

FILED

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DEPT. OF REAL ESTATE

By

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9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H-42015 LA
13 VACATION PALM SPRINGS REAL)
14 ESTATE INC., and BRENDAN) ACCUSATION
15 PATRICK LENIHAN, individually and)
16 as former designated officer of)
Inc.,)
Respondents.

17 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the
18 Department of Real Estate ("Department" or "DRE") of the State of California, for cause of
19 Accusation against VACATION PALM SPRINGS REAL ESTATE INC. ("VPSREI"), and
20 BRENDAN PATRICK LENIHAN ("LENIHAN") (collectively "Respondents"), alleges as
21 follows:

- 22 1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a
23 Supervising Special Investigator, makes this Accusation against Respondents.
24 2. All references to the "Code" are to the California Business and Professions Code
25 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

26 LICENSE HISTORY

- 27 3. Respondent VPSREI has been licensed by the Department as a real estate
28 corporation ("REC"), from on or about April 11, 2015 through the present, under VPSREI's

1 original License ID, 01460731. On or about February 3, 2021, VPSREI was issued a new REC
2 license ID, 01523013, which is scheduled to expire on February 2, 2025, unless renewed. Under
3 the old REC license ID, 01460731, VPSREI was licensed through LENIHAN's real estate broker
4 ("REB") license, ID 01912185, and LENIHAN was the designated officer ("D.O.") until on or
5 about October 19, 2020, when the officer license was canceled. Under the new REC license ID,
6 01523013, VPSREI has been licensed through the REB license of Joseph Edward Czapkowicz
7 ("Czapkowicz"), License ID 01380722, from February 3, 2021 through the present. According to
8 Department records to date, VPSREI employs no salespersons and no broker associates. VPSREI
9 has no branch offices. VPSREI currently maintains the fictitious business name "Vacation Palms
10 Springs by Vacasa," active as of February 3, 2021, under VPSREI's new REC license ID,
11 01523013. The following three (3) fictitious business names were previously active and licensed
12 to VPSREI under VPSREI's old REC license ID, 01460731:

- 13 a. "Greater Palm Springs Realty," active from January 21, 2005 to January 20,
14 2009;
- 15 b. "Palm Springs Realty," active from July 7, 2016 to October 18, 2020; and
- 16 c. "Vacation Palm Springs," active from January 11, 2016 to October 18,
17 2020.

18 4. Respondent LENIHAN has been licensed by the Department as a real estate broker,
19 from on or about February 23, 2016 through the present, with LENIHAN's license scheduled to
20 expire on February 22, 2024, unless renewed. According to Department records to date,
21 LENIHAN is currently the D.O. for Poolside Vacation Rentals Inc., REC License ID 02141963.
22 LENIHAN employs two salespersons under his individual REB license. LENIHAN has no branch
23 offices, but does have the fictitious business name "Palm Springs Real Estate" licensed with the
24 Department, active as of August 19, 2019.

25 **PRIOR DISCIPLINE: DRE CASE NO. H-41163 LA**

26 5. On or about March 20, 2019, in Case No. H-41163 LA, the Department filed a
27 Stipulation and Agreement for VPSREI and LENIHAN, with an effective date of April 8, 2019.
28 Under the Stipulation and Agreement, all licenses and licensing rights of VPSREI and LENIHAN

1 under the Real Estate Law were suspended for a period of 30 days from the effective date of the
2 decision provided, however, that 30 days of the suspension would be stayed for two years on
3 condition that, in part:

4 a. VPSREI and LENIHAN obey all laws, rules and regulations governing the
5 rights, duties and responsibilities of a real estate licensee in the State of California.

6 b. No further cause for disciplinary action against VPSREI's and LENIHAN's
7 real estate licenses occur within two years from the effective date of the Decision.

8 c. VPSREI and LENIHAN severally or jointly pay the sum of \$3,779.95 for
9 the Commissioner's reasonable cost of the investigation and enforcement that led to the
10 disciplinary action in Case No. H-41163 LA.

11 d. VPSREI and LENIHAN severally or jointly pay the sum of \$11,469.98 for
12 the Commissioner's cost of the audit that led to the disciplinary action in Case No.
13 H-41163 LA.

