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DEPT. OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation against

DRE No. H-05132 SD

MELROY ASSET MANAGEMENT, INC. and  
VIDA KAREN MELROY, individually and as  
designated officer for Melroy Asset Management, Inc.,

ACCUSATION

Respondents.

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the Department of Real Estate<sup>1</sup> ("Department") of the State of California, for cause of Accusation against MELROY ASSET MANAGEMENT, INC. and VIDA KAREN MELROY, individually and as designated officer for Melroy Asset Management, Inc. ("Respondent"), alleges as follows:

1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a Supervising Special Investigator, makes this Accusation against Respondent.

<sup>1</sup> Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

1           2.       All references to the "Code" are to the California Business and Professions Code,  
2 all references to the "Real Estate Law" are to Part 1 of Division 4 of the Code, and all references  
3 to "Regulations" are to the Regulations of the Real Estate Commissioner, Title 10, Chapter 6,  
4 California Code of Regulations.

5           3.       Respondents are presently licensed and/or have license rights under the Real  
6 Estate Law (Part 1 of Division 4 of the Code).

7           4.       On January 7, 2000, the Department issued a real estate corporation license to  
8 Respondent MELROY ASSET MANAGEMENT, INC. ("MAMI"), License ID 01272499.  
9 Respondent MAMI is licensed to do business as "Melroy Property Management".

10          5.       On March 8, 2001, the Department issued a real estate broker license to  
11 Respondent VIDA KAREN MELROY ("VIDA MELROY"), License ID 01149415.  
12 Respondent VIDA MELROY was formerly licensed as a real estate salesperson from  
13 approximately November 17, 1992 through March 7, 2001.

14          6.       At all times relevant herein, MAMI acted as a corporate real estate broker by and  
15 through VIDA MELROY as the designated officer and broker responsible for supervising the  
16 activities requiring a real estate license conducted on behalf of MAMI by MAMI's officers,  
17 agents and employees, pursuant to Code section 10159.2.

18          7.       Daniel Joseph Melroy, aka Daniel Melroy, is an officer for MAMI and is a  
19 licensed real estate broker, License ID 01319904.

20          8.       Jack G. Melroy, aka Jack Melroy, is father to Respondent VIDA MELROY, an  
21 officer for MAMI, and a licensed real estate broker, License ID 00352229.

22          9.       Michael Dudding, aka Michael Upshaw, ("Dudding/Upshaw") is MAMI's former  
23 bookkeeper and has never been licensed in any capacity by the Department.  
24

1 Broker Activities

2 10. At all times mentioned herein, in the State of California, Respondents acted as  
3 real estate brokers and conducted licensed activities within the meaning of Code section  
4 10131(b) (solicit or offer to negotiate the sale, purchase or exchange of leases, or collects rents  
5 from real property or on a business opportunity).

6 Audit SD180005

7 11. On or about April 30, 2019, the Department completed an audit examination of  
8 the books and records of Respondents' property management activities, which require a real  
9 estate license pursuant to Code section 10131(b).

10 12. The audit covered the period of time from August 1, 2016 through June 30, 2018  
11 ("audit period").

12 13. The audit examination revealed violations of the Code and the Regulations as set  
13 forth in the following paragraphs, and more fully discussed in Audit Report SD180005 and the  
14 exhibits and work papers attached to said audit report.

15 14. Respondent MAMI is owned and controlled by Respondent VIDA MELROY and  
16 Daniel Melroy.

17 15. According to Respondents and the audit work papers examined, Respondent  
18 MAMI managed approximately 110 one-to-four family residential properties and 52 apartment  
19 complexes for 106 property owners during the audit period. Respondent MAMI charged a  
20 management fee of five to ten percent (5% - 10%) of monthly collected rents.

21 16. According to Respondents, MAMI maintained eight (8) bank accounts for  
22 property management activities during the audit period. Respondent MAMI maintained two (2)  
23 bank accounts for multiple beneficiaries and six (6) bank accounts for single beneficiaries. The  
24 auditor only examined TA-1, BA-1, and BA-2.

