

FILED

MAR 10 2020

DEPT. OF REAL ESTATE

By al Selous

1 Julie L. To, State Bar No. 219482
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6916
7
8

9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * * * *

12 In the Matter of the Accusation of)	No. H-41631 LA
)	
13 MYKEL ANNE MARTIN;)	<u>ACCUSATION</u>
)	
14 REALTY MASTERS &)	
15 ASSOCIATES, INC; and)	
)	
16 VINCENT KYAN, as designated)	
17 officer of Realty Masters & Associates, Inc,)	
)	
18 Respondents.)	
)	

19
20 The Complainant, Veronica Kilpatrick, is a Supervising Special Investigator of
21 the State of California, for cause of Accusation against Respondents MYKEL ANNE MARTIN,
22 REALTY MASTERS & ASSOCIATES, INC, and VINCENT KYAN (collectively,
23 "Respondents"), is informed and alleges as follows:

24 ///

25 ///

26 DRE Accusation of Mykel Anne Martin et al.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1.

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

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.

DRE LICENSE HISTORY

RESPONDENT MYKEL ANNE MARTIN ("MARTIN")

3.

MYKEL ANNE MARTIN ("MARTIN") is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a real estate salesperson ("RES"), Department of Real Estate ("Department" or "DRE") license ID 01169000. MARTIN was first licensed as a RES on or about October 21, 1993. MARTIN's mailing address of record is: 3250 Santa Fe Avenue, Suite 100, Riverside, CA 92506 ("Santa Fe address").

4.

According to DRE records to date, MARTIN is licensed under responsible real estate broker ("REB") REALTY MASTERS & ASSOCIATES, INC.

5.

MARTIN's RES license will expire on November 21, 2021.

RESPONDENT REALTY MASTERS & ASSOCIATES, INC. ("RMAI")

6.

REALTY MASTERS & ASSOCIATES, INC. ("RMAI") is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a real estate broker (corporation) ("REC"), DRE license ID 01927637. RMAI was first licensed as a

DRE Accusation of Mykel Anne Martin et al.

1 REC on or about January 25, 2013. RMAI's mailing address of record is: 1026 W. Foothill
2 Blvd., Upland, CA 91786 ("Foothill address"). RMAI's main address of record is: 17592 E. 17th
3 St., Ste. 150, Tustin, CA 92780 ("17th St., address").

4 7.

5 According to DRE records to date, RMAI's designated officer is REB VINCENT
6 KYAN until his officer affiliation expiration date of July 24, 2020; RMAI has 730 RES licensed
7 under its DRE license (including MYKEL ANNE MARTIN); and RMAI has the following
8 DBAs under its DRE license:

- 9 A. OSO Realty Group, active as of 6/25/19;
- 10 B. Powered BY RMA, active as of 12/9/19;
- 11 C. Realty Masters, active as of 1/3/18;
- 12 D. Realty Masters & Assoc., active as of 1/3/18;
- 13 E. Realty Masters & Associates, active as of 1/3/18; and
- 14 F. RMA, active as of 1/3/18.

15 8.

16 On or about March 16, 2016, in then-Bureau of Real Estate ("Bureau" or BRE")
17 Case No. H-40174 LA, an Order to Desist and Refrain was issued against RMAI and Max
18 Edwards McDermott (DRE license ID 00611660, expired July 11, 1985) that ordered RMAI and
19 McDermott to desist and refrain from: advertising, printing, displaying, publishing, and
20 distributing statements or representations with regard to the terms or conditions for their listing
21 of properties on the Multiple Listing Service ("MLS") which are false, misleading or deceptive;
22 making solicitations for listings of real property that are intended to be the first point of contact
23 with consumers which fail to contain (a) a designation that REALTY (RMAI) and McDermott
24 are performing acts for which a real estate license is required, and (b) their eight digit real estate

25
26
27 DRE Accusation of Mykel Anne Martin et al.

1 identification numbers; and using the fictitious business names “MLS Access” and/or “Listing
2 with MLS” to advertise for activities requiring the issuance of a real estate license without
3 obtaining a license from the Bureau for the use of such names.”

4 9.

5 RMAI’s REC license will expire on July 24, 2020.

6 **RESPONDENT VINCENT KYAN (“KYAN”)**

7 10.

8 VINCENT KYAN (“KYAN”), f.k.a. Vicente V. Gonzalez, is presently licensed
9 and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a REB,
10 DRE license ID 00984120. KYAN was first licensed as a RES on or about March 18, 1988 and
11 as a REB on or about December 3, 1993. KYAN’s mailing and main address of record are the
12 same as that of RMAI.

13 11.

14 According to DRE records to date, KYAN is the responsible REB designated
15 officer for RMAI, until his officer expiration date of July 24, 2020.

16 12.

17 KYAN’s REB license will expire on December 2, 2021.

18 **APPLICABLE SECTIONS OF THE REAL ESTATE LAW**

19 **False or Fictitious Business Name – Code Section 10159.5 and Regulation 2731**

20 13.

21 Pursuant to Code Section 10159.5(a)(1) *Fictitious Name*:

22 “Every person applying for a license under this chapter who desires to have the
23 license issued under a fictitious business name shall file with his or her application a certified
24

25
26
27 DRE Accusation of Mykel Anne Martin et al.

1 copy of his or her fictitious business name statement filed with the county clerk pursuant to
2 Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.”

3 14.

4 Pursuant to Regulation 2731(a) *Use of False or Fictitious Name*:

5 “A licensee shall not use a fictitious name in the conduct of any activity for which
6 a license is required under the Real Estate Law unless the licensee is the holder of a license
7 bearing the fictitious business name.”

8 **Team Name – Requirements – Code Section 10159.6**

9 15.

10 Pursuant to Code Section 10159.6 *Team Name – Requirements*:

11 “All of the following apply to use of a team name, as defined in paragraph (3) of
12 subdivision (a) of Section 10159.7:

13 (a) Notwithstanding subdivision (b) of Section 10140.6, advertising and
14 solicitation materials that contain a team name, including print or electronic media
15 and “for sale” signage, shall include, and display in a conspicuous and prominent
16 manner, the team name and the name and license number of at least one of the
17 licensed members of the team.

18 (b) The responsible broker’s identity shall be displayed as prominently and
19 conspicuously as the team name in all advertising and solicitation materials.

20 (c) The advertising and solicitation materials shall not contain terms that imply the
21 existence of a real estate entity independent of the responsible broker.

22 (d) Notwithstanding Section 10185, a violation of this section is not a
23 misdemeanor.”
24

25
26
27 DRE Accusation of Mykel Anne Martin et al.

1 **Place of Business: Contact Information -- Code Section 10162 and Regulation 2715**

2 16.

3 Pursuant to Code Section 10162 *Place of Business: Contact Information:*

4 “(a) Every licensed real estate broker shall have and maintain a definite place of
5 business in the State of California that serves as his or her office for the
6 transaction of business. This office shall be the place where his or her license is
7 displayed and where personal consultations with clients are held.

8 (b) A real estate license does not authorize the licensee to do business except from
9 the location stipulated in the real estate license as issued or as altered pursuant to
10 Section 10161.8.

11 (c) (1) Every real estate broker and salesperson licensee shall provide to the
12 commissioner his or her current office or mailing address, a current telephone
13 number, and a current electronic mail address that he or she maintains or uses to
14 perform any activity that requires a real estate license, at which the bureau may
15 contact the licensee.
16

17 (2) Every real estate broker and salesperson licensee shall inform the
18 commissioner of any change to his or her office or mailing address, telephone
19 number, or electronic mail address no later than 30 days after making the change.

20 (d) Notwithstanding Section 10185, a violation of this section is not a
21 misdemeanor.”

22 17.

23 Pursuant to Regulation 2715 *Business and Mailing Addresses of Licensee:*

24 “Every broker, except a broker acting in the capacity of a salesperson to another
25

26 DRE Accusation of Mykel Anne Martin et al.

1 broker under written agreement, shall maintain on file with the commissioner the address of his
2 principal place of business for brokerage activities, the address of each branch business office
3 and his current mailing address, if different from the business address. Every broker who is
4 acting in the capacity of a salesperson to another broker under written agreement shall maintain
5 on file with the commissioner the address of the business location where he expects to conduct
6 most of the activities for which a license is required and his current mailing address. A real
7 estate salesperson shall maintain on file with the commissioner his current mailing address, and
8 when applicable, the address of the principal business office of the broker to whom the
9 salesperson is at the time licensed. Whenever there is a change in the location or address of the
10 principal place of business or of a branch office of a broker, he shall notify the commissioner
11 thereof not later than the next business day following the change. This section shall apply to the
12 holder of a real estate license who fails to renew it prior to the period for which it was issued and
13 who is otherwise qualified for such license as set forth in Section 10201 of the Code.”

14 **Further Grounds for Disciplinary Action – Code Section 10177**

15 18.

16 Pursuant to Code Section 10177, “The commissioner may suspend or revoke the
17 license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the
18 issuance of a license to an applicant, who has done any of the following:

19 . . .

20 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing
21 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and
22 regulations of the commissioner for the administration and enforcement of the Real Estate Law
23 and Chapter 1 (commencing with Section 11000) of Part 2.”

24 . . .

26 DRE Accusation of Mykel Anne Martin et al.

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

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

7 **FACTS DISCOVERED BY THE DEPARTMENT**
8 **& CORRESPONDING CAUSES OF ACTION**

9 19.

10 9/6/18 DRE Corrective Action Letter

11 On September 6, 2018, the DRE sent a corrective action letter (“CAL”) via U.S.
12 Mail to MARTIN, and to RMAI (to D.O. KYAN’s attention) to officially notify the parties of the
13 following violations of the Real Estate Law discovered during the DRE’s investigation of
14 MARTIN’s website www.welovesellingrealestate.com:

15 Regulation 2731(a)	MARTIN and her team utilized the unregistered false/fictitious business names 16 TCR Group and Keller Williams Realty, neither of which were registered to 17 employing REB RMAI.
18 Code §10159.6(a)	MARTIN and her team members failed to disclose their employing REB 19 (RMAI) in their advertising.
20 Code §10137	MARTIN advertised Marlow Hooper as part of her team, when Hooper was 21 not employed under RMAI.
22 Code §10162(b) & 23 §10163	MARTIN advertised an unlicensed branch office at 15320 Central Ave., Chino, CA.
24 Code	MARTIN and her team failed to include a designation in their advertising.

25
26
27 DRE Accusation of Mykel Anne Martin et al.

§101040.6(a)(b)(1)	MARTIN and her team members failed to disclose their license status, numbers and employing broker's (RMAI) identity in their advertising.
Reg. 2725	KYAN failed to supervise the activities of RMAI's RES, including their advertising and their licenses/employment statuses.

20.

9/17/18 Return of DRE CAL to MARTIN

On September 17, 2018, the September 6, 2018 CAL that was addressed to MARTIN's address of record on file with the DRE was returned by the post office with the notation "Return to Sender. No Such Street. Unable to Forward."

21.

9/9/18 KYAN Response to DRE CAL

On September 9, 2018, KYAN submitted a letter of the same date to the DRE's San Diego District Office in which he denoted measures taken to instruct MARTIN and to ensure the CAL violations would not recur.

22.

2/6/19 DRE Web Search of Website www.welovesellingrealestate.com

On or about February 6, 2019, nearly five (5) months subsequent to the DRE's issuance of the DRE CAL to MARTIN and RMAI (to KYAN's attention) Special Investigator Jennifer Lynn ("SI Lynn") viewed the website www.welovesellingrealestate.com and discovered the following:

- A. "The TCR Group" and "TCR Group" were utilized throughout the website;
- B. MARTIN's DRE license number was neither prominent or conspicuous;
- C. MARTIN's employing REB information was neither prominent nor conspicuous;

- 1 D. the website implied that “The TCR Group” and/or “TCR Group” was a stand-
2 alone brokerage; and
3 E. that MARTIN is the administrator of the website; and
4 F. that KYAN did not supervise MARTIN to ensure MARTIN’s cessation and/or
5 correction of the violations cited in the 9/6/18 DRE CAL.

6 **First Cause of Action: Fictitious Business Names**

7 (RMAI & MARTIN)

8 (Code Section 10159.5 and Regulation 2731)

9 23.

10 “The TCR Group” and “TCR Group”

11 The use of unlicensed FBNs “The TCR Group” and “TCR Group” throughout the
12 website www.welovesellingrealestate.com is in violation of **Code Section 10159.5 and**
13 **Regulation 2731** and is cause for the suspension or revocation of the license and license rights of
14 **Respondents RMAI and MARTIN** pursuant to **Code Sections 10177(d) and (g)**.

15 **Second Cause of Action: Team Names**

16 (RMAI & MARTIN)

17 (Code Section 10159.6)

18 24.

19 The use of team names “The TCR Group” and “TCR Group” throughout the
20 website www.welovesellingrealestate.com is not in compliance with, and is in violation of, **Code**
21 **Section 10159.6** and is cause for the suspension or revocation of the license and license rights of
22 **Respondents RMAI and MARTIN** pursuant to **Code Sections 10177(d) and (g)**.

26 DRE Accusation of Mykel Anne Martin et al.

1 **Third Cause of Action: Place of Business**

2 (MARTIN)

3 (Code Section 10162)

4 25.

5 The DRE's CAL addressed to MARTIN's address of record on file was returned
6 by the post office on or about September 17, 2019 as bearing a bad or non-existent address, in
7 violation of **Code Section 10162(c)(1)(2) and Regulation 2715**, and is cause for the suspension
8 or revocation of the license and license rights of **Respondent MARTIN**, pursuant to **Code**
9 **Sections 10177(d) and (g)**.

10 **Fourth Cause of Action: Failure to Supervise**

11 **(KYAN, as D.O. of RMAI)**

12 (Code Section 10177(h) and Regulation 2725)

13 26.

14 KYAN, as the D.O. of RMAI, failed to supervise MARTIN, a RES of RMAI, to
15 ensure that MARTIN ceased to violate the Real Estate Law. KYAN was put on notice of
16 MARTIN's violations of the Real Estate Law on or about September 6, 2018 by way of the
17 DRE's CAL, to which he responded to the DRE that he had made contact with MARTIN and
18 instructed her to make the corrections to her violations. By February 2019, MARTIN had not
19 corrected all of the violations cited in the 9/6/18 CAL. The conduct of Respondent KYAN is in
20 violation of **Code Section 10177(h) and Regulation 2725**, and is cause for the suspension or
21 revocation of his license and license rights.

22 ///

23 ///

24 ///

1
2 COSTS

3 27.

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

8 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
9 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
10 action against all the licenses and license rights of Respondents **MYKEL ANNE MARTIN,**
11 **REALTY MASTERS & ASSOCIATES, INC and VINCENT KYAN** under the Real Estate
12 Law (Part I of Division 4 of the Business and Professions Code), and for such other and further
13 relief as may be proper under other applicable provisions of law.

14 Dated at San Diego, California

15 this 28 day of February 2020.

16
17
18 
19 Veronica Kilpatrick
Supervising Special Investigator

20
21
22 cc: MYKEL ANNE MARTIN
23 REALTY MASTERS & ASSOCIATES, INC
24 VINCENT KYAN
V. Kilpatrick
25 Sacto.

26
27 DRE Accusation of Mykel Anne Martin et al.