

MAR - 2 2020

D Av (EPT. Cail	25%	On	EŞTAT	E
By (all		Voi	(CO)	

JUDITH B. VASAN, Counsel (SBN 278115) Department of Real Estate 320 West 4th Street, Suite 350 Los Angeles, California 90013-1105

3 Telephone:

(213) 576-6982

Direct: Fax:

(213) 576-6904 (213) 576-6917

Attorney for Complainant

6

1

2

4

5

7

9

10

11

12

13 14

15

16

17

18

20

21

22

24

23

25

26

27

1/1

BEFORE THE DEPARTMENT OF REAL ESTATE STATE OF CALIFORNIA

* * *

In the Matter of the Accusation against) No. H-41621 LA
DANIEL JOEL FISHER, doing business as Park Place Realty,)) <u>ACCUSATION</u>)
Respondent.)
)

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, for cause of Accusation against DANIEL JOEL FISHER ("Respondent") alleges as follows:

1.

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

2.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, of the California Code of Regulations.

ACCUSATION

LICENSE HISTORY

3.

a. Respondent DANIEL JOEL FISHER is presently licensed and/or has license	
rights under the Code, as a real estate broker, Department of Real Estate ("Department") licens	se
ID 01228516.	

- b. The Department originally issued Respondent's broker license on August 13, 2002. Respondent's broker license is scheduled to expire on August 12, 2022, unless renewed.
- c. Respondent's main office address is 6039 Park Drive, Wrightwood, California.
- d. According to the Department's records to date, Respondent maintains the fictitious business name "Park Place Realty" with the Department.

CAUSE FOR ACCUSATION

(AUDIT EXAMINATION - AUDIT NO. LA180032)

4.

At all times relevant herein Respondent was engaged in the business of a real estate broker within the meaning of Section 10131(b) of the Code. Respondent's activities included the leasing or renting of real property and the collection of rents and security deposits for real property on behalf of others for compensation or in expectation of compensation.

5.

On or about January 31, 2019, the Department completed an audit examination of the books and records of Respondent pertaining to the real estate activities described in Paragraph 4 above. The audit examination covered the period of time from January 1, 2016, through September 30, 2018 ("audit period"). The primary purpose of the examination was to determine Respondent's compliance with the Real Estate Law. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit No. LA180032 and the exhibits and work papers attached to said audit report.

2

3

4 5

6

٠

7

9

10

11

12

13

14

17

20

22

15 | Bank:

16 Account Name:

18 Account Number

Account Number:

19 | Signatories:

Purpose:

21 and

23

24

25

26

27

According to Respondent and the documents examined, during the last twelve (12) months of the audit period, Respondent managed approximately forty-two (42) properties for forty-one (41) owners during the audit period. Respondent collected and deposited rents, and made disbursements for compensation.

7.

At all times mentioned herein, and in connection with the property management activities described in Paragraph 4, above, Respondent accepted or received funds during the audit period, including funds in trust ("trust funds") from or on behalf of the owners of the properties managed by Respondent, and thereafter made deposits and/or disbursements of such funds. According to Respondent, he maintained two (2) bank accounts for handling of the receipts and disbursements of rents during the audit period in connection with his property management activity. The bank accounts are as follows:

Trust Account 1 ("T/A1")

Desert Community Bank

Desert Community Bank

Nanette Hunt Fisher Daniel J Fisher DBA Fisher's Prk Place R.E./Rntl

Trust

xxxxx3901

Daniel J Fisher, Nanette Hunt Fisher

T/A1 was maintained for multiple beneficiaries for handling the receipts

and disbursements of trust funds (rents) in connection with Respondent's property management activity.

