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FILED

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DEPARTMENT OF REAL ESTATE

By B. Nicholas

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
MARK GEOFFREY KAPLAN,) No. H-12590 SF
Respondent.) ACCUSATION

The Complainant, STEPHANIE YEE, a Supervising Special Investigator of the State of California, for cause of Accusation against MARK GEOFFREY KAPLAN (“Respondent”), is informed and alleges as follows:

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

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Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (“Code”).

LICENSE HISTORY

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At all times mentioned, Respondent was and is licensed by the Department as a real estate broker, License ID 00872023. Respondent was licensed by the Department as a real

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1 estate broker on or about March 15, 1985. Unless renewed, Respondent's broker license will
2 expire July 24, 2025.

3 Respondent was and is licensed to do business under the fictitious business name
4 "Rockwell Properties."

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6 At no time mentioned was Rockwell Property Management LLC licensed by the
7 Department in any capacity.

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9 At no time mentioned prior to August 24, 2021, was Rockwell Properties
10 Management Inc. licensed by the Department in any capacity. Beginning on or about August
11 25, 2021, Rockwell Properties Management Inc. was licensed by the Department as a corporate
12 real estate broker. Respondent is licensed by the Department as the designated broker officer of
13 Rockwell Properties Management Inc.

14 AUDIT OK20-0044

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16 On or about May 27, 2021, the Department completed its audit (OK20-0044) of
17 the books and records of Respondent's property management activities described in Paragraph 7.
18 The auditor herein examined the records for the period of November 1, 2019, through October
19 31, 2020.

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21 At all times mentioned, Respondent engaged in the business of, acted in the
22 capacity of, advertised, or assumed to act as a real estate broker within the State of California
23 within the meaning of Sections 10131(b) of the Code, including the operation and conduct of a
24 property management business with the public wherein, on behalf of others, for compensation or
25 in expectation of compensation, Respondent leased or rented and offered to lease or rent, and
26 solicited for prospective tenants of real property or improvements thereon, and collected rents
27 from real property or improvements thereon.

1 As of the audit examination, Respondent managed twelve (12) residential
2 properties, nine (9) apartment complexes, and two (2) commercial complexes for thirteen (13)
3 owners. Respondent collected a minimum of \$450,000 in trust funds annually.

4 Respondent's property management services include, but not limited to, collecting
5 rents, paying expenses, and screening tenants. For such property management services,
6 Respondent charged a management fee of between 3 to 6 percent of collected rents. Respondent
7 also charged a lease execution fee of 6 percent of 1 year lease.

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9 While acting as a real estate broker as described in Paragraph 7, Respondent
10 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in
11 connection with the leasing, renting, and collection of rents on real property or improvements
12 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust
13 funds.

14 The trust funds accepted or received by Respondent were deposited or caused to
15 be deposited by Respondent into accounts which were maintained by Respondent for the
16 handling of trust funds, and thereafter from time-to-time Respondent made disbursements of said
17 trust funds.

18 During the audit period, as described in Paragraph 6, Respondent maintained
19 fourteen (14) bank accounts to hold trust funds. Four accounts were selected for examination,
20 identified as follows:

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ACCOUNT # 1	
22 Bank Name and Location:	First Republic Bank 23 111 Pine Street 24 San Francisco, CA 94111
25 Account No.:	XXXXXXXX1725
26 Account Name:	Rockwell Property Management LLC

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<p>1 Description:</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p>	<p>Account #1 was a single beneficiary (Hsieh) account used to hold rents and for disbursement of owners' proceeds and expenses related to property management by Respondent. (Management fees were paid directly by owner to Respondent.)</p>
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<p>6</p> <p>7 ACCOUNT # 2</p>	
<p>8 Bank Name and Location:</p> <p>9</p> <p>10</p>	<p>First Republic Bank</p> <p>111 Pine Street</p> <p>San Francisco, CA 94111</p>
<p>11 Account No.:</p>	<p>XXXXXXXX4738</p>
<p>12 Account Name:</p>	<p>Rockwell Property Management LLC</p>
<p>13 Description:</p> <p>14</p> <p>15</p> <p>16</p>	<p>Account #2 was a single beneficiary (Philip Macdonald Family Trust) account used to hold rents and for disbursement of owners' proceeds, property management fees, and expenses related to property management by Respondent.</p>

