

**FILED**

**APR - 2 2020**

**DEPT. OF REAL ESTATE**

*By @SLOW*

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9 **BEFORE THE DEPARTMENT OF REAL ESTATE**

10 **STATE OF CALIFORNIA**

11 \* \* \*

12 In the Matter of the Accusation against

DRE No. H-05144 SD

13 D&M REALTY AND MANAGEMENT and  
14 ANGELA SUE DURBIN, individually and as  
15 designated officer for D&M Realty and Management,

**ACCUSATION**

Respondents.

16 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the  
17 Department of Real Estate<sup>1</sup> (“Department”) of the State of California, for cause of Accusation  
18 against D&M REALTY AND MANAGEMENT and ANGELA SUE DURBIN, individually and  
19 as designated officer for D&M Realty and Management (collectively “Respondents”), alleges as  
20 follows:

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

23  
24 <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 November 23, 2011, the Department issued a real estate corporation license to  
8 Respondent D&M REALTY AND MANAGEMENT ("DMRM"), License ID 01907548.  
9 Respondent DMRM's license is scheduled to expire on November 23, 2023. Respondent has  
10 renewal rights pursuant to Code section 10201. The Department retains jurisdiction pursuant to  
11 Code section 10103.

12          5.       On October 13, 2011, the Department issued a real estate broker license to  
13 Respondent ANGELA SUE DURBIN ("DURBIN"), License ID 01876515. Respondent  
14 DURBIN's broker license is scheduled to expire on October 12, 2023. Respondent has renewal  
15 rights pursuant to Code section 10201. The Department retains jurisdiction pursuant to Code  
16 section 10103.

17          6.       Respondent DURBIN was formerly licensed as a real estate salesperson from  
18 January 26, 2010 through October 12, 2011.

19          7.       At all times relevant herein, DMRM was licensed as a real estate corporation, by  
20 and through Respondent DURBIN as designated officer-broker of Respondent DMRM to  
21 qualify said corporation and to act for said corporation as a real estate broker.

22          8.       At all times relevant herein,, Respondent DURBIN has been licensed as the  
23 designated officer-broker for Respondent DMRM, pursuant to section 10211 of the Code. As  
24 said designated officer-broker, Respondent DURBIN was at all times mentioned herein

1 responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the  
2 officers, agents, real estate licensees, and employees of Respondent DURBIN for which a  
3 license is required.

4 9. Whenever reference is made in an allegation in this Accusation to an act or  
5 omission of Respondent DMRM, such allegation shall be deemed to mean that the officers,  
6 directors, employees, agents and/or real estate licensees employed by or associated with  
7 Respondent DMRM committed such act or omission while engaged in the furtherance of the  
8 business or operations of such corporate respondent and while acting within the course and  
9 scope of their authority and employment.

10 Broker Activities

11 10. At all times mentioned herein, in the State of California, Respondents acted as  
12 real estate brokers and conducted licensed activities within the meaning of Code section  
13 10131(b) (solicit or offer to negotiate the sale, purchase or exchange of leases, or collects rents  
14 from real property or on a business opportunity).

15 Audit SD180031

16 11. On or about October 31, 2019, the Department completed an audit examination of  
17 the books and records of Respondent DMRM's property management activities, which require a  
18 real estate license pursuant to Code section 10131(b).

19 12. The audit covered the period of time from January 1, 2018 through May 31, 2019  
20 ("audit period").

21 13. The audit examination revealed violations of the Code and the Regulations as set  
22 forth in the following paragraphs, and more fully discussed in Audit Report SD180031 and the  
23 exhibits and work papers attached to said audit report.

24

1 14. William Rankin McGill ("McGill") is a licensed broker (License ID 01860199)  
2 and was also the former designated officer-broker for DMRM from approximately November 23,  
3 2011 through October 23, 2015.

4 15. On June 19, 2019, the Department's auditor held an entrance conference with  
5 Respondent DURBIN. According to Respondent DURBIN, she is President of DMRM and  
6 owns all shares for DMRM. McGill was a former co-owner of DMRM with DURBIN.

