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FILED

JAN 19 2017

BUREAU OF REAL ESTATE

By 

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H- 40509 LA
)	
MARIO C. GONZALEZ, doing business)	
as MCR Escrow Division a)	<u>ACCUSATION</u>
Non-Independent Broker Escrow,)	
)	
Respondent.)	
_____)	

19 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator, for
20 cause of Accusation against Respondent MARIO C. GONZALEZ, doing business as MCR
21 Escrow Division a Non-Independent Broker Escrow ("Respondent"), is informed and alleges as
22 follows:
23

24 1.

25 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator, makes
26 this Accusation in her official capacity.

27 ///

1 2.

2 Respondent is presently licensed and/or has license rights under the Real Estate
3 Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code") as a real
4 estate broker. The broker license of Respondent is scheduled to expire on November 24, 2018.

5 3.

6 Respondent is authorized to use the fictitious business name "MCR Escrow
7 Division a Non-Independent Broker Escrow," hereafter "MCR Escrow."

8 4.

9 All further references to respondents herein includes Respondent, and also
10 includes officers, directors, employees, agents and real estate licensees employed by or
11 associated with Respondent, and who at all times herein mentioned were engaged in the
12 furtherance of the business or operations of Respondent, and who were acting within the course
13 and scope of their authority and employment.

14 5.

15 At all times relevant herein Respondent was engaged in the business of, acted in
16 the capacity of, advertised or assumed to act as a real estate broker in the State of California,
17 within the meaning of Code Section 10131(a). Said activities included soliciting sellers and
18 buyers for the listing, sale and purchase of real property, negotiating the purchase and sale of
19 real property on behalf of buyers and sellers, including negotiating short sales of real property
20 on behalf of buyers and sellers, for compensation or in expectation of compensation.

21 6.

22 Respondent also conducted broker-controlled escrows through his escrow
23 division, using the unauthorized fictitious business name "MCR Escrow Division," under the
24 exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers
25 performing escrows incidental to a real estate transaction where the broker is an agent or a party
26 to the transaction and in which the broker is performing acts for which a real estate license is
27 required.

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FIRST CAUSE OF ACCUSATION

(Audit Violations)

7.

On or about September 15, 2016, the Bureau completed an audit examination of the books and records of Respondent pertaining to the real estate activities described in Paragraph 6, above, covering a period from May 1, 2014, to May 31, 2016.

8.

At all times mentioned herein, and in connection with the activities described in Paragraph 6, above, Respondent accepted or received funds to be held in trust ("trust funds") from or on behalf of actual or prospective parties to transactions handled by Respondent, and thereafter made deposits and/or disbursements of such funds. From time-to-time herein mentioned during the audit period, said trust funds were deposited into a bank account maintained by Respondent as follows:

B/A #1

Account Name: Mario C. Gonzalez
MCR Escrow Division
Account No. xxxxxxxx6065
Bank Name: Wells Fargo Bank, 18712 Gridley Road, Cerritos, CA 90703
Signatories: Mario C. Gonzalez (REB)
Signatories: One (1) signature required
Purpose: The above information was obtained from the subpoenaed bank statements and the signature card dated November 5, 2013, from Wells Fargo Bank. The account was maintained for handling the receipts and disbursements of trust funds received in connection with Respondent's broker escrow activity. The account was also used as a general business account. Disbursements included payments for personal bills and other general expenses of Respondent.

9.

The audit examination revealed violations of the Code and Title 10, Chapter 6, Code of Regulations (“Regulations”) by Respondent, as set forth in the following paragraphs, and more fully discussed in Audit Report No. LA 150157 and the exhibits and work papers attached to the audit report:

(a) Respondent permitted, allowed or caused the withdrawal or disbursement of trust funds from the escrow trust account maintained as B/A #1 so that the trust account had a minimum shortage of <\$607,702.36> as of May 31, 2016. The shortage was caused by a minimum negative escrow balance of <\$850.00>, minimum unauthorized disbursements/conversion of funds of <\$364,933.56>, minimum bank charges of <\$889.20> and minimum unidentified cause(s) of <\$241,029.60> as of May 31, 2016.

