

FILED

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DEPARTMENT OF REAL ESTATE
BY: [Signature]

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
GENA INC.; and) No. H- 38947 LA
GEORGE A. MAIRENA,)
individually and as designated) ACCUSATION
officer of Gena Inc.,)
)
)
)
Respondents.)
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)

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, BUREAU of Real Estate ("Bureau") for cause of Accusation against GENA INC. ("GENA") and GEORGE A. MAIRENA ("MAIRENA"), individually and as designated officer of Gena Inc. (collectively "Respondents"), is informed and alleges as follows:

1.

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

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2.

From August 4, 2006, through the present, Respondent GENA has been licensed as a real estate corporation. At all times relevant herein, GENA was acting by and through Respondent MAIRENA as its designated broker-officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3.

Respondent MAIRENA was originally licensed as a real estate broker on March 18, 1988.

Table: Designated Officer Tenure

Designated Officer(s)	Tenure
George A. Mairena	Inception of GENA to date

4.

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

FIRST CAUSE OF ACCUSATION
(Audit)

5.

At all times mentioned, in the City of Downey, County of Los Angeles, Respondents GENA and MAIRENA acted as a real estate brokers and conducted licensed activities within the meaning of Code Section 10131(b) wherein they conducted a property management brokerage.

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On November 13, 2012, the BUREAU completed an audit examination of the books and records of Respondent GENA pertaining to the property management activities described in Paragraph 5, which require a real estate license. The audit examination covered a period of time beginning on September 1, 2009 and ending on July 31, 2012. The audit examination revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations ("Regulations") as alleged in the following paragraphs, and more fully set forth in Audit Report LA 120024 and the exhibits and work papers attached thereto.

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“GENA Inc. dba Imperial Properties/Imperial Properties Trust
*****2712”
Wells Fargo Bank
Portland, OR 97228-6995
(Property management account depository for rents and security deposits)

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1 ("TA 2")

2 "GENA Inc.

3 *****8275"

4 Wells Fargo Bank

5 Portland, OR 97228-6995

6 (Property management account depository for rents and security deposits. TA 2 was
7 opened on May 23, 2008 and closed on May 15, 2011 with balance transferred to TA 1)

8 ("GA 1")

9 "The Brooks of Claremont HOA General Account

10 *****4064"

11 Wells Fargo Bank

12 Portland, OR 97228-6995

13 (General business bank account for GENA)

14 Violations of the Real Estate Law

15 8.

16 In the course of activities described in Paragraphs 5 and 7, above, and during the
17 examination period, described in Paragraph 6, Respondents GENA and MAIRENA acted in
18 violation of the Code and the Regulations in which Respondents:

19 (a) Permitted, allowed or caused the disbursement of trust funds from TA 1,
20 GENA's property management trust account for rent and security deposits collection, where the
21 disbursement of funds reduced the total of aggregate funds in TA 1, to an amount which, on July
22 31, 2012, was at a minimum accountability of \$12,468.84, less than the existing aggregate trust
23 fund accountability of GENA to every principal who was an owner of said funds, without first
24 obtaining the prior written consent of the owners of said funds, in violation of Code Section
25 10145(a) and Regulation 2832.1. On September 26, 2012 the shortage was cured;
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1
2 (b) Failed to maintain an adequate control record in the form of a columnar record
3 in chronological order of trust funds received but not deposited into TA 1, received in
4 chronological order, in violation of Code Section 10145 and Regulation 2831;
5

6 (c) Failed to maintain a separate record for each beneficiary or transaction, thereby
7 failing to account for all trust funds received, deposited and disbursed for TA 1, in violation of
8 Code Section 10145 and Regulation 2831.1;

9 (d) Failed to perform a monthly reconciliation of the balance of all separate
10 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of
11 all trust funds received and disbursed by TA 1 in violation of Code Section 10145 and
12 Regulations 2831.2;

13 (e) Failed to place trust funds, including rents and security deposits, accepted on
14 behalf of another into the hands of the owner of the funds, a neutral depository or into a trust fund
15 account in the name of the trustee at a bank or other financial institution not later than three
16 business days following receipt of the funds by the broker or by the broker's salesperson, in
17 violation of Code Section 10145 and Regulation 2832(d);
18

