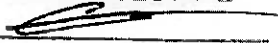


**FILED**

SEP 13 2021

DEPT. OF REAL ESTATE

By 

1 LAURENCE D. HAVESON, Counsel (SBN 152631)  
 2 Department of Real Estate  
 3 320 West 4th Street, Suite 350  
 4 Los Angeles, California 90013-1105  
 5 Telephone: (213) 576-6982  
 6 Direct: (213) 576-6854  
 7 Fax: (213) 576-6917  
 8 *Attorney for Complainant*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
 9 STATE OF CALIFORNIA

10 \* \* \*

<p>11 In the Matter of the Accusation of:           12 SMART CHOICE REALTY &amp; MORTGAGE          13 FINANCE, INC., and HAROLD JOSEPH          14 OSBORNE, individually and as designated          15 officer of Smart Choice Realty &amp; Mortgage          16 Finance, Inc.           Respondents.</p>	<p>No. H-42092-LA   <u>ACCUSATION</u></p>
---	---

17 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the  
 18 Department of Real Estate ("Department" or "DRE") of the State of California, for cause of  
 19 Accusation against SMART CHOICE REALTY & MORTGAGE FINANCE, INC. ("SCRMFI"),  
 20 and HAROLD JOSEPH OSBORNE ("OSBORNE"), collectively "Respondents," is informed and  
 21 alleges in her official capacity as follows:

- 22 1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a  
 23 Supervising Special Investigator, makes this Accusation against Respondents.
- 24 2. All references to the "Code" are to the California Business and Professions Code  
 25 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

26 **LICENSE HISTORY**

- 27 3. Respondent SCRMFI has been licensed by the DRE as a real estate corporation  
 28 ("REC"), License ID 02096525, from on or about August 22, 2019, through the present, with

1 SCRMFI's license scheduled to expire on August 21, 2023 unless renewed. SCRMFI is licensed  
2 through OSBORNE's real estate broker ("REB") license and OSBORNE is the designated officer  
3 ("D.O.") of SCRMFI. SCRMFI also has a mortgage loan originator ("MLO") license  
4 endorsement, National Mortgage Licensing System ("NMLS") ID 1896218.

5 4. Respondent OSBORNE has been licensed by the DRE as a REB, License ID  
6 02058142, from on or about July 1, 2019, through the present, with OSBORNE's license  
7 scheduled to expire on June 30, 2023 unless renewed. OSBORNE is also currently broker  
8 associate for REC American Integrity Finance, Inc., License ID 02061505. OSBORNE was  
9 previously licensed as a real estate salesperson ("RES"), from on or about March 13, 2018,  
10 through June 30, 2019. On September 15, 2018, OSBORNE's RES license was suspended by the  
11 DRE pursuant to California Family Code section 17520 (failure to comply with a child support  
12 order). On November 16, 2018, DRE released the suspension. OSBORNE also has a MLO license  
13 endorsement, NMLS ID 1314197.

#### 14 **ACTIVITIES REQUIRING A REAL ESTATE LICENSE**

15 5. At all times mentioned herein, in Los Angeles and Orange Counties, California,  
16 Respondents engaged in the performance of activities requiring a real estate license pursuant to  
17 Code Section 10130, and acted and ordered, caused, authorized or participated in licensed  
18 activities within the meaning of Code Sections 10131.

#### 19 **FACTS DISCOVERED BY DRE**

20 6. On or about December 16, 2019, the DRE received a complaint from T.B.<sup>1/</sup> against  
21 OSBORNE and former real estate salesperson Christina Flowers ("Flowers"), License ID  
22 01907221, whose license expired on February 27, 2018, and the time for late renewal has elapsed.  
23 T.B. alleges that: beginning on or about November 25, 2019, Flowers communicated with T.B.  
24 about refinancing her mortgage. Among other things, Flowers told T.B. that she could get T.B.  
25 preapproved in 10 minutes and that Flowers was very fast. T.B. started the process, provided  
26 Flowers with sensitive information over the phone, and Flowers said that she could have a rate for  
27 T.B. the next day.

28 <sup>1/</sup> Initials are used in place of an individual's full name to protect their privacy. Documents containing the individual's full name will be provided during the discovery phase of this case to Respondent(s) and/or their attorney(s), after service of a timely and proper request for discovery on Complainant's counsel.

1           7.     According to T.B., on a subsequent call on another day, Flowers asked T.B. for  
2 more information and stated she could not give T.B. a rate until 24 to 48 hours after T.B.  
3 submitted all of the documents requested. T.B. told Flowers that she was not happy with the "bait  
4 and switch" approach. At this point T.B. had also given Flowers a loan application that T.B. had  
5 prepared for Quicken, with a quoted rate locked at 3.69%. T.B. told Flowers that she was not  
6 interested in switching unless Flowers could get T.B. a lower rate.

7           8.     According to T.B., at no point did Flowers inform T.B. that Flowers is not a  
8 licensed professional. Flowers's email signature states that she is a mortgage consultant. All of  
9 Flowers's email messages to T.B. had the subject line "Your refinance with Christina Flowers"  
10 and Flowers made comments about T.B. doing business with her.

11          9.     According to T.B., on or about December 5, 2019, Flowers emailed T.B. a list of  
12 mortgage refinance rates, and she provided closing costs for the Quicken loan. None of the rates  
13 provided by Flowers was lower than the rate that T.B. had with Quicken. T.B. asked Flowers  
14 where she obtained false closing costs for T.B.'s Quicken quote, and twice asked her for Flowers's  
15 license information, which Flowers ignored.

16          10.    According to T.B., on or about December 6, 2019, Flowers added T.B. to a  
17 conference call with OSBORNE. OSBORNE introduced himself as being in the mortgage  
18 business for over 18 years and that he can beat any rate. T.B. expressed her concerns to  
19 OSBORNE and after T.B. asked OSBORNE for his license information, he refused to provide it,  
20 became angry and hung up.

21          11.    On or about May 5, 2020, the DRE received a complaint from D.C. against  
22 OSBORNE, alleging that OSBORNE posted a Craigslist Ad in Los Angeles, which, according to  
23 D.C., stated, in part: "MORTGAGE! \$10K - \$80K PER MO – WORK FROM HOME!  
24 ~UNLIMITED FREE LEADS (Irvine)"; "No license? No problem, I can still help you start  
25 making money immediately! Check out the pay structure below."; "If you generate a loan using  
26 your own leads you will receive 60% of the commission. (70% if licensed). If you generate a loan  
27 using MY leads at your own workspace you will receive 50% of the commission. (60% if  
28 licensed)."

1           12.     D.C. alleges that she signed up for an overview webinar with OSBORNE and that  
2 during a video meeting, OSBORNE advised that: no one would need to be licensed; officially,  
3 everyone would be working as "Fronters," using OSBORNE's dialing system to contact leads;  
4 fronters would not quote exact rates on their first contact with prospects, but they could provide  
5 the prospect with an example of current mortgage rates; fronters would then get prospects to  
6 provide all documents required to process a mortgage loan.; fronters would submit those  
7 documents to OSBORNE, who would provide fronters with loan offers that the borrowers could  
8 qualify for; the fronters would advise the prospects of the loan offers they qualified for, and  
9 convince prospects to commit to pursuing mortgages with the fronters' company. OSBORNE  
10 would provide the fronters with mortgage options so that fronters had more than one offer to make  
11 to prospects in case they declined the first offer made; fronters were responsible for negotiating  
12 with prospects regarding rates and fees they would accept. D.C. alleges that OSBORNE is hiring  
13 unlicensed persons to perform the work of licensed loan originators.

14           13.     On or about December 7, 2020, the DRE received a complaint from A.S. against  
15 OSBORNE, alleging that OSBORNE was defrauding "employees" as independent contractors, not  
16 paying for their time. On or about March 11, 2021, A.S. provided further information, alleging  
17 that A.S. applied for the role of "Remote-Sales Rep" for SCRMI through Indeed.com, was hired  
18 by OSBORNE and was employed by SCRMI from on or about November 5, 2020 through  
19 December 7, 2020. According to A.S., OSBORNE told her and other staff that OSBORNE "had to  
20 bend the rules of the DRE" in order to have A.S. and others on his team. SCRMI provided A.S.  
21 with copies of sales scripts, rebuttal answers to use with prospects, an instructional manual,  
22 questionnaires to use with prospects, and other documents. A.S. alleged that OSBORNE  
23 supervised her directly, and OSBORNE also had an assisting REB named Francisco Franco  
24 ("Franco") who was responsible for SCRMI's training materials.

25           14.     The instructional manual that A.S. received from SCRMI provides instructions on  
26 how the "lead generator" is to conduct the call, follow the script, collect the prospect's personal  
27 information/documents such as driver license, social security number, two months of bank  
28 statements, tax returns for the last two years, mortgage statements, filling in the questionnaire

1 (including asking what rates/terms prospects are looking for) and submitting a quote from Franco  
2 or OSBORNE with the prospect's current loan information. The scripts that A.S. received from  
3 SCRMI provide the language for lead generators to use to solicit borrowers. The questionnaire  
4 that A.S. received from SCRMI has sections for lead generators to fill in based on information  
5 obtained from prospects, including property value, mortgage balance, monthly mortgage payment,  
6 whether the prospect is open to scenarios with and without cash-out on a mortgage refinance,  
7 FICO score, employment information, and loan amount desired.