<u>Account</u>	<u>Account No.</u>	<u>Account</u>	<u>Account No.</u>
TA-1	#XXX0846	BA-1	#XXX0853
BA-2	#XXX4696	BA-3	#XXX0469
BA-4	#XXX2701	BA-5	#XXX4951
BA-6	#XXX6285	BA-7	#XXX2768

17. Trust Account #1 (TA-1)

Bank: Wells Fargo Bank

Account Name: Melroy Asset Management, Inc. DBA: Melroy Property Management

Account #: xxxxxx0846

Signatories: Respondent VIDA MELROY, Daniel Melroy, and Jack Melroy

# of signatures required: One (1)

Description: TA-1 was used as a depository for rents collected from tenants for multiple beneficiaries in connection with Respondents' property management activities during the audit period. Disbursements from TA-1 were payments for expenses related to the properties managed, owner remittances, and to MAMI for management fees. Based on Wells Fargo Bank's "Master Signature Agreement", TA-1 was a multiple beneficiaries trust account opened on April 12, 2010.

18. Bank Account #1 (BA-1)

Bank: Wells Fargo Bank

Account Name: Melroy Investments, Inc. Melroy Asset Management, Inc. DBA: Melroy Property Management

Account #: xxxxxx0853

Signatories: Respondent VIDA MELROY, Daniel Melroy, and Jack Melroy

# of signatures required: One (1)

Description: BA-1 was used as a depository for rents collected from tenants for multiple beneficiaries in connection with Respondents' property management activities during the audit period. Disbursements from BA-1 were payments for expenses related to the properties managed, owner remittances, and to MAMI for management fees. Based on Wells Fargo Bank's "Master Signature Agreement", BA-1 was a bank account for multiple beneficiaries opened on April 12, 2010.

19. Based on an examination of BA-1's bank statements and the auditor's discussions with VIDA MELROY and MAMI's former bookkeeper, Dudding/Upshaw was authorized or allowed to have access to transfer trust funds from BA-1 via ACH deposits, withdrawals, and electronic transfers to various accounts and to make web payments during the audit period.

20. Bank Account #2 (BA-2)

Bank: Wells Fargo Bank

Account Name: Melroy Asset Management, Inc. DBA: Melroy Property Management As Banker for the Regents, University of California

Account #: xxxxx4696

Signatories: Respondent VIDA MELROY, Daniel Melroy, and Jack Melroy

# of signatures required: One (1)

Description: BA-2 was a single beneficiary bank account used as a depository for rents collected from tenants of property owner, Regents, University of California. Disbursements from BA-2 were payments for expenses related to the properties managed, owner remittances, and to MAMI for management fees. Based on the bank signature card dated April 23, 2010, BA-2 was opened on April 12, 2010.

Violations

21. In the course of its property management activities during the audit examination period, Respondent acted in violation of the Code and the Regulations as follows:

22. Issue One. Code section 10145 and Regulation 2832.1. Trust fund handling for multiple beneficiaries

Bank reconciliations were prepared for TA-1 in connection with Respondents' property management activities with a cut-off date of June 30, 2018. As of June 30, 2018, TA-1 had a minimum shortage of <\$163,347.24>. The shortage causes were due to: a negative property balance of <\$3,159.56> caused by disbursements to the property owner of 2284 Kearney Ave., San Diego, when there were insufficient funds to do so; minimum incurred bank service charges between July 11, 2017 and June 11, 2018 that had not been reimbursed by MAMI <\$3,642.55>; and minimum unidentified sources of shortage <\$156,545.13>.

