

FILED

OCT 03 2013

BUREAU OF REAL ESTATE

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	
MATHIS & ASSOCIATES, INC)	NO. H-5855 SAC
and BARRY VANCE MATHIS)	
)	OAH NO. 2012120150
Respondents.)	
)	

DECISION

The Proposed Decision dated August 27, 2013, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2)(C) of the Government Code, the following corrections are made to Proposed Decision:

On page 13, item 2, third sentence of the Order, is amended to read:

“The Commissioner may, in his discretion...”

This Decision shall become effective 12 o'clock noon on OCT 23 2013

IT IS SO ORDERED

REAL ESTATE COMMISSIONER

S

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

MATHIS & ASSOCIATES, INC.
And BARRY VANCE MATHIS,

Respondents.

Case No. H-5855 SAC

OAH No. 2012120150

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, on July 24, 2013, in Sacramento, California.

Tricia D. Sommers, a Deputy Real Estate Commissioner, State of California (Complainant) was represented by Truly Sughrue, Counsel, Bureau of Real Estate (Bureau).

Barry V. Mathis (respondent), as the designated-officer of Mathis & Associates, Inc. (respondent Mathis or Mathis), was present and represented respondents' interests.

The case was submitted for decision on July 24, 2013.

SUMMARY

In 2009, the Bureau conducted an initial audit of respondent's accounting and record keeping practices to determine whether trust funds were handled and maintained in accordance with the Real Estate Law. The Bureau identified several violations including a trust account shortfall in the amount of \$502.24. The Bureau filed an Accusation (No. H-5335 SAC), and respondent's license was disciplined with a stayed suspension.

In March through May 2012, the Bureau concluded a follow-up audit of respondents' records. The follow-up audit revealed a trust account shortfall in the

amount of \$153,677.45. The investigation revealed that respondent had not performed monthly trust account reconciliations, maintained control records, maintained separate beneficiary records, or retained all property management records, as required by law. The Bureau alleged in this second Accusation (No. H-5855 SAC), that respondent's violations constituted cause for disciplinary action. Respondent's violations warrant discipline of his license and licensing rights.

FACTUAL FINDINGS

1. Complainant made and filed this accusation (No. H-5855 SAC) in her official capacity on August 2, 2012. Complainant filed a First Amended Accusation on January 25, 2013.

2. The Bureau issued corporate real estate broker license number C/01873052 to respondent Mathis & Associates, Inc. (Mathis), on October 24, 2009. The main office address is 401 Vernon Street, Roseville. Respondent is the sole designated broker-officer of Mathis.¹ The license was active at all times relevant to this matter and will expire on October 23, 2013, unless renewed or revoked. The primary business of Mathis has been property management; however, respondent now engages primarily in real estate sales under this corporate name. This license was active at all times relative to this matter and will expire on October 23, 2013, unless renewed or revoked.

3. The Bureau initially issued respondent his real estate salesperson license on October 21, 2000. The salesperson license terminated on November 3, 2004, and the Bureau issued respondent his broker license number B/01298055 on November 4, 2004. On October 9, 2007, respondent began doing business as Intero Real Estate Services, Roseville. The fictitious business name Property Management Solutions was added on February 28, 2011. The main office address is 548 Gibson Drive, Suite 200, Roseville. The license was active at all times relative to this matter and will expire on November 3, 2016, unless renewed or revoked.

4. As the designated broker-officer of Mathis (Bus. & Prof. Code, § 10131, subd. (b)), respondent was involved in property management activities for 150 owners. Respondent managed 220 residential properties for compensation of approximately seven to eight percent of collected rents.

¹ The Statement of Information filed by respondent in November 2008, lists respondent as Chief Executive Officer (CEO), Secretary, and Chief Financial Officer (CFO) of Mathis & Associates, Inc. (C2714050). No other officer is named.

