

SEP 13 2019

DEPT. OF REAL ESTATE

By *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-05093 SD
)	
MICHAEL ANTHONY BRUNNHOELZL,)	<u>ACCUSATION</u>
doing business as Downtown Real Estate)	
Consultants and Michael Anthony Properties;)	
GREG J. BERNAVE,)	
)	
Respondents.)	

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, for cause of Accusation against MICHAEL ANTHONY BRUNNHOELZL, doing business as Downtown Real Estate Consultants and Michael Anthony Properties, and GREG J. BERNAVE (sometimes referred to as "Respondents") alleges as follows:

1.

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

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1 2.

2 All references to the "Code" are to the California Business and Professions Code
3 and all references to "Regulations" are to Title 10, Chapter 6, of the California Code of
4 Regulations.

5 LICENSE HISTORY

6 (MICHAEL ANTHONY BRUNNHÖELZL)

7 3.

8 a. Respondent MICHAEL ANTHONY BRUNNHÖELZL ("BRUNNHÖELZL")
9 is presently licensed and/or has license rights under the Code as a real estate broker,
10 Department of Real Estate ("Department") license ID 01007091.

11 b. The Department originally issued Respondent BRUNNHÖELZL a real estate
12 salesperson license on or about November 5, 1988. The Department issued Respondent's
13 broker license on or about May 6, 1993. Respondent's license is scheduled to expire on May 5,
14 2021, unless renewed.

15 c. From on or about December 19, 1995, through the present, Respondent
16 BRUNNHÖELZL has maintained the authorized fictitious business name "Michael Anthony
17 Properties." From on or about June 21, 2010, through the present, Respondent
18 BRUNNHÖELZL has also maintained the authorized fictitious business name "Downtown
19 Real Estate Consultants."

20 d. BRUNNHÖELZL's main office address is 5920 Friars Road, Suite 100, San
21 Diego, California:

22 e. According to the Department's records to date, from on or about March 24,
23 2005, through August 21, 2018, BRUNNHÖELZL maintained a branch office location at 1501
24 India Street, Suite 104, San Diego, California ("India branch office").

25 f. From on or about October 10, 2014, through September 8, 2017, Respondent
26 BRUNNHÖELZL was the employing broker for Respondent GREG J. BERNAVE
27 ("BERNAVE").

1 (GREG J. BERNAVE)

2 4.

3 a. Respondent BERNAVE is presently license and/or has license rights under the
4 Code as a real estate salesperson, Department license ID 01174166.

5 b. The Department originally issued Respondent BERNAVE a salesperson
6 license on or about January 7, 1994. Respondent's license is scheduled to expire on January 6,
7 2023, unless renewed.

8 c. According to the Department's records to date, Respondent BERNAVE is not
9 currently employed by a real estate broker. From on or about October 10, 2014, through
10 September 8, 2017, Respondent BRUNNHÖELZL was the employing broker of Respondent
11 BERNAVE.

12 CAUSE FOR ACCUSATION

13 (AUDIT)

14 5.

15 At all times relevant herein Respondent BRUNNHÖELZL was engaged in the
16 business of a real estate broker within the meaning of:

17 a. Code section 10131(a). by selling or offering to sell, buying or offering to buy,
18 soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, or negotiating
19 the purchase, sale or exchange of real property or a business opportunity ("real estate sales");
20 and

21 b. Code section 10131(b). by leasing or renting or offering to lease or rent, or
22 placing for rent, or soliciting listings of places for rent, or soliciting for prospective tenants, or
23 negotiating the sale, purchase or exchanges of leases on real property, or on a business
24 opportunity, or collecting rents from real property, or improvements thereon, or from business
25 opportunities ("property management activity").

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27 ///

ACCUSATION

1 6.

