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FILED

SEP 29 2021

DEPT. OF REAL ESTATE

By *cu Selau*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation Against	)	
	)	No. H-42116 LA
GALLERY REAL ESTATE SERVICES;	)	
DONNA KAY HINSHAW, individually and as	)	
Designated Officer of Gallery Real Estate	)	
Services,	)	<u>ACCUSATION</u>
	)	
Respondents.	)	
	)	

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, for cause of Accusation against GALLERY REAL ESTATE SERVICES ("GRES") and DONNA KAY HINSHAW ("HINSHAW"), individually and as Designated Officer of Gallery Real Estate Services, (sometimes referred to collectively as "Respondents") alleges as follows:

1.

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

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ACCUSATION

2.

All references to the "Code" are to the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6 of the California Code of Regulations.

LICENSE HISTORY

(GALLERY REAL ESTATE SERVICES)

3.

a. Respondent GRES is presently licensed and/or has license rights under the Code as a corporate real estate broker with Department of Real Estate ("Department") license ID 01901145.

b. The Department originally issued GRES a broker license on or about June 23, 2011. GRES' license is set to expire on October 8, 2023, unless renewed.

c. From on or about October 9, 2019, through the present, GRES' designated officer has been Respondent HINSHAW.

d. As of April 1, 2021, GRES has maintained the fictitious business name "Gallery Property Management" with the Department.

(DONNA KAY HINSHAW)

4.

a. HINSHAW is presently licensed and/or has license rights under the Code as a real estate broker with Department license ID 01306307.

b. The Department originally issued HINSHAW a broker license on or about March 7, 2011. HINSHAW's license is set to expire on March 6, 2023, unless renewed.

c. Since on or about October 9, 2019, HINSHAW has been the designated officer for GRES. As designated officer, HINSHAW is responsible for the supervision of the activities conducted on behalf of Respondent GRES by its officers, agents, real estate licensees, and employees pursuant to Section 10159.2 of the Code.

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ACCUSATION

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At all times relevant herein GRES engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker for or in expectation of compensation, within the meaning of Code section 10131(b), by leasing or renting or offering to lease or rent, or placing for rent, or soliciting listings of places for rent, or soliciting for prospective tenants, or negotiating the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collecting rents from real property, or improvements thereon, or from business opportunities ("property management")

(AUDIT NO. LA200002)

On or about January 27, 2021, the Department completed an audit examination of the books and records of GRES pertaining to its property management activities described in Paragraph 5 above. The audit examination covered the period of time from June 1, 2019, to May 29, 2020 ("audit period"). The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report No. LA200002 and the exhibits and work papers attached to said audit report.

The Department auditor conducted an entrance interview via telephone with HINSHAW, who, during the course of the audit, provided records for the examination. According to HINSHAW and the records examined, during the audit period, GRES managed approximately one hundred and forty-two (142) single family residences and five (5) apartment complexes totaling twenty-six (26) units for approximately one hundred and sixteen (116) owners. GRES collected rent, paid expenses, and screened tenants for compensation during the audit period.

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At all times mentioned herein, and in connection with the property management activities described in Paragraph 5 above, GRES accepted or received funds, including funds in trust ("trust funds") from or on behalf of the owners of the properties managed by GRES, and thereafter made deposits and/or disbursements of such funds. GRES maintained ten (10) bank accounts to hold and collect trust funds for multiple beneficiaries during the audit period. The auditor examined three (3) bank accounts:

Bank Account 1 ("BA 1")

Bank: Chase Bank
Account Name: Gallery Real Estate Services
Account Number: xxxxxx7705

Bank Account 2 ("BA 2")

Bank: Chase Bank
Account Name: Gallery Real Estate Services
Account Number: xxxxxx6913

Bank Account 3 ("BA 3")

Bank: Chase Bank
Account Name: Gallery Real Estate Services
Account Number: xxxxxx0006

Violations of the Real Estate Law

9.

The audit examination revealed violations of the Code and the Regulations, as set forth in the following paragraphs, and more fully discussed in Audit Report No. LA200002 and the exhibits and work papers attached to the audit reports:

(a) Handling of Trust Funds/Trust Fund Handling for Multiple Beneficiaries (Code section 10145(a); Regulations section 2832.1).

As of May 29, 2020, BA 1 had a trust fund shortage of \$50,510.85. The shortage was caused by negative property balances totaling \$37,458.18 and an unidentified shortage of

ACCUSATION

1 \$13,052.67. The negative balances were caused by disbursements when there were insufficient
2 funds to disburse.

3 As of May 29, 2020, BA 2 had a trust fund shortage of \$5,305.00. The shortage
4 was caused by negative property balances totaling \$5,305.00. The negative balances were
5 caused by disbursements when there were insufficient funds to disburse. BA 2 also had \$513.02
6 in unidentified and unaccounted for funds.

7 As of May 29, 2020, BA 3 had a minimum trust fund shortage of \$64,478.46.
8 The shortage was caused by negative property balances totaling \$64,478.46. The negative
9 balances were caused by disbursements when there were insufficient funds to disburse.
10 BA 3 also had a minimum of \$115,108.89 in unidentified and unaccounted for funds.

