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FILED

DEC 14 2023

DEPARTMENT OF REAL ESTATE
By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12 GEM ENTERPRISES INC.;) No. H-12700 SF
13 and)
14 JOSEPH ALBERT DAROSA, individually and) ACCUSATION
15 as designated officer of Gem Enterprises Inc.,)
16 Respondents.)

17 The Complainant, STEPHANIE YEE, a Supervising Special Investigator of the
18 State of California, for cause of Accusation against GEM ENTERPRISES INC. and JOSEPH
19 ALBERT DAROSA (collectively referred to as "Respondents"), is informed and alleges as
20 follows:

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22 The Complainant, STEPHANIE YEE, a Supervising Special Investigator of the
23 State of California, makes this Accusation in her official capacity.

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1 PRELIMINARY ALLEGATIONS

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

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6 At all times mentioned, Respondent GEM ENTERPRISES INC. (GEI) was and
7 is licensed by the Department as a real estate broker corporation, License ID 01237201. GEI
8 was licensed by the Department as a real estate corporation on or about May 11, 2002. Unless
9 renewed, GEI's corporate broker license will expire March 11, 2027.

10 At all times mentioned, GEI was and is licensed to do business under the
11 fictitious business name, "Gem Property Management."

12 At all times mentioned, JOSEPH ALBERT DAROSA (DAROSA) was and is
13 licensed by the Department as the designated broker officer of GEI. As said designated officer-
14 broker, DAROSA was and is responsible pursuant to Section 10159.2 of the Code for the
15 supervision of the activities of the officers, agents, real estate licensees, and employees of GEI
16 for which a license is required.

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18 At all times mentioned, Respondent DAROSA was and is licensed by the
19 Department individually as a real estate broker, License ID 00605237. DAROSA was licensed
20 as a real estate broker on February 5, 1981. Unless renewed, DAROSA's broker license will
21 expire April 23, 2025.

22 At all times mentioned, DAROSA was and is licensed by the Department as the
23 designated broker officer of GEI.

24 Beginning January 1, 2018, and continuing thereafter, DAROSA was and is
25 affiliated as a broker associate with Intero Real Estate Services Inc.

26 At all times mentioned, DAROSA was and is licensed to do business under the
27 fictitious business name, "Gem Property Management" and "Gem Realtors."

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

AUDIT OK-21-0031

On or about August 31, 2022, the Department completed its audit (OK-21-0031) of the books and records of GEI's property management activities described in Paragraph 7. The auditor herein examined the records for the period of January 1, 2020, through March 31, 2022.

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Sections 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 or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

As of August 31, 2021, Respondents managed ninety-five (95) one-to-four family residences with one hundred and six (106) units and one apartment complex with eight (8) units for a total of eighty-one (81) property owners. Respondents collected approximately \$340,000 in trust funds monthly.

Respondents' property management services include, but not limited to, collecting rents, paying expenses, and screening tenants. For such property management services, Respondents charged a management fee of 6 to 10 percent of collected rents.

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While acting as a real estate broker as described in Paragraph 7, Respondents accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

The trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into accounts which were maintained by Respondents for the handling of trust funds, and thereafter from time-to-time Respondents made disbursements of said trust funds, identified as follows:

TRUST ACCOUNT # 1	
Bank Name and Location:	Wells Fargo Bank 1790 S Bascom Avenue, Suite 120 Campbell, CA 95008
Account No.:	XXXX4298
Account Name:	Gem Enterprises Inc, Trust Account
Purpose:	Trust Account #1 was used for deposits and disbursements related to management of properties. Deposits consisted of rents and security deposit collected from tenants. Disbursements were payments for expenses related to the properties managed, remittances to owners, payment of management fees to GEI.

In the course of the property management activities described in Paragraph 7, and during the audit examination period described in Paragraph 6, Respondents violated the Code and Regulations described below:

1 Trust Account Accountability and Balances

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3 Based on the records provided during the audit, a bank reconciliation for Trust
4 Account #1 was prepared for as of December 31, 2021, and March 31, 2022. The adjusted bank
5 balance of Trust Account #1 was compared to the total balances of the beneficiary records for
6 Trust Account #1.

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8 **December 31, 2021**

9 Adjusted Bank Balance	\$327,386.99
10 Accountability	<u>\$379,987.68</u>
11 Trust Fund Shortage	<u>(\$52,600.69)</u>

12 A shortage of \$52,600.69 was found in Trust Account #1 as of December 31,
13 2021. \$2,640.84 of the shortage was due to negative balances in six (6) owner/property
14 accounts. The cause of the remaining shortage of \$49,959.85 could not be identified.

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16 **March 31, 2022**

17 Adjusted Bank Balance	\$396,140.40
18 Accountability	<u>\$447,875.96</u>
19 Trust Fund Shortage	<u>(\$51,735.56)</u>

20 A shortage of \$51,735.56 was found in Trust Account #1 as of March 31, 2022.
21 \$1,527.43 of the shortage was due to negative balances in five (5) owner/property accounts. The
22 cause of the remaining shortage of \$50,208.13 could not be identified.

23 Respondents provided no evidence that the owners of the trust funds had given
24 their written consent to allow Respondents to reduce the balance of the funds in Trust Account
25 #1 to an amount less than the existing aggregate trust fund liabilities, in violation of Section
26 10145 of the Code and Section 2832.1 of Title 10, Chapter 6, California Code of Regulations
27 (Regulations).

1 Separate Records

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3 Respondents failed to maintain accurate separate records for each beneficiary or
4 transaction, accounting therein for all funds which were deposited into Trust Account #1
5 containing all of the information required by Section 2831.1 of the Regulations.

6 GEI's separate records for each beneficiary or transaction to account for all trust
7 funds deposits and disbursed out of Trust Account #1, were not accurate. The separate records
8 were inaccurate since deposits and disbursements were recorded on different dates than they
9 were recorded on the control records. Expenses and management fees which were paid after
10 owner proceeds were disbursed during the month were recorded as disbursements in the
11 subsequent month.

12 Trust Account Reconciliation

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14 Respondents failed to reconcile the balance of separate beneficiary or transaction
15 records with the control record of trust funds received and disbursed at least once a month,
16 and/or failed to maintain a record of such reconciliations for each bank account holding trust
17 funds as required by Section 2831.2 of the Regulations.

18 FAILURE TO SUPERVISE

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20 Respondent DAROSA failed to exercise reasonable supervision over the acts of
21 GEI in such a manner as to allow the acts and events described above to occur. DAROSA
22 permitted, ratified and/or caused the conduct described above, to occur, and failed to take
23 reasonable steps, including but not limited to the handling of trust funds, supervision of
24 employees, and the implementation of policies, rules, procedures, and systems to ensure the
25 compliance of the corporation with the Real Estate Law and the Regulations.

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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 imposing disciplinary action against all licenses and license rights of Respondents under the Code, for the 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 the provisions of law.



STEPHANIE YEE
Supervising Special Investigator

Dated at Oakland, California,
this 8th day of December, 2023

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Government Code*, 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.