2 On or about February 28, 2019, the Department completed an audit examination
3 of the books and records of Respondent BRUNNHÖELZL, doing business as Downtown Real
4 Estate Consultants and Michael Anthony Properties, pertaining to the real estate activities
5 described in Paragraph 5(b) above. The audit examination was limited to Respondent's property
6 management activity. The audit examination covered the period of time from
7 January 1, 2016, through July 31, 2018 ("audit period"). The primary purpose of the
8 examination was to determine Respondent BRUNNHÖELZL's compliance with the Real Estate
9 Law. The audit examination revealed violations of the Code and the Regulations as set forth in
10 the following paragraphs, and more fully discussed in Audit No. SD170045 and the exhibits
11 and work papers attached to said audit report.

12 7.

13 The Department auditor interviewed Respondent BRUNNHÖELZL on
14 September 13, 2018 at his main office location. BRUNNHÖELZL's attorney Ehrich Lenz was
15 also present. According to Respondent and the documents examined, Respondent managed
16 one-to-four unit residential properties and apartment complexes for approximately 200 owners.
17 BRUNNHÖELZL charged a management fee of about 8% of the collected rents. Respondent
18 employed five property managers, including him, and each property manager managed several
19 of the rental properties. According to BRUNNHÖELZL, the fictitious business name
20 "Downtown Real Estate Consultants" was used at the India branch office, which was closed in
21 September 2017.

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 BRUNNHÖELZL, he maintained one (1) bank account for handling of the receipts

ACCUSATION

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

3 Trust Account 1 ("TA")

4 Bank: Torrey Pines Bank, A Division of Western Alliance Bank
5 Account Name: Michael Anthony Properties Inc DBA Downtown Real Estate
6 Consultants Trust Account
7 Account Number: xxxxxxx6960
8 Signatories: Michael Anthony Brunnhoelzl, Janine Brunnhoelzl
9 Signatures Required: One

10
11 Purpose: TA was used as a depository for trust funds, primarily rents and security
12 deposits collected from tenants. Disbursements from TA included
13 payments for property-related expenses, owner remittances, and
14 management fees to BRUNNHÖELZL.

15 9.

16 Respondent BRUNNHÖELZL maintained a general business account ("GA")
17 with account number xxxxx0565 at Torrey Pines Bank. BRUNNHÖELZL's management fees
18 were transferred from TA to GA. BRUNNHÖELZL also transferred management fees to
19 BRUNNHÖELZL's personal accounts with account number xxxxx0623 at HSBC ("PA1") and
20 account number xxxxxxxx5107 at Morgan Stanley ("PA2").

21 Violations

22 10.

23 The audit examination revealed violations of the Code and the Regulations, as
24 set forth in the following paragraphs, and more fully discussed in Audit No. SD170045 and the
25 exhibits and work papers attached to the audit report:

1 **(a) Trust Fund Handling for Multiple Beneficiaries (Code section 10145**
2 **and Regulations section 2832.1)**. As of July 31, 2018, TA had a minimum trust fund shortage
3 of \$70,575.70. It was determined that the shortage was caused by the following:

4 (1) minimum negative property balance of \$25,181.95. The minimum
5 negative property balance of \$25,181.95 was caused by disbursements from beneficiaries who
6 did not have sufficient funds in TA.

7 (2) minimum unauthorized disbursements and/or conversion of funds of
8 \$45,393.75. (a) According to the records and information provided, between February 1, 2018,
9 and July 31, 2018, BRUNNHÖELZL earned at least \$242,272.52 in fees. Respondent disbursed
10 \$287,601.27 from TA to GA, PA1 and PA2 during the same time period. BRUNNHÖELZL
11 overdraw \$45,328.75 in fees. (b) During the audit period, BRUNNHÖELZL owned two
12 properties managed through TA located at 4039 Carmel View and 325 7th Avenue. There was
13 at least one expense for \$65.00 for the 7th Avenue property that was not posted on the trust
14 account records but was paid from TA.

15 Respondent BRUNNHÖELZL failed to provide evidence that the owners of the
16 trust funds had given their written consent to allow BRUNNHÖELZL to reduce the balance of
17 funds in TA to an amount less than the existing aggregate trust fund liability of Respondent
18 BRUNNHÖELZL to all owners of the funds.

