

1 CHERYL D. KEILY SBN# 94008  
2 Bureau of Real Estate  
3 320 West 4<sup>th</sup> Street, Suite 350  
4 Los Angeles, California 90013-1105

4 Telephone: (213) 576-6982  
5 (Direct) (213) 576-6905

**FILED**

JUN 09 2015

BUREAU OF REAL ESTATE

By *[Signature]*

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of

No. H-39859 LA

12 DAYMARK PROPERTIES REALTY, )  
13 INC.; TODD ANTHONY MIKLES, )  
14 designated officer for Daymark )  
15 Properties Realty, Inc.; and )  
16 RICHARD G. BURNETT, former )  
17 designated officer for Daymark )  
18 Properties Realty, Inc., )

ACCUSATION

17 Respondents. )

19 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the  
20 State of California, for cause of Accusation against DAYMARK PROPERTIES REALTY,  
21 INC. ("DAYMARK"), TODD ANTHONY MIKLES ("MIKLES"), designated officer for  
22 DAYMARK; and RICHARD G. BURNETT ("BURNETT"), former designated officer for  
23 DAYMARK, is informed and alleges as follows:

24 ///

25 ///

26 ///

27 - 1 -

BUREAU OF REAL ESTATE ACCUSATION RE DAYMARK PROPERTIES REALTY, INC.;  
TODD ANTHONY MIKLES; AND RICHARD G. BURNETT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

Respondent DAYMARK is licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code"), as a corporate real estate broker.

3.

Respondent MIKLES is licensed and/or has license rights under the Real Estate Law as a real estate broker, and is presently the designated officer for DAYMARK.

4.

Respondent BURNETT is licensed and/or has license rights under the Real Estate Law as a real estate broker, and was formerly the designated officer for DAYMARK.

5.

From June 12, 2013, to the present, MIKLES has been the designated officer for DAYMARK. From February 21, 2013, to June 11, 2013, BURNETT was the designated officer for DAYMARK. From May 13, 2012, to February 20, 2013, DAYMARK had no designated officer.

6.

At all times material herein for compensation, or in expectation of compensation, Respondents engaged in the business of real property management, including offering to negotiate and negotiating leases and rental agreements on behalf of prospective real property tenants, and offering to perform and performing the rental and collection of rents and security deposits for real property on behalf of others within the meaning of Code Section 10131(b).

///

1 7.

2 During the periods alleged in Paragraph 5, above, Respondents MIKLES and  
3 BURNETT, as the officers designated by Respondent DAYMARK pursuant to Section 10211  
4 of the Code, were responsible for the supervision and control of the activities conducted on  
5 behalf of Respondent DAYMARK by its officers and employees as necessary to secure full  
6 compliance with the Real Estate Law as set forth in Code Section 10159.2 and Section 2725 of  
7 Title 10, Chapter 6, Code of Regulations ("Regulations")

8 FIRST CAUSE OF ACCUSATION

9 (Audit Violations)

10 8.

11 On or about November 7, 2014, the Bureau completed its audit examination of  
12 the books and records of Respondent DAYMARK pertaining to the real estate activities  
13 described in Paragraph 6, above, covering the period from July 1, 2012, to July 31, 2014.

14 9.

15 At all times mentioned herein, and in connection with the activities described in  
16 Paragraph 6, above, DAYMARK accepted or received funds, including funds in trust from or  
17 on behalf of owners of the real property managed by DAYMARK, and thereafter made deposits  
18 and/or disbursements of such funds. From time-to-time herein mentioned during the audit  
19 period, said trust funds were deposited into and/or disbursed from accounts maintained as  
20 single-beneficiary bank accounts in the name of non-licensee Daymark Realty Advisors Inc.  
21 ("non-licensee DRAI") as follows:

22 Bank Acct. #1

23 Account Name: NNN Mission Square LLC Operating Account B/A1

24 Acct. No.: 411xxx7603

1 Bank Name: Torrey Pines Bank<sup>1</sup>  
2 Signature: MIKLES, Larry Leaming (non-licensee), Paul Henderson (non-licensee)  
3 One signature required.

