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FILED

JUN 28 2021

DEPARTMENT OF REAL ESTATE
By L. Knapp

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:)	NO. H-12548 SF
)	
12 49 SQUARE REALTY GROUP, INC. and)	<u>ACCUSATION</u>
13 GARY NICHOLAS SAYED,)	
)	
14 Respondents.)	
)	

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16 The Complainant, TRICIA D. PARKHURST, acting in her official capacity as a
17 Supervising Special Investigator of the State of California, for cause of Accusation against
18 Respondents 49 SQUARE REALTY GROUP, INC. ("49 SQUARE") and GARY NICHOLAS
19 SAYED ("SAYED"), (collectively referred to herein as "Respondents"), are informed and
20 allege as follows:

21 PRELIMINARY ALLEGATIONS

22 1.

23 49 SQUARE is presently licensed by the Department of Real Estate ("the
24 Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
25 Business and Professions Code ("the Code") as a corporate real estate broker, and at all times
26 relevant herein was acting by and through SAYED as its designated broker officer.

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2.

At all times herein mentioned, SAYED 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 a restricted real estate broker and as the designated broker officer of 49 SQUARE.

3.

At all times relevant herein, SAYED acting in the capacity as the designated broker officer of 49 SQUARE 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 49 SQUARE 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 49 SQUARE such allegation shall be deemed to mean that the employees, agents and real estate licensees employed by or associated with 49 SQUARE committed such act or omission while engaged in furtherance of the business or operations of 49 SQUARE 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 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 compensation, leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenant, or negotiated for sale, purchase or exchanges of leases on real property, or on a business opportunity, or collected rent from real property, or improvements thereon, or from business opportunities.

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1 **FIRST CAUSE OF ACTION**

2 **Audit Violations**

3 (As to Respondents 49 SQUARE and SAYED)

4 6.

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

7 7.

8 Beginning on July 20, 2020, and continuing through February 1, 2021, the
9 Department conducted an audit at the Department's Oakland office and at Respondents' branch
10 office located at 933 Geary St. San Francisco, CA, where the auditor examined records for the
11 period of July 1, 2018, to June 30, 2020 ("the audit period").

12 8.

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

TRUST ACCOUNT # 1	
Bank Name and Location:	Umpqua Bank 3938 24 th Street San Francisco, CA 94114
Account No.:	XXXXX9952
Entitled:	49 Square Realty Group Inc. Jefferson-15 th Investments LLC Client Trust Account
Signatories:	Gary Sayed, DO
No. of Signatures Required:	One
Purpose of Account:	Used for deposits and disbursements related to management of properties owned by Jefferson-15 th Investments LLC.

TRUST ACCOUNT # 2	
Bank Name and Location:	Umpqua Bank 3938 24 th Street San Francisco, CA 94114
Account No.:	XXXXX0026
Entitled:	49 Square Realty Group Inc. Jefferson-15 th Investments LLC Client Trust Account

1	Signatories:	Gary Sayed, DO
	No. of Signatures Required:	One
2	Purpose of Account:	Used to maintain security deposits of properties owned by Jefferson-15 th Investments LLC.

TRUST ACCOUNT # 3

4	Bank Name and Location:	Umpqua Bank 3938 24 th Street San Francisco, CA 94114
6	Account No.:	XXXXX9945
7	Entitled:	49 Square Realty Group Inc. Larkin De LLC Client Trust Account-Operating Account
8	Signatories:	Gary Sayed, DO
	No. of Signatures Required:	One
9	Purpose of Account:	Used for deposits and disbursements related to management of a missed use property owned by Larkin, DE, LLC.

TRUST ACCOUNT # 4

11	Bank Name and Location:	Umpqua Bank 3938 24 th Street San Francisco, CA 94114
13	Account No.:	XXXXX0018
14	Entitled:	49 Square Realty Group Inc. Larkin De LLC Client Trust Account-Security Deposit Account
15	Signatories:	Gary Sayed, DO
16	No. of Signatures Required:	One
17	Purpose of Account:	Used to maintain security deposits for a mixed use property owned by Larkin, DE, LLC.

TRUST ACCOUNT # 5

18	Bank Name and Location:	Umpqua Bank 3938 24 th Street San Francisco, CA 94114
20	Account No.:	XXXXX9994
21	Entitled:	49 Square Realty Group Inc. 1550 Steiner De LLC Client Trust Account
22	Signatories:	Gary Sayed, DO
23	No. of Signatures Required:	One
24	Purpose of Account:	Used to maintain security deposits for a mixed use property owned by Larkin, DE, LLC.

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BANK ACCOUNT # 1	
Bank Name and Location:	Wells Fargo Bank P.O. Box 63020 San Francisco, CA 94163
Account No.:	XXXXXX7689
Entitled:	Lem Ray Properties I De, LLC Lem Ray Properties I De, LLC Loancore
Signatories:	No Signers
Purpose of Account:	Used to deposit rents for four LLC owners, who owned six apartment/commercial/missed use buildings and jointly borrowed \$23 million on loan.

