

**FILED**

**August 2, 2012**

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DEPARTMENT OF REAL ESTATE

By *A. Jones*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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11  
12 In the Matter of the Accusation of )  
13 MATHIS & ASSOCIATES INC )  
14 and BARRY VANCE MATHIS, )  
15 Respondents. )

No. H-5855 SAC

ACCUSATION

16 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner  
17 of the State of California, for cause of Accusation against MATHIS & ASSOCIATES INC and  
18 BARRY VANCE MATHIS (Respondents), is informed and alleges as follows:

19 PRELIMINARY ALLEGATIONS

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21 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner  
22 of the State of California, makes this Accusation in her official capacity.

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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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At all times mentioned, Respondent MATHIS & ASSOCIATES INC (M&A) was and is licensed by the State of California Department of Real Estate (Department) as a real estate broker corporation.

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At all times mentioned, Respondent BARRY VANCE MATHIS (MATHIS) was and is licensed by the Department individually as a real estate broker, and as the designated broker officer of M&A. As said designated officer-broker, MATHIS was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of M&A for which a license is required.

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

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

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1 FIRST CAUSE OF ACTION

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3 Each and every allegation in Paragraphs 1 through 6, inclusive, is  
4 incorporated by this reference as if fully set forth herein.

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6 On or about March 12, 2012, and continuing intermittently through May 25, 2012,  
7 an audit was conducted of the records of Respondents. The auditor herein examined the records  
8 for the period of March 1, 2011, through March 30, 2012.

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

15 10

16 The trust funds accepted or received by Respondents as described in Paragraph 9  
17 were deposited or caused to be deposited by Respondents into trust accounts which were  
18 maintained by Respondents for the handling of trust funds, and thereafter from time-to-time  
19 Respondents made disbursements of said trust funds, identified as follows:

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ACCOUNT # 1	
21 Bank Name and Location:	Mechanics Bank, P.O. Box 6995, Portland, OR 97228-6995
22 Account No.:	xxxx6342
23 Entitled:	Mathis & Associates Inc 24 DBA Property MGMT Solutions 25 Trust Account

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2 In the course of the activities described in Paragraph 6, Respondents:

3 (a) caused, suffered, or permitted the balance of funds in Account #1 to be  
4 reduced to an amount which, as of March 30, 2012, was approximately \$153,677.45 less than the  
5 aggregate liability of Account #1 to all owners of such funds, without the prior written consent of  
6 each and every owner of such funds, in violation of Section 10145 of the Code and Section  
7 2832.1 of Title 10 of the California Code of Regulations (Regulations);

8 (b) failed to maintain a written control record, for Account #1, of all trust  
9 funds received and disbursed, containing all information required by Section 2831 of the  
10 Regulations;

11 (c) failed to keep accurate separate records for each beneficiary or transaction,  
12 accounting therein for all funds which were deposited into Account #1, containing all of the  
13 information required by Section 2831.1 of the Regulations;

14 (d) failed to reconcile, for Account #1, the balance of separate beneficiary or  
15 transaction records with the control record of trust funds received and disbursed at least once a  
16 month, and/or failed to maintain a record of such reconciliations for each account as required by  
17 Section 2831.2 of the Regulations;

18 (e) commingled with its own money or property, the money or property of  
19 others which was received or held by Respondents in trust in violation of Section 10176(e) of the  
20 Code; and

21 (f) failed to retain for three years, as required by Section 10148(a) of the  
22 Code, copies of all transaction documents related to Respondents management of the property  
23 owned by Guy and Lisa Gates, in connection with transactions for which a real estate license is  
24 required; and

25 (g) operated the real estate business, under the fictitious business names of  
26 "Intero Real Estate Services" and "Property Management Solutions Partners" without obtaining a  
27 license bearing said fictitious business name in violation of Section 2731 of the Regulations.

Respondents commingled and/or converted trust funds in connection with the property management activities described in Paragraph 6. Respondents converted and/or commingled said trust funds to Respondents own use and benefit or to purposes not authorized by the rightful owners of said funds. The amount of said commingled and converted trust funds is unknown, but well known to Respondents, and is not less than \$100,000.

The facts alleged in the First Cause of Action are grounds for the suspension or revocation of Respondents licenses and license rights under the following sections of the Code and Regulations:

(1) As to Paragraph 10(a), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

(2) As to Paragraph 10(b), under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2831 of the Regulations;

(3) As to Paragraph 10(c), under Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations;

(4) As to Paragraph 10(d), under Section 10177(d) of the Code in conjunction with Section 2831.2 of the Regulations;

(5) As to Paragraph 10(e), under Section 10176(e) of the Code;

(6) As to Paragraph 10(f), under Section 10177(d) of the Code in conjunction with Section 10148(a) of the Code;

(7) As to Paragraph 10(g), under Section 10177(d) of the Code in conjunction with Section 10159.5 of the Code and Section 2731 of the Regulations;

(8) As to Paragraph 11, under Sections 10176(e), 10176(i), and/or 10177(g).

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2 The acts and/or omissions of Respondents as alleged the First Cause of Action,  
3 entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148  
4 (Reimbursement for Cost of Audit for Trust Fund Handling Violation) of the Code.

5 SECOND CAUSE OF ACTION

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

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10 Respondent MATHIS failed to exercise reasonable supervision over the acts of  
11 Respondent M&A in such a manner as to allow the acts and events described above to occur.

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13 The acts and/or omissions of M&A described in Paragraph 16 constitute failure on  
14 the part of MATHIS, as designated broker-officer for M&A, to exercise reasonable supervision  
15 and control over the licensed activities of M&A required by Section 10159.2 of the Code.

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17 The facts described above as to the Second Cause of Action constitute cause for  
18 the suspension or revocation of the licenses and license rights of Respondent MATHIS under  
19 Section 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in  
20 conjunction with Section 10177(d) of the Code.

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

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1 PRIOR DISCIPLINARY ACTION

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3 Effective March 11, 2011, in Case No. H-5335 SAC before the Department of  
4 Real Estate, the Real Estate Commissioner suspended the real estate broker licenses of  
5 Respondent MATHIS for 60-days, stayed upon terms and conditions set for in the Order, for  
6 MATHIS' violation of Section 10177(d) of the Code in conjunction with Sections 10145,  
7 10176(e), and 10176(g) of the Code and Sections 2832, 2832.1, 2831, 2831.1, 2831.2, 2834, and  
8 2835 of the Regulations.

9 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
10 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
11 action against all licenses and license rights of Respondent under the Code, for the cost of  
12 investigation and enforcement as permitted by law, and for such other and further relief as may  
13 be proper under the provisions of law.

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15 TRICIA D. SOMMERS  
16 Deputy Real Estate Commissioner

17 Dated at Sacramento, California,  
18 this 19<sup>th</sup> day of August, 2012

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20 DISCOVERY DEMAND

21 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Department of  
22 Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the  
23 *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate  
24 may result in the exclusion of witnesses and documents at the hearing or other sanctions that the  
25 Office of Administrative Hearings deems appropriate.  
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