11 HINSHAW did not provide any evidence that the owners of the trust funds had
12 given their written consent to allow GRES to reduce the balance of funds in BA 1, BA 2, and
13 BA3 to an amount less than the existing aggregate trust fund liabilities.

14 **(b) Trust Fund Handling (Code section 10145; Regulations section 2832).**

15 GRES did not provide the bank signature cards for BA 1, BA 2, and BA 3.
16 Instead, GRES provided a letter from Chase Bank, dated October 9, 2020, indicating that BA 1,
17 BA 2, and BA 3 were opened on May 21, 2014.

18 Based on an examination of the letter from Chase Bank, BA 1, BA 2, and BA 3
19 were not designated in the name of "Gallery Real Estate Services" as trustee.

20 **(c) Handling of Trust Funds/Trust Account Reconciliation (Code section 10145;**
21 **Regulations section 2831.2).**

22 GRES did not maintain accurate records of monthly reconciliation for BA 1 and
23 BA 2. The balance of all the separate records comparing the balance of the record of all trust
24 funds received and disbursed (control record) for BA 1 and BA 2 were inaccurate. GRES also
25 failed to maintain a monthly bank reconciliation for BA 3. The auditor calculated the minimum
26 accountability for BA 3 based on limited bank statements and deposit records for the months of
27 April 2020 and May 2020.

1 **(d) Handling of Trust Funds/Separate Record for Each Beneficiary or Transaction (Code**
2 **section 10145; Regulations section 2831.1).**

3 GRES did not maintain accurate separate records for each beneficiary or
4 property for BA 1. There were outstanding checks posted that were not traceable to a separate
5 record.

6 GRES did not maintain a separate record for the \$513.02 funds in BA 2 that
7 were unidentified and unaccounted for as of May 29, 2020.

8 GRES did not maintain separate records for each beneficiary or property for BA
9 3. GRES failed to maintain a separate record for the \$155,108.89 funds in BA 3 that were
10 unidentified and unaccounted for as of May 29, 2020.

11 **(e) Trust Fund Records to be Maintained (Code section 10145; Regulations section 2831).**

12 GRES did not maintain an accurate record of all trust funds received and
13 disbursed (control record) for BA 1. There were outstanding checks posted that were not
14 traceable to the control record.

15 GRES did not maintain a control record for BA 3.

16 **(f) Use of False or Fictitious Business Name (Code section 10159.5; Regulations section**
17 **2731).**

18 During the audit period, GRES used the unlicensed fictitious business name
19 "Gallery Property Management" without first obtaining a license from the Department bearing
20 such fictitious business name. As of April 1, 2021, GRES is authorized by the Department to
21 use the fictitious business name of "Gallery Property Management."

22 **(g) Responsibility of Corporate Officer in Charge/Broker Supervision (Code sections**
23 **10159.2 and Regulations section 2725).**

24 Based on the findings above, HINSHAW failed to exercise adequate supervision
25 and control over the activities conducted by GRES' licensees and/or employees as necessary to
26 secure full compliance with the Real Estate Law and Commissioner's Regulations in violation
27 of 10159.2. HINSHAW failed to establish policies, rules, procedures, and systems to review,
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1 oversee, inspect, and manage transactions requiring a real estate license and the handling of
2 trust funds in violation of Regulation 2725.

3 10.

4 Each of the foregoing violations in Paragraph 9(a)-(g) above constitute cause for
5 the suspension or revocation of the real estate license and/or license rights of Respondents
6 GRES and HINSHAW under the provisions of Sections 10177(d), 10177(g), and/or 10177(h).

7 COSTS

8 (AUDIT COSTS)

9 11.

10 Section 10148(b) of the Code, provides, in pertinent part, that the Real Estate
11 Commissioner shall charge a real estate broker for the costs of any audit if the Commissioner
12 has found in a final decision, following a disciplinary hearing, that the broker has violated
13 Section 10145 of the Code or a regulation or rule of the Commissioner interpreting said Code
14 section.

15 (INVESTIGATION AND ENFORCEMENT COSTS)

16 12.

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

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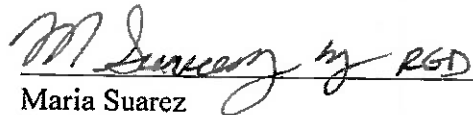
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1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
3 disciplinary action against all the licenses and/or license rights of Respondents GALLERY
4 REAL ESTATE SERVICES and DONNA KAY HINSHAW, individually and as Designated
5 Officer of Gallery Real Estate Services, under the Real Estate Law, for the costs of
6 investigation and enforcement as permitted by law, for the cost of the audit, and for such other
7 and further relief as may be proper under other applicable provisions of law.

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9 Dated at Los Angeles, California this 27TH day of September, 2021.

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13 Maria Suarez
14 Supervising Special Investigator
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25 cc: GALLERY REAL ESTATE SERVICES
26 DONNA KAY HINSHAW
27 Maria Suarez
28 Sacto.
Audits – Isabel Beltran