

**FILED**

DEC 28 2012

DEPARTMENT OF REAL ESTATE  
BY: 

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8  
9 BEFORE THE DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

11 In the Matter of the Accusation of )  
12 MSRE INC., doing business as ) No. H- 38633 LA  
13 Main Street Realty; and )  
14 WALTER A. ZDAZINSKY, ) ACCUSATION  
15 individually and as designated )  
16 officer of MSRE Inc., )  
17 Respondents, )

17 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the  
18 State of California, for cause of Accusation against MSRE INC. (MSRE) and WALTER A.  
19 ZDAZINSKY ("ZDAZINSKY"), individually and as designated officer of MSRE Inc.  
20 (collectively "Respondents"), is informed and alleges as follows:

21 1.

22 The Complainant, Veronica Kilpatrick, makes this Accusation in her official  
23 capacity.

24 2.

25 From April 3, 2007, Respondent MSRE has been licensed as a real estate  
26 corporation. At all times relevant herein, MSRE was acting by and through Respondent

1 ZDAZINSKY as its designated broker-officer pursuant to Business and Professions Code  
2 (“Code”) Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3  
4 3.

5 From December 19, 2006, through the present, Respondent ZDAZINSKY has  
6 been licensed as a real estate broker.

7 4.

8 MSRE is owned by Leticia Arciniega, chief executive officer and chief financial  
9 officer, and a real estate salesperson.

10 5.

11 Whenever reference is made in an allegation in this Accusation to an act or  
12 omission of “Respondents”, such allegation shall be deemed to mean that the officers, directors,  
13 employees, agents and real estate licensees employed by or associated with Respondents  
14 committed such act or omission while engaged in the furtherance of the business or operations of  
15 Respondents and while acting within the course and scope of their corporate authority and  
16 employment, including ZDAZINSKY.

17 FIRST CAUSE OF ACCUSATION

18 (Audit of Real Estate Sales and Property Management Activities)

19 6.

20 At all times mentioned, in the State of California, City of San Jacinto, County of  
21 Riverside, Respondents MSRE and ZDAZINSKY acted as real estate brokers and conducted  
22 licensed activities within the meaning of:

23 A. Code Section 10131(a). Respondents engaged in the business of a residential  
24 resale brokerage and acted in the capacity of, advertised or assumed to act as a real estate broker,  
25 including the solicitation and negotiation of the sale of real property as the agent of others; and

26 B. Code Section 10131(b). Respondents engaged in the business of, acted in the  
capacity of, advertised or assumed to act as a real estate broker, including the operation and

1 conduct of a property management business with the public wherein, for or in expectation of  
2 compensation, for another or others, Respondents leased or rented or offered to lease or rent, or  
3 placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or  
4 collected rents from real property, or improvements thereon.  
5

6 Audit of MSRE Inc.

7 7.

8 On October 8, 2012, the Department completed an audit examination of the books  
9 and records of Respondent MSRE pertaining to the real estate sales activities and property  
10 management described in Paragraph 6, which requires a real estate license. The audit  
11 examination covered a period of time beginning on January 1, 2010 to July 31, 2012. The audit  
12 examination revealed violations of the Code and the Title 10, Chapter 6, California Code of  
13 Regulations ("Regulations") set forth in the following paragraphs, and more fully set forth in  
14 Audit Report SD 120004 & SD 120007 and the exhibits and work papers attached thereto.

15 Trust Account

16 8.

17 At all times mentioned, in connection with the activities described in Paragraph 6,  
18 above, MSRE accepted or received funds including funds in trust (hereinafter "trust funds") from  
19 or on behalf of actual or prospective parties to real estate transactions including buyers and  
20 sellers and property owners and tenants. Thereafter MSRE made deposits and or disbursements  
21 of such trust funds. From time to time herein mentioned during the audit period, said trust funds  
22 were deposited and/or maintained by MSRE in the bank accounts herein set forth.

23 ///

24 ///

25 ///

26

1           Bank Account 1 (BA 1)

2           Bank: Bank of Hemet  
3           1891 S. San Jacinto, Suite A  
4           San Jacinto, CA 92583

5           Account Name:    MSRE Inc  
6                            DBA: Main Street Real Prop Pros

7           Account Number:  \*\*\*\*\*3501

8           Signator(ies):    Unknown

9  
10          Bank Account 2 (BA 2)

11          Bank: Bank of Hemet  
12          1891 S. San Jacinto, Suite A  
13          San Jacinto, CA 92583

14          Account Name:  MSRE Inc  
15                          DBA: Main Street Real Prop Pros

16          Account Number: \*\*\*\*\*1901

17          Signator(ies):  Leticia Arciniega (RES)  
18                          Patricia Gibson

19          Bank Account 3 (BA 3)

20          Bank: Bank of Hemet  
21          1891 S. San Jacinto, Suite A  
22          San Jacinto, CA 92583

23          Account Name:  MSRE Inc  
24                          DBA: Main Street Real Prop Pros

25          Account Number: \*\*\*\*\*1601

26          Signator(ies):  Leticia Arciniega (RES)  
                          Patricia Gibson

1 Violations of the Real Estate Law

2  
3 9.