23. Bank reconciliations were prepared for BA-1 in connection with Respondents' property management activities with a cut-off date of June 30, 2018. As of June 30, 2018, BA-1 had a minimum shortage of <\$849,678.85>. The shortage was due to negative balances of property accounts of <\$187,359.39>; minimum embezzled funds by MAMI's bookkeeper Dudding/Upshaw of <\$489,241.84>; and minimum unauthorized disbursements of <\$173,077.62> to various accounts related to MAMI. As of June 30, 2018, BA-1 had unidentified/unaccounted for funds of \$33,720.78.

24. Examples of the negative property balances for BA-1 include, without limitation, the following:

<u>Property Owner</u>	<u>Address</u>	<u>Amount</u>
Dudding/Upshaw <sup>1</sup>	9713 Kenner Woods	<\$22,182.32>
Jack Melroy	2765 Ocean Front Walk	<\$151,471.05>
VIDA MELROY	4566 36 <sup>th</sup> St.	<\$51,276.10>

25. Based on an examination of BA-1's bank statements, control records and separate records and the auditor's discussions with VIDA MELROY, MAMI's former bookkeeper Dudding/Upshaw made several deposits from BA-1 into Dudding/Upshaw's Citibank account (account number unknown) and other ACH disbursements/electronic transfers totaling \$489,241.84 from October 5, 2016 through March 6, 2018. Examples of the entries for transfers include, without limitation, the following: "ACH Prep Origintn – Melroy Asset"; "Cardmember Serv Web payment...Upshaw, Michael"; and "Citi Card Online Payment Michael A. Upshaw".

26. Based on an examination of records and the auditor's discussions with VIDA MELROY, Respondent MAMI disbursed or transferred funds from BA-1 between August 10, 2016 through December 20 2017, totaling \$173,077.62, without any related properties or authorization from beneficiaries. ACH disbursements totaling \$120,279.50 were made to an account whose name and number were unknown to the auditor and online transfers totaling \$52,798.12 were made to an account whose name and number were unknown to the auditor. Examples of the transfers/disbursements including, without limitation, the following:

<u>Date</u>	<u>Amount</u>	<u>Description</u>
9/26/2017	\$48,950.00	ACH Prep Origintn – Melroy Asset-File 2339Coid3262
9/2/2016	\$50,000.00	WT Fed#01213 Comerica Bank

27. During the audit examination, Respondents provided documents contending that \$757,631.26 in payments from insurance and lawsuit settlements were received by MAMI to

<sup>1</sup> Darrius Upshaw and Michael Allen Upshaw



1 cover the funds allegedly embezzled by Dudding/Upshaw. On or about July 2, 2018, Travelers  
2 Insurance paid a settlement totaling \$505,000 through a check no. 1362 for \$500,000 .00 and a  
3 check no. 1363 for \$5,000.00 paid to "Melroy Asset Management." The law firm Hoffman &  
4 Forde paid a settlement check of \$252,631.26 as settlement for a lawsuit concerning the alleged  
5 embezzlement by Dudding/Upshaw. The checks were deposited into MAMI's bank account  
6 maintained with Citibank (Account No. 8371) in July of 2018. The settlement checks totaling  
7 \$757,631.26 for the allegedly embezzled trust funds were not deposited into TA-1 or BA-1.

8 28. As of June 30, 2018, BA-2, a single beneficiary bank account, had a discrepancy  
9 of <\$2,528.23> due to poor record keeping.

10 29. Respondents failed to provide any evidence that the owners of the trust funds had  
11 given their written consent to allow Respondent MAMI to reduce the balances of the funds in  
12 TA-1 and BA-1 to an amount less than the existing aggregate trust fund liabilities, in violation of  
13 Code section 10145 and Regulation 2832.1.

14 30. Issue Two. Handling of Trust Funds/Fraud, Dishonest Dealing, Embezzlement by  
15 Dudding/Upshaw

16 Between approximately October 5, 2016 and March 6, 2018, Dudding/Upshaw made  
17 disbursements/transfers totaling \$489,241.84 from BA-1 without written authorization from  
18 property owners/principals who owned the trust funds. Said embezzled funds were transferred to  
19 Dudding/Upshaw's account or accounts.

