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FILED

FEB 11 2019

DEPT. OF REAL ESTATE

By *John C. Gire*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation against

11 GIRE, INC. and JASON GREGORY GIRE, individually
12 and as designated officer for Gire, Inc.,

13 Respondents.
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) DRE No. H-05048 SD

) ACCUSATION
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16 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the
17 Department of Real Estate¹ ("Department") of the State of California, makes this Accusation in
18 her official capacity for cause of Accusation against GIRE, INC. and JASON GREGORY GIRE,
19 individually and as designated officer for Gire, Inc. (collectively "Respondents"), is informed
20 and alleges as follows:

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24 ¹ Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

1.

All references to the "Code" are to the California Business and Professions Code, all references to the "Real Estate Law" are to Part 1 of Division 4 of the Code, and all references to "Regulations" are to Regulations of the Real Estate Commissioner, Title 10, Chapter 6, California Code of Regulations.

2.

Respondents are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Code).

3.

On May 18, 2011, GIRE, INC. ("GI") was issued a corporate real estate broker license, License ID 1899279. Unless renewed, GI's license expires on May 17, 2019. Respondent GI has renewal rights pursuant to Code section 10201. The Department retains jurisdiction pursuant to Code section 10103.

4.

GI is licensed to do business as Noble Real Estate Services.

5.

On January 5, 2007, JASON GREGORY GIRE ("GIRE") was issued a real estate broker license, License ID 01237921. GIRE was licensed as a real estate salesperson from April 25, 1998 through January 4, 2007.

6.

Olimpia Gire was issued a real estate salesperson on November 8, 1985, License ID 00901986. According to Respondents, GIRE is the President and a director of GI and Olimpia Gire is the CFO and a director of GI.

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1 7.

2 At all times relevant herein, GI has acted as a corporate real estate broker by and through
3 GIRE as the designated officer and broker responsible, pursuant to Code section 10159.2, for
4 supervising the activities requiring a real estate license conducted on behalf of GI by GI's
5 officers, agents and employees.

6 8.

7 At all times relevant herein, in the State of California, GI acted as a corporate real estate
8 broker and conducted licensed activities within the meaning of the following Code sections:

9 (A) 10131(a), including the solicitation for listings of and the negotiation of the purchase
10 and sale of real property as the agent of others for or in expectation of compensation; and

11 (B) 10131(b), including soliciting or offering to negotiate the sale, purchase, or exchange
12 of leases on real property or on a business opportunity or collecting rents from real property or
13 improvements thereon, or from business opportunities.

14 FIRST CAUSE OF ACCUSATION

15 Audit SD170023

16 9.

17 On or about May 30, 2018, the Department completed an audit examination of the books
18 and records of Respondent GI's property management activities, which require a real estate
19 license pursuant to Code section 10131(b). The audit examination covered a period of time from
20 June 1, 2016 through December 31, 2017 ("audit period"). The audit examination revealed
21 violations of the Code and the Regulations as set forth in the following paragraphs, and more
22 fully discussed in Audit Report SD170023 and the exhibits and work papers attached to said
23 audit report.

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10.

An entrance conference was held on January 31, 2018, with Respondent GIRE and Olimpia Gire (collectively "the Gires"). Based on the information provided to the Department's auditor and the audit work papers examined, Respondent GI conducted property management and residential resale activities during the audit period. As of January 31, 2018, Respondent GI managed approximately 373 one-to-four family residences with 418 units for 354 property owners. The audit examination was limited to GI's property management activities.

11.

According to the Gires, they owned one property with four (4) units which was managed through a separate account. GI had seven (7) property managers who each oversaw a group of rental properties/accounts.

Bank Accounts

12.

According to the Gires, GI maintained one (1) trust account in connection with its property management activities. During the audit period, GI collected trust funds totaling approximately \$17.65 million.

TA #1

Bank: Silvergate Bank

Account: Gire Inc. DBA Noble Real Estate Services Broker Trust Account

Account No. XXXXXXXX131

Signatories: GIRE and Olimpia Gire

Signatures required: One (1)

Description: TA1 was used as a depository of trust funds for multiple beneficiaries, primarily rents and security deposits collected from tenants. Disbursements from TA1 included payments for property-related expenses, owner remittances, and management fees to GI.