4 Bank Acct. #2 B/A2

5 Account Name: NNN Mission Square LLC Depository Account  
6 Acct. No.: 411xxx7638

7 Bank Name: Torrey Pines Bank  
8 Signature: MIKLES, Larry Leaming (non-licensee), Paul Henderson (non-licensee)  
9 One signature required.

10 Bank Acct. #3 B/A3

11 Account Name: NNN Britannia Business Center LLC Depository Account  
12 Acct. No.: 411xxx1388

13 Bank Name: Torrey Pines Bank  
14 Signature: MIKLES, Larry Leaming (non-licensee), Paul Henderson (non-licensee)  
15 One signature required.

16 Bank Acct. #4 B/A4

17 Account Name: NNN 400 Capitol Center LLC Operating Account  
18 Acct. No.: 411091xxx

19 Bank Name: Torrey Pines Bank  
20 Signatory: MIKLES, Larry Leaming (non-licensee), Paul Henderson (non-licensee)  
21 One signature required.

22 Bank Acct. #5 B/A5

23 Account Name: NNN 400 Capitol Center LLC  
24 Acct. No.: 00394252xxxx

25  
26

27 <sup>1</sup> 12220 El Camino Real, Ste. 110, San Diego, CA. 92130

1 Bank Name: Bank of America  
 2 Signature: Unknown  
 3 Bank Acct. #6 B/A6  
 4 Account Name: Berkadia Commercial Mortgage LLC  
 5 Acct. No.: 123508xxxx  
 6 Bank Name: Bank of America  
 7 Signature: Unknown  
 8 Bank Acct. #7 B/A7  
 9 Account Name: NNN 400 Capitol Center, LLC  
 10 Acct. No.: 00394252xxxx  
 11 Bank Name: Bank of America  
 12 Signature: Unknown

13 10.

14 The audit examination revealed violations of the Code by Respondents, as set  
 15 forth in the following paragraphs, and more fully discussed in Audit Report No. LA130281, and  
 16 the exhibits and work papers attached to the audit report:

17 (a) Failed to designate B/A1, B/A2, B/A3, and B/A4 as trust accounts in the  
 18 name of DAYMARK, as trustee, though the accounts were used to handle trust funds related to  
 19 DAYMARK's property management activities in violation of Code Section 10145 and Section  
 20 2832 of the Regulations;

21 (b) Permitted unlicensed employee, Larry Leaming, CFO of DAYMARK, to be  
 22 an authorized signatory and to make withdrawals from B/A1, B/A2, B/A3 and B/A4 without his  
 23 being covered by a fidelity bond in violation of Code Section 10145 and Section 2834 of the  
 24 Regulations;

25 (c) Failed to maintain an accurate control record for B/A2, B/A3 and B/A5 in the  
 26 form of a columnar record in chronological order of all trust funds received, deposited and

1 disbursed to the extent that the control records showed that the deposit date was incorrectly  
2 recorded in at least nineteen (19) instances, which is in violation of Code Section 10145 and  
3 Section 2831 of the Regulations;

4 (d) During the period of July 1, 2012 to February 20, 2013, DAYMARK acted in  
5 the capacity of a real estate broker engaging in property management activity for compensation  
6 without having a designated broker in violation of Code Section 10130 [unlicensed conduct];  
7 and

8 (e) Failed to provide for the auditor's examination of all books and records  
9 related to DAYMARK's property management activities, including bank signature cards for  
10 B/A5, B/A6 and B/A7, vendors' invoices and payment records to the 3<sup>rd</sup> party vendors for the  
11 disbursements made from B/A4 to DAYMARK to reimburse the payroll and insurance related  
12 to the personnel who provided the services for the property owned by NNN 400 Capitol Center,  
13 LLC, payment records to 3<sup>rd</sup> party vendors and deposit records for "reimbursement checks"  
14 totaling \$309,631.04 disbursed from B/A4 to DAYMARK or non-licensee DRAI during the  
15 period March 21, 2013, to April 25, 2014, in violation of Respondents' obligation to retain  
16 books and records pursuant to Code Section 10148.