20 31. Based on the examination of BA-1's records, VIDA MELROY owned the  
21 property located at 4566 36<sup>th</sup> Street, San Diego, California, and made several personal expense  
22 disbursements from BA-1 when there were insufficient funds available for use by the property  
23 owner, VIDA MELROY. As of June 30, 2018, the property had a negative balance of  
24



1 <\$51,276.10>. Respondent VIDA MELROY also owned the property located at 3983 Caminito  
2 Cassis, San Diego, California, which had a negative property balance of <\$11,739.13> as of  
3 June 30, 2018. The combined negative property balances were <\$63,015.23>.

4 32. Jack Melroy either owned some of the properties managed by MAMI or owned  
5 some properties in partnership with others. Jack Melroy's properties included the following:  
6 1) 1207 Lyons Lane; 2) 1663 Diamond St.; 3) 19655-77 Grand Ave; 4) 2765 Ocean Front Walk;  
7 and 5) 4433 Montalvo St. The five properties had combined minimum negative property  
8 balances of <\$151,471.05>. There was a minimum of 17 expense payments made on behalf of  
9 Jack Melroy's property at 2765 Ocean Front Walk that were not recorded on the control record.  
10 The auditor had to prepare and reconstruct the separate record for that property to obtain the  
11 property balance as of June 30, 2018.

12 33. The balance for BA-1 was reduced to an amount less than the existing aggregate  
13 trust fund liabilities without written authorization from the property owners or persons entitled to  
14 the funds.

15 34. Issue Three. Code section 10145 and Regulation 2831. Trust fund records to be  
16 maintained.

17 Respondent MAMI failed to maintain accurate or complete records of trust funds  
18 received and disbursed (control records) for TA-1, BA-1, and BA-2, in violation of Code section  
19 10145 and Regulation 2381. There were trust fund disbursements that were not recorded on  
20 TA-1's control record during the audit period. During the audit period, Dudding/Upshaw  
21 fraudulently transferred funds totaling \$489,241.84 from BA-1 into Dudding/Upshaw's personal  
22 account(s). As alleged in further detail in Issue 1 above.

1           35.    Issue Four. Code section 10145 and Regulation 2831.1. Separate records for  
2 each beneficiary or transaction

3           During the audit period, Respondent MAMI failed to maintain accurate separate records  
4 for each beneficiary or transaction (separate records) for TA-1 and BA-1, in violation of Code  
5 section 10145(g) and Regulation 2831.1. MAMI's separate records did not accurately reflect  
6 trust fund receipts and disbursements related to MAMI's property management activities during  
7 the audit period. During the audit period, MAMI failed to maintain an accurate separate record  
8 of the receipt and disposition of all trust funds deposited into BA-1 as required under Code  
9 section 10145, subdivision (g), and Regulation 2381.1, in that BA-1 had unidentified or  
10 unaccounted for funds of \$33,720.78, as also discussed above in Issue 1.

11           36.    The auditor reconstructed the separate record for the property owned by Jack  
12 Melroy, located at 2765 Ocean Front Walk, due to a minimum of 17 transactions/ disbursements  
13 totaling <\$54,605.23> that were not recorded or were omitted from the property trust account  
14 control records. Examples of the omitted disbursements include, without limitation, the  
15 following:

<u>Date Recorded</u>	<u>Property</u>	<u>Amount</u>
08/04/2016	2765 Ocean Front Walk	\$3,343.96
02/06/2017	2765 Ocean Front Walk	\$4,435.46
02/13/2017	2765 Ocean Front Walk	\$6,574.73
09/25/2017	2765 Ocean Front Walk	\$8,393.77
10/19/2017	2765 Ocean Front Walk	\$20,925.15

22           37.    During the audit period, Respondent MAMI failed to maintain an accurate,  
23 separate record of the receipts and disposition of all trust funds deposited into TA-1 as required  
24

under Code section 10145, subdivision (g), and Regulation 2381.1, in that TA-1 had unidentified or unaccounted for funds of \$156,545.13, as also discussed above in Issue 1.