19 **(b) Trust Fund Handling: Commingling, Unauthorized Disbursements,**
20 **Conversion of Funds, Secret Profit/Undisclosed Compensation (Mark-Ups and**
21 **Conversion) (Code sections 10145, 10176(e), 10176(g), 10176(i), 10177(i) and Regulations**
22 **section 2832)**. During the audit period, Respondent BRUNNHÖELZL received undisclosed
23 compensation or secret profits by marking up vendor invoices, made unauthorized
24 disbursements from TA to his other bank accounts GA, PA1 and PA2, and converted trust
25 funds in TA for BRUNNHÖELZL's business expenses in GA.

26 (1) Mark-Ups. According to BRUNNHÖELZL, he hired independent
27 contractors ("vendors") to do repairs and other improvements to the rental properties. These

1 vendors gave BRUNNHOEELZL a discounted rate, and in turn, BRUNNHOEELZL charged the
 2 property owners the full expense. For these expenses, BRUNNHOEELZL recorded the full
 3 expense in his records, but disbursements to the vendors were for the discounted amount.
 4 According to BRUNNHOEELZL, he created "Michael Anthony Properties" work orders to
 5 match his records. The vendor invoices matched the amount of the check disbursements. The
 6 work orders provided to the property owners, however, did not indicate the amount of the mark-
 7 up BRUNNHOEELZL retained. The Michael Anthony Properties work orders did not contain
 8 any disclosures to the property owners of the profit made by BRUNNHOEELZL nor the mark-
 9 up. BRUNNHOEELZL did not provide any written agreement wherein the property owners agree
 10 to mark-ups or profits related to repair and maintenance expenses. The management agreements
 11 reviewed contained the following statement, or similar language, "In the event that the Owner
 12 shall request the Agent to undertake work exceeding that [sic] usual to normal management
 13 then a fee shall be agreed upon for such services before work begins." The minimum total of
 14 mark-ups in July 2018, which was the difference between the amount charged to the property
 15 owners and the amount paid to the vendors, was \$6,579.16. For example:

Date Per Records	Vendor/Payee	Amount Per Records	Check Amount	Invoice Amount	Difference (Mark-Up)
7/5/18	Sustainable Pools	\$85.00	\$55.00	\$55.00	\$30.00
7/11/18	Bill Howe Plumbing	\$495.00	\$450.00	\$450.00	\$45.00
7/12/18	Allegiance Heating & Air	\$295.00	\$235.00	\$235.00	\$60.00
7/17/18	Joaquin S. (maintenance)	\$3,299.26 (total)	\$2,263.04 (2 checks)	\$2,263.04	\$1,036.22
7/19/18	C and C Glass	\$497.00	\$397.00	\$397.00	\$100.00

25 According to BRUNNHOEELZL, after receiving notification of the audit, BRUNNHOEELZL
 26 started an in-house maintenance company "MJ Maintenance" to make it easier to follow the
 27

1 discounted transactions. BRUNNHÖELZL disbursed the full expense amount to MJ
2 Maintenance, and in turn, MJ Maintenance paid the vendor the discounted amount.

3 (2) Management Fees Earned/Disbursed: Management fees earned and
4 posted in the records were not readily traceable to the bank statements. According to
5 BRUNNHÖELZL and the bank statements examined, BRUNNHÖELZL disbursed his
6 management fees by online transfer to GA or electronic disbursement to his personal accounts
7 PA1 and PA2. The trust account records indicated his management fees earned for each
8 property, however BRUNNHÖELZL's disbursements from TA did not match the records. For
9 example:

	Commissions Earned	Amount to GA	Amount to PA1 or PA2	Total to GA, PA1, or PA2	Difference Earned vs. Withdrawn
Totals ¹ in 2/2018	\$37,128.62	\$12,000.00	\$29,101.27	\$41,101.27	\$3,972.65
Totals in 3/2018	\$39,335.59	\$16,000.00	\$45,500.00	\$61,500.00	\$22,164.41
Totals in 4/2018	\$39,428.86	\$15,000.00	\$42,000.00	\$57,000.00	\$17,571.14
Total					\$43,708.20

19 According to BRUNNHÖELZL and the records examined, GA was used for business expenses
20 such as salary and/or commissions to BRUNNHÖELZL's licensed employees, AT&T, business
21 accountant, office rent, and taxes. Additionally, checks were issued payable to PA2 and car
22 payments.