Prior Discipline of Respondent

5. On January 25, 2010, the Commissioner filed Accusation H-5335 SAC against respondent. The accusation alleged that respondent was a real estate broker doing business as Intero Real Estate Services, engaged in property management activities. The audit of respondent's business records and practices covered the period of January 1, 2008 through August 31, 2009. In the course of business, respondent accepted and received funds in trust on behalf of owners, lessees, and others. Respondent held funds in a bank account with the designated name "Mathis and Associates, Inc., dba Intero Real Estate Service Property Management."

6. In connection with the collection and disbursement of trust funds, the Bureau alleged in a prior Accusation (No. H-5335 SAC), that respondent: 1) failed to properly designate the trust account (Cal. Code Regs., tit. 10, § 2832), 2) failed to maintain control records for the trust account (Cal. Code Regs., tit. 10, § 2831.), 3) failed to maintain separate records for the trust account (Cal. Code Regs., tit. 10, §, 2831.1.), 4) failed to reconcile the control record with the separate beneficiary records for the trust account (Cal. Code Regs., tit. 10, § 2831.2), 5) allowed a shortage of \$502.24 to accrue in the trust account (Cal. Code Regs., tit. 10, § 2832.1; Bus. & Prof. Code 10145.), 6) commingled funds by leaving \$1,929.60 in the trust account for more than 25 days (Cal. Code Regs., tit. 10, § 2835; Bus. & Prof. Code, § 10176, subd (e).), and 7) failed to disclose to owners a repair fee of \$5.00 per hour being charged against their proceeds (Bus. & Prof. Code, § 10176, subd. (g).)

7. After hearing, the ALJ found cause for discipline based on the alleged violations. However, improprieties were determined to be "technical" and "not of a serious nature" in that no clients were harmed. Prior to hearing, respondent had corrected all of the deficiencies identified in the Bureau audit. A 60 day suspension was stayed for one year and respondent was ordered to pay for the cost of past and future audits. (Bus. & Prof. Code, § 101048, subd. (b).) The Decision and Order after hearing became effective on March 11, 2011.

Trust Fund Accountability and Balances

8. Karan Dogra is employed by the Bureau as a general auditor. His duties include conducting routine (random) and investigative (based on a complaint) audits of licensees. From March 12 to May 25, 2012, he conducted a follow-up audit (SC-11-0099) of respondents' property management activities for the one-year period of March 1, 2011 to March 30, 2012. The auditor met with respondent, issued a search warrant, obtained and examined records on a sample basis, performed account analysis, prepared an audit report dated June 12, 2012, and testified at hearing.

9. Mathis maintained only one trust account, into which trust funds were placed. The funds in this account were maintained at Mechanics Bank, Portland,

Oregon (No. 40956342) under the name Mathis & Associates Inc., DBA Property MGMT Solutions, Trust Account (Trust #1). Respondent was the sole signatory.

10. Respondent initially had trouble timely producing the requested records. After a one month delay, the auditor issued a subpoena and obtained the records which included Bank Statements, a Bank Signature Card, Property Management Files, Separate Records, an Outstanding Check List, a Trust Account Summary, Property Management Agreements, and Cancelled Checks.

11. Trust #1 was the operating account for multiple properties managed by respondents. Respondent had no ownership interest in any of the properties. Deposits in the account consisted of rents, security deposits, and fees received from tenants, while disbursements included payments for repairs, broker fees, and owner proceeds.

12. The auditor prepared a reconciliation of the trust account as of March 30, 2012. The reconciliation process required the auditor to calculate the adjusted account balance by subtracting any outstanding checks and adding back any deposits in transit. This figure should match the accountability or total of separate records for all owners. A "shortage" means that the broker does not have all the funds that are owed to property owners.

As of the March 30, 2012 cut-off date, the auditor established a shortage in Trust #1 of \$153,677.45. The adjusted balance of Trust #1 was \$95,310.69. The trust fund accountability was \$248,988.14.² The difference or shortage in Trust #1 in the amount of \$153,677.45 was caused by the following:

- 1) Negative balances of \$9,686.82;
- 2) Broker disbursement of management fees of \$137,934.93; and
- 3) Pay Lease/Bank Charges of \$6,055.70 that respondent should have but did not reimburse to the trust account.