38. Issue Five. Code section 10145 and Regulation 2831.2. Reconciliation of records

During the audit period, Respondent MAMI failed to perform and maintain an accurate monthly reconciliation comparing the balance of all separate beneficiary or transaction records (separate records) to the balance of all trust funds received and disbursed (control record) for TA-1 and BA-1, in violation of Code section 10145 and Regulation 2831.2. The reconciliation performed for June 30, 2018 by Respondent MAMI showed that BA-1 had a discrepancy of <\$40,209.15> when, in fact, BA-1 had a minimum shortage of at least <\$849,678.85>.

39. Issue Six. Code section 10145 and Regulation 2832. Handling of trust funds/deposits within three (3) business days.

Based on the audit work papers examined, Respondent MAMI collected trust funds in the form of rent receipts and failed to deposit the trust funds into TA-1 within three (3) business days following the receipt of the funds. Examples include, without limitation, the following:

<u>Tenant</u>	<u>Property Code</u>	<u>Date Received</u>	<u>Date Deposited</u>	<u>Amount</u>
Superior/Vida Melroy	4566 36 <sup>th</sup> St.	12/22/2017	01/04/2018	\$30,000.00
Vida Melroy	4566 36 <sup>th</sup> St.	12/22/2017	01/04/2018	\$30,000.00
C.C. <sup>1</sup>	3929 Kansas St.	04/03/2018	04/13/2018	\$1,695.00

40. Issue Seven. Code section 10145 and Regulation 2834. Trust account withdrawals.

During the audit period, Respondents authorized Dudding/Upshaw access to make withdrawals via electronic transfers from TA-1 without having written authorization on file that Dudding/Upshaw was a signer for TA-1, in violation of Code section 10145(g) and Regulation

<sup>1</sup> Initials are used in place of individuals' full names to protect their privacy. Documents containing individuals' full names will be provided during the discovery phase of this case to Respondents and/or their attorneys, after service of a timely and proper request for discovery on Complainant's counsel.

2834. Dudding/Upshaw also was authorized or had access to transfer funds from BA-1 via ACH deposits/withdrawals and electronic transfers to various accounts and to make web payments during the audit period.

41. Issue Eight. Code sections 10145 and 10176(i) or 10177(j). Handling of trust funds/conversion of funds/unauthorized disbursements.

During the audit period, Respondent VIDA MELROY owned property located at 4566 36<sup>th</sup> Street in San Diego, and paid personal expenses from BA-1 when there were insufficient funds available for use in VIDA MELROY's property balance, in violation of Code section 10145 and Code section 10176, subdivision (i) or Code section 10177, subdivision (j). Examples of the insufficient payments/charges include, without limitation, the following:

<u>Check #</u>	<u>Payee</u>	<u>Date Paid</u>	<u>Amount Paid</u>	<u>Account balance on date of payment</u>
15667	La Jolla County Day	09/21/2016	\$15,000.00	\$1,189.95
18432	MPM	09/27/2017	39,692.68	\$502.81
18979	MPM	12/18/2017	\$20,731.85	\$2,913.03
19999	American Express	05/30/2018	\$7,179.67	<\$8,200.90>
21074	La Jolla County Day	06/20/2018	\$19,550.00	<\$10,334.36>
	La Jolla County Day	06/20/2018	\$18,990.00	<\$10,334.36>

42. During the audit period, Dudding/Upshaw made several disbursements from BA-1 into Dudding/Upshaw's personal bank accounts and other ACH disbursements or electronic transfers totaling \$489,241.84, in violation of Code section 10145 and Code section 10176, subdivision (i) or Code section 10177, subdivision (j), and is also further described in Issue 1.

