

**FILED**

**APR 11 2023**

**DEPT. OF REAL ESTATE**

By 

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7

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H-05710 SD  
12 )  
13 DAMIEN DONALD MCNELLIS; )  
14 MISHICOT SERVICES, INC.; and )  
15 KEVIN H. WONG, individually and ) ACCUSATION  
16 As designated officer of Mishicot )  
Services, Inc., )  
Respondents. )

17  
18 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the  
19 State of California, acting in her official capacity, for cause of Accusation against DAMIEN  
20 DONALD MCNELLIS (“MCNELLIS”), MISHICOT SERVICES, INC. (“MSI”), and KEVIN  
21 H. WONG aka Kevin Hsueh Kai Wong (“WONG”), individually and as designated officer  
22 of Mishicot Services, Inc., is informed and alleges as follows:

23 1.

24 The Complainant, Veronica Kilpatrick, acting in her official capacity as  
25 Supervising Special Investigator of the State of California, makes this Accusation.

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1 2.

2 All references to the "Code" are to the California Business and Professions  
3 Code, and all references to "Regulations" are to Title 10, Chapter 6, California Code of  
4 Regulations unless otherwise specified.  
5

6 (LICENSE HISTORY)

7 3.

8 Respondent MCNELLIS is presently licensed and/or has license rights under the  
9 Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code as a real  
10 estate salesperson (license no. 02064010). Respondent MCNELLIS was licensed as a real  
11 estate salesperson from on or about July 6, 2018 to July 5, 2022. On July 5, 2022, Respondent  
12 MCNELLIS's license expired. The Department of Real Estate retains jurisdiction over the  
13 license pursuant to California Business and Professions Code section 10103. From on or about  
14 July 24, 2018 to July 14, 2021, Respondent MCNELLIS's sponsoring broker was Respondent  
15 MSI.<sup>1</sup>

16 4.

17 Respondent MSI<sup>2</sup> is presently licensed and/or has license rights under the Real  
18 Estate Law, Part 1 of Division 4 of the California Business and Professions Code as a real  
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20 \_\_\_\_\_  
21 <sup>1</sup> Respondent MCNELLIS is the only identified individual in Respondent MSI's Articles of  
22 Incorporation filed on or about February 28, 2018, Statement of Information filed on or about  
23 March 30, 2020, and Statement of Information filed on or about May 14, 2021 with the  
24 California Secretary of State. Respondent MCNELLIS is the president, secretary, chief  
25 financial officer ("CFO"), sole director, and agent for service of process for Respondent MSI.

26 <sup>2</sup> Respondent MSI was initially incorporated as Damien DM, Inc. on or about February 28,  
27 2018. Damien DM, Inc.'s name changed to Mishicot Services, Inc. on or about May 16, 2018.

1 estate corporation (license no. 02071139). MSI was licensed as a real estate corporation from  
2 on or about July 23, 2018 to July 22, 2022. On July 22, 2022, Respondent MSI's license  
3 expired. The Department of Real Estate retains jurisdiction over the license pursuant to  
4 California Business and Professions Code section 10103. From on or about July 31, 2018 to  
5 July 14, 2021, Respondent MSI's fictitious business name was PMI Bahia South. From on or  
6 about July 23, 2018 to July 22, 2022, MSI's designated officer was Respondent WONG. MSI  
7 has not had any other designated officer. At all times herein, Respondent MSI's President and  
8 Chief Financial Officer has been Respondent MCNELLIS.

9 5.

10 Respondent WONG is presently licensed and/or issued by the Department of  
11 Real Estate as a real estate broker (license no. 01222102). On or about June 17, 2005,  
12 Respondent WONG was originally licensed as a real estate broker, and has been so licensed  
13 since then. Previously, from on or about May 8, 1997 to May 7, 2001, Respondent WONG was  
14 licensed as a real estate salesperson. Respondent WONG's fictitious business names have been  
15 "Primercer" and "Primercer Real Estate" from on or about September 13, 2005 through the  
16 present. THOMAS is TPI's chief executive officer ("CEO") and chief financial officer  
17 ("CFO").