14 e. VPSREI pay the Commissioner's reasonable cost, not to exceed
15 \$14,337.47, for any subsequent audit to determine if VPSREI corrected the violations
16 identified in the Stipulation and Agreement.

17 f. LENIHAN successfully complete a continuing education course on trust
18 fund accounting and handling.

19 **BROKERAGE: VPSREI**

20 6. At all times mentioned, in Riverside County, California, VPSREI acted as a real
21 estate broker, conducting licensed activities within the meaning of Code sections 10131(b):
22 leasing or renting, offering to lease or rent, or collecting rents from real property for others. At all
23 times mentioned from July 1, 2019 to October 19, 2020, when the officer license was cancelled,
24 VPSREI was acting by and through LENIHAN as its D.O. pursuant to Code section 10159.2, and
25 LENIHAN was responsible for ensuring compliance with the Real Estate Law.

26 **AUDIT OF VPSREI: AUDIT NO. SD200019**

27 7. On April 30, 2021, the Department completed an audit examination of the books
28 and records of VPSREI real estate activities that require a corporate real estate broker license

1 under Code section 10131. The audit examination, SD200019, covered the time period July 1,
2 2019 to December 31, 2020 ("audit period") and was limited to VPSREI's property management
3 services for the long-term and short-term vacation rental properties.

4 8. The purpose of the audit examination was to perform a chargeable follow-up
5 examination to determine whether VPSREI and LENIHAN had complied with Code sections
6 10145, 10159.2, and 10177(h), and Regulations 2830, 2831, 2831.1, 2831.2, 2832, 2832.1, 2834,
7 2835(b), and 2725, as cited in the Accusation and in the Stipulation and Agreement in DRE Case
8 No. H-41163 LA, discussed above in Paragraph 5.

9 9. Based on discussions between the Department's auditor, VPSREI's current D.O.,
10 Czapkowicz, and VPSREI's Real Estate Compliance and Regulatory Counsel, Bryan Cossette
11 ("Cossette"), VPSREI's corporate structure as of December 31, 2020 was as follows:

<u>Name</u>	<u>Title</u>	<u>License Status</u>	<u>Shareholder %</u>
Bob Milne	CEO/President	Non-licensee	0%
Sam Peay	CFO/ Treasurer	Non-licensee	0%
Lisa Jurinka	Secretary	Non-licensee	0%
Joe Czapkowicz	Assistant Treasurer (Effective 2/03/2021)	REB ID No. 01380722	0%
W-AVRNA, LLC	None	Non-licensee	100%

18 10. According to Czapkowicz and Cossette, W-Acq. Vacation Rentals North America
19 LLC ("W-AVRNA, LLC") is the 100% shareholder of VPSREI.

20 11. According to Czapkowicz, during the audit period, VPSREI provided property
21 management services for long-term (more than thirty (30) days) and short-term (thirty (30) days or
22 less) vacation rental properties. The total properties managed during the audit period by VPSREI
23 for long-term and short-term vacation rental properties were approximately five hundred twenty-
24 one (521) properties for approximately five hundred twenty-five (525) owners. The total
25 properties managed by VPSREI for long-term and short-term vacation rental properties as of the
26 December 31, 2020 audit cut-off date were approximately three hundred thirty-nine (339)
27 properties for approximately three hundred forty (340) owners. VPSREI collected approximately
28 \$18.3 million in trust funds during the last twelve (12) months of the audit period (from January 1,

2020 to December 31, 2020) for the property management services for the long-term and short-term vacation rental properties.

12. According to Czapkowicz and records examined, during the audit period, VPSREI maintained one (1) bank account (TA1) for handling the receipts and disbursements of trust funds in connection with the with the property management services for the long-term and short-term vacation rental properties during the audit period. The information for TA1 is as follows:

Trust Account #1 ("TA1")

Bank:	Wells Fargo Bank
Account Name:	Vacation Palm Springs Real Estate Inc. Long Term Trust Account
Account #:	XXXXXXXXXX0733
Signatories:	Amanda Hoffman, (Office Manager; Non-licensee) LENIHAN (Former D.O.; REB License ID 01912185)
Signatures required:	One (1) signature
Purpose	TA1 is a multiple beneficiary account maintained for handling the receipts and disbursements of trust funds in connection with VPSREI's property management services for the long-term and the short-term vacation rental properties.