///

||///

///

///

||///

		1 rust Account 2 ("1/A2")	
2	Bank:	Desert Community Bank	
3	Account Name:	Fisher Park Place Realty Client Trust Fund	
· 4	Account Number:	xxxxxx1246	
5	Signatories:	Daniel J Fisher, Nanette Hunt Fisher	
6	Purpose:	T/A2 was maintained for multiple beneficiaries for handling the receipts	
7	and disbursements of trust funds (security deposits) in connection with Respondent's property		
8			
9			
10		Trust Account ("T/A3")	
11	Bank:	Desert Community Bank	
12	Account Name:	Daniel J. Fisher DBA Park Place Realty Client Trust Fund	
13	Account Number:	xxxxx9364	
14	Signatories:	Daniel J Fisher	
15	Purpose:	T/A3 was opened on October 12, 2018 to replace T/A2 for handling the	
16	receipts and disbursements of trust funds (security deposits) in connection with Respondent's		
17	<u> </u>		
18	T/A2.	•	
19		Violations	
20	8.		
21	The audit examination revealed violations of the Code and the Regulations, as		
22	set forth in the following paragraphs, and more fully discussed in Audit No. LA180032 and the		
23	exhibits and work papers attached to the audit report:		
24	(a) Handling of Trust Funds/Trust Fund Handling for Multiple Benefiaries		
25	(Code section 10145 and Regulations section 2832.1).		
26		As of September 30, 2018, there was a trust fund shortage of \$15,763.47	
27	in T/A1. The minimum	n shortage of \$15,763.47 was caused by the following:	

(i) minimum negative property balance of \$13,478.98;

- (ii) minimum bank charges totaling \$324.5; and
- (iii) minimum unauthorized disbursements totaling \$1,959.98.

In addition, as of September 30, 2018, Respondent commingled fees/commission of a minimum amount totaling \$11,189.20. Furthermore, there was a minimum amount of Respondent's fees/commission allowed totaling \$1,721.10 and a minimum unidentified/unaccounted for amount totaling \$8,001.78 due to inadequate record-keeping. There was no evidence in the files examined that the owners of the trust funds had given their written consent to allow Respondent to reduce the balance of the funds in T/A1 to an amount less than the existing aggregate trust fund liabilities to all owners of the funds.

T/A2: As of April 30, 2018, there was a trust fund shortage of \$10,234.02 in T/A2 due to bank charges totaling \$361.00 and conversion of trust funds totaling \$9,873.02. There was no evidence in the files examined that the owners of the trust funds had given their written consent to allow Respondent to reduce the balance of the funds in T/A2 to an amount less than the existing aggregate trust fund liabilities to all owners of the funds.

(b) <u>Handling of Trust Funds/Trust Fund Records to be Maintained (Code section 10145 and Regulations section 2831)</u>.

T/A1: Respondent failed to maintain a control record during the period from January 1, 2016 through August 31, 2017 for T/A1.

Respondent failed to maintain an accurate and complete record of all trust funds received and disbursed ("control record") for T/A1 during the period from September 1, 2017 through September 30, 2018. The control record was not in chronological sequence by date and thus it did not have an accurate daily balance. Some receipts were recorded on the control record of T/A1 but were not deposited in T/A1. In addition, the control record of T/A1 was maintained in a format that did not readily enable tracing and reconciliation. Moreover, Respondent did not account or record his management fees in T/A1's control record.

T/A2: During the audit period, Respondent failed to maintain a control record for T/A2 which was used for handling the receipts and disbursements of trust funds (security deposits) in connection with Respondent's property management activity during the audit period.

(c) <u>Handling of Trust Funds/Separate Record for Each Beneficiary of</u> <u>Transaction (Code section 10145 and Regulations section 2831.1)</u>.

T/A1: Respondent failed to maintain separate records during the period from January 1, 2016 through August 31, 2017 for T/A1 which was used for handling the receipts and disbursements of trust funds in connection with Respondent's property management activity.

Respondent failed to maintain accurate and complete separate records for T/A1 during the period from September 1, 2017 through September 30, 2018. Some disbursements were made from T/A1 but were not recorded on the separate records of T/A1.

T/A2: During the audit period, Respondent failed to maintain separate records for T/A2 which was used for handling the receipts and disbursements of trust funds (security deposits) in connection with Respondent's property management activity during the audit period.

(d) <u>Trust Account Reconciliation (Code section 10145 and Regulations</u> section 2831.2). During the audit period, Respondent failed to maintain a monthly reconciliation comparing the balance of all separate beneficiary or transaction records (separate records) to the balance of the record for all trust funds received and disbursed (control record) for T/A1 and T/A2.

As of September 30, 2018, Respondent failed to reconcile the unidentified/unaccounted for funds held in T/A1 totaling \$8,001.78.

