

**FILED**

**JUN 20 2023**

**DEPT. OF REAL ESTATE**

By: 

1 Julie L. To (SBN 219482)  
2 Department of Real Estate  
3 320 West 4th Street, Suite. 350  
4 Los Angeles, California 90013-1105  
5 (213) 576-6982 (office)  
6 (213) 576-6916 (direct)  
7 [julie.to@dre.ca.gov](mailto:julie.to@dre.ca.gov)  
8 *Counsel for Complainant*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation against	)	No. H-05751 SD
12 HKT CAL INC;	)	<b>ACCUSATION</b>
13 RICHARD PATTERSON WINKLER,	)	
14 as designated officer of HKT Cal Inc;	)	
15 and	)	
16 MARC ANTHONY PRESTERA,	)	
17 as former designated officer of HKT Cal Inc,	)	
18 Respondents.	)	

19 The Complainant, Veronica Kilpatrick, acting in her official capacity as a  
20 Supervising Special Investigator of the State of California, for cause of Accusation against  
21 HKT CAL INC (HCI), RICHARD PATTERSON WINKLER (WINKLER), and MARC  
22 ANTHONY PRESETERA (PRESTERA) (collectively, "Respondents"), is informed and  
23 alleges as follows:

24 1.

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

4 **DEPARTMENT OF REAL ESTATE LICENSE HISTORY**

5 **HKT CAL INC**

6 **(HCI)**

7 2.

8 According to Department of Real Estate ("DRE") records to date and publicly  
9 accessible online ([https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License\\_id=01524589](https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License_id=01524589))  
10 Respondent HCI is presently licensed and/or has license rights under the Real Estate Law (Part  
11 1 of Division 4 of the Code) as a restricted real estate broker (corporation) ("REC"), DRE  
12 license ID 01524589.

13 3.

14 According to DRE records to date and publicly accessible online: HCI was  
15 originally licensed by the DRE on or about June 16, 2006; its mailing and main address of  
16 record are the same: 12750 High Bluff Dr., Ste. 300, San Diego, CA 92130 (High Bluff  
17 address); and it currently has affiliated with its license thirty-one (31) licensed fictitious  
18 business names (FBN) and 282 real estate salespersons (RES).

19 4.

20 According to DRE records to date and publicly accessible online, real estate  
21 broker (REB) RICHARD PATTERSON WINKLER is HCI's current designated officer of  
22 record (D.O.) until his officer affiliation expires on April 2, 2024, and REB MARC  
23 ANTHONY PRESTERA was HCI's immediate past D.O. prior to WINKLER.

24 ///

25 ///

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

5.

According to DRE records to date and publicly accessible online, on April 3, 2020, in DRE Case No. H-05053 SD, pursuant to the Stipulation and Agreement filed on March 5, 2020 (Stipulation), HCI's REB (corporation) license was revoked with a right to a restricted license, subject to the terms and conditions of said Stipulation.

**RICHARD PATTERSON WINKLER**

**(WINKLER)**

6.

According to DRE records to date and publicly accessible online ([https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License\\_id=01264882](https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License_id=01264882)), Respondent WINKLER is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB, DRE license ID 01264882.

7.

According to DRE records to date and publicly accessible online: WINKLER was originally licensed by the DRE as a RES on or about August 21, 1999 and as a REB on or about December 23, 2002; his mailing address of record is 13151 Caminito Mendiola, San Diego, CA 92130; his main address of record is HCI's High Bluff address; and he currently has no current DBAs or RES affiliated with his license.

8.

According to DRE records to date and publicly accessible online, WINKLER is a broker associate for HCI.

9.

According to DRE records to date and publicly accessible online, WINKLER is the D.O. for HCI until his officer affiliation expires on April 2, 2024.

10.

1 According to DRE records to date and publicly accessible online, WINKLER's  
2 DRE license will expire on December 22, 2026.  
3

4 **MARC ANTHONY PRESTERA**

5 **(PRESTERA)**

6 11.

7 According to DRE records to date and publicly accessible online  
8 ([https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License\\_id=00862074](https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License_id=00862074)), Respondent  
9 PRESTERA is presently licensed and/or has license rights under the Real Estate Law (Part 1  
10 of Division 4 of the Code) as a REB, DRE license ID 00862074.  
11

12 12.

13 According to DRE records to date and publicly accessible online: PRESTERA  
14 was originally licensed by the DRE as a RES on or about March 16, 1984 and as a REB on or  
15 about October 6, 2008; his mailing and address of record is 3551 Buena Vista Dr.,  
16 Sacramento, CA 95864; and he currently has one (1) current DBA and no RES affiliated with  
17 his license.

18 13.

19 According to DRE records to date and publicly accessible online, PRESTERA  
20 is currently the D.O. for Prestera Real Estate, Inc. (until his officer affiliation expires on  
21 February 10, 2026) and AJD Cal, Inc. (until his officer affiliation expires on April 2, 2024).

22 14.

23 According to DRE records to date and publicly accessible online, PRESTERA  
24 was the D.O. for HCI until his officer affiliation was cancelled on April 9, 2021.

25 ///

26 ///

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

15.

According to DRE records to date and publicly accessible online,  
PRESTERA's DRE license will expire on October 5, 2024.

16.