23 (c) Trust Fund Records to be Maintained (Code section 10145 and
24 Regulations section 2831). BRUNNHÖELZL failed to maintain a complete and accurate
25 record of trust funds received and disbursed ("control record") for TA. BRUNNHÖELZL
26

27 ¹ Monthly total of management fees earned included other commissions, such as leasing
commissions, late income, and moving fees.

1 utilized the AppFolio software to generate a general ledger report. Some disbursements were
2 made online through the bank's "bill-pay" system where BRUNNH0ELZL instructed his
3 financial institution to pay a third-party. The amount of the checks and bill-pay disbursements
4 did not always match the control record. These disbursements were issued as a check, using
5 check numbers in the #9000 series. The check number through the bill-pay system did not
6 match the check number in the trust account records. BRUNNH0ELZL did not provide any
7 reference number to readily correlate and trace the several transactions posted in the records as
8 it related to the bill-pay transactions. The discrepancies in the amounts were caused by mark-up
9 fees.

10 Rent payments from tenants were generally received online from the tenant's
11 bank account or by check. A courier picked up the tenant's payments from the main office and
12 delivered them to the bank. In August 2017, BRUNNH0ELZL obtained a machine to also
13 make deposits to the bank remotely from his office. The total batch amount per bank statement
14 to the bank via courier or remotely did not always match the total on the control records.

15 **(d) Separate Record for Each Beneficiary or Transaction (Code section**
16 **10145(g) and Regulations section 2831.1).** BRUNNH0ELZL failed to maintain complete and
17 accurate separate records for each beneficiary or transaction for TA. For example, the following
18 checks or portions of checks were not recorded on a separate record:

19

20 Payee	21 Check Number	Check Date	Check Amount	Amount Not Recorded on a Separate Record
22 Paul Velasquez 23 (vendor)	5834	4/30/2018	\$6,500.00	\$6,500.00
24 Paul Velasquez	5909	5/24/2018	\$13,780.00	\$8,500.00
25 Paul Velasquez	6060	6/19/2018	\$7,870.00	\$2,630.00
26 Paul Velasquez	6168	7/27/2018	\$8,000.00	\$8,000.00

27

1 In addition, BRUNNH0ELZL did not maintain a separate record for the minimum unidentified
2 and/or unaccounted for funds of \$50,664.50 in TA as of July 31, 2018.

3 **(e) Trust Account Reconciliation (Code section 10145 and Regulation**
4 **2831.2)**. During the audit period, BRUNNH0ELZL failed to perform and maintain a monthly
5 reconciliation comparing the balance of all separate records to the balance of the control record
6 for TA.

7 **(f) Trust Account Designation (Code section 10145 and Regulations section**
8 **2832)**. According to the bank signature card for TA, the bank account was not created in the
9 name of Respondent BRUNNH0ELZL as trustee. TA is in the name of "Michael Anthony
10 Properties, Inc."

11 **(g) Use of False or Fictitious Business Name (Code section 10159.5 and**
12 **Regulations sections 2731)**. During the audit period, BRUNNH0ELZL conducted property
13 management and real estate activities using the unlicensed fictitious business name "Michael
14 Anthony Properties Inc" on the following documents: (1) property management agreements; (2)
15 lease agreements; (3) bank signature card, bank statements, and bank checks for TA; (4)
16 letterhead; and (5) website.