13. On October 19, 2020, the bank signature card for TA1 was updated to remove LENIHAN and Hoffman as signatories, and Czapkowicz was added as an authorized signatory effective October 19, 2020.

Audit Violations in Audit No. SD200019

14. The Complainant realleges and incorporates by reference all of the allegations contained in paragraphs 1 through 13 above, with the same force and effect as though fully set forth herein.

15. 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. SD200019 and the exhibits and work papers attached to the audit report:

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1 **Issue One (1). Code section 10145 and Regulations 2832.1: Trust Fund Handling for**
2 **Multiple Beneficiaries**

3 16. As of October 18, 2020, TA1 had a shortage of <\$254,633.67>, which was due to
4 negative property balances totaling <\$6,088.92>, credit card merchant/processing fees totaling
5 <\$794.67>, unauthorized disbursements/commingling of trust funds totaling <\$169,640.73>, IRS
6 tax lien/funds withheld by the IRS totaling <\$41,184.91>, and credit card payments withheld by
7 Wells Fargo Bank/Credit Card Company totaling <\$36,924.44>. In addition, there were
8 "unidentified/unaccounted for funds" held in TA1 totaling \$1,506.32 as of October 18, 2020.

9 17. VPSREI provided no evidence that the owners of the trust funds gave their written
10 consent to allow VPSREI to reduce the balance of the trust funds in TA1 to an amount less than
11 the aggregate trust fund liabilities of VPSREI to all owners of the funds.

12 18. On October 30, 2020, and November 4, 2020, VPSREI made two (2) deposits into
13 TA1 totaling \$255,411.37, from its general business account ending in 7452 ("GA1"), to cure the
14 total trust fund shortage.

15 19. VPSREI's failure to obtain the written consent of the owners of the trust funds to
16 reduce the balance of the funds in TA1 to an amount less than the aggregate trust fund liabilities
17 was in violation of Code section 10145 and Regulation 2832.1.

18 **Issue Three (3).^{1/} Code sections 10145 and 10176(e), and Regulation 2832: Unauthorized**
19 **Disbursements; Commingling; Trust Funds in General Business Account; Mishandling of**
20 **Trust Funds**

21 20. On June 24, 2020, VPSREI, without written authorization from the owners of the
22 trust funds, made an online transfer totaling \$169,640.73 in trust funds from TA1 to GA1, which
23 caused part of the total trust fund shortage in TA1 as of October 18, 2020. These trust funds were
24 also commingled with VPSREI's general funds as GA1 was used for VPSREI's general business
25 activities.

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27 ^{1/} Issue Two (2) was skipped intentionally. Complainant reserves the right to conduct further investigation and to
28 amend the accusation should further evidence be acquired in support of Issue Two, as well as potential causes of
accusation not alleged in this Accusation at the time of filing.

1 21. According to Czapkowicz and VPSREI's senior accountant Daniel Flores
2 ("Flores"), the online transfer of \$169,640.73 was made in error and these funds were deposited
3 back into TA1 on October 30, 2020.

4 22. VPSREI's acts and/or omissions in transferring \$169,640.73 in trust funds from
5 TA1 to GA1, without written authorization from the owners of these trust funds, were in violation
6 of Code sections 10145 and 10176(e), and Regulation 2832.

7 **Issue Four (4). Code section 10145 and Regulation 2831: Trust Fund Records to be**
8 **Maintained**

9 23. Based on records examined, VPSREI failed to maintain complete and accurate
10 records of all trust funds received and disbursed (control record) for TA1 in connection with
11 VPSREI's property management services for the vacation rental properties. Some receipts were
12 recorded on the control record of TA1 but were not deposited into TA1 as of October 18, 2020. In
13 addition, some disbursements were recorded on the control record of TA1 but were not disbursed
14 from TA1.

15 24. VPSREI's failure to maintain a complete and accurate control record of trust funds
16 for TA1 in connection property management services for the vacation rental properties was in
17 violation of Code section 10145 and Regulation 2831.