Respondent caused, permitted and/or allowed the withdrawal or disbursement of trust funds from the trust account maintained at Wells Fargo Bank so that the total of aggregate funds remaining in the account was less than the existing aggregate trust fund liability of Respondent to every principal who was an owner of said funds without first obtaining the prior written consent of the owners of said funds as is required by Code Section 10145(a) and Sections 2832.1 and 2951 of the Regulations.

(b) Respondent failed to designate BA #1 as a trust account in violation of Code Section 10145 and Sections 2832 and 2951 of the Regulations.

(c) Respondent collected at least \$208,500 of trust funds from twelve (12) prospective buyers for initial deposits on the purchase of twelve (12) properties. Said funds were deposited to BA #1 and commingled with funds of Respondent disbursed from BA #1 for personal/operating expenses in violation of Code Sections 10145 and 10176(e) and Sections 2832 and 2951 of the Regulations.

(d) Respondent made unauthorized disbursements/withdrawals of at least <\$364,933.56> from BA #1 out of which <\$324,719.48> was in for the form of ATM withdrawals at various store branches and <\$40,155.75> was disbursed for Respondent’s

1 personal expenses. The balance in BA #1 was reduced to an amount that was less than the
2 amount of trust funds deposited into BA #1. The foregoing is in violation of Code Sections
3 10145 and 10176(i)/10177(j) and Section 2950(g) of the Regulations, and constitutes conversion
4 of funds.

5 (e) Respondent collected at least \$208,500 of trust funds from twelve (12) buyers
6 and deposited said funds into BA #1 and disbursed at least \$24,350 of trust funds without
7 maintaining a control record in the form of a columnar record in chronological order of all trust
8 funds received, deposited and disbursed for BA #1 in violation of Code Section 10145 and
9 Sections 2831, 2950(d) and 2951 of the Regulations.

10 (f) Respondent failed to maintain a separate record for each beneficiary of trust
11 funds, or each transaction, of all trust fund receipts and disbursements from BA #1 in violation
12 of Code Section 10145 and Sections 2831.1, 2950(d) and 2951 of the Regulations.. The auditor
13 used BA #1's subpoenaed bank statements, cancelled check copies, deposit records and
14 documents submitted to the Bureau to determine the foregoing.

15 (g) Respondent failed to maintain a monthly reconciliation comparing the balance
16 of all separate records to the balance of the record of trust funds received and disbursed (control
17 record) for BA #1 in violation of Code Section 10145 and Sections 2831.2 and 2951 of the
18 Regulations.

19 (h) At least six (6) out of eleven (11) escrow instructions examined did not
20 contain the accurate license identification number in violation of California Finance Code
21 Section 17403.4.

22 (i) Respondent used a fictitious business name, "MCR Escrow Division," for
23 activities requiring the issuance of a real estate license without filing an application for the use
24 of such name with the Bureau in violation of Code Section 10159.5 and Section 2731(a) of the
25 Regulations.

26 (j) Despite the service of a subpoena duces tecum on Respondent, Respondent
27 failed to provide for examination, inspection and copying all the books and records related to

1 Respondent's real estate activities, including BA #1's bank signature card, bank statements,
2 records of receipt and disbursements, separate records, records of reconciliation, cancelled
3 checks, receipts, invoices and escrow transaction files related to his broker escrow activities in
4 violation of Code Section 10148 and Section 2950(e) of the Regulations.

5 (k) Respondent failed to adequately supervise the broker escrow activities
6 conducted by MCR Escrow and his employees. Respondent failed to establish policies, rules,
7 procedures, and systems to examine, oversee, inspect and manage transactions requiring a real
8 estate license and the handling of trust funds to secure full compliance with the Real Estate
9 Laws and the Commissioners Regulations. The foregoing is in violation of Code Section
10 10177(h) and Section 2725 of the Regulations.

