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FILED

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DEPARTMENT OF REAL ESTATE

By 

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9 BEFORE THE
10 DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of

NO. H-4189 SD

14 MORTGAGE PARTNERS INC.,
15 RICK SCOTT SCHULLER, and
16 MERLINDA ALDEFOLLA MATUSZEWSKI,

ACCUSATION

17 Respondents.

18 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy Real
19 Estate Commissioner of the State of California, for cause of Accusation against MORTGAGE
20 PARTNERS INC. (hereinafter "MPI"), RICK SCOTT SCHULLER (hereinafter "Schuller"), and
21 MERLINDA ALDEFOLLA MATUSZEWSKI (hereinafter "Matuszewski"), (collectively referred
22 to herein as "Respondents") is informed and alleges as follows:

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24 MPI is presently licensed by the Department of Real Estate (hereinafter "the
25 Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
26 California Business and Professions Code (hereafter "the Code"), as a corporate real estate broker,
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1 and at all times relevant herein was acting by and through SCHULLER as its designated officer
2 broker.

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4 At all times relevant herein, MPI had the following fictitious business names
5 registered with the Department: "MP Funding", "MPI-Real Estate", and "Venture Real Estate."
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8 SCHULLER is presently licensed by the Department and/or has license rights under
9 the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker.

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11 At all times relevant herein, SCHULLER had the following fictitious business name
12 registered with the Department: "Mortgage Partners."
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15 At all times relevant herein, SCHULLER was licensed by the Department as the
16 designated officer broker of MPI. As the designated officer broker, SCHULLER was responsible,
17 pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents,
18 real estate licensees and employees of MPI for which a real estate license is required.
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21 MATUSZEWSKI is presently licensed by the Department and/or has license rights
22 under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate salesperson and at all
23 times relevant herein was employed as a real estate salesperson by MPI.
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26 Whenever reference is made in an allegation in this Accusation to an act or omission
27 of MPI, such allegation shall be deemed to mean that the employees, agents and real estate licensees

1 employed by or associated with MPI committed such act or omission while engaged in furtherance
2 of the business or operations of MPI and while acting within the course and scope of their authority
3 and employment.

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5 At all times herein mentioned, MPI engaged in activities on behalf of others within
6 the State of California for or in expectation of compensation, for which a real estate license is
7 required under:
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- 9 (a) Section 10131(a) of the Code, including the operation and conduct of a
10 real estate brokerage that included the sale or offer of sale, purchase or
11 offer of purchase, solicitation of prospective sellers and purchasers of,
12 solicitation or obtaining listings of, or negotiations of the purchase, sale or
13 exchange of real property or a business opportunity; and
14
15 (b) Section 10131(d) of the Code, including the solicitation of borrowers or
16 lenders for or negotiation of loans or collection of payments or
17 performance of services for borrowers or lenders or note owners in
18 connection with loans secured directly or collaterally by liens on real
19 property or on a business opportunity.
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21 FIRST CAUSE OF ACTION
22 As Against MPI - Residential Property Activities

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24 Each and every allegation in Paragraphs 1 through 8, inclusive, above, is
25 incorporated by this reference as if fully set forth herein.

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Beginning on or about June 17, 2010, and continuing intermittently until December 22, 2010, an audit was conducted at MPI's office located at 7428 Jackson Drive, San Diego, California, and the Department of Real Estate's Los Angeles District Office, wherein the Auditor examined MPI's records for the period of June 1, 2007 through May 31, 2010 (hereinafter "the audit period").

While acting as a corporate real estate broker as described in Paragraph 8, above, and within the audit period, MPI accepted or received funds in trust (hereinafter "trust funds") from or on behalf of sellers, buyers, and others in connection with the sale of residential property, for or in expectation of compensation, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

In the course of the activities described in Paragraph 8, above, and within the audit period, MPI:

- (a) failed to deposit trust funds accepted or received as described in Paragraph 11, above, into a designated trust account in the name of MPI as trustee, immediately into a neutral escrow depository, or into the hands of MPI's principals, in violation of Section 10145 of the Code and Section 2832, of Title 10 of the California Code of Regulations (hereinafter "the Regulations");
- (b) failed to maintain records of all trust funds received and disbursed, including but not limited to information identifying from whom trust funds were

received, in violation of Section 10145 of the Code and Section 2831 of the Regulations;