<p>17</p> <p>18 ACCOUNT # 3</p>	
<p>19 Bank Name and Location:</p> <p>20</p> <p>21</p>	<p>First Republic Bank</p> <p>111 Pine Street</p> <p>San Francisco, CA 94111</p>
<p>22 Account No.:</p>	<p>XXXXXXXX3767</p>
<p>23 Account Name:</p>	<p>Rockwell Property Management LLC</p>
<p>24 Description:</p> <p>25</p> <p>26</p> <p>27</p>	<p>Account #3 was a single beneficiary (Kang) account used to hold rents and for disbursement of owners' proceeds, property management fees, and expenses related to property management by Respondent.</p>

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ACCOUNT # 4	
Bank Name and Location:	First Republic Bank 111 Pine Street San Francisco, CA 94111
Account No.:	XXXXXXXX6598
Account Name:	Rockwell Property Management LLC
Description:	Account #2 was a multi-beneficiary account used to hold security deposits and broker funds (in the form of security deposits from Respondent's subleased tenants). Account #4 was an interest bearing account.

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In the course of the property management activities described in Paragraph 7, and during the audit examination period described in Paragraph 6, Respondent violated the Code and Regulations described below:

Trust Account Designation

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During the audit period, Account #1, Account #2, Account #3, and/or Bank Account #4, accounts used to hold trust funds, were not designated as trust accounts in the name of the broker or the broker's fictitious business name as trustee, in violation of Section 10145 of the Code and Section 2832 Title 10, Chapter 6, California Code of Regulations (Regulations). The accounts were titled "Rockwell Property Management LLC."

Control Record

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Respondent failed to maintain an accurate written control record, for Account #1, of all trust funds received and disbursed, containing all information required by Section 2831 of the Regulations.

1 According to Respondent's bookkeeper, the property owner (Hsieh) wanted to and
2 had booked expenses he personally paid (other than from funds in Account #1) into the control
3 record for Account #1. Limited examination showed two uncleared transactions made during the
4 audit period were recorded as paid from Account #1 but were actually paid from other sources.
5 The two transactions examined were: (1) 8/31/20 Rockwell Property Management \$573.31, and
6 (2) 9/23/20 MT General Contractor \$8,150.00.

7 Separate Records

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9 Respondent failed to maintain accurate separate records for each beneficiary or
10 transaction, accounting therein for all funds which were deposited into Account #4 containing all
11 of the information required by Section 2831.1 of the Regulations. Respondent failed to maintain
12 any beneficiary records for Account #4.

13 Trust Account Reconciliation

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15 Respondent failed to reconcile the balance of separate beneficiary or transaction
16 records with the control record of trust funds received and disbursed at least once a month, and/or
17 failed to maintain a record of such reconciliations for Account #4 as required by Section 2831.2
18 of the Regulations.

19 Interest Bearing Account

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21 Respondent caused, permitted, and/or allowed, the deposit of trust funds into an
22 interest bearing account for Account #4, in violation of Section 10145(d) of the Code.

23 Unlicensed Activity

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25 Prior to August 25, 2021, Respondent, on behalf of Rockwell Property
26 Management LLC, in course of the property management brokerage activities described in
27 Paragraph 7, while Rockwell Property Management LLC was unlicensed, solicited prospective

1 As to Paragraph 15, under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 10130 of the Code.

3 COST RECOVERY

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5 The acts and/or omissions of Respondent as alleged above, entitle the Department
6 to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund
7 handling violation) of the Code.

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

13 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
14 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
15 action against all licenses and license rights of Respondent under the Code, for the cost of
16 investigation and enforcement as permitted by law, for the cost of the audit, and for such other
17 and further relief as may be proper under other provisions of law.

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19 STEPHANIE YEE
20 Supervising Special Investigator

21 Dated at Oakland, California,
22 this 2nd day of May, 2022

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DISCOVERY DEMAND

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Pursuant to Sections 11507.6, *et seq.* of the *Government Code*, 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.