18 **Issue Five (5). Code section 10145 and Regulation 2831.1: Separate Record for Each**
19 **Beneficiary or Transaction**

20 25. The separate records maintained for TA1 were inaccurate and incomplete. Some
21 receipts were recorded on the separate records of TA1 but were not deposited into TA1 as of
22 October 18, 2020. In addition, some disbursements were recorded on the separate records of TA1
23 but were not disbursed from TA1.

24 26. VPSREI also failed to maintain a separate record for the "unidentified/unaccounted
25 for funds" held in TA1 totaling \$1,506.32 as of October 18, 2020.

26 27. VPSREI's failure to maintain accurate and complete separate records for TA1 in
27 connection with its property management services for the vacation rental properties was in
28 violation of Code section 10145 and Regulation 2831.1.

1 **Issue Six (6). Code section 10145 and Regulation 2831.2: Trust Account Reconciliation**

2 28. During the audit period, VPSREI failed to perform and maintain a monthly
3 reconciliation comparing the balance of all separate records to the balance of the control record of
4 all trust funds received and disbursed for TA1 in connection with its property management
5 services for the vacation rental properties.

6 29. VPSREI also failed to reconcile the "unidentified/unaccounted for funds" held in
7 TA1 totaling \$1,506.32 as of October 18, 2020.

8 30. VPSREI's failure to perform and maintain a monthly reconciliation comparing the
9 balance of all separate records to the balance of the control record of all trust funds received and
10 disbursed for TA1, and VPSREI's failure to reconcile the "unidentified/unaccounted for funds"
11 held in TA1 totaling \$1,506.32, in connection with its property management services for the
12 vacation rental properties was in violation of **Code section 10145 and Regulation 2831.2**.

13 **Issue Seven (7). Code section 10145 and Regulation 2832: Trust Fund Handling**

14 31. VPSREI collected trust funds and failed to place trust funds in TA1 within three (3)
15 business days of receipt. The Department's auditor provided the following examples:

16

Date Received	Date Deposited	Amount	Property	Guest Initials
10/01/2020	10/26/2020	\$1,229.98	78395 Singing Palms Dr.	S.K.
10/01/2020	10/26/2020	\$921.69	913 Arroyo Vista Dr.	A.K.
10/01/2020	10/26/2020	\$1,273.79	78795 Lowe Dr.	M.A.
10/01/2020	11/27/2020	\$300.47	46219 Cypress Est. Ct.	J.F.
10/01/2020	11/27/2020	\$302.17	241 Farrell Dr.	J.E.
10/01/2020	11/27/2020	\$278.93	2356 Linden Way #D	D.C.

21

22 32. VPSREI's failure to set place trust funds in TA1 within three (3) business days of
23 receipt was in violation of **Code section 10145 and Regulation 2832**.

24 **Issue Eight (8). Code sections 10145 and Regulation 2834: Trust Account Withdrawals**

25 33. According to VPSREI's Wells Fargo bank signature card dated September 4, 2018
26 for TA1, LENIHAN allowed Hoffman, VPSREI's Office Manager who was an unlicensed

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1 employee, to be a signer on TA1 without fidelity bond or insurance coverage at least during the
2 period from July 1, 2019 July 19, 2019.

3 34. VPSREI had insurance coverage during the period from July 20, 2019 to October
4 18, 2020 in the amount of \$15 million with a deductible in the amount of \$1 million. However,
5 VPSREI did not have evidence of financial responsibility sufficient to protect members of the
6 public against a loss subject to the deductible amount. VPSREI did not have separate bond or
7 insurance coverage adequate to cover the amount of the deductible and/or a cash deposit held in a
8 separate account, apart from other funds of the broker, the broker's employees, or the broker's
9 principals, in a bank or recognized depository in California adequate to cover the amount of the
10 fidelity bond deductible and held exclusively and solely for the purpose of paying the fidelity bond
11 deductible amount.

12 35. VPSREI's Wells Fargo bank signature card for TA1 was updated on October 19,
13 2020, to remove LENIHAN and Hoffman as signatories, and to add Czapkiewicz as an authorized
14 signatory effective October 19, 2020.