17 DISCIPLINARY STATUTES AND REGULATIONS

18 11.

19 The conduct of Respondent described in Paragraph 10, above, violated the Code  
20 and the Regulations as set forth below:

21 <u>PARAGRAPH</u>	21 <u>PROVISIONS VIOLATED</u>
22 10(a)	22 Code Section 10145; Section 2832 23 of the Regulations
24 10(b)	24 Code Section 10145; Section 2834 of the 25 Regulations

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

- 10(c) Code Section 10145 and Section 2831 of the Regulations
- 10(d) Code Section 10130
- 10(e) Code Section 10148
- 12.

The foregoing violations constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondents under the provisions of Code Sections 10177(d) for violation of the Real Estate Law and/or 10177(g) for negligence or incompetence, for violation of Code Sections 10130 [unlicensed conduct], 10145 [trust account violations] and 10148 [failure to maintain records], and Sections 2831, 2832 and 2834 of the Regulations.

SECOND CAUSE OF ACCUSATION

13.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 12, above.

14.

Respondents MIKLES and BURNETT ordered, caused, authorized or participated in the conduct of Respondent DAYMARK during the periods set forth in Paragraphs 8 through 12, above.

15.

The conduct, acts and/or omissions, of Respondents MIKLES and BURNETT, in allowing Respondent DAYMARK to violate the Real Estate Law, as set forth above, constitutes a failure by Respondents MIKLES and BURNETT, as the officers designated by a corporate broker licensee, to exercise the supervision and control over the activities of Respondent DAYMARK, as required by Code Section 10159.2 and Section 2725 of the Regulations, and is cause to suspend or revoke the real estate licenses and license rights of

1 Respondents MIKLES and BURNETT under Code Sections 10177(d), 10177(g) and/or  
2 10177(h).

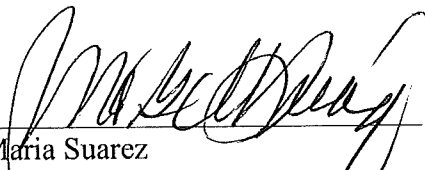
3 Code Section 10106 provides, in pertinent part, that in any order issued in  
4 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the  
5 administrative law judge to direct a licensee found to have committed a violation of this part to  
6 pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

7 Code Section 10148(b) provides, in pertinent part, that in the event that  
8 respondent has violated Code Section 10145, or a regulation interpreting said section, the  
9 respondent shall pay the Commissioner's reasonable costs for (a) the audit which led to the  
10 disciplinary action, and (b) a subsequent audit to determine if the respondent has corrected the  
11 violations found in the original audit.

12 WHEREFORE, Complainant prays that a hearing be conducted on the  
13 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing  
14 disciplinary action against all the licenses and license rights of Respondents DAYMARK  
15 PROPERTIES REALTY INC., TODD ANTHONY MIKLES and RICHARD G. BURNETT  
16 under the Real Estate Law, for the cost of investigation and enforcement as permitted by Code  
17 Section 10106, for audit costs pursuant to Code Section 10148(b) and for such other and further  
18 relief as may be proper under other applicable provisions of law.

19 Dated at Los Angeles, California

20 this 8<sup>th</sup> day of June, 2015.

21   
22 Maria Suarez  
23 Deputy Real Estate Commissioner

24 cc: DAYMARK PROPERTIES REALTY INC.  
25 TODD ANTHONY MIKLES  
26 RICHARD G. BURNETT  
27 Maria Suarez  
Sacto.