On or about June 8, 2016, GI closed a second trust account, TA2 (Account #778) and transferred the remaining balance from TA2 to TA1.

GI maintained a general business account #XXXXXXX781 ("GA").

Violations

13.

In the course of the property management activities described in Paragraph 10, above, and during the audit period described in Paragraph 9, Respondent GI acted in violation of the Code and the Regulations in that:

13(A) Code section 10145(a) and Regulation 2832.1. Trust fund handling for multiple beneficiaries.

As of December 31, 2017, TA1 had a shortage in the amount of approximately (\$95,903.48). Respondent GI caused, permitted and/or allowed, the withdrawal or disbursement of trust funds from this account, without the prior written consent of every principal who then was an owner of funds in the account, thereby reducing the balance of funds in the said account to an amount less than the existing aggregate trust fund liability of the broker to all owners of said trust funds, in violation of Section 10145 of the Code and Regulation 2832.1;

(i) A bank reconciliation was prepared for TA1 as of December 31, 2017. The adjusted bank balance was compared to the total balance of separate records beneficiary/property records. The <\$95,903.48> shortage was caused by the following:

- Minimum Unauthorized Disbursements (Conversion) <\$41,955.03>
- Minimum credit card fees <\$ 2,492.63>
- Unidentified Shortage <\$24,745.89>
- Negative Property Balances <\$26,709.93>

Includes, without limitation, the following sample properties:

- 2619/2621/2623 J St. <\$4,107.00>
- 6765 Alvarado Rd. #1 <\$3,555.66>
- 827 S. Anza St. <\$4,810.00>

1 13(B). Code sections 10145, 10176(e), 10176(i), 10177(j) and Regulation 2832. Trust
2 fund handling / Commingling / Unauthorized Disbursements / Conversion of Trust Funds.

3 During the audit period, GI commingled and converted trust funds and made
4 unauthorized disbursements to GI's general account, GA. At least \$41,995.03 of trust funds
5 were transferred from TA1 to GA for GI's or the Gires' personal expenses/benefit. Multiple bill
6 payments for GI's personal benefit were made from GI's general account. GI disbursed,
7 transferred, and converted trust funds from TA1 for its own benefit without authorization from
8 all owners of trust funds in TA1, in violation of Code sections 10145, 10176(e), 10176(i) or
9 10177(j) and Regulation 2832.

10 (i) At least two unauthorized transfers of trust funds were made from
11 TA1 to GA. One transfer was done on May 17, 2017 for \$20,000.00 and another on December
12 21, 2017 for \$10,000.00.

13 (ii) As of December 31, 2017, the balance in GA was reduced to an
14 amount that was less than the amount of the trust funds deposited into GA.

15 (iii) At least \$6,640.70 in payments were made from TA1 for the Gires'
16 personal San Diego Gas & Electric bills, which were not related to properties managed by GI.

17 The payments include the following, without limitation:

- 18 • \$762.88 Paid on 5/30/2017
- 19 • \$881.89 Paid on 7/17/2017
- 20 • \$1,211.95 Paid on 10/10/2017

21 (iv) At least \$5,224.33 from TA1 was used to cover the Gires' own
22 rental property expenses.

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13(C). Code section 10145 and Regulation 2831. Trust fund records to be maintained.

GI failed to maintain accurate records of trust funds received and disbursed (control records) for TA1, in violation of Code section 10145 and Regulation 2831.

(i) Some rent payments received online did not match the transactions on the control record or GI's Deposit Detail Listing. Examples of the inaccurate entries include, without limitation, the following:

<u>Property</u>	<u>Date of Deposit</u>	<u>Amount Per Bank</u>	<u>Amount Per Books</u>
2164-A Iris Ave.	12/6/2017	\$937.06	\$914.68
1967 Clearbrook	12/4/2017	\$2,197.50	\$2,195.00

(ii) In addition, there were checks payable to Noble Real Estate Services ("NRES") which were incorrectly posted in the records. Examples of the checks include, without limitation, the following:

<u>Check No.</u>	<u>Date on check</u>	<u>Date Paid/Cleared Account</u>	<u>Date Per Books</u>
28394	12/22/17	12/26/17	1/1/18
27810	11/20/17	11/20/17	12/1/17
27528	10/21/17	10/23/17	11/1/17
27168	9/23/17	9/25/17	10/1/17

13(D). Code section 10145 and Regulation 2831.1. Separate records for each beneficiary or transaction.