19 (f) Mixed and commingled trust funds and personal funds by depositing trust funds
20 received into GENA's general operating account, in violation of Code Sections 10145 and
21 10176(e) and Regulation 2832;
22

23 (g) Permitted Nancy Mairena and John Mariena, unlicensed and unbonded
24 persons, to be authorized signatories on TA 1 and TA 2, in violation of Code Section 10145 and
25 Regulation 2834(a);
26

1 (h) Failed to disclose that GENA charged property owners service fees and
2 charges for which no agreement or authorization existed. GENA charged property owners
3 service, maintenance and administration fees, in violation of Code Section 10176(g); and

4 (i) MAIRENA failed to adequately supervise and control the real estate and
5 property management activity conducted under GENA's real estate broker license. Additionally,
6 Respondents had no system in place for regularly monitoring GENA's compliance with the Real
7 Estate Law especially in regard to establishing, systems, policies and procedures to review trust
8 fund handling, and to keep GENA in compliance with the Real Estate Law, in violation of Code
9 Sections 10159.2, 10177(h) and Regulation 2725.

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11 9.

12 The conduct of Respondents GENA and MAIRENA, described in Paragraph 8,
13 above, violated the Code and the Regulations as set forth below:

14 PARAGRAPH

PROVISIONS VIOLATED

15		
16	8(a)	Code Section 10145 and Regulation 2832.1
17	8(b)	Code Section 10145 and Regulation 2831
18	8(c)	Code Section 10145 and Regulation 2831.1
19	8(d)	Code Section 10145 and Regulation 2831.2
20	8(e)	Code Section 10145 and Regulation and 2832(d)
21	8(f)	Code Section 10145 and 10176(e) and Regulation 2832
22	8(g)	Code Section 10145 and Regulation 2834
23	8(h)	Code Section 10176(g)
24	8(i)	Code Sections 10159.2 and 10177(h) and Regulation 2725 (MAIRENA)

25 The foregoing violations constitute cause for the discipline of the real estate licenses and license
26 rights of Respondents GENA and MAIRENA under the provisions of Code Sections 10176(e),
10177(d), and 10177(g), and 10177(h) for MAIRENA.

1 SECOND CAUSE OF ACCUSATION
2 (Negligence)

3 10.

4 The overall conduct of Respondents GENA and MAIRENA constitutes
5 negligence and is cause for discipline of the real estate license and license rights of said
6 Respondents pursuant to the provisions of Code Section 10177(g).

7 THIRD CAUSE OF ACCUSATION
8 (Fiduciary Duty)

9 11.

10 The conduct, acts and omissions of Respondents GENA and MAIRENA
11 constitute a breach of fiduciary duty, owed to GENA's clients, of good faith, trust, confidence
12 and candor, within the scope of their contracted property management relationship with
13 landlords and tenants, in violation of Code Section 10177(g) and constitutes cause for discipline
14 of the real estate license and license rights of said Respondents pursuant to the provisions of
15 Code Section 10177(g).

16 12.

17 Code Section 10106 provides, in part, that in any order issued in resolution of a
18 disciplinary proceeding before the BUREAU of Real Estate, the Commissioner may request the
19 administrative law judge to direct a licensee found to have committed a violation of this part to
20 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

21 13.

22 Code Section 10148(b) provides, in pertinent part the Commissioner shall charge a
23 real estate broker for the cost of any audit, if the commissioner has found in a final decision
24 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation
25 or rule of the commissioner interpreting said section.
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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and/or license rights of Respondents GENA INC. and GEORGE A.
4 MAIRENA, individually and as designated officer of Gena Inc. Management Inc., under the
5 Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) and for
6 such other and further relief as may be proper under other applicable provisions of law,
7 including but not limited to, proof of cure of the shortage, and costs investigation, enforcement
8 and audit.

9 Dated at Los Angeles, California.

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11 this 3 day of July, 2013.
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14 ROBIN TRUJILLO
15 Deputy Real Estate Commissioner
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21 cc: Gena Inc.
22 George A. Mairena
23 Robin Trujillo
24 Isabel Beltran - Audits
25 Sacto
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