

FILED

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BUREAU OF REAL ESTATE

By *Carol Davis*

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7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-40874 LA
12 TNC, INC.; CYNTHIA JANNETTE GOMEZ,)
13 individually and as designated officer of) ACCUSATION
14 TNC, Inc.; and MINERVA CLAY,)
15 Respondents.)

16
17 The Complainant, Maria Suarez, a Supervising Special Investigator of the State
18 of California, acting in her official capacity, for cause of Accusation against TNC, INC.
19 ("TNCI"), CYNTHIA JANNETTE GOMEZ ("GOMEZ"), individually and as designated
20 officer of TNC, Inc., and MINERVA CLAY ("CLAY"), is informed and alleges as follows:

21 1.

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

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2.

All references to the "Code" are to the California Business and Professions Code, and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations, unless otherwise specified.

3.

A. TNC, INC.: Respondent TNCI is presently licensed and/or has license rights issued by the Bureau of Real Estate as a real estate corporate broker (license no. 01843283). TNCI was originally licensed as a corporate real estate broker on or about May 12, 2008. From on or about July 16, 2009 through the present, GOMEZ has been the designated officer of TNCI. SRESI is owned by BRODERICK and his wife, Carly Guinn Broderick.

B. CYNTHIA JANNETTE GOMEZ: Respondent GOMEZ is presently licensed and/or has license rights issued by the Bureau of Real Estate as a real estate officer (license no. 01411148). GOMEZ was originally licensed as a real estate broker on or about July 7, 2009. Previously, from on or about February 20, 2004 to July 6, 2009, GOMEZ had a real estate salesperson license.

C. MINERVA CLAY: Respondent CLAY is presently licensed and/or has license rights issued by the Bureau of Real Estate as a real estate salesperson (license no. 01431979). GOMEZ was originally licensed as a real estate salesperson on or about June 4, 2004. From on or about January 7, 2015 to June 8, 2017, GOMEZ's broker of record was TNCI. From June 9, 2017 through the present, GOMEZ's broker of record has been Steller Corp (license no. 02018339), which was originally licensed on October 6, 2016. Steller Corp's designated officer is GOMEZ.

4.

At all times mentioned, in San Bernardino County, TNCI and GOMEZ engaged in the business of real estate brokers conducting licensed activities within the meaning of Code section 10131(a) (selling or offering to sell, buying or offering to buy, soliciting prospective

1 sellers or purchasers of, soliciting or obtaining listings of, or negotiating the purchase, sale, or
2 exchange of real property or a business opportunity). TNCI and GOMEZ also engaged in
3 licensed activities by performing escrows pursuant to the an exemption for brokers performing
4 in-house escrows pursuant to California Financial Code section 17006(a)(4).

5
6 FIRST CAUSE OF ACCUSATION

7 (Trust Fund Audit)

8 5.

9 On or about November 24, 2015, the Bureau of Real Estate completed an audit
10 examination of the books and records of TNCI to determine whether TNCI handled and
11 accounted for trust funds and conducted its real estate activities in accordance with the Real
12 Estate Law and Regulations. The audit examination covered a period of time beginning on
13 August 1, 2014 and ended on July 31, 2015. The audit examination revealed violations of the
14 Code and the Regulations set forth in the following paragraphs, and more fully discussed in
15 Audit Report LA150033 and the exhibits and work papers attached to said audit report.

16
17 Bank Accounts/Trust Account

18 6.

19 At all times mentioned, in connection with the activities described in Paragraph
20 4, above, TNCI accepted or received funds including funds in trust ("trust funds") from or on
21 behalf of actual or prospective parties, such as buyers of real property, and thereafter made
22 deposits and/or disbursements of such funds. From time to time herein mentioned, during the
23 audit period, said trust funds were deposited and/or maintained by TNC in the bank account as
24 follows:

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1 "TNC Inc. Escrow Trust Account"
*****7841

2 Comerica Bank
3 800 N. Haven Ave., Ste. 110
4 Ontario, CA 91764

(T/A 1)

5 "TNC Inc. Escrow Trust Account"
*****4646

6 Comerica Bank
7 800 N. Haven Ave., Ste. 110
8 Ontario, CA 91764

(T/A 2)

9 7.