4 In the course of activities described in Paragraphs 6 and 8 above, and during the  
5 examination period, described in Paragraph 7, Respondents MSRE and ZDAZINSKY, acted in  
6 violation of the Code and the Regulations in that Respondents:

7 (a) Failed to maintain an accurate and complete control record in the form of a  
8 columnar record in chronological order, in violation of Code Section 10145 and Regulation 2831

9 (b) Failed to maintain an accurate and complete separate record for each  
10 beneficiary or transaction for BA 1 and BA 2, in violation of Code Section 10145 and  
11 Regulation 2831.1.

12 (c) Failed to perform a monthly reconciliation of the balance of all separate  
13 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of  
14 all trust funds received and disbursed by MSRE's bank accounts, in violation of Code Section  
15 10145 and Regulation 2831.2.

16 (d) BA 1 and BA 2 were not in the name of the broker as trustee at a bank or  
17 other financial institution, nor designated as a trust account, in violation of Code Section 10145  
18 and Regulation 2832(a). This violation has been corrected.

19 (e) Permitted Patricia Gibson, an unlicensed and unbonded person, to be an  
20 authorized signatory on BA 1 and BA 2, into which trust funds were deposited, nor was  
21 ZDAZINSKY a signatory on either account, in violation of Code Section 10145 and Regulation  
22 2834.

23 (f) Converted \$13,005.84 in trust funds from BA 1, by the instrumentality of  
24 internal transfer from BA 1 to BA 4 and BA 5 from MSRE owner, and chief executive officer  
25  
26

1 and chief financial officer Leticia Arciniega, which caused a reduction in the amount in MSRE's  
2 general business accounts BA 4 and BA 5 to an amount less than the amount of the trust funds  
3 deposited constituting conversion, in violation of Code Sections 10145, 10176(e) and 10176(i).

4 On September 13, 2012, said amount was transferred back from BA 4 to BA 1 by Leticia  
5 Arciniega.  
6

7 (g) Received undisclosed compensation by means of an earning credit agreement  
8 with The Bank of Hemet. The earnings credit was based on and calculated by trust fund activity  
9 in MSRE's bank accounts. Bank service charges were deducted from the earning credit accrued  
10 by MSRE's bank accounts thus reducing MSRE's cost of doing business. The earnings credit  
11 arrangement was not disclosed by MSRE or ZDAZINSKY to the beneficiaries of BA 1 and BA  
12 2, in violation of Code Sections 10176(a) and 10176(g).  
13

14 (h) Failed to maintain on file with the Department the address of its principal  
15 place of business for MSRE's brokerage activities, in violation of Code Section 10162 and  
16 Regulation 2715.

17 (i) Respondent ZDAZINSKY failed to exercise reasonable control and  
18 supervision over the activities conducted by MSRE's employees and/or licensees as necessary to  
19 secure full compliance with the Real Estate laws, as required under Code Section 10159.2 and  
20 Regulation 2725, in violation of Code Section 10177(h).  
21

22 10.

23 The conduct of Respondents MSRE and ZDAZINSKY, described in Paragraph 9,  
24 above, violated the Code and the Regulations as set forth below:

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26 ///

<u>Paragraph</u>	<u>Provisions Violated</u>
9(a)	Code Section 10145 and Regulation 2831
9(b)	Code Section 10145 and Regulation 2831.1
9(c)	Code Section 10145 and Regulation 2831.2
9(d)	Code Section 10145 and Regulation 2832(a)
9(e)	Code Section 10145 and Regulation 2834
9(f)	Code Sections 10145, 10176(e) and 10176(i)
9(g)	Code Sections 10176(a) and 10176(g)
9(h)	Code Section 10162 and Regulation 2715
9(i)	Code Sections 10159.2 and 10177(h) and Regulation 2725 (ZADZINSKY)

The foregoing violations constitute cause for discipline of the real estate licenses and license rights of Respondents MSRE and ZDAZINSKY under the provisions of Code Sections 10176(a), 10176(e), 10176(i), 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION  
(Negligence)

11.

The overall conduct of Respondents MSRE and ZDAZINSKY constitutes negligence and is cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

THIRD CAUSE OF ACCUSATION  
(Fiduciary Duty)

12.

The conduct, acts and omissions of Respondents MSRE and ZDAZINSKY constitute a breach of fiduciary duty, owed to MSRE's clients and trust fund beneficiaries of good faith, trust, confidence and candor, within the scope of their fiduciary relationship with their

1 clientele, in violation of Code Sections 10176(i) and 10177(g) and constitutes cause for discipline  
2 of the real estate license and license rights of said Respondents pursuant to the provisions of said  
3 Code Sections.  
4

5 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
6 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
7 action against all licenses and/or license rights of Respondents MSRE INC. and WALTER A.  
8 ZDAZINSKY, individually and as designated officer of MSRE Inc. under the Real Estate Law  
9 (Part 1 of Division 4 of the California Business and Professions Code) and for such other and  
10 further relief as may be proper under other applicable provisions of law, including, but not  
11 limited to costs of audit pursuant to Code Section 10148, and costs of investigation and  
12 enforcement pursuant to Code Section 10106.  
13

14  
15 Dated at Los Angeles, California.  
16

17 this 12 day of December, 2012.  
18

19   
20 VERONICA KILPATRICK  
21 Deputy Real Estate Commissioner  
22

23 cc: MSRE Inc.  
24 Walter A. Zdazinsky  
25 Veronica Kilpatrick  
26 Audits – Zaky Wanis  
Sacto