

FILED

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BUREAU OF REAL ESTATE

By

Calabria

DIANE LEE, Counsel (SBN 247222)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013

Telephone: (213) 576-6982
(Direct) (213) 576-6907

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	No. H- 41102 LA
	)	
MAI REALTY, INC.; and	)	
NINA MAI, individually and as	)	<u>ACCUSATION</u>
designated officer of Mai Realty, Inc.,	)	
	)	
Respondents.	)	

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, acting in her official capacity, for cause of Accusation against MAI REALTY, INC. ("MRI") and NINA MAI aka Duyen-An Nguyen Mai ("MAI"), individually and as designated officer of Mai Realty, Inc., is informed and alleges as follows:

1.

The Complainant, Veronica Kilpatrick, acting in her official capacity as Supervising Special Investigator of the State of California, makes this Accusation.

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- 1 -

Accusation re: MAI REALTY, INC. and NINA MAI

2.

All references to the "Code" are to the California Business and Professions Code, and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations unless otherwise specified.

3.

A. MAI REALTY, INC.: Respondent MRI is presently licensed and/or has license rights issued by the Department of Real Estate as a real estate corporate broker (license no. 01805780). MRI was originally licensed as a corporate real estate broker on or about April 19, 2007. Respondent MRI also has a mortgage loan originator ("MLO") endorsement (NMLS number 251650). From on or about April 20, 2011 through the present, MRI's designated officer has been MAI. Previously, from on or about April 19, 2007 to April 19, 2011, MRI's designated officer was Ann Nguyen Mai (license no. 01272757). At no time mentioned herein has MRI had a fictitious business name/DBA with the Department of Real Estate.

B. NINA MAI: Respondent MAI is presently licensed and/or has license rights issued by the Department of Real Estate as a real estate broker (license no. 01862630). MAI was originally licensed with a real estate broker license on or about August 31, 2009. MAI also has a MLO endorsement (NMLS number 328594). At no time mentioned herein has MAI had a fictitious business name/DBA with the Department of Real Estate.

4.

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents," such allegation shall be deemed to mean that the officers, directors, employees, agents, and real estate licensees employed by or associated with Respondents committed such act or omission while engaged in the furtherance of the business or operations of Respondents and while acting within the course and scope of their corporate authority and employment, including, but not limited to, MRI and MAI.

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1 (CRIMINAL CONVICTIONS)

2 5.

3 On or about March 28, 2018, in the Superior Court of California, County of
4 Riverside, case no. RIF1605980, Respondent was convicted of violating two (2) counts of
5 California Penal Code section 487(a) (grand theft over \$950), both felonies. In part,
6 Respondent was sentenced to serve 60 months formal probation, be committed to custody for
7 124 days, pay victim restitution, perform 1500 hours of community service, pay \$500.00 in
8 victim restitution, complete 52-week domestic violence program, perform 20 hours of
9 community service, and not practice as a real estate broker without leave of court. These
10 crimes are substantially related to the qualifications, functions, or duties of a real estate licensee
11 under Section 2910, Title 10, Chapter 6, California Code of Regulations.

12 6.

13 The crimes of which Respondent was convicted, as described above, constitute
14 cause under California Business and Professions Code sections 490 and 10177(b) for the
15 suspension or revocation of the license and license rights of Respondent under the Real Estate
16 Law.

17 (TRUST FUND AUDIT)

18 7.

19 At all times mentioned below, in Riverside County, MRI and MAI engaged in
20 the business of real estate brokers conducting licensed activities within the meaning of Code
21 sections 10131(a) and 10131(b). MRI and MAI engaged in selling or offering to sell, buying or
22 offering to buy, soliciting prospective sellers or purchasers of, soliciting or obtaining listings of,
23 or negotiating the purchase, sale or exchange of real property or a business opportunity. MRI
24 and MAI also engaged in operating a real property management company by leasing, renting,
25 and/or offering to rent places for rent, soliciting for prospective tenants, and/or collecting rents
26

1 from real property.

2 8.

3 On or about September 19, 2017, the Department of Real Estate completed audit
4 examinations of the books and records of MRI to determine whether MRI and MAI handled
5 and accounted for trust funds and conducted its real estate activities in accordance with the Real
6 Estate Law and Regulations. The audit examination covered a period of time beginning on
7 January 1, 2015 and ended on April 30, 2017. The audit examination revealed violations of the
8 Code and the Regulations set forth in the following paragraphs, and more fully discussed in
9 Audit Reports SD160047, SD160049, and SD160050 and the exhibits and work papers
10 attached to said audit report.

11
12 Bank Accounts/Trust Accounts

13 9.

14 At all times mentioned, in connection with the activities described in Paragraph
15 7, above, MRI accepted or received funds including funds in trust ("trust funds") from or on
16 behalf of actual or prospective parties, such as owners of real property seeking property
17 management services, and thereafter made deposits and/or disbursements of such funds. From
18 time to time herein mentioned, during the audit period, said trust funds were deposited and/or
19 maintained by MRI in the bank account as follows:

20 "Mai Realty"

*****7018

21 Bank of America

22 204 East 6th St.

Corona, CA 92879

(BA 1)

24 "Mai Realty, Inc."

*****1026

25 BBVA Compass Bank

26 195 West Ontario Ave.

Corona, CA 92882

(BA 2)

In the course of activities described in Paragraphs 7 and 9, above, and during the audit examination period in Paragraph 8, above, Respondents MRI and MAI acted in violation of the Code and the Regulations as set forth below:

(a) Permitted, allowed, or caused the disbursement of trust funds from the bank account BA 1 where the disbursement of funds reduced the total of aggregate funds in BA 1, to an amount which, on April 30, 2017, was at least \$28,498.11 less than the existing aggregate trust fund liability to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code section 10145 and Regulations section 2832.1. On or about July 20, 2017, MAI deposited \$28,498.11 into BA 1 to cure the shortage.

(b) Failed to maintain a control record in the form of a columnar record in chronological order of all trust funds received, deposited, and disbursed, for BA 1 and BA 2 in connection with the property management activities, in violation of Code section 10145 and Regulations section 2831.

(c) Failed to maintain an accurate and complete separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited, and disbursed from BA 1 and BA 2 in connection with the property management activities, in violation of Code section 10145 and Regulations section 2831.1.

(d) Failed to perform and maintain a monthly reconciliation comparing the balance of all separate records to the balance of the record of all trust funds received and disbursed (control record) for BA 1 and BA 2 in connection with the property management activities, in violation of Code section 10145 and Regulations section 2831.2.

(e)(1) Deposited and disbursed trust funds from BA 1 and BA 2, which were not designated trust fund accounts, in violation of Code section 10145(a) and Regulations section 2832.

1 (e)(2) Failed to deposit trust funds in the form of cash from tenants into a trust
2 fund account when not given to the trust fund owner, in violation of Code section 10145(a) and
3 Regulations section 2832.

4 (f) Permitted Andrew Mai, an unlicensed and unbonded person, to be a
5 signatory on BA 1 and BA 2, in violation of Code section 10145 and Regulations section 2834.
6 Also, MAI failed to be a signatory on BA 1, in violation of Code section 10145 and Regulations
7 section 2834. On or about July 3, 2017, Andrew Mai was removed as a signatory on BA 1, and
8 MAI was added as a signatory on BA 1.

9 (g) Disbursed and converted \$7,440.83 in trust funds from BA 1 to MAI in
10 April 2017 without authorization, in violation of Code sections 10145 and 10176(e).

11 (h) MRI and MAI commingled trust funds with MRI's general funds and
12 MAI's personal funds by depositing trust funds, MRI's general funds, and MAI's personal
13 funds into the same accounts, BA 1 and BA 2, in violation of Code sections 10145 and
14 10176(e).

15 (i) Used the unlicensed fictitious business name of "Mai Realty" in
16 connection with its mortgage loan broker activity, in violation of Code section 10159.5 and
17 Regulations section 2731.

18 (j) MRI acted as a mortgage loan originator and arranged loans secured by
19 real property containing one to four residential units, but failed to file a business activity report
20 with the Department of Real Estate within ninety (90) days from December 31, 2015 and
21 December 31, 2016, the end of MRI's fiscal years, in violation of Code section 10166.07(a).

22 (k) MRI and MAI failed to disclose their MLO numbers on the real property
23 purchase agreements for transactions for which they are real estate agents, in violation of Code
24 section 10140.6(b).

25 (l) Failed to retain two (2) loan transaction files at the main office, in
26 violation Code section 10148.

27

1 (m) MAI failed to exercise reasonable control and supervision over the
2 activities conducted on behalf of MRI as necessary to secure full compliance with the Real
3 Estate Law, including, but not limited to, establishing policies, rules, procedures, and systems
4 to review, oversee, and inspect the handling of trust funds, in violation of Code sections
5 10159.2 and 10177(h) and Regulations section 2725.

7 11.

8 The conduct of Respondents MRI and MAI described in Paragraph 8, above,
9 violated the Code and the Regulations as set forth below:

10 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
11 10(a)	Code section 10145 and Regulations section 2832.1
12 10(b)	Code section 10145 and Regulations section 2831
13 10(c)	Code section 10145 and Regulations section 2831.1
14 10(d)	Code section 10145 and Regulations section 2831.2
15 10(e)	Code section 10145(a) and Regulations section 2832
16 10(f)	Code section 10145 and Regulations section 2834
17 10(g)	Code sections 10145 and 10176(e)
18 10(h)	Code sections 10145 and 10176(e)
19 10(i)	Code section 10159.5 and Regulations section 2731
20 10(j)	Code section 10166.07(a).
21 10(k)	Code section 10140.6(b)
22 10(l)	Code section 10148
23 10(m)	Code sections 10159.5 and 10177(h) and Regulations section 2725

24 The foregoing violations constitute cause for discipline of the real estate license and license
25 rights of MRI and MAI under the provisions of Code sections 10176(e), 10177(d), 10177(g),
26 10177(h), and/or 10177(j)/10176(i).

1 COSTS

2 12.

3 Code section 10106 provides, in pertinent part, that in any order issued in
4 resolution of a disciplinary proceeding before the department, the Commissioner may request
5 the administrative law judge to direct a licensee found to have committed a violation of this part
6 to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

7 Code section 10148(b) provides, in pertinent part, the Commissioner shall
8 charge a real estate broker for the cost of any audit, if the Commissioner has found in a final
9 decision following a disciplinary hearing that the broker has violated Code section 10145 or a
10 regulation or rule of the Commissioner interpreting said section.

11 WHEREFORE, Complainant prays that a hearing be conducted on the
12 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
13 disciplinary action against all licenses and/or license rights under the Real Estate Law (Part 1 of
14 Division 4 of the California Business and Professions Code) of Respondents MAI REALTY,
15 INC. and NINA MAI, individually and as designated officer of Mai Realty, Inc., for the cost of
16 investigation and enforcement as permitted by law, audit costs as permitted by law, and for such
17 other and further relief as may be proper under applicable provisions of law.

18 Dated at San Diego, California: July 9, 2018

19
20 
21 Veronica Kilpatrick
22 Supervising Special Investigator

23 cc: Mai Realty, Inc.
24 Nina Mai
25 Veronica Kilpatrick
26 Sacto
27 Enforcement
Audits – Zaky Wanis