

FILED

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DEPARTMENT OF REAL ESTATE
By *J. Taggart*

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7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)
11 OMNI PROPERTIES, INC., and) No. H-12735 SF
12 DION CHENG,) ACCUSATION
(individually and as designated officer of Omni
13 Properties, Inc.),)
14 Respondent(s).)
15

16 The Complainant, STEPHANIE YEE, a Supervising Special Investigator of the
17 State of California, for cause of Accusation against OMNI PROPERTIES, INC. and DION
18 CHENG (collectively referred to as Respondents), is informed and alleges as follows:

19 1

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

22 PRELIMINARY ALLEGATIONS

23 2

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

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2 At all times mentioned, Respondent OMNI PROPERTIES, INC. (OMNI) was
3 and is licensed by the Department as a restricted real estate broker corporation, License ID
4 02039541.

5 On or about July 26, 2017, OMNI was licensed by the Department as a real
6 estate broker corporation.

7 Effective May 10, 2018, in Case No. H-12186 SF before the Department, the Real
8 Estate Commissioner (Commissioner) issued an order revoking the real estate corporate license
9 of OMNI, granting the right to a restricted real estate corporate license upon terms and
10 conditions, for violation of Code Section 10177(d). Said restricted corporate license was issued
11 on June 29, 2018.

12 Unless renewed, OMNI's restricted corporate broker license will expire June 28,
13 2026.

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

18 At all times mentioned, OMNI was licensed to do business under the fictitious
19 business names Marbella Properties and Omni Real Estate.

At all times mentioned, Respondent CHENG was and is licensed by the Department individually as a restricted real estate broker, License ID 01478360.

23 CHENG was licensed as a real estate salesperson on February 15, 2005, and as a
24 broker on August 5, 2013.

25 Effective May 10, 2018, in Case No. H-12186 SF before the Department, the
26 Commissioner issued an order revoking the real estate corporate license of OMNI, granting the
27 ///

1 right to a restricted real estate corporate license upon terms and conditions, for violation of Code
2 Sections 10177(d) and 10177(h). Said restricted corporate license was issued on June 29, 2018.

3 Unless renewed, CHENG 's restricted broker license will expire June 28, 2026.

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

10 PRIOR DISCIPLINARY ACTION

11 **H-12186 SF**

12 6

13 On or about December 26, 2017, the Department filed an Accusation, Hearing
14 No. H-12186 SF, against the real estate licenses of Respondents. The Accusation was made
15 pursuant to an audit which covered the period of May 1, 2016, through April 30, 2017. The
16 audit revealed trust fund handling violations including a total shortage of \$7,635.91 as of April
17 30, 2017, in the accounts used to hold trust funds.

18 On or around April 19, 2018, the Department entered into a Stipulation and
19 Agreement with Respondents, which became effective May 10, 2018. The Determination of
20 Issues found Respondents violated Section 10177(d) of the Code, and CHENG violated Section
21 10177(h) of the Code. Pursuant to the Stipulation, Respondents real estate licenses were
22 revoked; provided, however, that Respondents could apply for restricted real estate licenses
23 subject to the terms and conditions stated in the Order.

24 **H-12493 SF**

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26 On or about October 27, 2020, the Department filed an Accusation, Hearing No.
27 H-12493 SF, against the real estate licenses of Respondents. The Accusation was made pursuant

1 to an audit which covered the period of May 11, 2018, through February 28, 2019. The audit
2 revealed trust fund handling violations including commingling and a total shortage of \$27,747.78
3 as of January 31, 2019, in the accounts used to hold trust funds.

4 On or around June 7, 2021, the Department filed a Decision, which became
5 effective June 28, 2021. The Decision found Respondents violated Sections 10177(d) and
6 10177(g) of the Code, and CHENG violated Section 10177(h) of the Code. Pursuant to the
7 Decision, the restricted licenses issued to Respondents were to remain restricted for an additional
8 three years.

9 AUDIT OK22-0010

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11 On or about October 11, 2023, the Department completed its audit (OK22-0010)
12 of the books and records of OMNI's property management activities described in Paragraph 9.
13 The auditor herein examined the records for the period of January 1, 2021, through March 31,
14 2022. The audit examination was initiated per the Decision in H-12493 SF. The audit was
15 limited to OMNI's property management activities.

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17 At all times mentioned, Respondents engaged in the business of, acted in the
18 capacity of, advertised, or assumed to act as a real estate broker within the State of California
19 within the meaning of Section 10131(b) of the Code, including the operation and conduct of a
20 property management business with the public wherein, on behalf of others, for compensation or
21 in expectation of compensation, Respondents leased or rented and offered to lease or rent, and
22 solicited for prospective tenants of real property or improvements thereon, and collected rents
23 from real property or improvements thereon.

