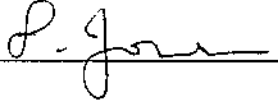


FILED

December 10, 2012

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007

DEPARTMENT OF REAL ESTATE

By 

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9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)	
)	13 No. H-5925 SAC
14 KIMBERLY ANN POIESZ,)	
)	15 <u>ACCUSATION</u>
16 Respondent.)	

17 The Complainant, TRICIA SOMMERS, a Deputy Real Estate Commissioner of
18 the State of California, for cause of Accusation against KIMBERLY POIESZ, (Respondent), is
19 informed and alleges as follows:

20 1

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

23 2

24 Respondent is presently licensed and/or has license rights under the Real Estate
25 Law, Part 1 of Division 4 of the Business and Professions Code (Code).

26 3

27 At all times mentioned, Respondent was and is licensed by the Department
individually as a real estate broker.

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At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker 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, Respondent 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.

5

On or about July 12, 2012, and continuing intermittently through July 27, 2012, an audit was conducted of the records of Respondent. The auditor herein examined the records for the period of May 1, 2011, through May 31, 2012.

6

While acting as a corporate real estate broker as described in Paragraph 4, Respondent accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time to time made disbursements of said trust funds.

7

The trust funds accepted or received by Respondent, as described in Paragraph 6, were deposited or caused to be deposited by Respondent into trust accounts which were maintained by Respondent for the handling of trust funds, and thereafter from time-to-time Respondent made disbursements of said trust funds, identified as follows:

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ACCOUNT # 1	
Bank Name and Location:	Tri Counties Bank 789 High Street Auburn, CA 59603
Account No.:	XXXXXX0619
Account Name:	Cattails Inc. DBA Todd's Valley Property Management

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In the course of the activities described in Paragraph 4, Respondent:

(a) caused, suffered, or permitted the balance of funds in Account #1 to be reduced to an amount which, as of May 31, 2012, was approximately \$6,773.20 less than the aggregate liability of Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations (Regulations);

(b) commingled with its own money or property, the money or property of others which was received or held by Respondents in trust in violation of Section 10176(e) of the Code and Section 2835 of the Regulations;

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

(d) failed to deposit trust funds into one or more trust funds accounts in the name of Respondent as trustee at a bank or other financial institution, in conformance with Section 10145 of the Code and Section 2832 of Title 10 of the Regulations.

9

The facts alleged in the above are grounds for the suspension or revocation of Respondent's licenses and license rights under the following sections of the Code and Regulations:

1 (1) As to Paragraph 8(a) under Section 10177(d) of the Code in conjunction
2 with Section 10145 of the Code and Section 2832.1 of the Regulations;

3 (2) As to Paragraph 8(b), under Section 10177(d) of the Code in conjunction
4 with Section 2835 of the Regulations and Section 10176(e) of the Code;

5 (3) As to Paragraph 8(c), under Section 10177(d) of the Code in conjunction
6 with Section 2831.2 of the Regulations; and

7 (4) As to Paragraph 8(d), under Section 10177(d) of the Code in conjunction
8 with Section 2832 of the Regulations and Section 10145 of the Code.

9 COST RECOVERY

10 10

11 The acts and/or omissions of Respondent as alleged above, entitle the Department
12 to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund
13 handling violation) of the Code.

14 11

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

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