///

1           43.    Issue Nine. Code sections 10159.2, 10177(h), and Regulation 2725. Broker  
2 supervision.

3           Respondent VIDA MELROY failed to adequately supervise the activities of MAMI's  
4 salespersons, employees, or agents and failed to establish policies, rules, procedures, and systems  
5 to review, oversee, inspect, and manage transactions requiring a real estate license and the  
6 handling of trust funds to ensure compliance with the Real Estate Law, in violation of Code  
7 sections 10159.2, 10177, subdivision (h), and Regulation 2725. Respondent VIDA MELROY  
8 allowed Dudding/Upshaw access to make direct deposits and withdrawals via electronic transfers  
9 from TA-1 and BA-1 from August 1, 2016 through March 9, 2018.

10           44.    The conduct, acts, and/or omissions of Respondent MAMI as described above in  
11 Paragraphs 19 through 42, violated the Code and the Regulations as set forth below:

<u>Issue</u>	<u>Paragraphs</u>	<u>Violations</u>
1	22-29	Code section 10145 and Regulation 2832.1
2	30-33	None cited in audit report
3	34	Code section 10145 and Regulation 2831
4	35-37	Code section 10145 and Regulation 2831.1
5	38	Code section 10145 and Regulation 2831.2
6	39	Code section 10145 and Regulation 2832
7	40	Code section 10145 and Regulation 2834
8	41-42	Code sections 10145, 10176(i) or 10177(j)
9	43	Code section 10159.2 and Regulation 2725

22           45.    The foregoing violations constitute cause for the suspension or revocation of the  
23 real estate licenses and license rights of Respondent MAMI under the provisions of Code  
24 sections 10177(d), 10176(i) or 10177(j), and/or 10177(g).

1           46.     The conduct, acts, omissions, and violations described in Issue Two, Paragraphs  
2 30 through 33 constitute cause for the suspension or revocation of the real estate licenses and  
3 license rights of Respondent MAMI and Respondent VIDA MELROY under the provisions of  
4 Code section 10177, subdivision (g).

5                               Respondent VIDA MELROY - Broker Supervision

6           47.     Based on the MAMI audit violations noted above in Paragraphs 22 through 46,  
7 Respondent VIDA MELROY failed to adequately supervise the activities of MAMI's  
8 salespersons, employees, or agents and failed to establish policies, rules, procedures, and systems  
9 to review, oversee, inspect, and manage transactions requiring a real estate license and the  
10 handling of trust funds to ensure compliance with the Real Estate Law and Regulations, in  
11 violation of Code section 10159.2, Code section 10177, subdivision (h), and Regulation 2725.

12           48.     The conduct, acts and/or omissions of Respondent VIDA MELROY as set forth  
13 above in Paragraphs 43 and 47, constitute cause to suspend or revoke the real estate licenses and  
14 license rights of Respondent VIDA MELROY pursuant to Code section 10177, subdivisions (h),  
15 (d) and/or (g).

16                               Audit Costs

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

21                               Investigation/Enforcement Costs

22           50.     Code section 10106 provides, in pertinent part, that in any order issued in  
23 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner  
24 may request the administrative law judge to direct a licensee found to have committed a violation

1 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement  
2 of the case.

3 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this  
4 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action  
5 against all licenses and/or license rights of Respondents under the Real Estate Law (Part 1 of  
6 Division 4 of the Business and Professions Code), for the costs of the audit, investigation, and  
7 enforcement as permitted by law, and for such other and further relief as may be proper under  
8 other provisions of law.

9 Dated at San Diego, California this 24 day of February, 2020.

11   
12 VERONICA KILPATRICK  
13 Supervising Special Investigator

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16  
17  
18 cc: Melroy Asset Management, Inc.  
19 Vida Karen Melroy  
20 Veronica Kilpatrick  
21 Sacto  
22 Audits/Godswill Keraoru  
23  
24