10 In the course of activities described in Paragraphs 5 and 7, above, and during the
11 audit examination period in Paragraph 6, above, Respondents TNCI and GOMEZ acted in
12 violation of the Code and the Regulations as set forth below:

13 (a) Permitted, allowed, or caused the disbursement of trust funds from bank
14 account T/A 1 where the disbursement of funds reduced the total of aggregate funds in BA 1 to
15 a total amount which, on July 31, 2015, was at least \$22,822.89 less than the existing aggregate
16 trust fund liability to every principal who was an owner of said funds, without first obtaining
17 the prior written consent of the owners of said funds, in violation of Code section 10145 and
18 Regulations sections 2832.1, 2950(d), 2950(g), and 2951. This shortage was cured by October
19 13, 2015.

20 (b) Failed to maintain accurate and complete control records of all trust
21 funds received, deposited, and disbursed for T/A 1, in violation of Code section 10145 and
22 Regulations sections 2831, 2950(d), and 2951.

23 (c) Failed to maintain accurate and complete separate records for each
24 beneficiary or property for all trust funds received and disbursed for T/A 1, in violation of Code
25 section 10145 and Regulations sections 2831.1, 2950(d), and 2951.

1 (d) Failed to perform and maintain a monthly reconciliation comparing the
2 balance of all separate beneficiary or transaction records (separate records) to the balance of the
3 record of all trust funds received and disbursed (control record) for T/A 1 and T/A 2, in
4 violation of Code section 10145 and Regulations sections 2831.2, 2950(d), and 2951.

5 (e) Commingled trust funds with TNC's own funds by keeping \$9,122.50 of
6 its sales commission in T/A 1, in violation of Code sections 10145 and 10176(e) and
7 Regulations section 2835(b).

8 (f) Commingled and converted trust funds totaling \$12,000.00 from T/A 1
9 and T/A 2 as of July 31, 2015, and cause \$500.00 in unauthorized disbursements (cash
10 withdrawals) from T/A 1 on July 17, 2015, in violation of Code sections 10145, 10176(e), and
11 10177(j) and Regulations section 2950(d), 2950(g), and 2951.

12 (g) GOMEZ appointed and delegated day-to-day supervision and oversight
13 responsibility to real estate broker Ahmed Nasim (license no. 00966808) as the divisional
14 manager of TNCI's main office in Ontario, California and real estate broker Terry Sanchez
15 (license no. 01235344) as the branch manager of TNCI's branch office in Fontana, California,
16 and did not notify and submit a copy of the office management contracts to the Bureau of Real
17 Estate, in violation of Code section 10164.

18 (h) Failed to advise all parties in writing of its ownership interest in the
19 escrow division in most of the escrow files examined during the audit, in violation of
20 Regulations section 2950(h).

21 (i) Failed to disclose to the owners of the trust funds of its receipt of
22 earnings credit from Comerica Bank from trust funds in T/A 1 and T/A 2 and its use of the
23 credit to offset bank service charges, in violation of Code section 10176(g) and Regulations
24 section 2830.

1 (j) GOMEZ failed to exercise reasonable control and supervision over the
2 activities conducted on behalf of TNCI as necessary to secure full compliance with the Real
3 Estate Laws, in violation of Code sections 10159.2 and 10177(h) and Regulations section 2725.

4 8.

5 The conduct of Respondents TNCI and GOMEZ described in Paragraph 8,
6 above, violated the Code and the Regulations as set forth below:

7 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
8 7(a)	Code section 10145 and Regulations sections 2832.1, 2950(d), 2950(g), 9 and 2951
10 7(b)	Code section 10145 and Regulations sections 2831, 2950(d), and 2951
11 7(c)	Code section 10145 and Regulations sections 2831.1, 2950(d), and 2951
12 7(d)	Code section 10145 and Regulations sections 2831.2, 2950(d), and 2951
13 7(e)	Code sections 10145 and 10176(e) and Regulations section 2835(b)
14 7(f)	Code sections 10145, 10176(e), and 10177(j) and Regulations section 15 2950(d), 2950(g), and 2951
16 7(g)	Code section 10164
17 7(h)	Regulations section 2950(h)
18 7(i)	Code section 10176(g) and Regulations section 2830
19 7(j)	Code sections 10159.2 and 10177(h) and Regulations section 2725

20 The foregoing violations constitute cause for discipline of the real estate license and license
21 rights of TNCI and GOMEZ under the provisions of Code sections 10176(e), 10176(i),
22 10177(d), 10177(g), 10177(h), and/or 10177(j).

