

FILED

February 6, 2013

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DEPARTMENT OF REAL ESTATE

By

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

12 MICHAEL PATRICK GUINDON, )

13 )  
14 Respondent. )

No. H-5954 SAC

ACCUSATION

15 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner  
16 of the State of California for cause of Accusation against MICHAEL PATRICK GUINDON  
17 (GUINDON), is informed and alleges as follows:

18 1.

19 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner  
20 of the State of California, makes this Accusation against Respondents in her official capacity.

21 2.

22 Respondent GUINDON is presently licensed and/or has license rights under the  
23 Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (Code) as a real  
24 estate broker doing business as Metzger Management Company.

25 3.

26 At all times mentioned, GUINDON engaged in the business of, acted in the  
27 capacity of, advertised or assumed to act as a real estate broker in the State of California, within

1 the meaning of Section 10131(b) of the Code, including the operation and conduct of a property  
2 management business wherein Respondent leased, rented, or offered to lease or rent, solicited  
3 listings for lease or rent, collected rents from tenants or lessees, or performed other services for  
4 real property owners and tenants or lessees, all for or in expectation of compensation.

5 4.

6 Beginning on or about March 5, 2012, and intermittently through June 20, 2012,  
7 the Department conducted an audit of GUINDON's real estate business for the period of January  
8 31, 2011, to March 31, 2012, as set forth in Audit No. SC 11-0102(PM), dated June 21, 2012.  
9 During the course of the real estate activities described in Paragraph 3, above, GUINDON  
10 received and disbursed funds held in trust on behalf of others.

11 5.

12 GUINDON maintained one (1) bank account at Bank of the West, 4932 Pacific  
13 Ave., Stockton, CA 95207:

14 (1) Trust Account #1 was designated as "Metzger Management Trust  
15 Account", Account No. XXX-XX4845;

16 From time to time GUINDON made disbursements from said funds.

17 6.

18 The following facts were ascertained by the audit for the period referred to above.

- 19 a. Trust Fund Accountability was established for Trust Account #1 and as of  
20 December 31, 2011, a shortage of \$41,053.67 was discovered, in violation  
21 of Section 10145 of the Code;
- 22 b. Trust Fund Accountability was established for Trust Account #1 and as of  
23 February 29, 2012, a shortage of \$13,075.32 was discovered, in violation of  
24 Section 10145 of the Code;
- 25 c. GUINDON failed to obtain the written consent of every owner of trust  
26 funds to allow the balance of the trust account to fall to an amount less than the  
27 existing aggregate trust fund liability of the broker to all owners of the funds in

1 violation of Section 2832.1 of the Regulations. After discovery, GUINDON  
2 failed to notify owners of the trust funds of the trust account shortages;

3 d. GUINDON failed to maintain a record of all trust funds received and  
4 disbursed for Trust Account #1 as required by Section 2831 of the Regulations;

5 e. GUINDON failed to perform the required monthly reconciliations  
6 comparing the balance of the control records to the total balance of the  
7 beneficiary records for Trust Account #1, as required by Section 2831.2 of the  
8 Regulations and

9 f. GUINDON made unauthorized disbursements of \$4,186.94 during the  
10 Audit Period, from Trust Account #1 for bank charges in violation of Sections  
11 10145 and 10176 (i) of the Code.

12 7.

13 The acts and omissions of Respondent GUINDON described in Paragraph 6,  
14 above, constitute violations of Sections 2831 (Control Records), 2831.2 (Monthly  
15 Reconciliations), and 2832.1 (Written Consent Trust Fund Owners) of the Regulations and  
16 Sections 10145 (Trust Fund Handling) and 10176(i) (Other Conduct: Fraud or Dishonest  
17 Dealing) of the Code and constitute grounds for disciplinary action under Sections 10176(i),  
18 10177(d) (Willful Disregard/Violation of Real Estate Law) or, in the alternative, 10177(g)  
19 (Negligence/Incompetence Real Estate Licensee) of the Code.

20 8.

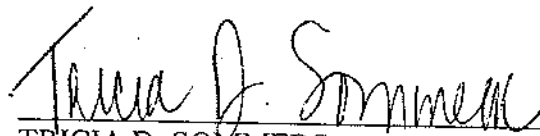
21 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
22 resolution of a disciplinary proceeding before the department, the commissioner may request the  
23 administrative law judge to direct a licensee found to have committed a violation of this part to  
24 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the 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 all licenses and license rights of Respondent, under the Real Estate  
4 Law (Part 1 of Division 4 of the Business and Professions Code), for the reasonable cost of  
5 investigation and litigation of this case, including agency attorney's fees and for such other and  
6 further relief as may be proper under the provisions of law.

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8 

9 TRICIA D. SOMMERS  
10 Deputy Real Estate Commissioner

11 Dated at Sacramento California,  
12 this 1st day of February, 2013.