HCI's REAL ESTATE ACTIVITIES

At all times mentioned, in the State of California, HCI conducted licensed activities within the meaning of Code Section 10131<sup>1</sup> and real estate sales activities, which require a real estate license, including, but not limited to activities performed by HCI's RES, employees and agents.

APPLICABLE SECTIONS OF THE REAL ESTATE LAW

Trust Fund Handling/When Broker Handles Escrow

(Code Section 10145 and Regulations: 2830; 2831; 2831.1; 2831.2; 2832.1; 2950; and 2951; and Financial Code Section 17006)

17.

Pursuant to Code Section 10145 *Handling of Trust Funds* (selected portions):

“(a)(1): A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not

---

<sup>1</sup> Pursuant to Code Section 10131 Broker Defined, “A real estate broker within this meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity. (b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities. (c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government. (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity. (e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.”

1 immediately placed into a neutral escrow depository or into the hands of the broker's principal,  
2 into a trust fund account maintained by the broker in a bank or recognized depository in this  
3 state. All funds deposited by the broker in a trust account shall be maintained there until  
4 disbursed by the broker in accordance with instructions from the person entitled to the funds.

5 (2) Withdrawals may be made from a trust fund account of an individual  
6 broker only upon the signature of that broker, or in the case of a corporate broker, only upon  
7 the signature of an officer through whom the corporation is licensed pursuant to Section 10158  
8 or 10211, or one, or more, of the following persons if specifically authorized in writing by the  
9 individual broker or officer:

10 (A) A real estate salesperson licensed to the broker.

11 (B) Another broker acting pursuant to a written agreement with the  
12 individual broker that conforms to the requirements of this part and any  
13 regulations promulgated pursuant to this part.

14 (C) An unlicensed employee of the individual broker, if the broker has  
15 fidelity bond coverage equal to at least the maximum amount of the  
16 trust funds to which the unlicensed employee has access at any time.  
17 For purposes of this section, bonds providing coverage may be written  
18 with a deductible of up to 5 percent of the coverage amount. For bonds  
19 with a deductible, the employing broker shall have evidence of financial  
20 responsibility that is sufficient to protect members of the public against  
21 a loss subject to the deductible amount.

22 Evidence of financial responsibility shall include one or more of the  
23 following:

24 (i) Separate fidelity bond coverage adequate to cover the amount  
25 of the fidelity bond deductible.

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

(ii) A cash deposit held in a separate account, apart from other funds of the broker, the broker’s employees, or the broker’s principals, in a bank or recognized depository in this state adequate to cover the amount of the fidelity bond deductible and held exclusively and solely for the purpose of paying the fidelity bond deductible amount.

(iii) Any other evidence of financial responsibility approved by the commissioner.

(3) An arrangement under which a person enumerated in subparagraph (A),(B), or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker’s custody.

...

(4)(b) A real estate broker acting as a principal pursuant to Section 10131.1<sup>2</sup> shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or notes is made simultaneously with the receipt of the purchase funds.

...

(4)(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds...”

---

<sup>2</sup>Code Section 10131.1 states, “(a) A real state broker within the meaning of this part is also a person who engages as a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property...”

1 18.

2 Pursuant to Regulation 2830 *Broker Placement of Trust Funds with Financial*

3 *Institutions:*

4 “The relationship between a real estate broker and a client for whom the broker  
5 holds funds in trust is an agency relationship. As an agent, the broker owes a fiduciary duty to  
6 the client regarding the handling of the trust. Any benefit received by the broker relating to the  
7 broker's handling of client funds in trust belongs to the client by law, and the broker must pass  
8 that benefit along to the client.

9 (a) Unless in possession of written permission from the client, it is unlawful for  
10 any real estate broker, including any corporate broker, to receive, directly or indirectly, any  
11 commission, compensation, or other consideration, whether personal or professional, from any  
12 person or institution other than the client as an inducement for the placement of a trust fund  
13 account in accordance with Section 10145 of the Business and Professions Code. Actual  
14 placement of a trust fund account is not a precondition to a violation of this section, whether  
15 the violation is or is not a per se violation pursuant to subsection (c), below.

16 (b) For purposes of this section, a “compensating balance” is a balance  
17 maintained in a checking account or other account in a bank or other recognized depository in  
18 the name of a real estate broker for the purpose of paying bank fees on a separate trust fund  
19 account.

20 (c) Unless in possession of written permission from the client as described in  
21 subsection (a), the following activities, whether performed directly or indirectly, are deemed  
22 per se receipt of inducements for the placement of trust account business by any person and are  
23 unlawful:

24 (1) Receiving or requesting payment for, accepting or requesting  
25 provision of, or accepting or requesting assistance with business



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

expenses, including, but not limited to, rent, employee salaries, furniture, copiers, facsimile machines, automobiles, telephone services or equipment, or computers.

(2) Receiving or requesting receipt of any form of consideration intended for the benefit of the broker, rather than the trust account itself, including cash, below market rate loans, automobile charges, or merchandise or merchandise credits.

(3) Receiving or requesting to receive on behalf of the broker or corporation, compensating balances or benefits in the pricing or fees for the maintenance of a compensating balance account.

(4) Receiving or requesting provision of all, or any part, of the time or productive effort of any employee of the bank or other recognized depository for any service unrelated to the trust account.