The account balances of 22 property owners were running negative balances as of March 30, 2012. Negative balances totaled \$9,686.82. The auditor created a spread sheet to determine which owner accounts were affected. Further, respondent could not produce the written consent of any property owner to disburse money from the trust account and thereby create a shortage. (Cal. Code Regs., tit. 10, § 2832.1.)

Over disbursements in management fees were discovered when the auditor noticed several even dollar disbursements from the trust account into respondent's own personal account at Mechanics Bank. When he asked respondent about this,

² The separate record accountability of \$248,988.14, was comprised of \$239,889.02 in identified accountability and \$9,099.12 in unidentified/unaccounted for funds.

respondent admitted in a written declaration to the auditor dated March 28, 2012, that during some months, he took "too much income ...from the trust account." The auditor prepared a chart to determine the amount of management fees that respondent over collected. From the management agreement with each client, the auditor determined the amount of management fees that respondent was entitled to take each month. (For example: for owner K.S., the management fee was "7% of rents or \$75, whichever is greater;" and for owner G.S. the management fee was "7% of rents.") Next, for each month of the audit period (from March 2011 through March 2012), he calculated the legitimate management fee and compared it to the amount respondent actually transferred from the trust account to his personal account. The auditor determined that respondent over collected \$137,934.93 in management fees over the one year audit period. This amounts to an unlawful conversion of trust funds to personal use.

Additionally, the auditor noticed that respondent was using an on-line company called Pay Lease which allowed tenants to pay their rents on-line. According to the auditor, these costs are a business expense and should be covered by the broker. Many Pay Lease charges were debited from the trust account and respondent did not reimburse this expense to Trust #1. The auditor made a schedule to determine the total amount of Pay Lease charges that were paid from Trust #1 during the audit period. As of March 30, 2012, a total of \$6,055.70 was paid out for these charges. Pay Lease charges were not disclosed on the property management agreements between respondent and the respective owners. Respondent produced no written consent of any property owner to absorb the cost associated with Pay Lease services.

Retention and Accuracy of Client Records

13. The audit was initially a follow-up audit for respondent based on prior license discipline. The Bureau had also received a complaint from property owner Lisa Gates. Ms. Gates alleged that she did not receive all the money due to her when she closed her account with respondent. Respondent was unable to produce the client file or any real estate documents for Ms. Gates upon demand by the auditor. Respondent told the auditor he had misplaced the file. The auditor testified that brokers are required to keep all records for three years. (Cal. Code Regs., tit. 10, § 2831.)

14. Respondent informed the auditor that effective October 2009, he was no longer conducting real estate activities under his individual license (Lic. No. B/01298055 for Barry Vance Mathis with associated DBA Intero Real Estate Services added on October 9, 2007). Instead, he stated that he was conducting business under his corporation (Lic. No. C/01873052 for Mathis & Associates, Inc. with associated DBA Property Management Solutions added on February 18, 2011).

A sampling of respondent's real estate records (property management agreements and rental agreements) revealed that respondent had entered into contracts under various individual and corporate names (Intero Real Estate Services, Property Management Partners, and Property Management Solutions), while using his individual license number at the signature line. Further, respondent was contracting under the name Property Management Solutions, LP, prior to February 18, 2011, the date that he added this DBA to the Mathis corporate license. Finally, respondent had entered into contracts under the name Property Management Partners, but he never registered this DBA under either his individual or corporate real estate licenses.

Control Record Not Maintained

15. The Real Estate Law requires the maintenance of a control record. A control record is a ledger for the trust account that shows all deposits and disbursements from the account with a running balance. The auditor testified that every transaction should be entered on the control record. (Cal. Code Regs., tit. 10, §2831.) During the audit, respondent was unable to produce a control record.