- (c) failed to maintain separate records for each beneficiary of trust funds accepted or received, in violation of Section 10145 of the Code and Section 2831.1 of the Regulations;
- (d) failed to reconcile the total of separate beneficiary/property records with a control record on a monthly basis, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;
- (e) failed to maintain complete Broker-Salesperson relationship agreements with several of its employees in violation of Section 2726 (Maintenance of Salesperson Agreements) of the Regulations, including but not limited to the following employees: David Gonzalez, Christine Pearson, Thomas Richard Smith, Michael Wadleigh;
- (f) failed to retain and to make available for inspection by the commissioner's designated representative original Salesperson license certificates in violation of Section 10160 of the Code and Section 2753 of the Regulations, including but not limited to the following Salespersons: Merlinda Aldefolla Matuszewski, Brian Axthelm, and Jose Jesse Jimenez;
- (g) while conducting real property sales activities, used the fictitious business names "MPI" and "MPI Realtors" which was not registered with the Department, in violation of Section 10159.5 of the Code and Section 2731 of the Regulations;

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1 (h) misrepresented to the owners of the following properties ("Properties") that
2 an earnest money deposit was obtained from the following buyers ("Buyers")
3 and was being held by MPI when the buyers made the offer on the properties:
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5 Buyer Name	Property Address	Earnest Money Deposit Amount
6 Grecia	2407 Sweet Sage St.	\$2,000.00
7 De La Cruz	6483 Plaza Ridge Rd.	\$3,100.00
8 De La Cruz	1554 Circulo Brindisi	\$3,000.00
9 Pulido	870 Sunnyside Ave.	\$1,800.00
Randhawa	1908 Pizarro Lane	\$5,000.00
Perez	741 S. Imperial Ave.	\$1,000.00
10 Frias	3331 Alvoca St.	\$1,000.00

11 The true facts were that MPI had received no funds from the buyers when the
12 buyers made their offers on the properties. Such representations are in
13 violation of Section 10176(a), (b), and (i) and Section 10177(g) and (j) of the
14 Code;
15

16 (i) failed to retain records of escrow receipts and earnest money deposit check
17 copies that were requested by the Auditor pursuant to a Subpoena Duces
18 Tecum dated September 15, 2010, and served upon SCHULLER on
19 September 21, 2010, in violation of Section 10148 of the Code.
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22 The acts and/or omissions of MPI described in Paragraph 12, above, constitute
23 grounds for the suspension or revocation of MPI's license and license rights pursuant to Section
24 10177(d) (Willful Disregard/Violation of Real Estate Law) and 10177(g) (Negligent/Incompetence
25 in Performing Act Requiring Licensee) of the Code.
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The acts and/or omissions of MPI as alleged in Paragraph 12, above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (Reimbursement for Cost of Audit for Trust Fund Handling Violation) of the Code.

SECOND CAUSE OF ACTION
As Against MPI - Mortgage Loan Activities

Each and every allegation in Paragraphs 1 through 14, inclusive, above, is incorporated by this reference as if fully set forth herein.

Beginning on or about June 17, 2010, and continuing intermittently until December 28, 2010, an audit was conducted at MPI's office located at 7428 Jackson Drive, San Diego, California, and the Department of Real Estate's Los Angeles District Office, wherein the Auditor examined MPI's records for the period of June 1, 2007 through May 31, 2010 (hereinafter "the audit period").

While acting as a corporate real estate broker as described in Paragraph 8, above, and within the audit period, MPI accepted or received funds in trust (hereinafter "trust funds") from or on behalf of borrowers, lenders, and/or others in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, for or in expectation of compensation, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

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The trust funds accepted or received by MPI as described in Paragraph 17, above, were deposited or caused to be deposited by MPI into two bank accounts maintained by MPI for the handling of trust funds and general business funds, and thereafter from time-to-time MPI made disbursements of said trust funds, identified as follows:

BANK ACCOUNT # 1	
Bank Name and Location:	Bank of America, P.O. Box 37176, San Francisco, CA 94137
Account No.:	XXXXX-08268
Entitled:	"Mortgage Partners, Inc. MP Funding, Venture Rel, Appraisal SVC, Credit Reporting, Real Estate"
Signatories:	Rick Scott Schuller (REB/D.O.)
No. of Signatures Required:	One

BANK ACCOUNT # 2	
Bank Name and Location:	Flagstar Bank, 301 W. Michigan Ave., Jackson, MI 49201
Account No.:	XXXX09757
Entitled:	"Mortgage Partners Inc"
Signatories:	Rick Scott Schuller (REB/D.O.)
No. of Signatures Required:	One

In the course of the activities described in Paragraph 8, above, and within the audit period, MPI:

- (a) failed to properly designate Bank Account #1 and Bank Account #2 as a trust account in the name of MPI or its registered fictitious business name, as trustee, in violation of Section 10145 of the Code and Section 2832 of the Regulations;
- (b) failed to maintain records of all trust funds received and disbursed, including but not limited to information identifying from whom trust funds were

received, for Bank Account #1 and Bank Account #2, in violation of Section 10145 of the Code and Section 2831 of the Regulations;

(c) failed to maintain separate records for each beneficiary of funds held in Bank Account #1 and Bank Account #2, in violation of Section 10145 of the Code and Section 2831.1 of the Regulations;

(d) failed to reconcile the total of separate beneficiary/property records with a control record on a monthly basis for Bank Account #1 and Bank Account #2, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;

(e) caused, suffered or permitted trust funds which were received and held by MPI to be commingled with MPI's own money, in violation of Section 10176(e) of the Code and Section 2835 of the Regulations;

(f) while conducting mortgage loan activities, used the fictitious business name "Mortgage Partners" which was not registered with the Department by MPI, in violation of Section 10159.5 of the Code and Section 2731 of the Regulations;

(g) failed to retain records of credit report invoices and credit report disbursement records that were requested by the Auditor pursuant to a Subpoena Duces Tecum dated September 15, 2010, and served upon SCHULLER on September 21, 2010, in violation of Section 10148 of the Code.

(h) failed to disclose within the printed text of the Mortgage Loan Disclosure Statement, a disclosure statement within in the meaning of Section 10240 of

1 the Code, the license number for MPI and/or the license number of MPI's
2 representative who negotiated the loan for certain transactions, in violation of
3 Sections 10236.4 of the Code. The following are examples of such
4 transactions:

Borrower Name	Date Closed
Yuzon	3/11/08
Goering	12/8/09
De La Cruz	6/20/08
Ocampo	4/2/08
Serrano	9/18/08
Duffy	3/12/09
Ribada	3/28/08
Brisebois	1/18/08
Seleznoff	11/9/07
Ruiz & Lopez	10/11/07

- 13 (i) failed to provide and/or provided incomplete and/or inaccurate Mortgage
14 Loan Disclosure Statements (MLDS) to borrowers containing all of the
15 information required by Section 10241 of the Code, in violation of Section
16 10240(a) of the Code, including, but not limited to the following:
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- 18 i. MLDS were not signed or dated by MPI, its agents or
19 employees, or were not signed or dated by the borrower within
20 three (3) days of a completed loan application or before the
21 borrower became obligated to the loan, and MPI did not
22 deliver the MLDS to the borrower within three (3) business
23 days after receipt of a complete written loan application from
24 the potential borrower. The following are examples of such:
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Borrower Name	Date of Loan Application	Date Closed
De La Cruz	5/29/08	6/20/08
Serrano	9/6/08	9/18/08
Duffy	2/6/09	3/12/09
Lee	3/4/10	3/10/10
Seleznoff	11/9/07	11/29/07

- (j) for the following transaction, MPI failed to retain a copy of the approved MLDS in the loan file to show said disclosure statement was provided to the borrower as required by Section 10240(a) of the Code, and the Good Faith Estimate that MPI provided to the borrowers did not include information pertaining to the requirement of Section 10240(c) of the Code:

Borrower Name	Date of Loan Application
Brisebois	11/5/07

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The acts and/or omissions of MPI described in Paragraph 19, above, constitute grounds for the suspension or revocation of MPI's license and license rights pursuant to Section 10177(d) (Willful Disregard/Violation of Real Estate Law) and 10177(g) (Negligent/Incompetence in Performing Act Requiring Licensee) of the Code.

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The acts and/or omissions of MPI as alleged in Paragraph 19, above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (Reimbursement for Cost of Audit for Trust Fund Handling Violation) of the Code.

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Each and every allegation in Paragraphs 1 through 21, inclusive, above, is incorporated by this reference as if fully set forth herein.

SCHULLER, as the designated officer broker of MPI, was required to exercise reasonable supervision and control over the activities of MPI and its employees pursuant to Section 10159.2 (Reasonable Supervision by Designated Officer) of the Code and Section 2725 of the Regulations (Reasonable Supervision by Broker).

SCHULLER failed to exercise reasonable supervision over the acts and/or omissions of MPI and its employees in such a manner as to allow the acts and/or omissions as described in Paragraphs 12 and 19, above, to occur, which constitutes cause for the suspension or revocation of the licenses and license rights of SCHULLER under Sections 10177(d) (Willful Disregard/Violation of Real Estate Law), 10177(g) (Negligence/Incompetence in Performing Act Requiring License), 10177(h) (Failure to Exercise Reasonable Supervision) and 10159.2 (Reasonable Supervision by Designated Officer) of the Code.