24 As of the audit examination, Respondents managed ninety (90) one-to-four-unit
25 residences for approximately seventy-six (76) owners. Respondents collected approximately
26 \$5,883,004.69 in trust funds during the audit period.

27 Respondents' property management services include, but were not limited to,

1 collecting rents and security deposits for real property and responsibility for repairs and
2 maintenance. For such property management services, Respondents charged a management fee
3 of \$175 to \$350 per month and/or between 4 to 10 percent of the monthly rents collected.

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5 While acting as a real estate broker as described in Paragraph 9, Respondents
6 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in
7 connection with the leasing, renting, and collection of rents on real property or improvements
8 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust
9 funds.

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

15 ACCOUNT # 1	
16 Bank Name and Location:	Wells Fargo
17	P.O. Box 6995
18	Portland, OR 97228
19 Account No.:	XXXXXX5442
20 Entitled:	Omni Properties Inc as Trustee
21	Marbella Properties Omni Real Estate
22 Purpose:	To collect, hold, and disburse trust funds generated by
23	licensed property management activities conducted under the
24	Marbella Properties fictitious business name.

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	ACCOUNT # 2
1	
2	Bank Name and Location: Wells Fargo
3	P.O. Box 6995
4	Portland, OR 97228
5	Account No.: XXXXXX6926
6	Entitled: Omni Properties Inc as Trustee
7	DBA: Marbella Properties Omni Real Estate
8	Purpose: To handle trust funds generated by licensed property
9	management activities conducted under the Omni Real Estate
10	fictitious business name.

11

12 During the course of the property management activities described in Paragraph 9,
13 and during the audit examination period described in Paragraph 8, Respondents violated the
14 Code and Title 10, Chapter 6, California Code of Regulations (Regulations) described below:

Trust Account Accountability and Balances

12

(Account #1)

18 Based on the records provided during the audit, a bank reconciliation for Account
19 #1 was prepared as of June 30, 2022. The adjusted bank balance of Account #1 as of June 30,
20 2022, was compared to the beneficiaries' accountability for Account #1 as of June 30, 2022.

22	Adjusted Bank Balance	\$723,354.48
23	Accountability	<u>\$728,563.36</u>
24	Trust Fund Shortage	(\$5,208.88)

25 A shortage of \$5,208.88 was found in Account #1 as of June 30, 2022. \$2,772.20
26 of the shortage was traced to the negative ledger balance for the 4011 Villa Vista property. The
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source of the remaining \$2,436.68 shortage could not be traced to any ledger or transaction.

Respondents provided no evidence that the owners of the trust funds had given their written consent to allow Respondents to reduce the balance of the funds in Account #1 to an amount less than the existing aggregate trust fund liabilities, in violation of Section 10145 of the Code and Section 2832.1 the Regulations.

13

(Account #2)

Based on the records provided during the audit, a bank reconciliation for Account #2 was prepared as of June 30, 2022. The adjusted bank balance of Account #2 as of June 30, 2022, was compared to the beneficiaries' accountability for Account #2 as of June 30, 2022.

12	Adjusted Bank Balance	\$189,597.74
13	Accountability	<u>\$190,369.36</u>
14	Trust Fund Shortage	<u>(\$771.62)</u>

A shortage of \$771.62 was found in Account #2 as of June 30, 2022. The source of shortage could not be traced to any ledger or transaction.

Respondents provided no evidence that the owners of the trust funds had given their written consent to allow Respondents to reduce the balance of the funds in Account #2 to an amount less than the existing aggregate trust fund liabilities, in violation of Section 10145 of the Code and Section 2832.1 the Regulations.

Trust Account Reconciliation

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

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FAILURE TO SUPERVISE

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Respondent CHENG failed to exercise reasonable supervision over the acts of OMNI. CHENG permitted, ratified, and/or caused the conduct described above, to occur, and failed to take reasonable steps, including but not limited to the handling of trust funds, supervision of employees, and the implementation of policies, rules, procedures, and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

16

The acts and/or omissions of CHENG as described in Paragraph 15, constitute failure on the part of CHENG, as designated broker-officer for OMNI, to exercise reasonable supervision and control over the licensed activities of OMNI as required by Section 10159.2 of the Code and Section 2725 of the Regulations.

GROUND FOR DISCIPLINE

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

As to Paragraphs 12 and 13, under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations.

As to Paragraph 14, under Sections 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations.

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The acts and/or omissions of CHENG as alleged in Paragraphs 15 and 16 constitute grounds for the suspension or revocation of all licenses and license rights of CHENG under Sections 10177(g) and/or 10177(h) of the Code, and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

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COST RECOVERY

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

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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 costs of the audit, and for such other and further relief as may be proper under the provisions of law.

S. Bhakti Mehta

STEPHANIE YEE

Supervising Special Investigator

Dated at Oakland, California,

this 20th day of June, 2024

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.