(5) Receiving or requesting expenditures for food, beverages, and entertainment.

(d) Receipt or request of receipt of the following are not deemed to be unlawful or in violation of this section:

(1) Promotional items with a permanently affixed company logo of the bank or other recognized depository with a value of not more than ten dollars (\$10) each. "Promotional item" does not include a gift certificate, gift card, or other item that has a specific monetary value on its face, or that may be exchanged for any other item having a specific monetary value.

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

(2) Receipt or requested receipt of education or educational materials exclusively related to the business of trust fund management if continuing education credits are not provided.

(e) The receipt or requested receipt of any form of consideration as an inducement for the placement of a trust account not specifically set forth in this section shall not be presumed lawful merely because it is not specifically prohibited.”

19.

Pursuant to Regulation 2831 *Trust Fund Records To Be Maintained:*

“(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

- (1) Date trust funds received.
- (2) From whom trust funds received.
- (3) Amount received.
- (4) With respect to funds deposited in an account, date of said deposit.
- (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
- (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
- (7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and

1 electronic storage and manipulation of information and documents, in accordance with  
2 generally accepted accounting principles, shall constitute compliance with subdivision (a)  
3 provided that such journals, records, or systems contain the elements required by subdivision  
4 (a) and that such elements are maintained in a format that will readily enable tracing and  
5 reconciliation in accordance with Section 2831.2.

6 (d) Nothing in this section shall be construed to permit a violation of Section  
7 10145 of the Code.

8 (e) A broker is not required to keep records pursuant to this section of checks  
9 which are written by a principal, given to the broker and made payable to third parties for the  
10 provision of services, including but not limited to escrow, credit and appraisal services, when  
11 the total amount of such checks for any transaction from that principal does not exceed \$1,000.  
12 Upon request of the Department or the maker of such checks, a broker shall account for the  
13 receipt and distribution of such checks. A broker shall retain for three years copies of receipts  
14 issued or obtained in connection with the receipt and distribution of such checks.”

15 20.

16 Pursuant to Regulation 2831.1 *Separate Record for Each Beneficiary or*  
17 *Transaction:*

18 “(a) A broker shall keep a separate record for each beneficiary or transaction,  
19 accounting for all funds which have been deposited to the broker’s trust bank account and  
20 interest, if any, earned on the funds on deposit. The record shall include information sufficient  
21 to identify the transaction and the parties to the transaction. Each record shall set forth in  
22 chronological sequence the following information in columnar form:

- 23 (1) Date of deposit.
- 24 (2) Amount of deposit.
- 25 (3) Date of each related disbursement.

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

(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.”

21.

Pursuant to Regulation 2831.2 *Trust Account Reconciliation*:

“The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.”

///  
///  
///

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

22.

Pursuant to Regulation 2832.1 *Trust Fund Handling for Multiple Beneficiaries:*

“The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.”

23.

Pursuant to Regulation 2832 *Trust Fund Handling:*

“(a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker’s salesperson.

(b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds.

(c) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if

(1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and

(2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.

1 (d) In these circumstances if the offeror's check was held by the broker in  
2 accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a  
3 neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror  
4 and offeree expressly so provide in writing, not later than three business days following  
5 acceptance of the offer unless the broker receives written authorization from the offerree to  
6 continue to hold the check.

7 (e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate  
8 broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial  
9 Code) when acting in the capacity of an escrow holder in a real estate purchase and sale,  
10 exchange or loan transaction in which the broker is performing acts for which a real estate  
11 license is required shall place all funds accepted on behalf of another into the hands of the  
12 owner of the funds, into a neutral escrow depository or into a trust fund account in the name of  
13 the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious  
14 name, as trustee at a bank or other financial institution not later than the next business day  
15 following receipt of the funds by the broker or by the broker's salesperson."

16 24.

17 Pursuant to Regulation 2950 *When Broker Handles Escrow*:

18 "The following acts in the handling of an escrow by a real estate broker  
19 exempted from the provisions of the Escrow Law (by Section 17006(a)(4) of the Financial  
20 Code) are prohibited and may be considered grounds for disciplinary action:

21 (a) Soliciting or accepting an escrow instruction (or amended or supplemental  
22 escrow instruction) containing any blank to be filled in after signing or initialing of such  
23 escrow instruction (or amended or supplemental escrow instruction).

24 (b) Permitting any person to make any addition to, deletion from, or alteration  
25 of an escrow instruction (or amended or supplemental escrow instruction) received by such  
26

1 licensee, unless such addition, deletion or alteration is signed or initialed by all persons who  
2 had signed or initialed such escrow instruction (or amended or supplemental escrow  
3 instruction) prior to such addition, deletion or alteration.

4 (c) Failing to deliver at the time of execution of any escrow instruction or  
5 amended or supplemental escrow instruction a copy thereof to all persons executing the same.

6 (d) Failing to maintain books, records and accounts in accordance with accepted  
7 principles of accounting and good business practice.

8 (e) Failing to maintain the office, place of books, records, accounts, safes, files,  
9 and papers relating to such escrows freely accessible and available for audit, inspection and  
10 examination by the commissioner.