15 36. VPSREI's acts and/or omissions in authorizing an unlicensed individual, without
16 an adequate fidelity bond or insurance coverage, to make withdrawals and sign checks drawn from
17 TA1 during the audit period was in violation of **Code section 10145 and Regulation 2834.**

18 **Issue Nine (9). Code section 10159.2 and Regulation 2725: Responsibility of Corporate**
19 **Officer in Charge; Broker Supervision**

20 37. The Complainant realleges and incorporates by reference all of the allegations
21 contained in paragraphs 1 through 36 above, with the same force and effect as though fully set
22 forth herein.

23 38. Based on the audit findings in Issues 1 through 8 above, as alleged in paragraphs 16
24 through 36 above, as the broker and designated officer of VPSREI during the audit period, until on
25 or about October 19, 2020, LENIHAN did not exercise adequate supervision and control over
26 property management activity for the vacation rental properties, conducted on behalf of VPSREI
27 by its employees and licensees, to ensure compliance with the Real Estate Laws and Regulations.

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1 LENIHAN failed to establish policies, rules, procedures, and systems to review, oversee, inspect,
2 and manage transactions requiring a real estate license and the handling of trust funds.

3 39. LENIHAN's acts and/or omissions, as alleged above in paragraph 38 were in
4 violation of **Code section 10159.2 and Regulation 2725.**

5 **Issue Ten (10). Code section 10130 and Regulation 2740: License Required; Broker Officers**
6 **(No Designated Officer)**

7 40. VPSREI performed acts requiring a real estate license (property management
8 activity for vacation rental properties) without a Designated Officer from on or about October 19,
9 2020 to on or about December 31, 2020, the audit cut-off date, in violation of **Code section 10130**
10 **and Regulation 2740.**

11 **CAUSE OF ACCUSATION**

12 **AUDIT VIOLATIONS IN AUDIT NO. SD200019**

13 41. The Complainant realleges and incorporates by reference all of the allegations
14 contained in paragraphs 1 through 40 above, with the same force and effect as though fully set
15 forth herein.

16 42. VPSREI's and LENIHAN's acts and/or omissions as described above in
17 paragraphs 16 through 40 violated the Code and the Regulations as set forth below:

<u>Issue No.</u>	<u>Paragraphs</u>	<u>Violations</u>
1	16-19	Code section 10145; Regulation 2832.1
3	20-22	Code sections 10145 and 10176(e); Regulation 2832
4	23-24	Code section 10145; Regulations 2831
5	25-27	Code section 10145; Regulation 2831.1
6	28-30	Code section 10145; Regulation 2831.2
7	31-32	Code section 10145; Regulation 2832
8	33-36	Code section 10145; Regulation 2834
9	37-39	Code sections 10159.2; Regulation 2725
10	40	Code section 10130; Regulation 2740

26 43. The foregoing violations in Issues 1 through 8, and 10 constitute cause for the
27 suspension or revocation of VPSREI's real estate license and license rights under the provisions of
28 **Code sections 10176(e), and 10177(d) and/or 10177(g).**

1 44. The foregoing violations in Issue 9 constitute cause for the suspension or
2 revocation of LENIHAN's real estate license and license rights under the provisions of Code
3 sections 10177(h), and 10177(d) and/or 10177(g).

4 **INVESTIGATION AND ENFORCEMENT COSTS**

5 45. Code section 10106 provides that in any order issued in resolution of a disciplinary
6 proceeding before the Department of Real Estate, the Commissioner may request the
7 administrative law judge to direct a licensee found to have committed a violation of this part to
8 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9 **AUDIT COSTS**

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

14 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
15 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
16 against all the licenses and license rights of VACATION PALM SPRINGS REAL ESTATE INC.
17 and BRENDAN PATRICK LENIHAN under the Real Estate Law, for the costs of investigation
18 and enforcement, and audit as permitted by law, and for such other and further relief as may be
19 proper under other applicable provisions of law, and for costs of audit.

20
21 Dated at San Diego, California this 3 day of June , 2021.

22
23 *Veronica Kilpatrick*

24 _____
Veronica Kilpatrick
Supervising Special Investigator

25
26 cc: VACATION PALM SPRINGS REAL ESTATE INC.
27 BRENDAN PATRICK LENIHAN
28 Poolside Vacation Rentals Inc.
 Veronica Kilpatrick
 Sacto.