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**FILED**  
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DEPARTMENT OF REAL ESTATE  
By J. Taggart

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 ) No. H-12579 SF  
13 MIDTOWN REALTY, INC. )  
14 and TIMOTHY JOSEPH FOY ) ACCUSATION  
15 Respondents. )

16 The Complainant, STEPHANIE YEE, acting in her official capacity as a  
17 Supervising Special Investigator of the State of California, for this Accusation against  
18 MIDTOWN REALTY, INC. ("MRI") and TIMOTHY JOSEPH FOY ("FOY"), sometimes  
19 collectively referred to as Respondents, is informed and alleges as follows:

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21 MRI is presently licensed and/or has license rights under the Real Estate Law, Part  
22 1 of Division 4 of the Business and Professions Code ("Code"), by the Department of Real Estate  
23 ("Department") as a corporate real estate broker doing business as Midtown Management.

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25 FOY is presently licensed and/or has license rights under the Code as a real estate  
26 broker.

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2 At all times mentioned, FOY was the designated broker-officer of MRI. As the  
3 designated broker-officer, FOY was responsible, pursuant to Section 10159.2 of the Code, for  
4 the supervision of the activities of officers, agents, real estate licensees and employees of MRI  
5 for which a real estate license is required to ensure the compliance of the corporation with the  
6 Real Estate Law and the Regulations.

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9 At all times mentioned, Respondents engaged in the business of, acted in the  
10 capacity of, advertised, or assumed to act as a real estate broker within the State of California  
11 within the meaning of Section 10131(b) of the Code, including the operation and conduct of a  
12 property management business with the public wherein, on behalf of others, for compensation or  
13 in expectation of compensation, Respondents leased or rented or offered to lease or rent, or  
14 placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or  
15 negotiated the sale, purchase or exchange of leases on real property, or on a business opportunity,  
16 or collected rents from real property, or improvements thereon, or from business opportunities.

17 FIRST CAUSE OF ACTION

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19 Complainant refers to Paragraphs 1 through 4, above, and incorporates the same,  
20 herein.

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22 Beginning on July 22, 2021, and continuing intermittently through August 12,  
23 2021, an audit was conducted remotely via Microsoft Teams and email at the Department's  
24 district office located at 1515 Clay Street, Suite 702 in Oakland, California. The auditor  
25 examined property management records for the period of June 1, 2020, through May 31, 2021  
26 ("the audit period").

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While acting as a real estate broker as described in Paragraph 4, above, and within the audit period, Respondents accepted or received funds in trust (“trust funds”) from or on behalf of property owners, lessees and others in connection with property management activities, and deposited or caused to be deposited those funds into bank accounts maintained by Respondents at First Republic Bank, 111 Pine Street, San Francisco, California, as described below:

TRUST ACCOUNT #1 (“T/A1”)	
Account No.:	XXXXXXXXX3155
Entitled:	Midtown Realty, Inc. (Trust Account)
GENERAL ACCOUNT #1 (“G/A1”)	
Account No.:	XXXXXXXXX0379
Entitled:	Midtown Realty, Inc. Commercial Account

and thereafter from time-to-time made disbursement of said trust funds.

In the course of the activities described in Paragraph 4, in connection with the collection and disbursement of trust funds, it was determined that:

- (a) An accountability was performed on account T/A1, and as of May 31, 2021, a shortage of \$247,415.63 was revealed in violation of Section 10145(a) (handling of trust funds) of the Code;
- (b) Respondents failed to obtain written permission from owners of trust funds in account T/A1, to allow the balances to drop below accountability, in violation of Section 2832.1 (trust fund handling for multiple beneficiaries) of Title 10, Chapter 6, California Code of Regulations (“Regulations”);
- (c) Respondents deposited trust funds that totaled \$92,652.24 into account

1 G/A1 that were commingled with MRI's general funds in violation  
2 Sections 10145(a) and 10176(e) (commingling trust funds) of the  
3 Code;

4 (d) Respondents over-disbursed at least \$14,236.31 of management fees  
5 from June 2020 to August 2020 in violation of Section 10176(i) (fraud  
6 or dishonest dealing)

7 (e) Respondents received \$3,514.00 in interest from First Republic Bank  
8 for trust funds deposited into account T/A1 and did not disclose to the  
9 owners of the funds that Respondents were receiving interest from  
10 their funds in violation of Sections 10145(d) (trust funds-interest  
11 bearing accounts) and 10176(g) (secret profit) of the Code.

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13 The act and/or omissions described above constitute violations of Section  
14 2832.1 of the Regulations and Sections 10145, 10176(e), 10176(g), and 10176(i) of the  
15 Code, and are grounds for discipline under the aforementioned Section and/or Sections  
16 10177(d) (willful disregard of real estate laws) and 10177(g) (negligence/incompetence  
17 licensee) of the Code.

18 SECOND CAUSE OF ACTION

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20 Complainant refers to Paragraphs 1 through 9, above, and incorporates the same,  
21 herein.

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23 At all times mentioned above, FOY was responsible, as the supervising  
24 designated broker/officer for MRI, for the supervision and control of the activities conducted on  
25 behalf of MRI's business by its employees to ensure its compliance with the Real Estate Law  
26 and Regulations. FOY failed to exercise reasonable supervision and control over the property  
27 management activities of MRI. In particular, FOY permitted, ratified and/or caused the conduct

1 described above to occur, and failed to take reasonable steps, including but not limited to, the  
2 handling of trust funds, supervision of employees, and the implementation of policies, rules, and  
3 systems to ensure the compliance of the business with the Real Estate Law and the Regulations.

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5 The above acts and/or omissions of FOY violate Section 2725 (broker  
6 supervision) of the Regulations and Section 10159.2 (responsibility/designated officer) of the  
7 Code and constitute grounds for disciplinary action under the provisions of Sections 10177(d),  
8 10177(g) and 10177(h) (broker supervision) of the Code.

9 AUDIT COSTS

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11 The acts and/or omissions of Respondents, as alleged above, entitle the  
12 Department to reimbursement of the costs of its audits pursuant to Section 10148(b) (audit costs  
13 for trust fund handling violations) of the Code.

14 COSTS OF INVESTIGATION AND ENFORCEMENT

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16 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
17 resolution of a disciplinary proceeding before the Department, the Commissioner may request the  
18 Administrative Law Judge to direct a licensee found to have committed a violation of this part to  
19 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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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 licenses and license rights of Respondents under the Real Estate  
4 Law and for such other and further relief as may be proper under other provisions of law.

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7                   STEPHANIE YEE

8                   Supervising Special Investigator

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10 Dated at Oakland, California,  
11 this 1st day of March, 2022.

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13                   DISCOVERY DEMAND

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15                   Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the  
16 Department hereby makes demand for discovery pursuant to the guidelines set forth in the  
17 *Administrative Procedure Act*. Failure to provide Discovery to the Department may result in the  
18 exclusion of witnesses and documents at the hearing or other sanctions that the Office of  
19 Administrative Hearings deems appropriate.