GI failed to maintain accurate separate records for TA1, in violation of Code section 10145 and Regulation 2831.1. As noted above in Paragraph 13(C), GI had inaccurate entries for online rent receipts. In addition, at least one deposit (#10631) was not properly posted. Moreover, there were checks payable to NRES which were incorrectly posted in GI's records. Examples of the check entries include the following:

1	<u>Property</u>	<u>Check No.</u>
2	1780 Saltaire #12	28394
3	1967 Clearbrook	28394
4	6765 Alvarado #1	28394
5	6765 Alvarado #1	27810
6	6765 Alvarado #1	27528
7	6765 Alvarado #1	27168
8	13(E). <u>Code section 10145 and Regulation 2831.2. Bank account reconciliation.</u>	
9	During the audit period, GI failed to maintain a monthly and timely reconciliation	
10	comparing the balance of all separate beneficiary or transaction records (separate records) to the	
11	balance of all trust funds received and disbursed (control record) for TA1, in violation of Code	
12	section 10145 and Regulation 2831.2.	
13	13(F). <u>Code sections 10159.2, 10177(h) and Regulation 2725. Broker supervision</u>	
14	Respondent GIRE failed to adequately supervise the activities of GI's property managers,	
15	salespersons, employees, or agents and failed to establish policies, rules, procedures, and systems	
16	to review, oversee, inspect, and manage transactions requiring a real estate license and the	
17	handling of trust funds to ensure compliance with the Real Estate Law and Regulations, in	
18	violation of Code sections 10159.2, 10177(h) and Regulation 2725.	
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14.

The conduct of Respondent GI as described above in Paragraphs 13(A) through 13(F), violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
13(A)	Code section 10145 and Regulations 2832.1
13(B)	Code sections 10145, 10176(e), 10176(i) or 10177(j), and Regulation 2832
13(C)	Code section 10145 and Regulation 2831
13(D)	Code section 10145 and Regulation 2831.1
13(E)	Code section 10145 and Regulation 2831.2
13(F)	Code sections 10159.2, 10177(h) and Regulation 2725

15.

The conduct, acts, omissions, and violations described in Paragraphs 13(A), 13(C), 13(D), and 13(E) constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent GI under the provisions of Code sections 10177(d) and/or 10177(g).

16.

The conduct, acts, omissions, and violations described in Paragraph 13(B) constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent GI under the provisions of Code sections 10177(d), 10176(e), 10176(i) or 10177(j), and/or 10177(g).

Respondent GIRE- Broker Supervision

17.

The conduct, acts and/or omissions of Respondent GIRE as set forth above in Paragraph 13(F), constitutes a failure to exercise the supervision and control over the activities of GI to

1 ensure compliance with the Real Estate Law and Regulations, as is required by Code section
2 10159.2 and Regulation 2725. Said conduct, acts, or omissions constitute cause to suspend or
3 revoke the real estate licenses and license rights of Respondent GIRE pursuant to Code sections
4 10177(h), 10177(d) and/or 10177(g).

5 Audit Costs

6 18.

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

11 Investigation/Enforcement Costs

12 19.

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

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
2 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
3 against all licenses and/or license rights of Respondents under the Real Estate Law (Part 1 of
4 Division 4 of the Business and Professions Code), for the costs of the audit, investigation, and
5 enforcement as permitted by law, and for such other and further relief as may be proper under
6 other provisions of law.

7 Dated at San Diego, California this 28 day of January, 2019.

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9 
10 VERONICA KILPATRICK
11 Supervising Special Investigator
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19 cc: GIRE, INC.
20 Jason Gregory Gire
21 Veronica Kilpatrick
22 Sacto
23 Audits/Jennifer Borromeo
24