

DEC 01 2021

DEPT. OF REAL ESTATE

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of No. H-05260-SD
12 BRIAN WILLIAM McDONNELL, ACCUSATION
13 Respondent.

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15 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the
16 Department of Real Estate ("Department" or "DRE") of the State of California, for cause of
17 Accusation against BRIAN WILLIAM McDONNELL ("McDONNELL"), "Respondent," is
18 informed and alleges in her official capacity as follows:

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

23 LICENSE HISTORY

- 24 3. Respondent McDONNELL has been licensed by the Department as a real estate
25 salesperson ("RES"), License ID 01108253, from on or about April 18, 1991, through the present,
26 with McDONNELL's license scheduled to expire on April 17, 2023, unless renewed.
27 McDONNELL also has a mortgage loan originator ("MLO") license endorsement, National
28 Mortgage Licensing System ("NMLS") ID 243343.

1 4. McDONNELL is employed by real estate corporation (“REC”) BDCM Inc.
2 (“BDCM”), License ID 01499025. BDCM is licensed through the real estate broker (“REB”) license of David Anthony Church, License ID 01071217, and Church is BDCM’s designated
3 officer (“D.O.”). BDCM maintains the fictitious business name IFC Mortgage, which is licensed
4 with the DRE.
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6 **ACTIVITIES REQUIRING A REAL ESTATE LICENSE**

7 5. At all times mentioned, in the Counties of San Diego and Los Angeles,
8 McDONNELL engaged in the performance of activities requiring a real estate license pursuant to
9 Code section 10130, and acted and ordered, caused, authorized or participated in licensed
10 activities within the meaning of Code section 10131.

11 **FACTS DISCOVERED BY DRE**

12 6. On or about January 29, 2021, the DRE received a complaint from R.Y.^{1/} regarding
13 McDONNELL and IFC Mortgage (one of BDCM’s licensed fictitious business names), alleging
14 that in January and February 2020, McDONNELL helped facilitate the refinancing of two loans
15 for R.Y.’s family properties, located at 2472, 2474, and 2476 E. Washington Blvd., Pasadena, CA
16 91104 (Pasadena Units) and 2837 N. Keystone St., Burbank, CA 91504 (Burbank Property).

17 7. According to R.Y., as part of those transactions, McDONNELL agreed to
18 reimburse the loan costs after escrow closed, including escrow, title, and other closing costs
19 totaling \$2,800 on the Pasadena Units loan and similar costs for the Burbank Property loan.
20 McDONNELL’s agreement to refund these monies to R.Y. was reached verbally, and thereafter
21 McDONNELL memorialized the agreement through e-mail and text messages. In one of
22 McDONNELL’s e-mail messages to R.Y., dated March 28, 2019, McDONNELL wrote: “I said I
23 would pay your costs, which I will right at close. The Escrow, Title etc. will be paid from me to
24 you in a separate check! Cool! . . . and I pay the costs.” In an e-mail message dated April 4, 2019,
25 McDONNELL asked R.Y., “What’s the word with you [sic] dad’s refi. Should we do a loan with
26 no fees???”

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28 ^{1/} Initials are used in place of an individual’s full name to protect their privacy. Documents containing the individuals’ full names will be provided during the discovery phase of this case to Respondents and/or their attorney(s), after service of a timely and proper request for discovery on Complainant’s counsel.

1 8. In a text message from R.Y. to McDONNELL dated December 6, 2019, R.Y.
2 wrote: "Brian, we previously talked about no fees for the loans. I'm looking at the loan
3 disclosures for both and they have fees. Can you back those out?" McDONNELL replied by text
4 to R.Y. the same day and wrote:

5 Dont look at those

6 All is well

7 I told you

8 I would cover the costs



10 But

11 We have to tally then at

12 Close

13 And me give

14 You a check



16 I remember

17 9. In another e-mail message from McDONNELL to R.Y. dated January 16, 2020,
18 McDONNELL wrote: "I agreed to pay your Escrow, title fees etc. It should pencil out to \$2800,
19 I'll pay you after we close. [¶] Look this over, you just pay payoff, interest (feb 1st payment),
20 home insurance!" McDONNELL attached to this January 16, 2020 e-mail message an estimated
21 closing statement with McDONNELL's hand-written notes on it.

