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FILED

JUL 27 2023

DEPARTMENT OF REAL ESTATE
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of

BANCAL MANAGEMENT
CORPORATION;

and

TAMMY LYNN MCNAUGHT, individually
and as designated officer of BMC Management
Corporation,

Respondents.

No. H-12675 SF

ACCUSATION

The Complainant, STEPHANIE YEE, a Supervising Special Investigator of the
State of California, for cause of Accusation against BANCAL MANAGEMENT
CORPORATION and TAMMY LYNN MCNAUGHT (collectively referred to as
"Respondents"), 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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AUDIT OK21-0078

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On or about October 20, 2022, the Department completed its audit (OK21-0078) of the books and records of BMC property management activities described in Paragraph 7. The auditor herein examined the records for the period of February 1, 2021, through January 31, 2022.

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

As of the audit examination, Respondents managed approximately sixty-three (63) residential properties, thirty-four (34) apartment complexes, and eighteen (18) commercial complexes for eighty-five (85) owners. Respondents collected approximately \$7,600,000 in trust funds annually.

Respondents' property management services include, but not limited to, collecting rents, paying expenses, and screening tenants. For such property management services, Respondents charged a management fee between \$150 and \$750 per unit per month and/or 4 to 6 percent of collected rents per unit per month. Respondents also charged a lease execution fee of between 4 and 6 percent, and a lease renewal fee between \$350 to \$450.

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While acting as a real estate broker as described in Paragraph 7, Respondents accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements

thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

The trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into accounts which were maintained by Respondents for the handling of trust funds, and thereafter from time-to-time Respondents made disbursements of said trust funds, identified as follows:

TRUST ACCOUNT # 1	
Bank Name and Location:	Heritage Bank of Commerce 224 Airport Parkway San Jose, CA 95110
Account No.:	XXXXXX8458
Account Name:	Bancal Management Corporation – Trust Account
Purpose:	Trust Account #1 was a multi-beneficiary account used to hold rents and for disbursement of owners' proceeds, management fees, and expenses related to properties managed by BMC.

TRUST ACCOUNT # 2	
Bank Name and Location:	Heritage Bank of Commerce 224 Airport Parkway San Jose, CA 95110
Account No.:	XXXXXX8105
Account Name:	Bancal Management Corporation – Bancal Trust Security Dep
Purpose:	Trust Account #2 was a multi-beneficiary account used to hold security deposits for properties managed by BMC. Trust Account #2 was an interest-bearing account.

TRUST ACCOUNT # 3	
Bank Name and Location:	Heritage Bank of Commerce 224 Airport Parkway San Jose, CA 95110
Account No.:	XXXXXX3031
Account Name:	Bancal Management Corporation – Roger Ressah Trust
Purpose:	Trust Account #3 was a multi-beneficiary account (two owners) used to hold rents and for disbursement of owners' proceeds, management fees, and expenses related to properties managed by BMC. Trust account #3 was an interest-bearing account.

TRUST ACCOUNT # 4	
Bank Name and Location:	Heritage Bank of Commerce 224 Airport Parkway San Jose, CA 95110
Account No.:	XXXXXX3155
Account Name:	Bancal Management Corporation – Trust Account
Purpose:	Trust Account #4 was a multi-beneficiary account used to hold rents and for disbursement of owners' proceeds, management fees, and expenses related to properties managed by BMC. BMC's intention was to close Trust Account #4 upon opening Trust Account #1 on 12/6/2021. Trust 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, Respondents violated the Code and Regulations described below:

Trust Account Accountability and Balances

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(Trust Account #1 and Trust Account #4)

Based on the records provided during the audit, a combined bank reconciliation for Trust Account #1 and Trust Account #4 was prepared as of January 31, 2022. A combined bank reconciliation was prepared for Trust Account #1 and Trust Account #4 since BMC maintained one set of records for the two bank accounts. The combined adjusted bank balance of Trust Account #1 and Trust Account #4 as of January 31, 2022, was compared to the combined beneficiaries' accountability for Trust Account #1 and Trust Account #4 as of January 31, 2022.

Adjusted Bank Balance	\$955,186.26
Accountability	<u>\$970,265.10</u>
Trust Fund Shortage	<u>(\$15,078.84)</u>

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1 A total shortage of \$15,078.84 was found in Trust Account #1 and Trust Account
2 #4 as of January 31, 2022. The shortage was caused by multiple negative account balances.

3 Respondents provided no evidence that the owners of the trust funds had given
4 their written consent to allow Respondents to reduce the balance of the funds in Trust Account
5 #1 and Trust Account #4 to an amount less than the existing aggregate trust fund liabilities, in
6 violation of Section 10145 of the Code and Section 2832.1 of Title 10, Chapter 6, California
7 Code of Regulations (Regulations).

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9 (Trust Account #2)

10 Based on the records provided during the audit, a bank reconciliation for Trust
11 Account #2 was prepared for as of January 31, 2022. The adjusted bank balance of Trust
12 Account #2 as of January 31, 2022, was compared to the beneficiaries' accountability for Trust
13 Account #2 as of January 31, 2022.

15 Adjusted Bank Balance	\$80,133.98
16 Accountability	<u>\$86,133.98</u>
17 Trust Fund Shortage	<u>(\$6,000.00)</u>

18 A shortage of \$6,000.00 was found in Trust Account #2 as of January 31, 2022.
19 The cause of the shortage was unidentified.