17 **(h) Business and Mailing Addresses of Licensees (Regulations section 2715)**.
18 BRUNNH0ELZL failed to notify the Department within the next business day of the
19 cancelation of BRUNNH0ELZL's India branch office. According to BRUNNH0ELZL, the
20 India branch office closed in September 2017, and he failed to notify the Department until
21 approximately August 22, 2018.

22 **(i) Retention of Records (Code section 10148)**. BRUNNH0ELZL failed to
23 produce all of the records requested for the audit examination for the audit period of January 1,
24 2016, through July 31, 2018. The Department served BRUNNH0ELZL with a subpoena duces
25 tecum on December 18, 2018 to produce his books and records related to his property
26 management activities. BRUNNH0ELZL failed to make all books and records available for
27 examination, inspection, or copying.

1 11.

2 Each of the foregoing violations in Paragraphs 10(a)-(i) above constitute cause
3 for the suspension or revocation of the real estate license and/or license rights of Respondent
4 under the provisions of Sections 10177(d) and/or 10177(g)

5 (TRUST FUND HANDLING BY SALESPERSON)

6 12.

7 In or around September 2017, BERNAVE, while employed by
8 BRUNNHOELZL, managed the property located at 1601 India Street, Unit 114, San Diego,
9 California ("Unit 114"). The owner of Unit 114 returned the tenant's security deposit of
10 \$3,200.00 to BERNAVE so that BERNAVE can give the tenant her refund upon vacating the
11 unit. BERNAVE failed to immediately deliver the funds to BRUNNHOELZL. According to
12 BRUNNHOELZL, on September 9, 2017, BRUNNHOELZL deposited his own funds in TA to
13 refund the tenant.

14 13.

15 In or around September 2017, BERNAVE managed the property located at 1501
16 Front Street, Unit 533, San Diego, California ("Unit 533"). The tenant in Unit 533 paid his
17 September 2017 rent of \$2,200.00 to BERNAVE in cash. BERNAVE failed to immediately
18 deliver the funds to BRUNNHOELZL. According to BRUNNHOELZL, on September 15,
19 2017, BRUNNHOELZL deposited his own funds in TA to cover the missing \$2,200.00 rental
20 payment.

21 14.

22 Respondent BERNAVE's failure to immediately deliver trust funds to his broker
23 or, if directed by the broker, to the broker's principal or trust fund account, as described in
24 Paragraphs 12 and 13 above, constitutes a violation of Code section 10145(c) and is cause for
25 the suspension or revocation of all real estate licenses and license rights of BERNAVE under
26 the provisions of Code sections 10177(d) and/or 10177(g).

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1 COSTS

2 (AUDIT COSTS)

3 15.

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

9 (INVESTIGATION AND ENFORCEMENT COSTS)

10 16.

11 Section 10106 of the Code, provides, in pertinent part, that in any order issued in
12 resolution of a disciplinary proceeding before the Department, the Commissioner may request
13 the administrative law judge to direct a licensee found to have committed a violation of this part
14 to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

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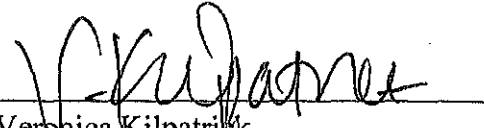
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1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
3 disciplinary action against all the licenses and/or license rights of Respondents MICHAEL
4 ANTHONY BRUNNHOELZL, doing business as Downtown Real Estate Consultants and
5 Michael Anthony Properties, and GREG J BERNAVE under the Real Estate Law, for the costs
6 of investigation and enforcement as permitted by law, for the cost of the audit, and for such
7 other and further relief as may be proper under other applicable provisions of law.

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9 Dated at San Diego, California this 4 day of September, 2019.

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13 Veronica Kilpatrick
14 Supervising Special Investigator

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24 cc: MICHAEL ANTHONY BRUNNHOELZL
25 GREG J BERNAVE
26 Veronica Kilpatrick
27 Sacto.
Audits – Jennifer Borromeo