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DEPARTMENT OF REAL ESTATE

By By dew

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of )

GARY YING WU SHING, )

Respondent. )

No. H-12441 SF

ACCUSATION

The Complainant, ROBIN S. TANNER, acting in her official capacity as a  
Supervising Special Investigator of the State of California, for cause of Accusation  
against GARY YING WU SHING (Respondent), is informed and alleges as follows:

1

At all times herein mentioned, Respondent was and is presently licensed and/or  
has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and  
Professions Code (the Code) by the Department of Real Estate (the Department) as a real estate  
salesperson.

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At no time mentioned herein was Respondent licensed by the Department as a  
real estate broker.

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1 3

2 At all times herein mentioned, Respondent conducted real estate activity under  
3 Respondent's individual salesperson license.

4 4

5 At all times herein mentioned, Respondent engaged in the business of, acted in  
6 the capacity of, advertised or assumed to act as a real estate broker within the State of California  
7 within the meaning of Section 10131 (b) of the Code, including the operation and conduct of a  
8 property management business with the public wherein, on behalf of others, for compensation or  
9 in expectation of compensation, Respondent leased or rented or offered to lease or rent, or  
10 solicited listings of places for rent or solicited for prospective tenants, or negotiated the sale,  
11 purchase or exchange of leases on real property, or on a business opportunity, or collected rent  
12 from tenants.

13 FIRST CAUSE OF ACTION

14 5

15 Each and every allegation in Paragraphs 1 through 3, inclusive, is incorporated by  
16 this reference as if fully set forth herein.

17 6

18 Beginning in or about January 2018, and continuing up to at least January 29,  
19 2019<sup>1</sup>, Respondent, while acting in the capacity of a real estate broker, in the course of activities  
20 described in Paragraph 3, solicited prospective tenants for, negotiated rental agreements for, and  
21 collected rents from real properties owned by another or others, including but not limited to the  
22 following:

23 ///

24 ///

25  
26 <sup>1</sup> In an email dated February 11, 2019, Respondent indicated he will "stop managing properties"  
27 and "will inform [his] clients to look for a qualified property management company to take over the responsibility."  
Additionally, to "ensure a smooth transition, to allow clients time to find a trusted property manager", Respondent  
estimates would "take about two to three months."

Property Owner	Property Location
Haitao Z.	1120 Crescent Drive, Merced
Haitao Z.	1174 Crescent Drive, Merced
Sophie W.	208 S. Bayview Avenue, Sunnyvale
Jenny Q.W.	4361 Briggs Lane, Merced
Jenny Q.W.	6139 Prospect Road, San Jose
Nora L.	3731 Larkspur Avenue, Merced
Jing Y. and Ting Y.	1956 Hillebrant Place, Santa Clara
Sun Management	3720 Morningside Avenue, Merced
Kelly G.	350 Huckleberry Drive, San Jose
Maggie Y.	3101 Lucich Drive, Merced
Fenghua Y.	1386 Cabrillo Avenue, Santa Clara

7

Respondent received compensation from property owners, in connection with the property management activities performed and described in Paragraphs 3 and 5.

8

The acts and/or omissions of Respondent, as described above, constitute violations and are grounds for the suspension or revocation of the licenses and license rights of Respondent under Sections 10130 (Unlicensed Activity), 10137 (Unlawful Compensation), 10177 (d) (Willful Disregard of Real Estate Laws) and/or 10177 (g) (Negligence/Incompetence of Licensee) of the Code.

SECOND CAUSE OF ACTION

9

Each and every allegation in Paragraphs 1 through 7, inclusive, is incorporated by this reference as if fully set forth herein.

On or about January 29, 2019, and continuing intermittently through February 11, 2019, an audit was conducted of the records of Respondent. The auditor examined the records for the period of June 1, 2018, to January 31, 2019 (the audit period).

