

FILED

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DEPT. OF REAL ESTATE

By

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against)	
)	No. H-05809 SD
D&M REALTY AND MANAGEMENT and)	
ANGELA SUE DURBIN, individually and as)	
Designated Officer of D&M Realty and)	<u>ACCUSATION</u>
Management,)	
Respondents.)	

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, for cause of Accusation against D&M REALTY AND MANAGEMENT ("DMRM") and ANGELA SUE DURBIN ("DURBIN"), individually and as designated officer of D&M Realty and Management (collectively as "Respondents") alleges as follows:

1.

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

2.

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

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1 Commissioner issued a Decision and Order, effective November 6, 2020, suspending the real
2 estate licenses of Respondents for sixty (60) days, provided, however, said sixty (60) days was
3 stayed for two (2) years upon certain terms and conditions, including, in part, payment of the
4 investigation, enforcement, and audit costs.

5 REAL ESTATE ACTIVITY

6 6.

7 At all times relevant herein DMRM engaged in the business of, acted in the
8 capacity of, advertised or assumed to act as a real estate broker for or in expectation of
9 compensation, within the meaning of Code section 10131(b), by leasing or renting or offering
10 to lease or rent, or placing for rent, or soliciting listings of places for rent, or soliciting for
11 prospective tenants, or negotiating the sale, purchase or exchanges of leases on real property, or
12 on a business opportunity, or collecting rents from real property, or improvements thereon, or
13 from business opportunities ("property management"). DMRM managed 158 family residences
14 with 176 units and 5 apartment buildings with a total of 35 units, for approximately 162
15 owners.

16 CAUSE FOR ACCUSATION

17 (AUDIT NO. SD220028)

18 7.

19 On or about December 14, 2023, the Department completed an audit
20 examination of the books and records of DMRM pertaining to its property management
21 activities described in Paragraph 6 above, to determine whether Respondents corrected the
22 violations described in Audit Report SD180031, Case No. H-05144 SD, and whether
23 Respondents are in compliance with the Code and Regulations. The audit examination covered
24 the period of time from January 1, 2022, to May 31, 2023 ("audit period"). The audit
25 examination revealed violations of the Code and the Regulations as set forth in the following
26 paragraphs, and more fully discussed in Audit Report No. SD220028 and the exhibits and work
27 papers attached to said audit report.

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8.

At all times mentioned herein, and in connection with the property management activities described in Paragraph 6 above, DMRM accepted or received funds, including funds in trust ("trust funds") from or on behalf of the owners of the properties managed by DMRM, and thereafter made deposits and/or disbursements of such funds. DMRM maintained two (2) bank accounts at California Bank & Trust with Account No. xxxx1041 ("TA1") and Account No. xxxx1058 ("TA2") to hold and collect trust funds for multiple beneficiaries during the audit period.

Violations of the Real Estate Law

9.

The audit examination revealed violations of the Code and the Regulations, as set forth in the following paragraphs, and more fully discussed in Audit Report No. SD210031 and the exhibits and work papers attached to the audit reports:

(a) Handling of Trust Funds/Trust Fund Handling for Multiple Beneficiaries (Code section 10145; Regulations section 2832.1).

As of May 31, 2023, TA1 contained a shortage of \$3,205.86 caused by ten (10) negative beneficiary balances totaling \$3,089.78 and an unidentified shortage of \$116.08. The balances were made positive between June 1, 2023, and July 31, 2023.

As of May 31, 2023, TA2 contained a shortage of \$8.00 caused by bank fees incurred on May 31, 2023.

Respondents did not provide any evidence that the owners of the trust funds had given their written consent to allow Respondents to reduce the balance of funds in TA1 or TA2 to an amount less than the existing aggregate trust fund liabilities.

(b) Handling of Trust Funds; Trust Funds Records To Be Maintained (Code section 10145; Regulations section 2831).

DMRM did not maintain an accurate and complete record of trust funds received and disbursed for TA1 during the audit period. TA1 had an unidentified shortage of \$116.08. Furthermore, Respondents posted transactions in the control record that did not occur in TA1.

1 For example, a deposit dated September 16, 2022, of \$78.00 and a disbursement dated May 22,
2 2023, of \$35.00 posted in the control record, however, both transactions did not occur in TA1
3 by May 31, 2023.

4 DMRM did not maintain an accurate and complete control record for TA2
5 during the audit period. For example, a deposit dated May 22, 2023, of \$35.50 posted in the
6 control record, however, the transaction did not occur in TA2 by May 31, 2023.

7 **(c) Handling of Trust Funds; Separate Records for Each Beneficiary or Transaction**
8 **(Code section 10145; Regulations section 2831.1).**

9 DMRM did not maintain accurate and complete separate records for each
10 beneficiary or transaction for TA1 and TA2 during the audit period. TA1 had an unidentified
11 shortage of \$116.08. In addition, there were transactions posted in the records that did not occur
12 in TA1 and TA2.

13 **(d) Responsibility of Corporate Officer in Charge/Broker Supervision (Code sections**
14 **10159.2; Regulations section 2725).**

15 Based on the findings above, DURBIN failed to exercise adequate supervision
16 and control over the activities conducted by DMRM's licensees and/or employees as necessary
17 to secure full compliance with the Real Estate Law in violation of 10159.2. Respondents failed
18 to establish policies, rules, procedures, and systems to review, oversee, inspect, and manage
19 transactions requiring a real estate license and the handling of trust funds in violation of the
20 Commissioner's Regulations section 2725.

21 10.

22 Each of the foregoing violations in Paragraph 9(a)-(d) above constitute cause for
23 the suspension or revocation of the real estate license and/or license rights of Respondents
24 under the provisions of Sections 10177(d), 10177(g), and/or 10177(h).

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1 COSTS

2 (AUDIT COSTS)

3 11.

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

9 (INVESTIGATION AND ENFORCEMENT COSTS)

10 12.

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

16 WHEREFORE, Complainant prays that a hearing be conducted on the
17 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
18 disciplinary action against all the licenses and/or license rights of Respondents D&M REALTY
19 AND MANAGEMENT and ANGELA SUE DURBIN under the Real Estate Law, for the costs
20 of investigation and enforcement as permitted by law, for the cost of the audit, and for such
21 other and further relief as may be proper under other applicable provisions of law.

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23 Dated at San Diego, California this 16 day of February, 2024.

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27 Veronica Kilpatrick
28 Supervising Special Investigator

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cc: D&M REALTY AND MANAGEMENT
ANGELA SUE DURBIN
Veronica Kilpatrick
Sacto.
Audits – Jennifer Borromeo