11 DISCIPLINARY STATUTES AND REGULATIONS

12 10.

13 The conduct of Respondent described in Paragraph 9, above, violated the Code
14 and the Regulations as set forth below:

15 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
16 9(a)	Code Section 10145(a); Sections 2832.1 and 2951 of the 17 Regulations.
18 9(b)	Code Section 10145; Sections 2832 and 2951 of the Regulations.
19 9(c)	Code Sections 10145 and 10176(e); Sections 2832 and 2951 of the 20 Regulations.
21 9(d)	Code Sections 10145 and 10176(i)/10177(j); Section 2950(g) of 22 the Regulations.
23 9(e)	Code Section 10145; Sections 2831, 2950(d) and 2951 of the 24 Regulations.
25 9(f)	Code Sections 10145; Section 2831.1, 2950(d) and 2951 of the 26 Regulations. 27

1 Francisco F.

2 14.

3 On or about July 28, 2015, Francisco F. executed an offer to purchase the real
4 property located at 2020-2022 E. 126th Street, Compton, California 90222 (“126th Street
5 Property”) for a purchase price of \$148,000. The offer was accepted by the sellers on or about
6 August 5, 2015. The agreement between the parties provided that escrow would be handled by
7 Respondent’s escrow division, MCR Escrow. Escrow was subsequently opened at MCR Escrow
8 as No. 1272-PM. On or about August 24, 2015, Francisco F. paid into escrow at MCR Escrow
9 the sum of \$20,000 as an escrow fee deposit. Thereafter, no further action was taken with respect
10 to processing the escrow for the purchase and sale of the 126th Street Property. When escrow
11 failed to progress, Francisco F. sought the return of his \$20,000 deposit, but Respondent has
12 failed and refused to return Francisco F.’s funds to him or to communicate with Francisco F.

13 15.

14 Additionally, on or about December 14, 2015, Francisco F. executed an offer to
15 purchase the real property located at 3330 Live Oak Street, Huntington Park, California 90255
16 (“Live Oak Street Property”) for a purchase price of \$365,000. Thereafter, an escrow was
17 opened at MCR Escrow as No. 1461-PM. On or about December 16, 2015, Francisco F. paid
18 into escrow at MCR Escrow the sum of \$15,000 by cashier’s check as an escrow fee deposit.
19 Thereafter, no further action was taken with respect to processing the escrow for the purchase
20 and sale of the Live Oak Street Property. When escrow failed to progress, Francisco F. sought
21 the return of his \$15,000 deposit, but Respondent has failed and refused to return Francisco F.’s
22 funds to him or to communicate with Francisco F.

23 16.

24 Respondent’s representation that he would faithfully perform the duties of an
25 escrow holder with respect to Francisco F.’s funds was false and fraudulent in that Respondent
26 had no intention of using Francisco F.’s funds to effectuate the completion of the sale of the
27 126th Street Property and the Live Oak Street Property, and instead intended to convert

1 Francisco F.'s funds to his own use and benefit.

2 Alma R. and Ruben O.

3 17.

4 On or about December 17, 2015, Alma R. and Ruben O. executed an offer to
5 purchase the real property located at 3330 Live Oak Street, Huntington Park, California 90255
6 ("Live Oak Street Property") for a purchase price of \$367,000. The offer was accepted by the
7 sellers on or about December 29, 2015. The agreement between the parties provided that escrow
8 would be handled by Respondent's escrow division, MCR Escrow. Escrow was subsequently
9 opened at MCR Escrow as No. 1483-PM. On or about December 16, 2015, Alma R. and Ruben
10 O. paid into escrow at MCR Escrow the sum of \$10,000 as an escrow fee deposit. Thereafter, no
11 further action was taken with respect to processing the escrow for the purchase and sale of the
12 Live Oak Street Property. When escrow failed to progress, on or about July 13, 2016, Alma R.
13 and Ruben O. executed an escrow cancellation instruction seeking the return of their \$10,000
14 deposit. Respondent has failed and refused to return the funds of Alma R. and Ruben O. to them
15 or to communicate with them.