BANK ACCOUNT # 2	
Bank Name and Location:	Wells Fargo Bank P.O. Box 63020 San Francisco, CA 94163
Account No.:	XXXXXX1226
Entitled:	Lem Ray Properties I De, LLC Lem Ray Properties I De, LLC Loancore
Signatories:	No Signers
Purpose of Account:	Used for servicing a \$23 million loan jointly borrowed by 4 LLC owners.

From time-to-time, Respondents made collections to, and disbursement from, said accounts.

9.

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

(a) failed to maintain separate records for each beneficiary in Trust Account #5 in violation of Section 10145 of the Code and Section 2831.1 of Title 10, California Code of Regulations ("the Regulations");

(b) failed to maintain separate records for each beneficiary in Bank Account #1 and Bank Account #2, in violation of Section 10145 of the Code and Section 2831.1 of the Regulations;

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1 (c) failed to maintain a complete and accurate record of all trust funds received
2 and disbursed for Bank Account #1 and for Bank Account #2, in violation of Section 10145 of
3 the Code and Section 2831 of the Regulations;

4 (d) failed to designate Bank Account #1 and Bank Account #2, used to hold trust
5 funds, as a trust accounts in violation of Section 10145 of the Code and Section 2832 of the
6 Regulations;

7 (e) failed to reconcile at least once a month, the balance of all separate
8 beneficiary or transaction records with the balance of the control records for Bank Accounts #5
9 in violation Section 10145 of the Code and Section 2831.2 of the Regulations; and

10 (f) caused, suffered or permitted funds of others which were received and
11 held by Respondents in Trust Account #1, Trust Account #2, and Trust Account #3 to be
12 commingled with Respondents' own money, in violation of Section 10176(e) of the Code and
13 Section 2835 of the Regulations.

14 10.

15 The acts and/or omissions of Respondents as alleged in paragraph 9, above,
16 constitute grounds for the suspension or revocation of all licenses and license rights of
17 Respondents pursuant to the following provisions of the Code and Regulations:

18 As to Paragraph 9(a), under Section 10177(d) and/or 10177(g) of the Code, in
19 conjunction with Section 10145 of the Code and Section 2831.1 of the Regulations;

20 As to Paragraph 9(b), under Section 10177(d) and/or 10177(g) of the Code, in
21 conjunction with Section 10145 of the Code, and Section 2831.1 of the Regulations;

22 As to Paragraph 9(c), under Section 10177(d) and/or 10177(g) of the Code, in
23 conjunction with Section 10145 of the Code and Section 2831 of the Regulations;

24 As to Paragraph 9(d), under Section 10177(d) and/or 10177(g) of the Code, in
25 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

26 As to Paragraph 9(e), under Section 10177(d) and/or 10177(g) of the Code, in
27 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

1 As to Paragraph 9(f), under Section 10176(e) of the Code.

2 **SECOND CAUSE OF ACTION**

3 Failure to Supervise
4 (As Against SAYED Only)

5 11.

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

8 12.

9 SAYED, as the designated officer broker of 49 SQUARE, was required to
10 exercise reasonable supervision and control over the activities of 49 SQUARE. SAYED failed
11 to exercise reasonable supervision over the acts and/or omissions of 49 SQUARE in such a
12 manner as to allow the acts and/or omissions as described in Paragraphs 1 through 10, above, to
13 occur, in violation of Section 10159.2 of the Code and Section 2725 of the Regulations.

14 13.

15 The facts described above as to the First Cause of Action are grounds for the
16 discipline of all licenses and license rights of sayed under section 10177(d) and/or Section
17 10177(g), 10177(h), and 10159.2 of the Code, in conjunction with Section 2725 of the
18 Regulations.

19 **PRIOR DISCIPLINE**

20 14.

21 Effective April 17, 2001, in Case No. H-7888 SF, the Real Estate Commissioner
22 revoked SAYED's real estate broker license, and granted him the right to a restricted real estate
23 broker license, for sustaining a conviction for bank larceny in violation of Title 18, United State
24 Code, Section 2113 that served as grounds for suspension or revocation of his broker license
25 pursuant to section 490 and 10177(b) of the Code.

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COST RECOVERY

Audit Costs

15.

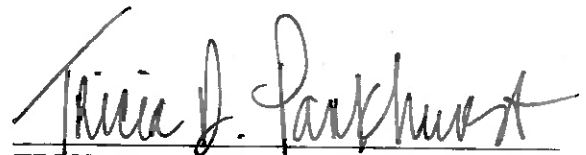
The acts and/or omissions of Respondents as alleged in the First Cause of Action, above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

Investigation and Enforcement Costs

16.

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, 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 all Respondent named herein under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, for the cost of the audit as permitted by law, and for such other and further relief as may be proper under other provisions of law.


TRICIA D. PARKHURST
Supervising Special Investigator

Dated at Sacramento, California,
this 28th day of June, 2021.

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1 DISCOVERY DEMAND

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

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