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Each and every allegation in Paragraphs 1 through 24, inclusive, above, is incorporated by this reference as if fully set forth herein.

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2 In connection with the activities described in Paragraph 28, below,
3 MATUSZEWSKI was acting outside the course and scope of her employment with MPI and
4 SCHULLER, Designated Officer/Broker of MPI, her supervising broker during the time relevant
5 herein. At all times relevant herein, MATUSZEWSKI was acting as a rogue salesperson without
6 broker control or supervision.
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9 In connection with the activities described in Paragraph 28, below, MATUSZEWSKI
10 was engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate
11 broker within the State of California within the meaning of Section 10131(a) of the Code, including
12 the operation and conduct of a real estate brokerage that included the sale or offer of sale, purchase
13 or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining
14 listings of, or negotiations of the purchase, sale or exchange of real property or a business
15 opportunity and Section 10131(d) of the Code, including the solicitation and/or performing of
16 services for borrowers in connection with loans secured directly or collaterally by liens on real
17 property or on a business opportunity, for or in expectation of compensation.
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21 During the course of the activities described in Paragraph 27, above, in or about
22 January 2008, buyers A. ECO and N. ECO ("the Buyers") verbally authorized MATUSZEWSKI to
23 help them look for a house to purchase in San Diego. During May 2008, MATUSZEWSKI
24 suggested to Buyers that they pay \$12,000.00 in advance to PRECIOUS PERIDOT, a Nevada
25 corporation owned by MATUSZEWSKI, for a down payment if Buyers decided to purchase a
26 home. MATUSZEWSKI represented to Buyers that she would hold the down payment for safe
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1 keeping until Buyers chose a home to purchase. MATUSZEWSKI failed to inform Buyers that
2 PRECIOUS PERIDOT's Nevada corporate status was revoked since 2006. On or about May 19,
3 2008, Buyers remitted to MATUSZEWSKI a cashiers check payable to PRECIOUS PERIDOT in
4 the amount of \$12,000.00, for a down payment on a yet-to-be-identified property.
5 MATUSZEWSKI issued to Buyers a written signed receipt which stated, "make it pay to the order
6 of 'Precious Peridot' 12K for purchase of property." On or about August 11, 2008,
7 MATUSZEWSKI entered into a short-sale listing agreement with seller ROMMEL PINEDA
8 ("Seller"), the owner of the property located at 90 Danawoods Lane, San Diego, California ("the
9 Property"). In August 2008, Buyers decided to purchase the Property. Buyers and
10 MATUSZEWSKI entered into an oral agreement which provided that MATUSZEWSKI was to
11 arrange financing for Buyers to purchase the Property. MATUSZEWSKI told Buyers to move into
12 the property and not to make any mortgage payments. In reliance on MATUSZEWSKI's
13 representations, Buyers moved into the Property in September 2008, without signing any written
14 contract and/or agreement with MATUSZEWSKI or the Seller. Thereafter, Buyers did not pay any
15 mortgage payments on the Property as instructed by MATUSZEWSKI, and due to the fact that
16 Buyers had not yet signed any contract or agreement to purchase or lease the property. After
17 December 2008, MATUSZEWSKI ignored all of Buyers' frequent attempts to contact her. In May
18 2009, Buyers were told by an agent of Prudential California Realty, JAN DAVIS, to move out of the
19 Property by June 5, 2009 because the Property was in the process of foreclosure. MATUSZEWSKI
20 failed to arrange financing for Buyers as promised. Buyers never purchased the Property and
21 MATUSZEWSKI never returned Buyers' \$12,000 deposit for the purchase of the Property.
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The acts and/or omissions of MATUSZEWSKI described in Paragraph 28, above, constitute a violation of Section 10130 of the Code (Broker's License Required), and are grounds for the discipline of all licenses and license rights of MATUSZEWSKI pursuant to Section 10176(a) (Making Substantial Misrepresentation), 10176(b) (Making Any False Promise Likely to Induce), 10176(i) (Fraud or Dishonest Dealing), 10177(d) (Willful Disregard/Violation of Real Estate Law), and/or Section 10177(g) (Negligence/Incompetence in Performing Act Requiring License) of the Code.

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 all Respondents named herein under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.


TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California

this 22 day of April, 2011.