Separate Record Not Maintained

16. The Real Estate Law requires that brokers maintain a separate record of the receipt and disposition of all trust funds deposited into the trust account. (Bus. & Prof. Code, § 10145, subd. (g); Cal. Code Regs., tit. 10, § 2831.1.) The separate record must include information sufficient to identify the transaction and parties including the date and amount of each deposit and withdrawal. The auditor was unable to identify and/or account for \$9,099.12 in Trust #1.

Trust Account Reconciliation

17. The Real Estate Law requires that trust accounts be reconciled by the corporation at least once a month and a record of the reconciliation be maintained. (Bus. & Prof. Code, § 2831.2.) This is done by comparing the accountability balance (record of all separate beneficiary or transaction records) to the control record balance (disbursements and receipts of the trust account), for the same day. Respondent did not maintain a control record so a reconciliation would not have been possible. The audit found that respondent did not conduct monthly trust fund reconciliations during the audit period and did not maintain a record of monthly trust fund reconciliations.

Mitigation/Rehabilitation

18. Respondent testified that he began managing rental properties for friends in 2009. In 2010, he began doing property management exclusively. His business grew rapidly from 30 to 300 units. He stated that this growth came at a price in that he had to "scramble" to learn the "system" which led to the present shortfalls.

19. Respondent first learned of the shortfall in the trust account through the Bureau's audit. He signed a declaration on March 28, 2012, in which he conceded taking "too much income" from the trust account. He estimated that his personal over-disbursements amounted to \$30,000. He blamed the situation on "neglect and ignorance" and expressed his commitment to repaying these funds. Respondent stated that the bulk of the trust account shortages were due to mismanaged security deposits. Prior to mid-2011, respondent stated that his practice was to collect the deposit from new tenants and give the funds to the property owner. When a tenant moved out, the security deposits were returned from the trust account and he failed to collect the money back from the owners. Respondent estimated that this practice affected 150 client accounts and amounted to \$138,000. Unfortunately, one-third of these owners were no longer managed by respondent. In his declaration, he stated that he would work to collect the money from current and prior owners in order to restore the unaccounted for trust shortfall.

20. Respondent testified that after the second audit, he hired a forensic bookkeeper to help him investigate what had happened. He also cited changes in bookkeepers and his accounting software program as partly responsible. Respondent learned through the National Association of Property Managers that he should not let property owners retain security deposits. Respondent was able to recoup some of the deposits from owners, but could not locate all of them. At the end of 2012, respondent sold his property management company and deposited all of the proceeds into the trust account. Respondent testified that as of "last week, all money has been returned to the company." Respondent took out a personal loan to ensure that everyone was "made whole." He stated that his expertise was in sales, not accounting, and he should have hired an experienced bookkeeper from another property management company.

21. With respect to using the wrong company name and license number on property management agreements and contracts, respondent admitted that he "probably did put the cart before the horse." He had attempted to file the paperwork for Property Management Partners with the Bureau but the name was rejected because the entity was not a "partnership," but a sole proprietorship. He stated that he did "create one or two contracts with that name" and "one of the trust account names and checks" had that name. As for the missing file, respondent believes he gave the Gates file to Debbie Burnett, Special Investigator for the Bureau. He conceded that he could not produce the beneficiary record to the auditor.

22. Respondent understood he had 25 days to reimburse accounts for business expenses paid from the trust account. He stated that he had instructed Pay Lease to charge his business account and not the trust account. As for charges to the trust account for restaurants, gasoline, and out-of-town trips, respondent agreed that these funds needed to be reimbursed. Respondent explained that he kept both his trust and business debit cards in his wallet and sometimes used the wrong one. He

said that when he noticed an improper charge to the trust account, his practice was to reimburse the trust.