20 Respondents provided no evidence that the owners of the trust funds had given
21 their written consent to allow Respondents to reduce the balance of the funds in Trust Account
22 #2 to an amount less than the existing aggregate trust fund liabilities, in violation of Section
23 10145 of the Code and Section 2832.1 of Title 10, Chapter 6, California Code of Regulations
24 (Regulations).

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Control Record

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Respondents failed to maintain an accurate written control record, for Trust Account #1 and Trust Account #4, of all trust funds received and disbursed, containing all information required by Section 2831 of the Regulations.

BMC maintained one combined control record for the Trust Account #1 and Trust Account #4 for the period beginning from December 6, 2021, through the end of the audit period. The record did not identify an accurate daily running balance since it combined the balances of Trust Account #1 and Trust Account #4.

Separate Records

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Respondent failed to maintain accurate separate records for each beneficiary or transaction, accounting therein for all funds which were deposited into Trust Account #1 and Trust Account #4 containing all of the information required by Section 2831.1 of the Regulations.

BMC maintained one set of beneficiary records for the two bank accounts combined for the period beginning from December 6, 2021, through the end of the audit period. The records did not identify accurate daily running balances since they combined the balances of the two bank accounts for each beneficiary.

As of January 31, 2022, there were unidentified funds in the amount of \$17,861.67 in Trust Account #1 and Trust Account #4. Respondents failed to maintain a separate record for the unidentified funds.

Trust Account Reconciliation

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Respondents failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month,

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1 and/or failed to maintain a record of such reconciliations for Trust Account #1 and Trust
2 Account #4, as required by Section 2831.2 of the Regulations.

3 Interest Bearing Account

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5 Respondent caused, permitted, and/or allowed, the deposit of trust funds into an
6 interest bearing account for Trust Account #2, Trust Account #3, and Trust Account #4, in
7 violation of Section 10145(d) of the Code.

8 Secret or Undisclosed Compensation

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10 Collected and retained unearned fees, compensation, profit, and/or failed to
11 disclose the full amount of compensation from homeowners in connection with payment for
12 property management services by Respondents, in violation of Section 10176(g) of the Code.

13 Respondents failed to disclose to property owners regarding benefits earned in the
14 form of airplane miles, from corporate business credit cards used. Corporate business credit
15 cards were used regularly to pay maintenance expenses for the properties BMC managed.
16 According to the credit card statement: "You earn 2 miles per \$1 spent on United purchases,
17 local transit and commuting, and at restaurants, gas stations, and office supply stores. You earn
18 1 mile per \$1 spend on all other purchases."

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Property maintenance expenses paid through the corporate business card, include but not limited to the following:

Property Address	Vendor	Date Paid	Amount
1728-1730 Jones St.	Home Depot	11/30/2021	\$1,041.85
348 Hyde St.	Amazon	11/15/2021	\$222.67
198 Potrero Ave.	Google Store	11/8/2021	\$794.05
6839-6841 California St.	Cherins Appliance	10/7/2021	\$1,073.37
3800 Scott St.	Lowes	7/1/2021	\$664.78
1137 Bush St.	SQ Bay Area Turf	10/15/2021	\$493.25
1137 Bush St.	SQ Bay Area Turf	10/18/2021	\$1,973.00
1137 Bush St.	SQ Bay Area Turf	10/29/2021	\$2,466.25

FAILURE TO SUPERVISE

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Respondent MCNAUGHT failed to exercise reasonable supervision over the acts of BMC in such a manner as to allow the acts and events described above to occur.

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The acts and/or omissions of MCNAUGHT as described in Paragraph 17, constitutes failure on the part of MCNAUGHT, as designated broker-officer for BMC, to exercise reasonable supervision and control over the licensed activities of BMC as required by Section 10159.2 of the Code and Section 2725 of the Regulations.

GROUND FOR DISCIPLINE

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The acts and/or omissions of Respondents as alleged in the above constitute grounds for the suspension or revocation of all licenses and license rights of Respondents, pursuant to the following provisions of the Code and Regulations:

As to Paragraphs 10 and 11, under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

As to Paragraph 12, under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2831 of the Regulations;

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1 As to Paragraph 13, under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 10145 of the Code and Section 2831.1 of the Regulations;

3 As to Paragraph 14, under Sections 10177(d) and/or 10177(g) of the Code in
4 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

5 As to Paragraph 15, under Sections 10177(d) and/or 10177(g) of the Code in
6 conjunction with Section 10145(d) of the Code; and

7 As to Paragraph 16, under Section 10177(g) of the Code.

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9 The acts and/or omissions of MCNAUGHT as alleged in Paragraphs 17 and 18
10 constitute grounds for the suspension or revocation of all licenses and license rights of
11 MCNAUGHT under Sections 10177(g) and/or 10177(h) of the Code, and Section 10159.2 of the
12 Code in conjunction with Section 10177(d) of the Code.

13 COST RECOVERY

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15 The acts and/or omissions of Respondents as alleged above, entitle the
16 Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

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

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

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8 STEPHANIE YEE
9 Supervising Special Investigator

10 Dated at Oakland, California,
11 this 14th day of July, 2023

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13 DISCOVERY DEMAND

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