7 16. According to Respondent DURBIN and the audit records examined, Respondent  
8 DMRM managed approximately 195 residential properties with a total of 232 units for 179  
9 property owners during the audit period. DMRM collected rents, paid expenses, and screened  
10 tenants for compensation. Respondent DMRM charged a flat-rate management fee of \$100.00  
11 per month with a leasing fee (tenant placement) of 50% of the first month's scheduled rent or  
12 eight (8) percent of the monthly scheduled rents with a \$350 leasing fee. Respondent DURBIN  
13 stated that DMRM does not perform residential resales, mortgage loans, or broker escrow  
14 activities.

15 17. According to Respondent DURBIN, DMRM maintained the following bank  
16 accounts for property management activities.

17 18. Trust Account #1 (TA1)

18 Bank: California Bank & Trust

19 Account Name: D&M Realty and Management Angela Durbin Trustee, Real  
20 Estate Trust Account

21 Account #: xxxxx1041

22 Signatories: Respondent DURBIN

23 # of signatures required: One (1)  
24

1 Description: TA1 is used as a depository for monthly rents collected from tenants  
2 for multiple beneficiaries. Disbursements from TA1 include payments for  
3 expenses related to the properties managed, owner remittances, and to DMRM for  
4 management fees. Based on transactions examined, security deposits from  
5 tenants were also deposited into TA1. TA1 was opened on June 5, 2018 to  
6 replace Bank Account 1 (BA1).

7 19. Trust Account #2 (TA 2)

8 Bank: California Bank & Trust

9 Account Name: D&M Realty and Management Angela Durbin Trustee, Real  
10 Estate Trust Account

11 Account #: xxxxx1058

12 Signatories: Respondent DURBIN

13 # of signatures required: One (1)

14 Description: TA2 is used as a depository for security deposits collected from  
15 tenants for multiple beneficiaries. Disbursements from TA2 include refund of  
16 security deposits to former tenants, and transfer withdrawals to TA1 and  
17 DMRM's general account (GA). TA2 was opened on June 5, 2018 to replace  
18 Bank Account 2 (BA2).

19 20. Bank Account #1 (BA1)

20 Bank: Wells Fargo Bank

21 Account Name: D&M Management [DMRM was formerly named D&M  
22 Management]

23 Account #: xxxxx3362

24 Signatories: Respondent DURBIN and McGill

1 Description: BA1 was used as a depository for monthly rents collected from  
2 tenants for multiple beneficiaries. BA1 was replaced by TA1. However, BA1  
3 remained open because credit card receipts and automatic deposits (including for  
4 Section 8 housing) were still made into BA1. Disbursements from BA1 were  
5 payments for expenses related to the properties managed, owner remittances, and  
6 to DMRM for management fees. Based on transactions examined, security  
7 deposits from tenants were also deposited into BA1.

8 21. Bank Account #2 (BA2)

9 Bank: Wells Fargo Bank

10 Account Name: D&M Management

11 Account #: xxxxxx6988

12 Signatories: Respondent DURBIN and McGill

13 Description: Respondents maintained BA2 to handle trust funds during the audit  
14 period. BA2 was closed on or about June 25, 2018. A reconciliation and  
15 accountability of BA2 was not prepared as part of the audit examination.

16 BA2 was an interest-bearing account used as a depository for security deposits  
17 collected from tenants. Disbursement from BA2 included refunds of security  
18 deposits to former tenants, and transfer withdrawals to TA1 and DMRM's general  
19 account, GA. The balance of \$418,406.83 was withdrawn by cashier's check on  
20 or about June 5, 2018 and deposited to open TA2 on or about June 6, 2018. BA2  
21 was closed on or about June 25, 2018 and replaced by TA2.

22 Violations

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

1           23.    Issue One. Code section 10145 and Regulation 2832.1. Trust fund handling for  
2 multiple beneficiaries

3           A combined reconciliation was prepared for TA1, TA2, and BA1 with a cut-off date of  
4 May 31, 2019. The adjusted bank balance for each account was combined and compared to the  
5 total minimum balance of the separate property records due to DMRM's manner of  
6 recordkeeping and handling of trust funds. As of May 31, 2019, there was a combined minimum  
7 shortage of <\$76,730.80> in TA1, TA2, and BA1. Respondents failed to provide any evidence  
8 that the owners of the trust funds had given their written consent to allow Respondent DMRM to  
9 reduce the balances of the funds in the trust fund accounts (TA1, TA2, and BA ) to an amount  
10 less than the existing aggregate trust fund liabilities, in violation of Code section 10145 and  
11 Regulation 2832.1.