23. Respondent stated that he was glad the Bureau came in and pointed out his errors. As a result, he was able to maintain the value of his business and recoup the losses. He sold his property management accounts to two different companies, Placer Property Management and M & M Properties. He insisted that he did not abuse the trust account with "vacations and boats." His goal for the last year has been to make up the shortfall, and he was happy he was able to do that. Respondent was sincere in acknowledging that he lacked the necessary skills to supervise trust account handling. He was candid in admitting that he was not performing reconciliations properly, took too much money out, and in some instances, excess management fees were taken out of the trust. He took a course in 2004 to obtain his license and another in 2011 after his last license discipline. He stated that he learned some things he had tried to implement, but "some of it I think I learned too late."

24. Respondent is not interested in managing properties anymore. He currently owns Mathis and Associates, Inc. and engages in real estate sales under his own brokerage. In 2012, he sold approximately six homes. In 2013, he sold approximately 15 homes. If his brokerage license is disciplined, he would like to retain a real estate salespersons license. He stated that he has a broker who is willing to hire him.

Costs

25. As of February 19, 2013, the Bureau incurred \$2,670 in attorney charges in connection with the prosecution of this case. Bureau counsel submitted a certification of prosecution costs at hearing. Additionally, the Bureau incurred \$5,195.50 in investigation and enforcement charges. The Bureau submitted a statement of investigation costs at hearing. The total cost of prosecution, investigation, and enforcement in this matter amounts to \$7,865.50, and appears to be reasonable. Pursuant to Business and Professions Code sections 10148 and 10106, the Bureau is authorized to seek reimbursement of audit and enforcement costs at hearing.

LEGAL CONCLUSIONS

Applicable Laws

1. Business and Professions Code section 10145, subdivision (a)(1) provides that "[a] real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in

this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.”

2. Business and Professions Code section 10148, subdivision (a) governs retention of real estate records as follows: “A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. ...After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit ...”

3. Business and Professions Code section 10176 authorizes the Commissioner to suspend or revoke the license of a real estate licensee had done any of the following:

- (e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

[¶]...[¶]

- (i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

4. Business and Professions Code section 10159.2, subdivision (a) provides that the “officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.”

5. Business and Professions Code section 10177 authorizes the Commissioner to suspend or revoke the license of a real estate licensee or corporation if an officer, director, or person owning or controlling ten percent or more of the corporation’s stock has done any of the following:

- (d) Willfully disregarded or violated the Real Estate Law

[¶]...[¶]

- (g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

- (h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

[¶]...[¶]

6. California Code of Regulations, title 10, section 2831 governs how trust funds must be held and recorded as follows:

- (a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:
 - (1) Date trust funds received.
 - (2) From whom trust funds received.
 - (3) Amount received.
 - (4) With respect to funds deposited in an account, date of said deposit.
 - (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
 - (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
 - (7) Daily balance of said account.
- (b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).
- (c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

7. California Code of Regulations, title 10, section 2831.2 states that “[t]he balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust

funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.”

8. California Code of Regulations, title 10, section 2832.1 states that “[t]he written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.”

Cause for Discipline

9. Clear and convincing evidence to a reasonable certainty established cause for disciplinary action against respondents pursuant to Business and Professions Code sections 10145, 10148, 10159.2, 10176, and 10177, subdivisions (d), (g), and (h); and California Code of Regulations, title 10, sections 2831, 2831.1, and 2832.2.

10. Cause for discipline of respondent’s license as a real estate broker was established by reason of the matters set forth in Factual Findings 1-25, and Legal Conclusion 9, as stated below:

- a. Respondent disbursed funds from a trust account for personal use and unauthorized business expenses without authorization of the persons entitled to the funds in violation of the Real Estate Law. (Bus. & Prof. Code, § 10145, subd. (a)(1); Cal. Code Regs, tit. 10, § 2832.1.)
- b. Respondent failed to retain the real estate records of all clients for a period of three years and failed to make all client records available to the Commissioner for inspection in violation of the Real Estate Law. (Bus. & Prof. Code, § 10148, subd. (a).)
- c. Respondent commingled personal funds with trust funds in violation of the Real Estate Law. (Bus. & Prof. Code, § 10176, subd. (e).)
- d. Respondent failed to properly supervise the activity of his employee bookkeepers in relation to trust fund accounting. (Bus. & Prof. Code, §§ 10159.2, subd. (a), 10177, subd. (h); Cal. Code Regs, tit. 10, § 2831, subds. (a), (b), & (c); 2831.1, 2831.2.)
- e. Respondent willfully disregarded the Real Estate Law in that as a licensed broker, he failed to learn and apply valid trust accounting principles following his 2009 audit and failed to properly supervise his bookkeepers in

the handling of trust accounts. (Bus. & Prof. Code, § 10177, subd. (d), (g), (h); Cal. Code Regs, tit. 10, § 2831, (a), (b), & (c), 2831.1, & 2831.2.)

Cost Recovery Analysis

11. The Commissioner has discretion to recoup audit costs after a final desist and refrain order or after a disciplinary hearing if the broker has been found to have violated Business and Professions Code section 10145 or any related regulation. (Bus. & Prof. Code, § 10148, subd. (b).) Additionally, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106, subd. (a).)

Zuckerman v. Board of Chiropractic Examiners (2002) 29 Cal.4th 32, sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include whether the licensee had a “subjective good faith belief” in the merits of his or her position, whether the licensee raised a “colorable challenge” to the proposed discipline, and the extent of the licensee’s financial ability to make later payments. Further, full costs may not be assessed when a “disproportionately large investigation” was conducted given the circumstances of the case. Finally, the Bureau should consider the public interest in regulating the targeted conduct.

At hearing, respondent presented evidence that he has sold his property management company and paid back the shortage in the trust account. There is no evidence that he lacked a “subjective good faith belief” in the merits of his position. He did not, however, present a colorable challenge to the discipline sought. Respondent is actively engaged in real estate sales and indicated that he has a broker who is willing to employ him in a sales capacity.

By reason of the matters set forth in Factual Finding 25, and Legal Conclusions 9 and 10, in conjunction with an analysis pursuant to the factors set forth in *Zuckerman*, supra, it is determined that the billed prosecution, investigation, and enforcement costs totaling \$7,865.50, represent a reasonable assessment to impose on respondent. Respondent shall reimburse the Bureau in that amount.

Conclusion

12. Respondent was originally licensed in 2000 as a real estate salesperson and in 2009 as a broker. He was previously disciplined in March 2011 for identical conduct, failure to reconcile trust fund accounts and maintain proper records. He failed to exercise diligence in the performance of his duties to the public. He was cooperative during the investigation. Though he is no longer engaged in property management activities, there is insufficient evidence that he would exercise greater judgment in the performance of his duties as a designated broker-officer.

13. Having considered these several factors it would be contrary to the public interest to allow respondent to retain his broker license at this time.

14. It would not be contrary to the public interest to issue respondent a restricted real estate salespersons license. The matters set forth in the Factual Findings and Legal Conclusions as a whole were considered in making the following order.

ORDER

All licenses and licensing rights of respondents Barry Vance Mathis and Mathis & Associates, Inc., under the Real Estate Law are REVOKED; provided, however, a RESTRICTED real estate salespersons license shall be issued to respondent Barry Vance Mathis pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted salespersons license within 90 days from the effective date of this Decision.

The restricted real estate salespersons license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.

2. Pursuant to Business and Professions Code section 101106, respondent shall pay the Commissioner's reasonable cost for prosecution, investigation, and enforcement of this disciplinary action in the amount of \$7,865.50. These costs shall be paid in full or in accordance with a payment schedule as agreed to between respondent and the Commissioner. The Commissioner may, in her discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment.

3. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

4. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the

Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

5. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

6. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:


- (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
- (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

7. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

8. Professional Responsibility Condition:

Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

DATED: August 27, 2013


DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings