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FILED

JUN 12 2020

DEPARTMENT OF REAL ESTATE
By X. X. X.

8
9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

13 MCDONALD INVESTMENTS, INC.)
14 and JARED OWEN MCDONALD,)

15 Respondents.)

No. H-3319 FR

ACCUSATION

16 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the State of
17 California, for Accusation against Respondents MCDONALD INVESTMENTS, INC. (MI) and
18 JARED OWEN MCDONALD (MCDONALD), sometimes collectively referred to as
19 Respondents, is informed and alleges as follows:

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21 The Complainant makes this Accusation against Respondents in her official
22 capacity.

23 2

24 MI is presently licensed and/or has license rights under the Real Estate Law, Part
25 1 of Division 4 of the California Business and Professions Code (Code), by the Department of
26 Real Estate (Department) as a corporate real estate broker doing business as Ram Property
27 Management.

1 3
2 MCDONALD is presently licensed and/or has license rights under the Code as a
3 real estate broker.

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5 At all times mentioned herein, MCDONALD was the designated broker-officer
6 of MI. As the designated broker-officer, MCDONALD was responsible, pursuant to Section
7 10159.2 of the Code, for the supervision of the activities of officers, agents, real estate licensees
8 and employees of MI for which a real estate license is required to ensure the compliance of the
9 corporation with the Real Estate law and the Regulations.

10 5
11 At all times herein mentioned, Respondents engaged in the business of, acted in
12 the capacity of, advertised, or assumed to act as real estate brokers within the State of California
13 within the meaning of Section 10131(b) of the Code, including the operation and conduct of a
14 property management business with the public wherein, on behalf of others, for compensation or
15 in expectation of compensation, Respondents leased or rented or offered to lease or rent, or
16 placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or
17 negotiated the sale, purchase or exchange of leases on real property, or on a business
18 opportunity, or collected rents from real property, or improvements thereon, or from business
19 opportunities.

20 FIRST CAUSE OF ACTION

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22 Complainant refers to Paragraphs 1 through 5, above, and incorporates the same,
23 herein.

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25 Beginning on September 24, 2018, and continuing intermittently through
26 February 19, 2019, an audit was conducted at MI's office located at 996 San Benito Street,
27 Hollister, California, and at the Department's district office located at 2550 Mariposa Mall,

1 Fresno, California, where the auditor examined records for the period of July 1, 2016, through
2 August 31, 2018 (the audit period).

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4 While acting as a real estate broker as described in Paragraph 5, above, and
5 within the audit period, Respondents accepted or received funds in trust (trust funds) from or on
6 behalf of property owners, lessees and others in connection with property management
7 activities, and deposited or caused to be deposited those funds into bank accounts maintained by
8 Respondents at Rabo Bank, 1730 Airline Hyway, #310, Hollister, California, as described
9 below:

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BANK ACCOUNT #1	
Account No.:	XXXXXXX2251
Entitled:	McDonald Investments, Incorporated DBA Ram Property Management

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15 and thereafter from time-to-time made disbursement of said trust funds.

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17 In the course of the activities described in Paragraph 5, in connection with the
18 collection and disbursement of trust funds, it was determined that:

- 19 (a) Respondents failed to properly designate Bank Account #1 as a trust
20 account as required by Section 2832 of the Regulations and Section
21 10145 of the Code;
- 22 (b) Respondents allowed an unlicensed and un-bonded person, Cindy
23 McDonald, as a signer on the bank account, in violation of Section
24 2834 of the Regulations;
- 25 (c) An accountability was performed on Bank Account #1, and as of
26 June 30, 2017, a shortage of \$155,647.37 was revealed in violation
27 of 10145 of the Code;

- 1 (d) An accountability was performed on Bank Account #1, and as of
2 June 30, 2018, a shortage of \$60,777.48 was revealed in violation
3 of Section 10145 of the Code;
- 4 (e) Respondents failed to obtain written permission from owners of
5 trust funds in Bank Account #1, to allow the balances to drop
6 below accountability, in violation of Section 2832.1 of the
7 Regulations;
- 8 (f) Respondents mixed trust funds with broker funds in Bank Account
9 #1, in violation of Section 10176(e) of the Code;
- 10 (g) Respondents failed to maintain records of all funds received and
11 disbursed (control records) for Bank Account #1, as required by
12 Section 2831 of the Regulations;
- 13 (h) Respondents failed to maintain separate beneficiary records for
14 Bank Account #1, as required by Section 2831.1 of the
15 Regulations; and
- 16 (i) Respondents failed to perform monthly reconciliations of the separate
17 beneficiary records and control records for Bank Account #1, as
18 required by Section 2831.2 of the Regulations.

19 10

20 The acts and/or omissions described above constitute violations of Sections 2831
21 (control records), 2831.1 (separate beneficiary records), 2831.2 (monthly reconciliations), 2832
22 (trust fund designations), 2034 (signatories on trust account) and 2832.1 (written permission
23 balance below accountability) of the Regulations and of Section 10145 (trust fund handling) of
24 the Code, and are grounds for discipline under Sections 10177(d) (willful disregard of real estate
25 laws) and 10177(g) (negligence/incompetence licensee) of the Code.

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1 SECOND CAUSE OF ACTION

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3 Complainant refers to Paragraphs 1 through 10, above, and incorporates the
4 same, herein.

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6 At all times herein above mentioned, MCDONALD was responsible, as the
7 supervising designated broker/officer for MI, for the supervision and control of the activities
8 conducted on behalf of MI's business by its employees to ensure its compliance with the Real
9 Estate Law and Regulations. MCDONALD failed to exercise reasonable supervision and
10 control over the property management activities of MI. In particular, MCDONALD permitted,
11 ratified and/or caused the conduct described above to occur, and failed to take reasonable steps,
12 including but not limited to, the handling of trust funds, supervision of employees, and the
13 implementation of policies, rules, and systems to ensure the compliance of the business with the
14 Real Estate Law and the Regulations.

15 13

16 The above acts and/or omissions of MCDONALD violate Section 2725(broker
17 supervision) of the Regulations and Section 10159.2 (responsibility/designated officer) of the
18 Code and constitute grounds for disciplinary action under the provisions of Sections 10177(d),
19 10177(g) and 10177(h) (broker supervision) of the Code.

20 Audit Costs

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22 The acts and/or omissions of Respondents, as alleged above, entitle the
23 Department to reimbursement of the costs of its audits pursuant to Section 10148(b) (audit costs
24 for trust fund handling violations) of the Code.

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