///

///

1///

(e) <u>Trust Account Designation and Trust Fund Handling (Code section</u> 10145 and Regulations section 2832).

T/A1: According to the bank signature maintained for T/A1, T/A1 was not established in the name of Respondent or his authorized fictitious name "Park Place Realty," as trustee. T/A1 was established in the name of "Nanette Hunt Fisher Daniel J Fisher DBA Fisher's Prk Place R.E./Rntl Trust."

<u>T/A2</u>: According to the bank signature card maintained for T/A2, T/A2 was not established in the name of Respondent or his authorized fictitious name "Park Place Realty," as trustee. T/A2 was established in the name of "Fisher Park Place Realty Client Trust Fund."

(f) Commingling / Mishandling of Trust Funds (Code section 10145 and Regulation section 2835(b)). As of September 30, 2018, Respondent kept a minimum of \$11,189.20 of his fees/commissions for over twenty-five (25) days in T/A1 after their deposit.

(g) <u>Unauthorized Disbursements / Conversion of Trust Funds/Mishandling</u> of Trust Funds (Code section 10145). As of September 30, 2018, there was, at a minimum, \$1,959.98 in unauthorized disbursements of trust funds from T/A1. The unauthorized disbursements caused a shortage in T/A1. For example:

<u>Date</u>	Amount	Check No.	Expense Type
12/4/2017	\$163.00	11778	Auto Club Membership
5/22/2018	\$457.72	11907	Payroll expense
8/1/2018	\$256.68	Debit	Vitamins for personal use
8/13/2018	\$96.00	Debit	Refund of rental application/credit report fee
8/28/2018	\$460.40	11980	Payroll expense
9/11/2018	\$526.18	1194	Payroll expense
Total	\$1,959.98		

ACCUSATION

	Ш
1	
2	sec
3	Co
4	exa
5	baı
6	T/2
7	sig
8	
9	fail
10	bro
11	
12	
13	the
14	the
15	
16	
17	
18	
19	Cor
20	has
21	Sec
22	sect
23	
24	

26

27

(h) Use of False or Fictitious Name (Code section 10159.5 and Regulation
section 2731). Respondent used the following unlicensed fictitious business names: (1) "United
Country Park Place Realty" appeared on property management agreements sampled for
examination.; (2) "Fisher's Prk Place R.E." appears on the bank signature card for T/A1 and the
bank statement for T/A1; (3) Fisher's Park Place Realty" appears on the bank statement of
Γ/A1 and the trust fund checks for T/A1; (4) "Fisher Park Place Realty" appeared on the bank
signature card for T/A2 and the bank statements of T/A2.

(i) Employment of Broker Associate (Code section 10161.8). Respondent ailed to timely notify the Department of the employment of Nanette Hunt Fisher, real estate broker ID 00941668, as a broker-associate starting January 1, 2018.

9.

Each of the foregoing violations in Paragraphs 8(a)-(i) above constitute cause for the suspension or revocation of the real estate license and/or license rights of Respondent under the provisions of Code sections 10176(e), 10176(i), 10177(d), 10177(g), and/or 10177(j).

COSTS

(AUDIT COSTS)

10.

Section 10148(b) of the Code, provides, in pertinent part, that the Real Estate Commissioner shall charge a real estate broker for the costs of any audit if the Commissioner has found in a final decision, following a disciplinary hearing, that the broker has violated Section 10145 of the Code or a regulation or rule of the Commissioner interpreting said Code section.

(INVESTIGATION AND ENFORCEMENT COSTS)

11.

Section 10106 of the Code, provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request

T	the administrative law judge to direct a licensee found to have committed a violation of this part
2	
3	
4	allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
5	disciplinary action against all the licenses and/or license rights of Respondent DANIEL JOEL
6	FISHER, doing business as Park Place Realty, under the Real Estate Law, for the costs of
7	investigation and enforcement as permitted by law, for the cost of the audit, and for such other
8	and further relief as may be proper under other applicable provisions of law.
9	
10	Dated at Los Angeles, California this 25th day of Albana, 2020.
11	
12	man 1
13	MANUA MARA
14	Maria Suarez Supervising Special Investigator
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	cc: DANIEL JOEL FISHER
25	Maria Suarez Sacto.
26	Audits – Zaky Wanis
@ / []	