11 (f) Failing to deposit all money received as an escrow agent and as part of an  
12 escrow transaction in a bank, trust account, or escrow account on or before the close of the  
13 next full working day after receipt thereof.

14 (g) Withdrawing or paying out any money deposited in such trustee account or  
15 escrow account without the written instruction of the party or parties paying the money into  
16 escrow.

17 (h) Failing to advise all parties in writing if he has knowledge that any licensee  
18 acting as such in the transaction has any interest as a stockholder, officer, partner or owner of  
19 the agency holding the escrow.

20 (i) Failing upon closing of an escrow transaction to render to each principal in  
21 the transaction a written statement of all receipts and disbursements together with the name of  
22 the person to whom any such disbursement is made.

23 (j) Delivering or recording any instrument which purportedly transfers a party's  
24 title or interest in or to real property without first obtaining the written consent of that party to  
25 the delivery or recording.”

1 25.

2 Pursuant to Regulation 2951 *Record Keeping and Funds Handling*:

3 “The provisions of Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2834 and 2835  
4 of these regulations shall apply to the handling of funds and the keeping of records by a real  
5 estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the  
6 Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and  
7 sale, exchange or loan transaction in which the broker is performing acts for which a real  
8 estate license is required.”

9 26.

10 Pursuant to California Financial Code Section 17006:

11 “(a) This division does not apply to:

12 (1) Any person doing business under any law of this state or the United  
13 States relating to banks, trust companies, building and loan or savings and loan  
14 associations, credit unions, or insurance companies.

15 (2) Any person licensed to practice law in California who has a bona  
16 fide client relationship with a principal in a real estate or personal property  
17 transaction and who is not actively engaged in the business of an escrow agent.

18 (3) Any person whose principal business is that of preparing abstracts or  
19 making searches of title that are used as a basis for the issuance of a policy of  
20 title insurance by a company doing business under any law of this state relating  
21 to insurance companies.

22 (4) Any broker licensed by the Real Estate Commissioner while  
23 performing acts in the course of or incidental to a real estate transaction in  
24 which the broker is an agent or a party to the transaction and in which the  
25 broker is performing an act for which a real estate license is required.



1 (b) The exemptions provided for in paragraphs (2) and (4) of subdivision (a) are  
2 personal to the persons listed, and those persons shall not delegate any duties other than duties  
3 performed under the direct supervision of those persons. Notwithstanding the provisions of  
4 this subdivision, the exemptions provided for in paragraphs (2) and (4) of subdivision (a) are  
5 not available for any arrangement entered into for the purpose of performing escrows for more  
6 than one business.”

7 **Broker Supervision**

8 **(Code Section 10159.2 and Regulation 2725)**

9 27.

10 Pursuant to Code Section 10159.2 *Responsibility of Corporate Officer in*  
11 *Charge:*

12 “(a) The officer designated by a corporate broker licensee pursuant to Section  
13 10211 shall be responsible for the supervision and control of the activities conducted on behalf  
14 of the corporation by its officers and employees as necessary to secure full compliance with  
15 the provisions of this division, including the supervision of salespersons licensed to the  
16 corporation in the performance of acts for which a real estate license is required.

17 (b) A corporate broker licensee that has procured additional licenses in  
18 accordance with Section 10158 through officers other than the officer designated pursuant to  
19 Section 10211 may, by appropriate resolution of its board of directors, assign supervisory  
20 responsibility over salespersons licensed to the corporation to its broker-officers.

21 (c) A certified copy of any resolution of the board of directors assigning  
22 supervisory responsibility over real estate salespersons licensed to the corporation shall be  
23 filed with the Real Estate Commissioner within five days after the adoption or modification  
24 thereof.”

25 ///

1 28.

2 Pursuant to Regulation 2725 *Broker Supervision*:

3 "A broker shall exercise reasonable supervision over the activities of his or her  
4 salespersons. Reasonable supervision includes, as appropriate, the establishment of policies,  
5 rules, procedures and systems to review, oversee, inspect and manage:

6 (a) Transactions requiring a real estate license.

7 (b) Documents which may have a material effect upon the rights or obligations  
8 of a party to the transaction.

9 (c) Filing, storage and maintenance of such documents.

10 (d) The handling of trust funds.

11 (e) Advertising of any service for which a license is required.

12 (f) Familiarizing salespersons with the requirements of federal and state laws  
13 relating to the prohibition of discrimination.

14 (g) Regular and consistent reports of licensed activities of salespersons.

15 The form and extent of such policies, rules, procedures and systems shall take into  
16 consideration the number of salespersons employed and the number and location of branch  
17 offices. A broker shall establish a system for monitoring compliance with such policies, rules,  
18 procedures and systems. A broker may use the services of brokers and salespersons to assist in  
19 administering the provisions of this section so long as the broker does not relinquish overall  
20 responsibility for supervision of the acts of salespersons licensed to the broker."

21 ///

22 ///

23 ///

24 ///

25 ///

26

27

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

29.

**False or Fictitious Business Name**

**(Code Section 10159.5 and Regulation 2731(a) in conjunction with Code Section 10130)**

Pursuant to Code Section 10159.5(a)(1) *Fictitious Name*:

“Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.”

30.

Pursuant to Regulation 2731(a) *Use of False or Fictitious Name*:

“A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious business name.”

