed (control record) was not performed for BA 1.  
 4 As of October 31, 2017, Respondent failed to reconcile the unidentified and unaccounted for  
 5 funds of \$4,015.91 held in BA 1.

6                                   (d) **Trust Account Designation (Code section 10145 and Regulations section**  
 7 **2832)**. According to the bank signature card maintained at Bank of America for BA 1, the bank  
 8 account was not designated as a trust account in the name of Respondent as trustee.

9                                   (e) **Commingling of Funds (Code sections 10145 and 10176(e) and**  
 10 **Regulations section 2835)**. During the audit period, Respondent kept his management fees  
 11 earned in BA 1 for over twenty-five (25) days. Respondent did not timely disburse the  
 12 management fees from BA 1. At all times during the audit period, Respondent kept more than  
 13 \$200.00 of his own funds in BA 1. Respondent did not maintain a separate record for broker's  
 14 funds in BA 1. BA 1's bank charges were not recorded in the BA 1 separate records. During the  
 15 court of the audit, the Department auditor had to reconstruct the broker's funds ledger to show  
 16 the minimum balance of broker's funds in BA 1. As of October 31, 2017, Respondent had a  
 17 minimum balance of \$1,399.16 of his own funds in BA 1. For example:

<u>Month/Year</u>	<u>Management Fees Earned</u>	<u>Management Fees Disbursed</u>	<u>Balance Management Fees in BA 1</u>
January 2015	\$1,297.00	\$1,243.00	\$54.00
February 2015	\$1,297.00	\$0	\$1,351.00
March 2015	\$1,297.00	\$0	\$2,648.00
April 2015	\$1,179.00	\$0	\$3,827.00
May 2015	\$1,297.00	\$0	\$5,124.00
June 2015	\$1,375.00	\$0	\$6,499.00
July 2015	\$1,504.50	\$0	\$8,003.50
August 2015	\$1,320.50	\$0	\$9,324.00

1	September 2015	\$1,324.50	\$0	\$10,648.50
2	October 2015	\$1,514.50	\$0	\$12,163.00
3	November 2015	\$1,514.50	\$1,100.00	\$12,577.50
4	December 2015	\$1,514.50	\$0	\$14,092.00
5	January 2016	\$1,525.94	\$0	\$15,617.94

6                   **(f) Interest-Bearing Trust Account (Code section 10145(d))**. BA 1 was an  
7 interest bearing account in which funds in the account were not kept separate, distinct, and apart  
8 from funds belonging to other persons for whom Respondent was holding funds in trust. During  
9 the audit period, BA 1 earned a total of \$6.29 in interest. The earned interest was all based on  
10 the average daily balance of BA 1, which consisted of trust funds belonging to property owners  
11 and also broker funds not disbursed on a timely basis. As of October 31, 2017, the balance of  
12 \$6.29 in interest earned were kept in BA 1.

13                   **(g) Use of False or Fictitious Business Name (Code section 10159.5 and**  
14 **Regulations section 2731)**. Respondent conducted his property management activities using  
15 the unlicensed fictitious business names "Churchill Property Management," "Churchill Group,"  
16 and "Churchill RE Group" when Respondent was not the holder of a license bearing those  
17 fictitious names. All of the Lease Agreements and Property Management Agreements for  
18 Parkway #209, Promontory, San Diego Mission, N. Westwind, Alanwood, and Contour,  
19 included the unlicensed business name of "Churchill Property Management." The Lease  
20 Agreements for San Diego Mission Road, Corte de las Piedras, and Alanwood and the Property  
21 Management Agreements for Paseo Aurora included the unlicensed fictitious business name of  
22 "Churchill Group." The Lease Agreement and Property Management Agreement of Orcutt  
23 Avenue included the unlicensed business name of "Churchill RE Group."

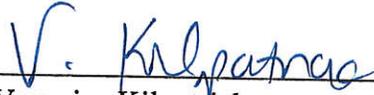
24                   **(h) Receiving Commission Under Exclusive Agreement Without Definite**  
25 **Termination Date (Code section 10176(f))**. The Exclusive Agreements for the following  
26 properties were missing a definite termination date: Orcutt, Parkway #209, Promontory,  
27 Alanwood, Contour, and San Diego Mission Rd.



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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 the licenses and/or license rights of Respondent KEVIN CHARLES CHURCHILL under the Real Estate Law, for the costs 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 applicable provisions of law.

Dated at San Diego, California this 29 day of May, 2019.

  
\_\_\_\_\_  
Veronica Kilpatrick  
Supervising Special Investigator

cc: KEVIN CHARLES CHURCHILL  
Veronica Kilpatrick  
Sacto.  
Audits – Linda Davies