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1 THIRD CAUSE OF ACCUSATION

2 (Failure to Update Address)

3 15.

4 On or about December 16, 2014, TNCI and GOMEZ notified the Bureau of Real
5 Estate that it had a branch office at 8456 Sierra Ave., Fontana, CA 92335 ("Sierra Ave.").

6 16.

7 In or about May 2016, TNCI vacated the Sierra Ave. branch office, but did not
8 inform the Bureau of Real Estate until on or about December 7, 2016.

9 17.

10 Based on the foregoing, TNCI and GOMEZ violated Regulations section 2715.

11 FOURTH CAUSE OF ACCUSATION

12 (Advertising/Website Violations)

13 18.

14 From at least November 22, 2016 to June 1, 2017, TNCI's www.century21.com
15 page advertised TNCI had a branch office at 16923 Sierra Lakes Parkway, #101, Fontana, CA
16 92336 ("Sierra Lakes Parkway") when it did not have a branch office there, in violation of Code
17 section 10163.

18 19.

19 From at least November 22, 2016 to June 1, 2017, TNCI's Facebook webpage
20 failed to disclose TNCI's real estate license number, in violation of Code section 10140.6.

21 20.

22 On at least June 1, 2017, TNCI's towncountry.c21.com webpage failed to
23 disclose TNCI's real estate license number, in violation of Code section 10140.6, and falsely
24 represented it had a branch office at the Sierra Ave. location.

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1 FIFTH CAUSE OF ACCUSATION

2 (Supervision and Compliance)

3 21.

4 The overall conduct of Respondents TNCI and CLAY constitutes a failure on
5 said GOMEZ's part, as officer designated by a corporate broker licensee, to exercise the
6 reasonable supervision and control over the licensed activities of TNCI and CLAY, as required
7 by Code sections 10159.2, and to keep TNCI and CLAY in compliance with the Real Estate
8 Law.

9 22.

10 TNCI, GOMEZ, and CLAY's conduct as alleged in Paragraphs 3-9, above, is
11 cause for discipline of the real estate license and real estate license rights of Respondent
12 GOMEZ pursuant to Code sections 10177(d), 10177(g), and 10177(h) and Regulations section
13 2725.

14 COSTS

15 23.

16 Code section 10148(b) provides, in pertinent part, that the Commissioner shall
17 charge a real estate broker for the cost of any audit if the Commissioner has found in a final
18 decision, following a disciplinary hearing, that the broker has violated Code section 10145 or a
19 regulation or rule of the Commissioner interpreting said Code section.

20 24.

21 Code section 10106 provides, in pertinent part, that in any order issued in
22 resolution of a disciplinary proceeding before the Bureau of Real Estate, the Commissioner may
23 request the administrative law judge to direct a licensee found to have committed a violation of
24 this part to pay a sum not to exceed the reasonable costs of investigation and enforcement of the
25 case.

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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 the license and license rights of Respondents TNC, INC., CYNTHIA
4 JANNETTE GOMEZ, individually and as designated officer of TNC, Inc., and MINERVA
5 CLAY, for the cost of investigation and enforcement pursuant to Code section 10106 and as
6 permitted by law, and for such other and further relief as may be proper under other applicable
7 provisions of law, including, but not limited to, costs of audit pursuant to Code section
8 10148(b).

9 Dated at Los Angeles, California: 22 November, 2017.

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12 _____
13 Maria Suarez
14 Supervising Special Investigator
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20 cc: TNC, Inc.
21 Cynthia Jannette Gomez
22 Minerva Clay
23 Maria Suarez
24 Sacto
25 Enforcement
26 Audits – Isabel Beltran
27