



At all relevant times, Respondent was doing business under the fictitious business name of McKinley Mortgage and/or McKinley Mortgage Company LLC ("MMC"). Respondent is a managing member and 100% owner of MMC and has served as the President of MMC since on or about June 1996. Respondent is listed as a "control person" for MMC on the National Mortgage Licensing System ("NMLS") registration.

**FIRST CAUSE OF ACTION**  
(DRE Broker Office Survey)

Each and every allegation in Paragraphs 1 through 3, inclusive, is incorporated by this reference as if fully set forth herein.

On July 25, 2017, the DRE conducted a Broker Office Survey ("BOS") of Respondent.

The BOS revealed that Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of Sections 10131(d) and/or 10131(e) of the Code:

- a. **B&P Code § 10131(d):** A real estate broker is a person who, for compensation or in expectation of compensation, solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connections with loans secured directly or collaterally by liens on real property or on a business opportunity.
- b. **B&P Code §10131(e):** A real estate broker is a person who, for compensation or in expectation of compensation, sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory

1 note secured directly or collaterally by a lien on real property or a business  
2 opportunity, and performs services for the server thereof.

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4 While engaging in the acts described above in Paragraph 6, Respondent was  
5 operating under the fictitious business name of McKinley Mortgage dba Home and Notes  
6 Documents; and/or Alaska Financial Company III, LLC; and/or McKinley Mortgage Co.; and/or  
7 McKinley Mortgage Co., LLC.

8 8

9 At all relevant times, McKinley Mortgage dba Home and Notes Documents;  
10 Alaska Financial Company III, LLC; McKinley Mortgage Co.; and/or McKinley Mortgage Co.,  
11 LLC were not reported as fictitious business names on Respondent's real estate broker license.

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13 The acts and/or omissions of Respondent, as alleged in the FIRST CAUSE OF  
14 ACTION, constitute grounds for the revocation of Respondent's real estate broker license under  
15 Sections 10159.5, 10177(d), and 10177(g) of the Code, in conjunction with Section 2731 of the  
16 Regulations.

17 **SECOND CAUSE OF ACTION**  
18 (Civil Judgments Eastern District of California)

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20 Each and every allegation contained above in Paragraphs 1 through 9, inclusive, is  
21 incorporated by this reference as if fully set forth herein.

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23 On or about March 28, 2018, in the United States District Court Eastern District  
24 of California Sacramento Division, Case No. 2:18-cv-00616-MCE-CMK, a Final Judgment was  
25 entered against Respondent and MMC, wherein Respondent and MMC were "permanently  
26 restrained and enjoined" from violating directly or indirectly the Securities Exchange Act of  
27 1934 (15 U.S.C. Sec. 78(j)); Rule 10b-5 of 17 C.F.R. Sec. 240; Section 17(a) of the Securities

1 Act of 1933 (15 U.S.C. Sec. 77(q)[A]); Section 5 of the Securities Act of 1933 (15 U.S.C. Sec.  
2 77(e)); and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (15 U.S.C. Secs.  
3 80b-b(1) and (2)).

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5 The Final Judgment, described above in Paragraph 11, further orders that  
6 Respondent was liable for disgorgement in the amount of \$10,584,107, representing the profit  
7 Respondent gained as a result of the conduct alleged in the complaint, plus a prejudgment  
8 interest in the amount of \$1,200,384, and a civil penalty in the amount of \$2,500,000. The total  
9 amount being \$14,284,491.

10 13

11 The acts and/or omissions of Respondent, as alleged in the SECOND CAUSE OF  
12 ACTION, constitute grounds for the revocation of Respondent's real estate broker license under  
13 Sections 10177(d), 10177(f), and 10177(g) of the Code.

14 **THIRD CAUSE OF ACTION**  
15 (Federal Agency Action by SEC)

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17 Each and every allegation contained above in Paragraphs 1 through 13, inclusive,  
18 is incorporated by this reference as if fully set forth herein.

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20 On April 6, 2018, in the United States of America, Securities and Exchange  
21 Commission, Case No. 3-18427, Respondent was issued an Order Instituting Public  
22 Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940,  
23 Making Findings and Imposing Sanctions.

24 16

25 The complaint by the Securities and Exchange Commission alleged that  
26 Respondent defrauded investors in a pooled investment fund known as Alaska Financial  
27 Company III, LLC, which was created by Respondent and MMC. The complaint further alleged

1 that Respondent improperly transferred \$18.2 million of investor money to MMC, in excess of  
2 the management and overhead fees described to the investors, including \$4.3 million that  
3 Respondent used for his personal purposes.

4 17

5 The Order, described above in Paragraph 15, bars Respondent from associating  
6 with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor,  
7 transfer agent, or nationally recognized statistical rating organization.

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9 The acts and/or omissions of Respondent, as alleged in the THIRD CAUSE OF  
10 ACTION, constitute grounds for the revocation of Respondent's real estate broker license under  
11 Sections 10177(d), 10177(f), and 10177(g) of the Code.

12 **FOURTH CAUSE OF ACTION**  
13 (Agency Action by State of Washington)

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15 Each and every allegation contained above in Paragraphs 1 through 18, inclusive,  
16 is incorporated by this reference as if fully set forth herein.

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18 On or about February 25, 2019, the State of Washington, Department of Financial  
19 Institutions Divisions, Division of Consumer Affairs, Case No. CR-18-2444-18-SC01, issued a  
20 Consent Order against Respondent, wherein it was determined that Respondent, while doing  
21 business under the fictitious business names of McKinley Mortgage Company, LLC, Alaska  
22 Financial Company III, LLC, and McKinley Mortgage Co, LLC, acted as a residential loan  
23 servicer in the state of Washington while Respondent's fictitious businesses was never licensed  
24 to conduct business as a consumer loan company in the state of Washington.

