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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-12677 SF
13 NORTH BERKELEY PROPERTIES)
14 and CHARLES THOMAS BETTENCOURT,) ACCUSATION
Respondents.)

15 The Complainant, STEPHANIE YEE, acting in her official capacity as a
16 Supervising Special Investigator of the State of California, for this Accusation against NORTH
17 BERKELEY PROPERTIES ("NBP") and CHARLES THOMAS BETTENCOURT
18 ("BETTENCOURT"), sometimes collectively referred to as Respondents, is informed and
19 alleges as follows:

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

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

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

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 Section 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 or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated the sale, purchase or exchange of leases on real property, or on a business opportunity, or collected rents from real property, or improvements thereon, or from business opportunities.

Whenever reference is made in an allegation in this Accusation to an act or omission of NBP, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with NBP committed such acts or omissions while engaged in furtherance of the business or operation of NBP and while acting within the course and scope of their corporate authority and employment.

On or about December 22, 2021, the Department completed its audit (OK 21-0017) of the books and records of NBP's property management activities described above in Paragraph 4. The auditor examined property management records for the period of January 1, 2020, through August 31, 2021 ("the audit period").

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1 FIRST CAUSE OF ACTION

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3 Complainant refers to Paragraphs 1 through 6, above, and incorporates the same,
4 herein.

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6 While acting as a real estate broker as described in Paragraph 4, above, and within
7 the audit period, Respondents accepted or received funds in trust ("trust funds") from or on
8 behalf of property owners, lessees and others in connection with property management activities,
9 and deposited or caused to be deposited those funds into bank accounts maintained by
10 Respondents at Bank of America, N.A., P.O. Box 25118, Tampa, FL 33622-5118 as described
11 below:

12 TRUST ACCOUNT #1 ("T/A1")	
13 Account No.:	XXXXXXXXXX9368
14 Entitled:	15 North Berkeley Properties Trust Account

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

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

- 20 (a) An accountability was performed on account T/A1, and as of
21 December 31, 2020, a shortage of \$939,906.92 was revealed in
22 violation of Section 10145(a) (handling of trust funds) of the Code;
23 (b) An accountability was performed on account T/A1, and as of July 31,
24 2021, a shortage of \$970,938.38 was revealed in violation of Section
25 10145(a) of the Code;

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1 (c) Respondents failed to obtain written permission from owners of trust
2 funds in account T/A1 and T/A2, to allow the balances to drop below
3 accountability, in violation of Section 2832.1 (trust fund handling for
4 multiple beneficiaries) of Title 10, Chapter 6, California Code of
5 Regulations (“Regulations”).

6 (d) On May 15, 2021, NBP received \$1,955.00 in rent from a tenant
7 residing in the property located at 2607 Ellsworth Street, Berkeley, CA
8 94704. The funds were not deposited into Respondent’s trust account
9 until May 21, 2021 in violation of Section 10145(a) of the Code and
10 Section 2832(a) (trust fund handling) of the Regulations.

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12 The act and/or omissions as alleged in paragraph 9 are grounds for
13 discipline under sections 2832.1 (trust fund handling for multiple beneficiaries) and
14 2832(a) (trust fund handling) of the Regulations, and Sections 10145(a) (handling of trust
15 funds), 10177(d) (willful disregard of real estate laws) and/or 10177(g)
16 (negligence/incompetence licensee) of the Code.

17 SECOND CAUSE OF ACTION

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19 Complainant refers to Paragraphs 1 through 10, above, and incorporates the
20 same, herein.

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22 At all times mentioned above, BETTENCOURT was responsible, as the
23 supervising designated broker/officer for NBP, for the supervision and control of the activities
24 conducted on behalf of NBP’s business by its employees to ensure its compliance with the Real
25 Estate Law and Regulations. BETTENCOURT failed to exercise reasonable supervision and
26 control over the property management activities of NBP. In particular, BETTENCOURT
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1 permitted, ratified and/or caused the conduct described above to occur, and failed to take
2 reasonable steps, including but not limited to, the handling of trust funds, supervision of
3 employees, and the implementation of policies, rules, and systems to ensure the compliance of
4 the business with the Real Estate Law and the Regulations.

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6 The above acts and/or omissions of BETTENCOURT violated Sections 2725
7 (broker supervision), 2832.1 (trust fund handling for multiple beneficiaries) and 2832(a) (trust
8 fund handling) of the Regulations, and Section 10159.2 (responsibility/designated officer) of the
9 Code and constitute grounds for disciplinary action under the provisions of Sections 10145(a)
10 (handling of trust funds), 10177(d), 10177(g) and 10177(h) (broker supervision) of the Code.

11 COSTS OF INVESTIGATION, ENFORCEMENT, AND AUDIT

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

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

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
2 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
3 against all licenses and license rights of Respondent under the Real Estate Law, 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 other provisions of law.

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8 STEPHANIE YEE

9 Supervising Special Investigator
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11 Dated at Oakland, California,
12 this 10th day of July, 2023.
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15 DISCOVERY DEMAND

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