**Further Grounds for Disciplinary Action**

**(Code Section 10177)**

31.

Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action*:

“The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation’s stock has done any of the following:

- (a) Procured, or attempted to procure, a real estate license or license renewal, for themselves or a salesperson, by fraud, misrepresentation, or

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

deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) (1) Entered a plea of guilty or no contest to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw that licensee’s plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(2) Notwithstanding paragraph (1), and with the recognition that sentencing may not occur for months or years following the entry of a guilty plea, the commissioner may suspend the license of a real estate licensee upon the entry by the licensee of a guilty plea to any of the crimes described in paragraph (1). If the guilty plea is withdrawn, the suspension shall be rescinded and the license reinstated to its status prior to the suspension. The department shall notify a person whose license is subject to suspension pursuant to this paragraph of that person’s right to have the issue of the suspension heard in accordance with Section 10100.

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning their designation or certification of special education, credential, trade organization membership, or

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

business, or concerning a business opportunity or a land or subdivision, as defined in Chapter 1 (commencing with Section 11000) of Part 2, offered for sale.

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term “realtor” or a trade name or insignia of membership in a real estate organization of which the licensee is not a member.

(f) Acted or conducted themselves in a manner that would have warranted the denial of their application for a real estate license, or either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked, surrendered, or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, surrender, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government

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

Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing an act for which the officer, director, or person is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of that licensee's salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Used their employment by a governmental agency in a capacity giving access to records, other than public records, in a manner that violates the confidential nature of the records.

(j) Engaged in any other conduct, whether of the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license.

(l) (1) Solicited or induced the sale, lease, or listing for sale or lease of residential property on the grounds, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons having a characteristic listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those characteristics are defined in Sections 12926 and 12926.1 of, subdivision (m) and paragraph (1) of

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

subdivision (p) of Section 12955 of, and Section 12955.2 of, the Government Code.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Business Oversight pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or the regulations of the Commissioner of Business Oversight pertaining thereto.

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Article 6 (commencing with Section 10237).

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

(q) Violated or failed to comply with Chapter 2 (commencing with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code, relating to mortgages.

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation’s stock, the commissioner may not deny the issuance or delay the renewal of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation. A decision by the commissioner to delay the renewal of a real estate license shall toll the expiration of that license until the results of any pending disciplinary actions against that licensee are final, or until the licensee voluntarily surrenders the licensee’s license, whichever is earlier.”

**CAUSE FOR DISCIPLINE**

**DRE FOLLOW-UP AUDIT SD210038: HCI**

**(Violations: Audit Examination Period from April 3, 2020 to June 30, 2022)**

32.

Included in the terms and conditions of the Stipulation in DRE Case No. H-05053 SD, as described above in Paragraph 5, is the requirement that HCI be subject to a subsequent audit by the DRE [at a cost pursuant to Code Section 10148 not to exceed \$25,844.50] for the purpose of determining whether the violations found in the Determination of Issues section of said Stipulation have been corrected.

///  
///  
///



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

33.

On February 28, 2023, pursuant to the Stipulation in DRE Case No. H-05053 SD, the DRE completed its subsequent audit examination of the books and records of Respondent HCI pertaining to its real sales and broker escrow activities (Audit SD210038), which require a real estate license. The subsequent audit examination covered a period of time beginning on April 3, 2020 and ending on June 30, 2022 (audit period), and the DRE examination was performed between July 25, 2022 and February 28, 2023 at the DRE's Los Angeles District Office (LADO) located at 320 @. 4<sup>th</sup> Street, Suite 350, Los Angeles, CA 90013-1105.

34.

The final audit report dated February 28, 2023 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report SD210038 (DRE Form RE 4511 (Rev. 7/14)).

35.

Background

At the time of Audit SD210038, according to DRE records as of February 23, 2023:

- A. WINKLER was HCI's D.O.;
- B. PRESTERA was HCI's immediate past D.O., from May 16, 2018 to April 8, 2021;
- C. HCI maintained thirty-one (31) licensed FBNS; and
- D. HCI had 286 RES and twenty-two broker associates under its license.

///  
///  
///

1 36.

2 Based on the DRE records as of February 2023, HCI maintained four (4)  
3 branch offices during the audit period, all of which ceased to exist by July 18, 2021.

4 37.

5 Corporate Structure

6 According to the DRE auditor's discussions with WINKLER and WINKLER's  
7 written statement dated January 19, 2023, the corporate structure of HCI as of January 19,  
8 2023 is as follows:

<u>Name</u>	<u>Corporate Title</u>	<u>License</u>	<u>Shareholder %</u>
WINKLER	D.O.	REB	0%
PRESTERA	Former D.O.	REB	0%
Joe Rothchild	CFO/Treasurer	(Non-licensee)	45%
Chad St. Jean	CEO	(Non-licensee)	45%
Lisa Becker	Ownership Shareholder	RES, DRE lic. 01781608	10%
			Total: 100%

16 38.

17 Business Activities

18 According to WINKLER and his written statement dated September 15, 2022,  
19 HCI engaged in real estate sales activity and represented both buyers and sellers. According to  
20 WINKLER and the records examined, HCI also provided escrow services to its own clients  
21 during the audit period. According to the DRE auditor's discussion with WINKLER and his  
22 written statement dated September 15, 2022, HCI did not perform any property management  
23 activities during the period from April 9, 2021 to September 15, 2022. According to  
24 WINKLER, HCI was not engaged in mortgage loan activity during the audit period.

