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**FILED**

FEB 11 2015

BUREAU OF REAL ESTATE

By S. Black

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8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of	)	NO. H-11798 SF
	)	
12 REMAX PROPERTIES WEST, INC. and	)	<u>FIRST AMENDED</u>
13 MIKE MASOUMI,	)	<u>ACCUSATION</u>
	)	
14 Respondents.	)	
	)	

16 The Complainant, ROBIN S. TANNER, acting in her official capacity as a  
17 Deputy Real Estate Commissioner of the State of California, for cause of Accusation against  
18 Respondents REMAX PROPERTIES WEST, INC. ("RPWI") and MIKE MASOUMI  
19 ("MASOUMI") are informed and allege as follows:

20 PRELIMINARY ALLEGATIONS

21 1.

22 RPWI is presently licensed by the Bureau of Real Estate ("the Bureau") and/or  
23 has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and  
24 Professions Code ("the Code") as a corporate real estate broker, and at all times relevant herein  
25 was acting by and through MASOUMI as its designated broker officer.

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2.

At all times herein mentioned, MASOUMI was licensed and/or had license rights under the Real Estate Law, Part 1 of Division 4 of the Code (“the Real Estate Law”) as an individual real estate broker and as the designated broker officer of RPWI.

3.

At all times relevant herein, MASOUMI, acting in the capacity as the designated broker officer of RPWI, was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of RPWI for which a real estate license is required.

4.

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

5.

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California on behalf of others, for compensation or in expectation of compensation within the meaning of:

- (a) Section 10131(a) of the Code, including the operation and conduct of a real estate brokerage that included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or exchange of real property or a business opportunity; and
- (b) Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for

1 compensation, leased or rented or offered to lease or rent, or placed for rent, or  
2 solicited listings of places for rent, or solicited for prospective tenants, or  
3 negotiated for sale, purchase or exchange of leases on real property, or on a  
4 business opportunity, or collected rent from real property, or improvements  
5 thereon, or from business opportunities.

6 FIRST CAUSE OF ACTION  
7 Audit Violations  
8 (As to Respondent RPWI)

9 6.

10 Each and every allegation contained above in Paragraphs 1 through 5, inclusive,  
11 is incorporated by this reference as if fully set forth herein.

12 7.

13 Beginning on November 15, 2013 and continuing through December 6, 2013, the  
14 Bureau conducted an audit at RPWI's main office located at 3395 South Bascom Avenue,  
15 Campbell, CA 95008, where the auditor examined records for the period of October 1, 2012 to  
16 September 30, 2013 ("the audit period").

17 8.

18 While doing business within the audit period, RPWI accepted or received funds  
19 in trust ("trust funds") from or on behalf of owners and tenants in connection with leasing,  
20 renting and collection of rents on real property or improvements thereon and deposited or  
21 caused to be deposited those funds into bank accounts maintained by RPWI, including:

<b>BANK ACCOUNT # 1</b>	
Bank Name and Location:	Chase P.O. Box 659754 San Antonio TX 78265-9754
Account No.:	XXXXXX475
Entitled:	Gaini Investment Group Inc. dba Gaini Property Management
Signatories:	Omid Gaini, RES
No. of Signatures Required:	One

22 From time to time, RPWI made collections to and disbursement from said accounts.

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9.

In the course of the activities described above in Paragraph 5, in connection with the collection and disbursement of trust funds, RPWI:

- (a) failed to maintain separate records for each beneficiary or property of trust funds accepted or received for Bank Account #1, in violation of Section 10145(g) of the Code and Title 10, Section 2831.1 of the California Code of Regulations (“the Regulations”);
- (b) failed to reconcile at least once a month, the balance of all separate beneficiary or transaction records with the record of all trust funds received and disbursed for Bank Account #1 in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;
- (c) failed to designate Bank Account #1 as a trust account in violation of Section 10145 of the Code and Section 2832 of the Regulations; and
- (d) conducted property management activities under the name “Gaini Property Management” which was not a licensed dba, in violation of Section 10145 of the Code and Section 2731 of the Regulations.

10.

The acts and/or omissions of RPWI as alleged above in Paragraph 9 are grounds for discipline under Sections 10177(d) and 10177(g) of the Code.

11.

The acts and/or omissions of RPWI as alleged above in Paragraph 9 entitle the Bureau to reimbursement of the costs of its audit pursuant to section 10148 of the Code.

SECOND CAUSE OF ACTION  
 Failure to Supervise  
 (As Against MASOUMI)

12.

Each and every allegation in Paragraphs 1 through 11, inclusive, above, is incorporated by this reference as if fully set forth herein.

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13.

MASOUMI, as the designated officer broker of RPWI, was required to exercise reasonable supervision and control over the activities of RPWI. MASOUMI failed to exercise reasonable supervision over the acts and/or omissions of RPWI in such a manner as to allow the acts and/or omissions as described in Paragraphs 1 through 9, above, to occur, in violation of Section 10159.2 of the Code and Section 2725 of the Regulations.

14.

The facts described above as to the Second Cause of Action are grounds for the discipline of all licenses and license rights of MASOUMI under Section 10177(g) of the Code and/or Section 10177(h) of the Code in conjunction with Section 10177(d) of the Code.

COST RECOVERY

15.

The Bureau will seek to recover cost of this suit pursuant to Section 10106 of the Code which provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and license rights of Respondent under the Real Estate Law, for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law.

  
ROBIN S. TANNER  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 5<sup>th</sup> day of February, 2015.

DISCOVERY DEMAND

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

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6 **FIRST CAUSE OF ACTION**

7 Audit Violations  
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9 beneficiary or transaction records with the record of all trust funds received  
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11 and Section 2831.2 of the Regulations;
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13 10145 of the Code and Section 2832 of the Regulations; and
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23 SECOND CAUSE OF ACTION

24 Failure to Supervise  
(As Against MASOUMI)

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ROBIN S. TANNER  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 23<sup>rd</sup> day of January, 2015.

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