25 21

26 On or about March 29, 2019, the State of Washington, Department of Financial  
27 Institutions Divisions, Division of Consumer Affairs, Case No. CR-18-2444-19-F001, issued a

1 Final Order against Respondent providing, in part, that Respondent cease-and-desist from  
2 engaging in conduct that violates Chapter 31.04 of the Revised Code of Washington, the  
3 Consumer Loan Act.

4 22

5 The acts and/or omissions of Respondent, as alleged in the FOURTH CAUSE OF  
6 ACTION, constitute grounds for the revocation of Respondent's real estate broker license under  
7 Sections 10177(d), 10177(f), and 10177(g) of the Code.

8 **FIFTH CAUSE OF ACTION**  
9 (DRE Broker Renewal Application)

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11 Each and every allegation contained above in Paragraphs 1 through 22, inclusive,  
12 is incorporated by this reference as if fully set forth herein.

13 24

14 On or about December 22, 2018, Respondent submitted to the DRE a Broker  
15 Renewal Application, Form No. RE208.

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17 In respondent to Question 9 of said application, to wit: "Within the six-year  
18 period prior to filing this application, have you ever been ordered to cease, desist and/or refrain  
19 from doing an act(s), or from violating a law, rule or regulation by, or cited for breach of ethics  
20 or unprofessional conduct, by an administrative agency or professional association in California  
21 or any other state?" Respondent answered "No."

22 26

23 Respondent failed to disclose on his Broker Renewal Application (RE208) the  
24 Alaska Order from December 31, 2013; the Securities and Exchange Commission Final  
25 Judgment from March 27, 2018, and the Securities and Exchange Commission Order from April  
26 6, 2018, each of which ordered Respondent to cease, desist, and/or refrain from doing an act,  
27 and/or from violating a law, rule, or regulation.

The acts and/or omissions of Respondent, as alleged in the FIFTH CAUSE OF ACTION, constitute grounds for the revocation of Respondent's real estate broker license under Sections 10177(a), 10177(d), and 10177(j) of the Code.

**MATTERS IN AGGRAVATION**  
(Disciplinary Action by State Agency)

On or about December 31, 2013, in the State of Alaska Department of Commerce, Community, and Economic Development, Division of Banking and Securities, Order No. 13-2136-C, Respondent and MMC were issued an Order to Surrender Mortgage License and Mortgage Loan Originator License, Pay Late Filing Fees, Imposing a Civil Penalty and Consent to Order ("Order").

The Order, described above in Paragraph 28, found that Respondent and MMC violated, in twenty-four (24) loan transactions, the following provisions of the Alaska Secure and Fair Enforcement for Mortgage Licensing Act of 2010 – the Alaska SAFE Act, which are incorporated by reference herein:

- a. AS 06.60.100(c), requires mortgage licensees to submit reports of condition of the licensee to the Department in the form prescribed by NMLS;
- b. AS 06.60.100(a) and 3 AAC14.410, require mortgage licensees to file annual reports with the Department no later than March 15 of each year;
- c. AS 06.60.325 and 3 AAC 14.510, require licensees to display their unique NMLS identifiers in all advertisement material except television and radio advertisement;
- d. AS 06.60.325, requires licensees to display their unique NMLS identifier on all loan forms;

- 1 e. AS 06.60.135, mandates that all licensees maintain a record of each  
2 borrower and each mortgage loan or mortgage loan application for 36  
3 months from the date of creation;
- 4 f. AS 06.60.330, requires all licensees to conduct mortgage loan activities in  
5 compliance with federal statutes and regulations, incorporated by reference  
6 herein, including: 12 U.S.C. 2601-2617, the Real Estate Settlement  
7 Procedures Act of 1974, 12 CFR 1024, 15 U.S.C. 1681 (Fair Credit  
8 Reporting Act), and 12 CFR 1002 (Equal Opportunity Credit Act).  
9 Respondent and MMC failed to comply with the above-listed statutes and  
10 regulations and, therefore, Respondent and MMC repeatedly violated AS  
11 06.60.330;
- 12 g. AS 06.60.340, prohibits licensees from failing to make disclosures as  
13 required by the Alaska SAFE Act and/or applicable federal statutes, and  
14 prohibits licensees from failing to comply with state and federal statutes  
15 and regulations;
- 16 h. 3 AAC 14.415, requires mortgage licensees to supervise operations and  
17 personnel, including mortgage loan originators, to ensure compliance with  
18 the Alaska SAFE Act; and
- 19 i. AS 06.60.159, provides that licensees are liable for the conduct of a person  
20 acting as a mortgage loan originator if the mortgage licensee knows or  
21 should have known that the person violated the Alaska SAFE Act and the  
22 person is employed or under contract with the mortgage licensee to act as a  
23 mortgage loan originator.

24 **COST RECOVERY**

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26 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
27 resolution of a disciplinary proceeding before the DRE, the Commissioner may request the



1 Administrative Law Judge to direct a licensee found to have committed a violation of this part to  
2 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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

8  
9  
10   
11 CHIKA SUNQUIST  
Supervising Special Investigator

12 Dated at Sacramento, California,  
13 this 3<sup>rd</sup> day of September, 2020.

14  
15 DISCOVERY DEMAND

16 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the  
17 DRE hereby makes demand for discovery pursuant to the guidelines set forth in the  
18 *Administrative Procedure Act*. Failure to provide Discovery to the DRE may result in the  
19 exclusion of witnesses and documents at the hearing or other sanctions that the Office of  
20 Administrative Hearings deems appropriate.