25 ///

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

39.

According to the records examined, from April 8, 2020 to June 30, 2022, HCI serviced approximately 205 broker escrow transactions for its own clients totaling \$91,501,000.

40.

Audit SD210038 was limited to HCI's broker escrow activities. A Non-Compliance Summary (DRE Form RE4931 (Revised 7/18)) was sent to both WINKLER and PRESETERA at their respective email addresses, and WINKLER sent back a signed copy of said Summary on or about February 14, 2023.

41.

Bank Accounts

According to the books and records examined, HCI maintained two (2) bank accounts for multiple beneficiaries for its broker escrow activities:

- TA1
- \* Bank: Bank of the West BNP Paribas
- \* Bank Address: 4180 LA Jolla Drive, Suite 150, La Jolla, CA 92037
- \* Account Name: HKT Cal Inc Carmel Valley Coast Escrow, Escrow Trust Account, Attn Kay Kent
- \* Account No. #####2534

A bank reconciliation for TA1 was prepared as of June 30, 2022; the adjusted bank balance was \$0.00. (According to a written statement from Bank of the West BNP Paribas, TA1 was closed on January 25, 2022.)

- BA1
- \* Bank: City National Bank
- \* Bank Address: 937 Lomas Santa Fe Drive, Solana Beach, CA 92075
- \* Account Name: HKT Cal, Inc., DBA Carmel Valley Coast Escrow (Tr Account)
- \* Account No. #####4392

1 A bank reconciliation for BA1 was prepared as of June 30, 2022; the adjusted bank balance  
2 was \$1,924,108.60. A bank reconciliation for BA1 was prepared as of April 8, 2021 with  
3 respect to the duration of PRESTERA's designated officer affiliation of April 9, 2020 to April  
4 8, 2021; the adjusted bank balance was \$585,072.01.

5 ///  
6 ///  
7 ///  
8 ///  
9 ///  
10 ///  
11 ///  
12 ///  
13 ///  
14 ///  
15 ///  
16 ///  
17 ///  
18 ///  
19 ///  
20 ///  
21 ///  
22 ///  
23 ///  
24 ///  
25 ///

26  
27

1 **CAUSE FOR DISCIPLINE**

2 **AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW**

3 42.

4 In the course of the real estate activities (broker escrow activities) described in  
5 paragraphs 38 and 39 during the subject audit period described in paragraph 33, above, the  
6 DRE auditor made findings that HCI violated the Code and the Regulations, as described  
7 below, and more fully discussed in the DRE's Audit Report for Audit SD210038 (DRE Form  
8 RE 4511 (Rev. 7/14), dated February 28, 2023.

9 43.

10 **Audit SD210038**

11 **Trust Fund Records To Be Maintained / When Broker Handles Escrow**

12 **(Code Section 10145 and Regulations 2831, 2950((d) and 2951)**

13 A. WINKLER (D.O. effective 04/09/21): Based on the records provided for  
14 the audit examination HCI did not always maintain accurate records of trust funds received  
15 and disbursed (control records) for TA1 and BA1. In some instances, the date of deposit for  
16 trust funds deposited to TA1 and BA1 were not always recorded. Examples of such  
17 inconsistent recording of deposit dates are as follows:

18

<u>Date Received</u>	<u>Date Deposited</u>	<u>Date per Bank Statement</u>	<u>Escrow Number</u>	<u>From Whom Trust Funds Were Received</u>	<u>Amount Received (per Bank Statement)</u>
06/10/22	Not recorded	06/10/22 (BA1)	4039-AM	Tracy W.	\$ 67,500.0
06/07/22	Not recorded	06/07/22 (BA1)	3836	(Incoming Wire)	\$ 5,113.97
09/27/21	Not recorded	09/27/21 (TA1)	3962	Fidelity National Home	\$ 32.00

19

20

21

22

23

24

25

09/24/21	Not recorded	09/24/21 (TA1)	3965	First American Title	\$ 9.00
06/01/22	Not recorded	06/01/22 (BA1)	4028	Michael W.	\$ 2,000.00
06/22/22	Not recorded	06/22/22 (BA1)	4030	The Pierce Family Trust	\$ 760.00
12/01/21	Not recorded	12/01/22 (TA1)	3997	Lisa B. - Refund	\$ 495.00
	Total Not Recorded:				\$75,909.97

B. PRESTERA (Former D.O., 04/09/20 to 04/08/21): Based on the records provided for the audit examination HCI's records of trust funds received and disbursed (control records) for TA1 and BA1 were not always accurate and complete. In some instances, the date of deposit for trust funds deposited to TA1 were not always recorded. Examples of such inconsistent recording of deposit dates are as follows:

<u>Date Received</u>	<u>Date Deposited</u>	<u>Date per Bank Statement</u>	<u>Escrow Number</u>	<u>From Whom Trust Funds Were Received</u>	<u>Amount Received (per Bank Statement)</u>
04/01/21	Not recorded	04/01/21 (TA1)	3916	Jonathan B.	\$ 40,000.00
04/06/21	Not recorded	04/06/01 (TA1)	3919	Tessa W.	\$ 20,000.00
04/06/21	Not recorded	04/06/21 (TA1)	3919	Tessa W.	\$ 64,300.00
03/18/21	Not recorded	03/18/21 (TA1)	3901	Nayereh P.	\$ 12,000.00
03/18/21	Not recorded	03/18/21 (TA1)	3908	Ismael G.	\$ 10,000.00
03/25/21	Not recorded	03/25/21 (TA1)	3909	Cameron C.	\$ 39,750.00
02/18/21	Not recorded	02/18/21	3882	Urban Professional	\$290,000.00
	Total Not Recorded:				\$476,050.00

///

///

**Audit SD210038**

**Separate Records For Each Beneficiary or Transaction / When Broker Handles Escrow**

**(Code Section 10145 and Regulations 2831.1, 2950((d) and 2951)**

A. WINKLER (D.O. effective 04/09/21): During the audit period, in connection with the collection and disbursement of trust funds, HCI failed to maintain a separate record of the receipt and disposition of all trust funds deposited into TA1 and BA1, as required per Code Section 10145(g) and Regulation 2831.1. TA1 and BA1 contained unidentified/unaccounted for funds of at least \$16,711.40 as of June 30, 2022.

1. Based on the record titled "Three-Way Reconciliation for the Escrow trust Account Month Ending 6/30/2022," there was a bank transfer balance offset from TA1 into BA1 and "adjusted Checks" totaling \$39,386.15 Receipt #578 on 12/30/21. There was a total of nineteen (19) outstanding checks totaling \$15,756.45 issued from an unknown date for the earliest check until September 10, 2021. The remaining funds of \$23,629.70 were identified as Escrow number "Transfer LC." Said record posted \$7,166.39 to be disbursed to "State of CA, Unclaimed Pro" on June 15, 2022, while the details or breakdown of the remaining \$23,629.70 were not identified.

2. According to HCI's [non-licensee] escrow officer and examination of records, HCI transferred a total of \$12,517.69, associated with nine (9) escrow numbers, as part of the 12/30/21 transfer of \$39,386.15 in funds from TA1 to BA1. (Not all separate records related to HCI's broker escrow activity were provided for the audit examination. The auditor's request to HCI for a copy of separate records and checks issued was unsuccessful.).

///

///

///

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

3. The nine (9) escrow numbers associated with the 12/30/21 transfer are as follows:

<u>Escrow Number</u>	<u>Check Date</u>	<u>Check Number</u>	<u>Amount Recorded</u>
3516-RD	*	26905	\$ 1,019.05
2792-KK	*	26942	\$ 1,250.00
3189-KB	*	27019	\$ 1,879.40
3542-RD	*	27098	\$ 196.65
3585-RD	*	27755	\$ 5,313.00
3617-LC	*	27887	\$ 174.90
3270-KB	*	28326	\$ 412.64
3062-KB	*	29357	\$ 2,242.05
3189-KB	*	29361	\$ 30.00
	Total:		\$12,517.69

B. PRESTERA (Former D.O., 04/09/20 to 04/08/21): Based on the sample transactions, HCI did not always maintain an accurate separate record for each beneficiary or transactions of all trust funds received and disbursed for TA1. During the audit period, in connection with the collection and disbursement of trust funds, HCI failed to maintain a separate record of the receipt and disposition of all trust funds deposited into TA1, as required per Code Section 10145(g) and Regulation 2831.1. TA1 contained unidentified/unaccounted for funds of at least \$84,179.08 as of April 8, 2021.

C. During the audit exit conference held on February 14, 2023, the requirements of Code Section 10148 (Retention of Records) were discussed with HCI's D.O. WINKLER and its former D.O. PRESTERA.

///  
///



1 45.

2 **Audit SD210038**

3 **Trust Account Reconciliation / When Broker Handles Escrow**

4 (Code Section 10145 and Regulations 2831.2 and 2951)

5 A. WINKLER (D.O. effective 04/09/21): During the audit period, HCI failed to  
6 maintain an accurate monthly reconciliation comparing the balance of all separate beneficiary  
7 or transaction records (separate records) to the balance of the record of all trust funds received  
8 and disbursed (control record) for TA1 and BA1.

9 B. PRESTERA (Former D.O., 04/09/20 to 04/08/21): During the audit period,  
10 HCI failed to maintain an accurate monthly reconciliation comparing the balance of all  
11 separate beneficiary or transaction records (separate records) to the balance of the record of all  
12 trust funds received and disbursed (control record) for TA1.

13 46.

14 **Audit SD210038**

15 **Handling of Trust Funds / When Broker Handles Escrow**

16 (Code Section 10145 and Regulations 2832 and 2951)

17 [WINKLER (D.O. effective 04/09/21)] Based on an examination of the August  
18 23, 2021 signature card for BA1, which was used for trust funds received and disbursed, BA1  
19 was not designated as a trust account in the name of HCI or its FBN as a trustee. According to  
20 a copy of the August 8, 2022 BA1 signature card that was provided for the audit examination  
21 (the date of which was outside of the audit period), the account was in the name "HKT Cal,  
22 Inc. DBA Carmel Valley Coast Escrow, a CA Corporation (TR Account)."