12           24.    The shortage causes were due to negative property balances totaling  
13 <\$20,501.92> and a minimum unidentified shortage of <\$56,228.88>. The negative property  
14 balances include the following:

<u>Property</u>	<u>Amount</u>
630 Sierra Way	<\$20,409.15>
801 Ash St. #201	<\$ 92.77>
	<\$20,501.92>

15           25.    According to the audit records examined, 801 Ash St. #201 was no longer  
16 managed after March 19, 2019, leaving a balance of <\$92.77>.

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1           26.    Issue Two. Management of properties owned by J.N.S.

2           During the audit period, DMRM managed the following four (4) properties for J.N.S.<sup>1</sup>:

3 <u>Property Address</u>	<u>Date of Property Management Agreement</u>
4           2228 Finch Lane, San Diego	July 21, 2013
5           9540 Via Perezza, San Diego	November 1, 2013
6           7095 Waite Drive, La Mesa	February 11, 2016
7           7097 Waite Drive, La Mesa	February 11, 2016

8           27.    Respondent DURBIN used third party vendor, Durbin's Carpet Cleaning, which  
9 is owned by DURBIN's spouse, for cleaning services on J.N.S.'s properties. Respondents failed  
10 to disclose the relationship/ ownership interest on the property management agreements with  
11 J.N.S.

12           28.    J.N.S. submitted a complaint to the Department against Respondents, in which  
13 J.N.S. alleged that Respondents failed to handle trust funds properly including failure to hold  
14 security deposits, failure to hold reserves for the Waite Drive properties, and failure to retain  
15 lease/rental agreements with tenants for J.N.S.'s properties managed by Respondents.

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

18           During the audit period, Respondent DMRM failed to maintain accurate or complete  
19 records of trust funds received and disbursed (control records) for TA1, TA2, and BA 1, in  
20 violation of Code section 10145 and Regulation 2381. According to DMRM's records,  
21 transactions for TA1 and BA1 were combined into one control record. Funds were deposited  
22 into TA1 and BA1 but were recorded in the TA2 control record. Additionally, there were  
23

24 <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.



1 transactions that were not posted in the correct control record. Examples include the following,  
2 without limitation:

<u>Date</u>	<u>Amount</u>	<u>Description/Property</u>	<u>Transaction Record</u>	<u>Transaction To/From</u>
02/01/2018	\$2,495	Security Deposit/ 5252-5274 La Jolla Mesa Dr.	TA2/ BA2	BA1
05/03/2019	\$1,780	Security Deposit/ 259 S. 39 <sup>th</sup>	TA2	TA1
05/16/2019	\$2,300	Security Deposit/ 2258 Alicante Cove	TA2	TA1
05/24/2019	\$1,695	Security Deposit/ 451 E. Mission Ave. Triplex	TA2	TA1
05/28/2019	\$2,300	Security Deposit/ 6739 Parkside Ave	TA2	TA1

12 30. Issue Four. Code section 10145 and Regulation 2831.1. Separate records for  
13 each beneficiary or transaction

14 During the audit period, Respondent DMRM failed to maintain accurate and/or complete  
15 separate records for each beneficiary or transaction (separate records) for TA1, TA2, and BA1,  
16 in violation of Code section 10145(g) and Regulation 2831.1. Some transactions were recorded  
17 in records for TA2 but were deposited into TA1 and BA1. Examples of the deposits are noted  
18 above in Issue Three. The separate records for TA1 and TA2 did not accurately reflect the trust  
19 funds held in each account for each beneficiary.

20 31. Issue Five. Code section 10145 and Regulation 2831.2. Trust account reconciliation

21 During the audit period, Respondent DMRM failed to perform and maintain an accurate  
22 monthly reconciliation comparing the balance of all separate beneficiary or transaction records  
23 (separate records) to the balance of all trust funds received and disbursed (control record) for  
24

1 TA1, TA2, and BA 1, in violation of Code section 10145 and Regulation 2831.2. On June 19,  
2 2019, Respondent DURBIN stated that she started performing reconciliations.