Respondent, while acting in the capacity of a real estate broker, as described in Paragraph 3, accepted or received funds in trust (trust funds) from or on behalf of owners, lessees and others in connection with property management activities, and deposited those funds into bank accounts maintained by Respondent, at the following financial institutions, including but not limited to the following:

BANK ACCOUNT #1	
Bank:	Bank of America, 43591 Mission Boulevard, Fremont, CA 94539
Account No.:	XXXXXXXXX5287
Entitled:	ROBIN Y. ZHANG SHING, GARY Y. SHING
BANK ACCOUNT #2	
Bank:	Wells Fargo Bank, 44029 Osgood Road, Suite 100, Fremont, CA 94539
Account No.:	XXXXXXX5707
Entitled:	GARY SHING
BANK ACCOUNT #3	
Bank:	JP Morgan Chase Bank, 39395 Paseo Padre Parkway, Fremont, CA 94538
Account No.:	XXXXXXXXXXXXX3827
Entitled:	GARY SHING
BANK ACCOUNT #4	
Bank:	Bank of America, 43591 Mission Boulevard, Fremont, CA 94539
Account No.:	XXXXXXXXXX4509

1	Entitled:	GARY Y WU SHING
2	BANK ACCOUNT #5	
3	Bank:	Wells Fargo Bank, 44029 Osgood Road, Suite 100, Fremont, CA 94539
4	Account No.:	XXXXXXX9448
5	Entitled:	MAGALAND ENTERPISE, LLC
6		

7 and thereafter from time-to-time made disbursement of said trust funds.

8 12

9 In the course of the activities described in Paragraph 3, in connection with the  
10 collection and disbursement of trust funds, it was determined that:

- 11 (a) Respondent failed to properly designate Bank Account #1, Bank Account #2,  
12 Bank Account #3, Bank Account #4, and Bank Account #5 as trust fund  
13 accounts and in the name of a broker as trustee as required by Section 10145  
14 of the Code and Section 2832 of Chapter 6, Title 10, California Code of  
15 Regulations (Regulations);
- 16 (b) Respondents caused, suffered or permitted funds of others which were  
17 received and held by Respondents to be commingled with Respondent's own  
18 personal funds in Bank Account #1, Bank Account #2, Bank Account #3,  
19 Bank Account #4, and Bank Account #5, in violation of Section 10176 (e) of  
20 the Code;
- 21 (c) Respondent caused, suffered or permitted funds of others which were received  
22 and held by Respondent to be commingled with broker funds which had not  
23 been disbursed within 25 days of earning them in Bank Account #1, Bank  
24 Account #2, and Bank Account #3, in accordance with Section 2835 of the  
25 Regulations and in violation of Section 10176 (e) of the Code; and
- 26 (d) Respondent failed to maintain an accurate columnar record in chronological  
27 sequence of all trust funds received and disbursed (Control Record),

1 containing all required information, for Bank Account #1, Bank Account #2,  
2 Bank Account #3, Bank Account #4, and Bank Account #5, in violation of  
3 Section 2831 of the Regulations;

4 (e) Respondent failed to maintain accurate separate records for each beneficiary  
5 of trust funds accepted or received and disbursed for Bank Account #1, Bank  
6 Account #2, Bank Account #3, Bank Account #4, and Bank Account #5, in  
7 violation of Section 10145 (g) of the Code and Section 2831.1 of the  
8 Regulations; and

9 (f) Respondents failed to reconcile at least once a month, the balance of all  
10 separate beneficiary or transaction records with the records of all trust funds  
11 received and disbursed for Bank Account #1, Bank Account #2, Bank Account  
12 #3, Bank Account #4, and Bank Account #5 as required by Section 2831.2 of  
13 the of the Regulations.

14 13

15 The acts and/or omissions described above constitute violations of Sections 2831  
16 (Control Records), 2831.1 (Separate Records), 2831.2 (Trust Account Reconciliation), 2832  
17 (Bank Account Not Properly Designated as Trust Account), 2835 (Commingling) of the  
18 Regulations, and Sections 10145 (Trust Fund Handling) and 10176 (e) (Commingling) of the  
19 Code, and are grounds for discipline under Sections 10176 (e), 10177 (d) and/or 10177 (g) of the  
20 Code.

21 COST RECOVERY

22 14

23 Audit Costs

24 The acts and/or omissions of Respondents, as alleged above, entitle the  
25 Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (Audit Costs  
26 for Trust Fund Handling Violations) of the Code.

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Costs of Investigation and Enforcement

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Real Estate 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 imposing disciplinary action against all licenses and license rights of Respondent under the Code, for the reasonable cost of investigation and enforcement as permitted by law, for the cost of the audit, and for such other and further relief as may be proper under other provisions of law.



ROBIN S. TANNER  
Supervising Special Investigator

Dated at Oakland, California,  
this 18<sup>th</sup> day of March, 2020.

DISCOVERY DEMAND

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