23 ///

24 ///

25 ///

**Audit SD210038**

**Fictitious Business Name/use of False or Fictitious Name**

**(Code Section 10159.5 and Regulations 2731)**

A. WINKLER (D.O. effective 04/09/21) and PRESTERA (Former D.O., 04/09/20 to 04/08/21): During the audit period, HCI used the unlicensed FBN “Carmel Valley Coast Escrow” in Addendum to Joint Escrow Instructions and Trust Accounting Receipt to conduct broker escrow activities.

B. The unlicensed FBN “Carmel Valley Coast Escrow” was used on the following documents:

1. [WINKLER, effective 04/09/21 and PRESTERA, 04/09/20 to 04/08/21]:

<u>Escrow Number</u>	<u>Buyer/Borrower</u>	<u>Title of Documents</u>	<u>Amount</u>
3947	Randy and Patricia N.	Trust Accounting Receipt Nos. 387, 415, 417	\$ 50,000.00 \$872,605.59 \$579,729.10
		Addendum to Joint Escrow Instructions dated 06/09/21	

2. [PRESTERA, 04/09/20 to 04/08/21]:

<u>Escrow Number</u>	<u>Buyer/Borrower</u>	<u>Title of Documents</u>	<u>Amount</u>
3872	Rodrigo and Katrina M.	Trust Accounting Receipt Nos. 178, 216, 224, 227 (Escrow closed 02/04/21)	\$ 5,000.00 \$ 402.56 \$ 600.00 \$410,883.09
3836-LC	Michael and Stephanie G.	Trust Accounting Receipt Nos. 83, 103, 104 (Escrow closed 10/15/20)	\$ 8,000.00 \$ 64,760.19 \$158,119.72

1			
2	3739-LC	The Tso Family Trust dated June 6, 2003	Trust Accounting Receipt Nos. 5460, 5487, 5488
3			\$ 30,000.00 \$400,000.00 \$372,144.33
4			Residential Purchase Agreement dated 06/22/20, page 10 (Escrow closed 08/05/20(
5			
6			
7	3727-LC	John K. Bishop	Trust Accounting Receipt Nos. 5435, 5446 (Escrow closed 06/19/20)
8			\$ 15,000.00 \$678,276.05 \$372,144.33
9			
10	3726-LC	Joel and Ruth F.	Trust Accounting Receipt Nos. 5434, 5442, 5 (Escrow closed 06/11/20)
11			\$ 7,000.00 \$135,345.77 \$ 25,392.25
12			
13	3812-LC	Reid H. and Alexandra K.	Trust Accounting Receipt Nos. 16, 52 (Escrow closed 08/28/20)
14			\$ 9,000.0 \$372,479.74
15			

48.

**Audit SD210038**

**Responsibility of Corporate Officer in Charge / Broker Supervision**

**(Code Section 10159.2 and Regulation 2725)**

A. WINKLER (D.O. effective 04/09/21): Based on the above findings, D.O.

WINKLER failed to adequately supervise and control the real estate activities conducted under HCI by its employees and RES. WINKLER failed to establish policies, rules, procedures, and systems to review, oversee, inspect, and manage transactions requiring a real estate license and the handling of trust funds.

1 B. PRESTERA (Former D.O., 04/09/20 to 04/08/21): Based on the above  
2 findings, former D.O. PRESTERA failed to adequately supervise and control the real estate  
3 activities conducted under HCI by its employees and RES. PRESTERA failed to establish  
4 policies, rules, procedures, and systems to review, oversee, inspect, and manage transactions  
5 requiring a real estate license and the handling of trust funds.

6 49.

7 **Additional Violations of the Real Estate Law**

8 (Code Sections 10177(d) and (h))

9 The overall conduct of Respondents is in violation of the Real Estate Law and  
10 constitutes cause for the suspension or revocation of the real estate licenses and license rights  
11 of HCI, WINKLER and PRESTERA under the provisions of **Code Section 10177(d)** (for  
12 willful disregard of the Real Estate Law) and [as to WINKLER and PRESTERA] **Code**  
13 **Section 10177(h)** (failure to exercise reasonable supervision).

14 **COSTS**

15 50.

16 **Investigation & Enforcement Costs**

17 (Code Section 10106)

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

23 ///

24 ///

25 ///

1 51.

2 **Audit Costs**

3 **(Code Section 10148)**

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

8 WHEREFORE, Complainant prays that a hearing be conducted on the  
9 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing  
10 disciplinary action against the license and license rights of Respondents **HKT CAL INC,**  
11 **RICHARD PATTERSON WINKLER,** and **MARC ANTHONY PRESTERA** under the  
12 Real Estate Law (Part 1 of vision 4 of the Business and Professions Code), for the cost of  
13 investigation and enforcement as permitted by law, and for such other and further relief as may  
14 be proper under other provisions of law, and for costs of audit.

15 Dated at San Diego, California

16 this 15 day of June, 2023.

17  
18   
19 \_\_\_\_\_  
20 Veronica Kilpatrick  
21 Supervising Special Investigator

22 cc: HKT Cal Inc.  
23 Richard Patterson Winkler  
24 Marc Anthony Prestera  
25 Enforcement – V. Kilpatrick, S. Knapton  
26 Audits – C. Soriano, K. Baron  
27 Sacto.