3 32. Issue Six. Code section 10145 and Regulation 2832. Trust account designation.

4 During the audit period, Respondent DMRM used BA1 and BA2 for the handling of trust  
5 funds in connection with property management activities but the accounts were not designated in  
6 Respondent DMRM's name or under DURBIN's name, as trustee, in violation of Code section  
7 10145 and Regulation 2832. BA2 was closed in June of 2018 and its funds were transferred to  
8 TA2; however, as of September 23, 2019, BA1 was still open and used by Respondents for  
9 electronic deposits connected to property management activities.

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

11 According to Department licensing records, McGill's designation as broker-officer for  
12 DMRM was cancelled as of October 23, 2015. Based on bank signature cards for BA1 and BA2,  
13 McGill was a signatory for BA1 and BA2 when he was not licensed or employed with DMRM,  
14 in violation of Code section 10145 and Regulation 2834.

15 34. Issue Eight. Code sections 10159.2, 10177(h), and Regulation 2725. Broker  
16 supervision.

17 Respondent DURBIN failed to adequately supervise the activities of Respondent  
18 DMRM's salespersons, employees, or agents and failed to establish policies, rules, procedures,  
19 and systems to review, oversee, inspect, and manage transactions requiring a real estate license  
20 and the handling of trust funds to ensure compliance with the Real Estate Law, in violation of  
21 Code sections 10159.2, 10177, subdivision (h), and Regulation 2725.

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1 35. The conduct, acts, and/or omissions of Respondent DMRM as described above in  
2 Paragraphs 23 through 33, violated the Code and the Regulations as set forth below:

<u>Issue</u>	<u>Violations</u>
1	Code section 10145 and Regulation 2832.1
2	None cited in audit report / 10177, subdivision (g) (negligence)
3	Code section 10145 and Regulation 2831
4	Code section 10145 and Regulation 2831.1
5	Code section 10145 and Regulation 2831.2
6	Code section 10145 and Regulation 2832
7	Code sections 10145 and Regulation 2834

11 36. The foregoing violations constitute cause for the suspension or revocation of the  
12 real estate licenses and license rights of Respondent DMRM under the provisions of Code  
13 section 10177, subdivisions (d) and/or (g).

14 Issue Two

15 37. The conduct, acts, omissions, and violations described in Issue Two, Paragraphs  
16 26 through 28, above, constitute cause for the suspension or revocation of the real estate license  
17 and license rights of Respondents under the provisions of Code section 10177, subdivision (g).

18 Issue Eight- Broker Supervision - Respondent DURBIN

19 38. Based on the audit violations noted above in Paragraphs 23 through 34,  
20 Respondent DURBIN failed to adequately supervise the activities of DMRM's salespersons,  
21 employees, or agents and failed to establish policies, rules, procedures, and systems to review,  
22 oversee, inspect, and manage transactions requiring a real estate license and the handling of trust  
23 funds to ensure compliance with the Real Estate Law and Regulations, in violation of Regulation  
24 2725, which constitutes cause to suspend or revoke the real estate licenses and license rights of

1 Respondent DURBIN pursuant to Code section 10159.2, Code section 10177, subdivisions (d)  
2 and/or (g), and Regulation 2725.

3 Audit Costs

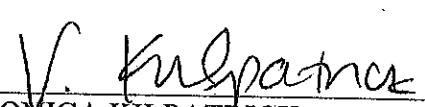
4 39. Code section 10148, subdivision (b) provides, in pertinent part, that the  
5 Commissioner shall charge a real estate broker for the cost of any audit, if the Commissioner has  
6 found in a final decision following a disciplinary hearing that the broker has violated Code  
7 section 10145 or a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

8 Investigation/Enforcement Costs

9 40. Code section 10106 provides, in pertinent part, that in any order issued in  
10 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner  
11 may request the administrative law judge to direct a licensee found to have committed a violation  
12 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement  
13 of the case.

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

20 Dated at San Diego, California this 12 day of March, 2020.

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22   
23 VERONICA KILPATRICK  
Supervising Special Investigator

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1 cc: D&M Realty and Management  
2 Angela Sue Durbin  
3 Veronica Kilpatrick  
4 Sacto  
5 Audits/Jennifer Borromeo  
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