22 10. On January 16, 2020 and February 7, 2020, escrows closed on the Pasadena Units
23 and Burbank Property loans. R.Y. estimated that the respective refunds owed to him by
24 McDONNELL based on McDONNELL's promises and the closing statements were \$2,999.85
25 and \$2,819.07. However, McDONNELL failed to pay the monies to R.Y. as promised.

26 11. After the loan closings, R.Y. requested reimbursement/refunds of the loan costs
27 from McDONNELL on multiple occasions via phone calls, and e-mail and text messages between

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1 March and August 2020. On multiple occasions, McDONNELL responded that the refunds were
2 forthcoming, but payments were never received.

3 12. In a text message sent by R.Y. to McDONNELL after the close of escrow, on or
4 before April 28, 2020, R.Y. wrote: "Brian, I can't seem to reach you. Call me." McDONNELL
5 replied by text the same day, writing: "money on the way."

6 13. In a text message sent by R.Y. to McDONNELL dated June 10, 2020, R.Y. wrote:
7 "Brian, it's been well over a month and we haven't seen the checks." McDONNELL replied by
8 text the same day, writing: "yes!!!!" In a text message sent by McDONNELL to R.Y. dated June
9 20, 2020, McDONNELL wrote: "doing accounting. sending check." On June 22, 2020, R.Y. sent
10 a text to McDONNELL stating: "Please send the checks asap."

11 14. On June 25, 2020, R.Y. sent another text to McDONNELL stating: "Are the checks
12 in the mail?" The same day, McDONNELL reply to R.Y. stating: "dude!!!! money. i have
13 your\$\$\$."

14 15. In a text message sent by McDONNELL to R.Y. dated September 10, 2020,
15 McDONNELL wrote: "f... im sending the check. what unit number?? we should send." R.Y.
16 replied by text the same date, stating: "There's no unit number. Here's the addresses again." And
17 R.Y. provided an address.

18 16. To date, the DRE has not received evidence that McDONNELL has paid R.Y. the
19 monies promised.

20 **VIOLATIONS OF THE REAL ESTATE LAW – CAUSES FOR DISCIPLINE**

21 17. In the course of the activities described above in Paragraph 10, and based on the
22 facts discovered by the DRE, as described in Paragraphs 11 through 16 above, Respondents acted
23 in violation of the Code and Regulations as follows.

24 **CAUSE OF ACCUSATION**

25 18. The Complainant realleges and incorporates by reference all of the allegations
26 contained in paragraphs 1 through 18 above with the same force and effect as though fully set
27 forth herein.

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1 19. McDONNELL's acts and/or omissions in promising to reimburse loan costs on the
2 refinance loans for the Pasadena Units and the Burbank Property out of McDONNELL's
3 commissions and then failing to reimburse such loan costs are in violation of Code sections
4 10166.051(a), 10166.051(b), 10176(b), and 10176(i), and constitute cause to suspend or revoke
5 the real estate licenses and license rights of Respondent STORM pursuant to Code sections
6 10176(b), 10176(i), and 10177(d) and/or 10177(g).

7 20. McDONNELL's acts and/or omissions in violation of Code sections 10166.051(a),
8 10166.051(b), 10176(b), and 10176(i) constitute cause for the suspension or revocation of
9 McDONNELL's MLO license endorsement by establishing McDONNELL's failure to
10 demonstrate such financial responsibility, character and general fitness as to command the
11 confidence of the community and to warrant a determination that as a mortgage loan originator
12 McDONNELL will operate honestly, fairly, and efficiently within the purposes of Article 2.1 of
13 the Real Estate Law.

14 COSTS

15 (INVESTIGATION AND ENFORCEMENT COSTS)

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

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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 Respondent BRIAN WILLIAM McDONNELL under
4 the Real Estate Law, for the costs of investigation and enforcement as permitted by law, and for
5 such other and further relief as may be proper under other applicable provisions of law.

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7 Dated at San Diego, California this 29th day of November, 2021.

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Veronica Kilpatrick

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Veronica Kilpatrick
Supervising Special Investigator

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cc: BRIAN WILLIAM McDONNELL
 BDCM Inc.
 Veronica Kilpatrick
 Sacto.

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