18 6.

19 Whenever acts referred to below are attributed to MCNELLIS, MSI, and/or  
20 WONG, those acts are alleged to have been done by MCNELLIS, MSI, and/or WONG, acting  
21 by himself/itself/themselves, or by and/or through one or more agents, associates, affiliates,  
22 and/or co-conspirators.

23 7.

24 At all times mentioned, in the County of San Diego and/or County of  
25 Orange, MCNELLIS, MSI, and WONG were engaged in the business of a real estate  
26 broker conducting licensed activities within the meaning of Code section 10131(b) ("[l]eases or  
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1 rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits  
2 for prospective tenants, or negotiates the sale, purchase, or exchanges of leases on real  
3 property, or on a business opportunity, or collects rents from real property, or improvements  
4 thereon, or from business opportunities”).

5  
6 (MCNELLIS: CONSUMER COMPLAINT)

7 8.

8 On or about October 19, 2021, J. B. filed a complaint with the Department of  
9 Real Estate stating MCNELLIS provided property management services to Helena  
10 Homeowner’s Association (“HOA”) and specific units within the HOA at 4753 35th St., San  
11 Diego, CA 92116, but absconded with their property management records and security  
12 deposits.

13 9.

14 To date, MCNELLIS has not provided the property management records and/or  
15 the security deposits to the HOA.

16 10.

17 The conduct, acts, and/or omissions of Respondent MCNELLIS, as set forth in  
18 paragraphs 8 and 9, above, are in violation of Code sections 10176(b) (false promises),  
19 10177(d) (willful disregard or violation of Real Estate Law), 10177(g) (negligence), and  
20 10177(j)/10176(i) (fraud or dishonest dealing).

21  
22 (MCNELLIS, MSI, and WONG: PROPERTY MANAGEMENT AUDIT)

23 11.

24 On or about June 27, 2022, the Department of Real Estate completed an audit  
25 examination of the books and records of MSI to determine whether MSI and WONG handled  
26 and accounted for trust funds and conducted their real estate activities in accordance with  
27

1 the Real Estate Law and Regulations. The audit examination covered a period of time  
2 beginning on January 1, 2020 and ending on February 28, 2022. The audit examination  
3 revealed violations of the Code and the Regulations set forth in the following paragraphs, and  
4 are more fully discussed in Audit Report SD210027 and the exhibits and work papers attached  
5 to said audit report.

6  
7 Trust Accounts

8 12.

9 At all times mentioned, in connection with the activities described in Paragraph  
10 7, above, MCNELLIS, MSI, and WONG accepted or received funds including funds in trust  
11 (“trust funds”) from or on behalf of actual or prospective parties, such as owners of real  
12 property, and thereafter made deposits and/or disbursements of such funds. From time to time  
13 herein mentioned, during the audit period, said trust funds were deposited and/or maintained by  
14 MCNELLIS, MSI, and WONG in the trust account as follows:

15 Undetermined account name

16 \*\*\*\*\*6860

17 Southern California Bank

18 12265 El Camino Real, Suite 100

19 San Diego, CA 92130

BA 1

20 Undetermined account name

21 Undetermined account number

22 Southern California Bank

23 12265 El Camino Real, Suite 100

24 San Diego, CA 92130

BA 2

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26 ///

27 ///

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13.

In the course of activities described in Paragraphs 7 and 12, above, and during the audit examination period in Paragraph 9, above, Respondents MCNELLIS, MSI, and WONG acted in violation of the Code and the Regulations as set forth below:

(a) Failed to maintain an accurate and complete control record of all trust funds received, deposited, and disbursed for BA 1 and BA 2, in violation of Code section 10145 and Regulations section 2831.

(b) Failed to maintain an accurate and complete separate record in chronological sequence for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited, and disbursed from BA 1,<sup>3</sup> in violation of Code section 10145 and Regulations section 2831.1.