8 15. On or about July 22, 2021, DRE received a declaration from Flowers stating that:  
9 she worked as a 1099 employee of OSBORNE and SCRMI, from September 16, 2019 to April  
10 10, 2020, as a lead generator / non-licensed sales - sales agent - mortgage. Flowers's job duties  
11 consisted of collecting and processing documents, sales calls following OSBORNE's prepared  
12 script on a phone dialer, making 500 calls per hour. Flowers was compensated by commission  
13 only, based on two sales, and received two checks from SCRMI in the amounts of \$3,653.50 and  
14 \$8,000, for the two sales. Commissions were determined by a sales contract written by  
15 OSBORNE. Flowers claims that OSBORNE promised her commissions, but did not pay.  
16 According to Flowers, her position with SCRMI was not as a lead generator, but was mortgage  
17 sales, processing, and collecting client documents. OSBORNE informed Flowers that she could  
18 perform the work without an NMLS license and that he would help train her to get a license.

19 **VIOLATIONS OF THE REAL ESTATE LAW - CAUSES FOR DISCIPLINE**

20 16. In the course of the activities described above in Paragraph 5, and based on the  
21 facts discovered by the DRE, as alleged in Paragraphs 6 through 15 above, SCRMI and  
22 OSBORNE acted in violation of the Code and Regulations as follows.

23 **First Cause of Accusation: Code Sections 10137 - Unlawful Compensation**

24 17. The Complainant realleges and incorporates by reference all of the allegations in  
25 paragraphs 1 through 16 above, with the same force and effect as though fully set forth herein.

26 18. Between September 16, 2019 and April 10, 2020, SCRMI retained Flowers to  
27 engage in, and paid compensation to Flowers for engaging in, activity requiring a real estate  
28 license, and made at least two (2) payments for activities for which a real estate license is required,

1 during a period of time during which Flowers was not licensed by the DRE, in violation of Code  
2 Section 10137.

3 19. SCRMFI's acts and/or omissions in violation of Code section 10137 constitute  
4 cause to revoke or suspend SCRMFI's real estate corporation license pursuant to Code section  
5 10177(d) and/or 10177(g).

6 **Second Cause of Accusation: Code Sections 10159.2 and 10177(h) and Regulation 2725 –**  
7 **Unlawful Compensation**

8 20. The Complainant realleges and incorporates by reference all of the allegations in  
9 paragraphs 1 through 19 above, with the same force and effect as though fully set forth herein.

10 21. Based on the facts discovered by the DRE, and the First Cause of Accusation, as  
11 alleged in paragraphs 6 through 19 above, as the broker and designated officer of SCRMFI,  
12 OSBORNE did not exercise adequate supervision and control over the real estate activities  
13 conducted on behalf of SCRMFI by its employees and licensees to ensure compliance with the  
14 Real Estate Laws and Regulations. OSBORNE failed to establish policies, rules and systems to  
15 review, oversee, inspect, and manage transactions requiring a real estate license and the handling  
16 of trust funds.

17 22. OSBORNE's acts and/or omissions, as alleged above in paragraphs 6 through 19  
18 above were in violation of Code Sections 10159.2 and 10177(h) and Regulation 2725, and  
19 constitute cause and constitute cause for the suspension or revocation of all licenses and license  
20 rights of OSBORNE pursuant to Code sections 10177(h), 10177(d) and/or 10177(g).

21 **COSTS**

22 **(INVESTIGATION AND ENFORCEMENT COSTS)**

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

27 ///

28 ///

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this  
2 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action  
3 against all the licenses and license rights of Respondents SMART CHOICE REALTY &  
4 MORTGAGE FINANCE, INC., and HAROLD JOSEPH OSBORNE under the Real Estate Law,  
5 for the costs of investigation and enforcement as permitted by law, and for such other and further  
6 relief as may be proper under other applicable provisions of law.

7  
8 Dated at San Diego, California this 10 day of September, 2021.

9  
10 *Veronica Kilpatrick*  
11 \_\_\_\_\_  
12 Veronica Kilpatrick  
13 Supervising Special Investigator

13 cc: SMART CHOICE REALTY & MORTGAGE FINANCE, INC.  
14 HAROLD JOSEPH OSBORNE  
15 Veronica Kilpatrick  
16 Sacto.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28