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DEPARTMENT OF REAL ESTATE

By *By dew*

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:)
12) No. H-7133 SAC
13 JHL COMMERCIAL PROPERTIES)
14 and RICHARD JOHN MCDONALD,) ACCUSATION
15 Respondents.)

16 The Complainant, TRICIA PARKURST, in her official capacity as a Supervising
17 Special Investigator of the State of California, Department of Real Estate (“Department”), brings
18 this Accusation against JHL COMMERCIA PROPERTIES (“JHL”) and RICHARD JOHN
19 MCDONALD (“MCDONALD”), (collectively “Respondents”), and is informed and alleges as
20 follows:

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22 JHL is presently licensed by the Department and/or has license rights under the Real
23 Estate Law, Part 1 of Division 4 of the California Business and Professions Code (“Code”), as a
24 corporate real estate broker, License No. 01030119.

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1 2
2 MCDONALD is presently licensed by the Department and/or has license rights
3 under the Real Estate Law as a real estate broker, License No. 1939920. MCDONALD became the
4 Broker Officer for JHL on December 4, 2021.

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6 JHL became licensed with the Department on June 6, 1989.

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8 The corporate broker license of JHL was expired from June 6, 2017 through
9 December 3, 2020.

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11 At all relevant times, Respondents engaged in the business of, acted in the capacity
12 of, advertised or assumed to act as real estate licensees within the State of California within the
13 meaning of Section 10131(b) of the Code including the operation and conduct of a property
14 management business with the public, wherein, on behalf of others, for compensation or in
15 expectation of compensation, Respondents leased or rented or offered to lease or rent, and solicited
16 for prospective tenants of real property or improvements thereon, and collected rents from real
17 property or improvements thereon.

18 FIRST CAUSE OF ACTION
19 **(Audit Violations as to JHL)**

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21 Each and every allegation made in Paragraphs 1 through 5. inclusive, is incorporated
22 by reference as if fully set forth herein.

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24 From March 5, 2021 through November 4, 2021, the Department conducted an audit
25 of the real estate activities of JHL located at 194 Camino Oruga, Ste. 1, Napa, CA 94558. The
26 Department's auditor examined the business records of JHL for the period of July 1, 2018 through
27 February 28, 2021, ("audit period").

While engaging in the real estate activities described above in Paragraph 5 and within the audit period, JHL accepted or received funds in trust (“trust funds”) and deposited or caused the trust funds to be deposited into the following accounts:

Trust Account #1:

Bank Name: US Bank, N.A.
P.O. Box 1800, St. Paul, Minnesota 55101-0800.
Account No.: Last 4 Digits: 5965
Account Name: JHL Commercial Properties Client Trust, 10 executive
Signatories: Lynn S. Hill
Scott S. Hill
Description: Management of the ten (10) Executive Court properties for one (1) owner. Deposits included owner contributions and rents. Disbursements included payments for repair and maintenance, management fees, leasing fees, and owner proceeds.

Bank Account #1:

Bank Name: US Bank, N.A.
P.O. Box 1800, St. Paul, Minnesota 55101-0800.
Account No.: Last 4 Digits: 7935
Account Name: JHL Commercial
Signatories: Scott S. Hill
Description: Management for the property located at 25 Executive Court. Despoils included owner contributions. Disbursements included payments for repair and maintenance, and management fees.

Bank Account #2:

Bank Name: US Bank, N.A.
P.O. Box 1800, St. Paul, Minnesota 55101-0800.
Account No.: Last 4 Digits: 7869
Account Name: JHL Commercial Properties
Signatories: Scott S. Hill
Description: Management for the properties located at 1621-1721 Action Avenue. Deposits included rents. Disbursements included payments from owner proceeds, repair and maintenance, and management fees.

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In the course of the real estate activities described above in Paragraph 5, and during the audit period, the following violations were discovered:

(a) JHL collected rents from properties owned by others for compensation and otherwise acted as a real estate broker during the period in which the corporate broker license of JHL was expired in violation of Section 10130 of the Code.

(b) Bank Account #1 and Bank Account #2, which were used to hold trust funds, were not designated as trust accounts, with the broker as trustee, in violation of Section 10145 of the Code, and Section 2832 of Chapter 6, Title 10, California Code of Regulations (“Regulations”); and

(c) Withdrawals of trust funds were made from Trust Account #1, Bank Account # 1, and Bank Account #2 by Scott S. Hill, a salesperson not licensed under JHL, and without having adequate fidelity bond or insurance coverage in violation of Section 10145 of the Code and Section 2834 of the Regulations.

The acts and/or omissions of JHL, as described above in the FIRST CAUSE OF ACTION, constitute grounds for discipline pursuant to 10130, 10145, 10177(d) and 10177(g) of the Code, in conjunction with Sections 2832 of the Regulations.

SECOND CAUSE OF ACTION
(Failure to Supervise as to MCDONALD)

Each and every allegation in Paragraphs 1 through 10, inclusive, is incorporated by this reference as if fully set forth herein.

As the designated officer for JHR, MCDONALD was responsible for the supervision and control over the activities conducted on behalf of JHR by the corporation’s officers, employees and agents, as necessary to ensure full compliance with all provisions of the

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1 Real Estate Law, including the supervision of all salespersons licensed under the corporation in the
2 performance of acts for which a real estate license is required.

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4 Upon becoming the Designated Officer for JHR on December 4, 2021,
5 MCDONALD failed to exercise reasonable supervision over trust fund handling. MCDONALD
6 was not an authorized signed on Trust Account #1, Bank Account #1, or Bank Account #2 until
7 April 2022.

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9 The acts and/or omissions of MCDONALD, as described above in the SECOND
10 CAUSE OF ACTION, constitute grounds for discipline pursuant to 10130, 10145, 10177(d) and
11 10177(g) of the Code, in conjunction with Sections 2832 of the Regulations.

12 THIRD CAUSE OF ACTION
13 **(Breach of Fiduciary Duties as to Respondents)**

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15 Each and every allegation made above in Paragraphs 1 through 14, inclusive, is
16 incorporated by this reference as if fully set forth herein.

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18 At all relevant times, while acting as a real estate agent, Respondents owed its
19 clients and/or beneficiaries those fiduciary duties that are inherit in a position of trust as created by
20 the agent/principal relationship, including, but not limited to the following duties: the duty of
21 reasonable care and skill, the duty of honesty, the duty of good faith and fair dealings, the duty of
22 loyalty, and duty of diligence.

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24 JHL breached its fiduciary duties by engaging in the acts and/or omissions described
25 above in the FIRST CAUSE OF ACTION.

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MCDONALD breached his fiduciary duties by engaging in the acts and/or omissions described above in the SECOND CAUSE OF ACTION.

AUDIT COSTS

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) (audit costs for trust fund violations) of the Code.

COST OF INVESTIGATION AND ENFORCEMENT

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 revoking all licenses and license rights of Respondents under the Real Estate Law, for the cost of investigation and enforcement as permitted by law, for the cost of the audit as permitted by law, and for such other and further relief as may be proper under other provisions of law.

TRICIA PARKHURST
Supervising Special Investigator

Dated at Sacramento, California,
this 8th day of April, 2022.

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, 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.