(c) Failed to perform and maintain an accurate monthly reconciliation of the balance of all separate beneficiary or transaction records (separate records) to the balance of the record of all trust funds received and disbursed (control record) for BA 1 and BA 2, in violation of Code section 10145 and Regulations section 2831.2.

(d) Failed to disburse at least \$350.00 in trust funds to G. T., the owner of these trust funds and 4753 35th St., Suite 1, San Diego, CA 92116, as of July 14, 2021, in violation of Code section 10145.

(e) Failed to retain all records of activities during the audit period which require a real estate broker license, which include, but are not limited to, bank statements, trust records, invoices, trust fund receipts and disbursements (control record), separate records, records of reconciliation, property management agreements, cancelled checks, and broker-salesperson

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<sup>3</sup> The Department of Real Estate was not able to assess the separate records for BA 2 because they were not provided to the Department of Real Estate.

1 agreements, in violation of Code section 10148.<sup>4</sup> As a result, the Department of Real Estate  
2 was not able to determine BA 1's and BA 2's minimum adjusted bank balance as of the audit  
3 cutoff date, February 28, 2022.

4 (f) The overall conduct of WONG constitutes a failure on WONG's part, as  
5 officer designated by a corporate broker licensee, to exercise the reasonable supervision and  
6 control over the licensed activities of MSI as well as by MSI's salespersons and employees,  
7 including, but not limited to, MCNELLIS, as required by Code section 10159.2 and  
8 Regulations section 2725.

9 (g)(1) MSI conducted property management services and received  
10 compensation when there was not designated officer from July 15, 2021 to February 28, 2022,  
11 in violation of Code section 10130.

12 (g)(2) MCNELLIS conducted property management services and received  
13 compensation with no supervising broker from July 15, 2021 to February 28, 2022, in violation  
14 of Code section 10130.

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22 <sup>4</sup> Since bank statements for BA 1 and BA 2 were not provided, the Department of Real Estate  
23 was not able to determine BA 1's and BA 2's minimum adjusted bank balance as of the audit  
24 cutoff date, February 28, 2022. Based on inaccurate and incomplete separate records, BA 1's  
25 estimated minimum accountability was \$26,104.84, and BA 2's estimated minimum  
26 accountability was \$27,020.20 as of the audit cutoff date, February 28, 2022.

27

14.

The conduct of Respondents TPI and THOMAS described in Paragraph 13, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
13(a)	Code section 10145 and Regulations section 2831
13(b)	Code section 10145 and Regulations section 2831.1
13(c)	Code section 10145 and Regulations section 2831.2
13(d)	Code section 10145
13(e)	Code section 10148
13(f)	Code section 10159.2 and Regulations section 2725
13(g)	Code section 10130

The foregoing violations constitute cause for discipline of the real estate license and license rights of Respondent MCNELLIS under the provisions of Code sections 10177(d), 10177(g), and 10176(i)/10177(j). The foregoing violations constitute cause for discipline of the real estate license and license rights of Respondent MSI under the provisions of Code sections 10177(d), 10177(g), 10177(h), and 10176(i)/10177(j). The foregoing violations constitute cause for discipline of the real estate license and license rights of Respondent WONG under the provisions of Code sections 10177(d), 10177(g), and 10177(h).

(COSTS)

15.

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




16.

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

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of DAMIEN DONALD MCNELLIS, MISHICOT SERVICES, INC., and KEVIN H. WONG under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code), for the cost of investigation and enforcement pursuant to Code section 10106 and as permitted by law, and for such other and further relief as may be proper under other applicable provisions of law, including costs of audit pursuant to Code section 10148(b).

Dated at San Diego, California: April 10, 2023.

  
Veronica Kilpatrick  
Supervising Special Investigator

cc: Damien Donald McNellis  
Mishicot Services, Inc.  
Kevin H. Wong  
Veronica Kilpatrick  
Sacto  
Enforcement  
Audits – Chambers Tse