16 18.

17 Respondent's representation that he would faithfully perform the duties of an
18 escrow holder with respect to the funds of Alma R. and Ruben O. was false and fraudulent in
19 that Respondent had no intention of using their funds to effectuate the completion of the sale
20 of the Live Oak Street Property, and instead intended to convert the funds of Alma R. and
21 Ruben O. to his own use and benefit.

22 Yalai Z.

23 19.

24 On or about September 1, 2015, Yalai Z. executed an offer to purchase the real
25 property located at 9876 Skyland Court, Fontana, California 92335 (Skyland Court Property) for
26 a purchase price of \$255,000. The offer was accepted by the seller on or about September 8,
27 2015. The agreement between the parties provided that escrow would be handled by

1 Respondent's escrow division, MCR Escrow. Escrow was subsequently opened at MCR Escrow
2 as No. 1324-PM. On or about September 9, 2015, Yalai Z. paid into escrow at MCR Escrow the
3 sum of \$20,000 as an escrow fee deposit. Thereafter, no further action was taken with respect to
4 processing the escrow for the purchase and sale of the Skyland Court Property. When escrow
5 failed to progress, Yalai Z. sought the return of her \$20,000 deposit, but Respondent has failed
6 and refused to return Yalai Z.'s funds to her or to communicate with Yalai Z.

7 20.

8 Respondent's representation that he would faithfully perform the duties of an
9 escrow holder with respect to the funds of Yalai Z. was false and fraudulent in that Respondent
10 had no intention of using her funds to effectuate the completion of the sale of the Skyland Court
11 Property, and instead intended to convert the funds of Yalai Z. to his own use and benefit.

12 Javiar L., Jose V. and Hector R.

13 21.

14 On or about November 17, 2014, Javiar L., Jose V. and Hector R. executed an
15 offer to purchase the real property located at 9343 Amsdell Avenue, Whittier, California 90650
16 ("Amsdell Avenue Property") for a purchase price of \$250,000. The offer was accepted by the
17 sellers on or about December 11, 2014. Escrow was subsequently opened at MCR Escrow as
18 No. 1171-PM. On or about December 4, 2014, Javiar L., Jose V. and Hector R. paid into escrow
19 at MCR Escrow the sum of \$10,000 by cashier's check as an escrow fee deposit. Thereafter, no
20 further action was taken with respect to processing the escrow for the purchase and sale of the
21 Amsdell Avenue Property. When escrow failed to progress, on or about November 21, 2016,
22 Javiar L., Jose V. and Hector R. executed an escrow cancellation instruction seeking the return
23 of their \$10,000 deposit. Respondent has failed and refused to return the funds of Javiar L., Jose
24 V. and Hector R. to them or to communicate with them.

25 22.

26 Respondent's representation that he would faithfully perform the duties of an
27 escrow holder with respect to the funds of Javiar L., Jose V. and Hector R. was false and

1 fraudulent in that Respondent had no intention of using their funds to effectuate the completion
2 of the sale of the Amsdell Avenue Property, and instead intended to convert the funds of Javier
3 L., Jose V. and Hector R. to his own use and benefit.

4 Carlos and Maria S.

5 23.

6 On or about July 28, 2015, Carlos and Maria S. executed an offer to purchase the
7 real property located at 9612 Paramount Boulevard, Downey, California 90240 ("Paramount
8 Boulevard Property") for a purchase price of \$320,000. The offer was accepted by the sellers on
9 or about July 30, 2015. The agreement between the parties provided that escrow would be
10 handled by Respondent's escrow division, MCR Escrow. Escrow was subsequently opened at
11 MCR Escrow as No. 1263-PM. On or about July 28, 2015, Carlos and Maria S. paid into escrow
12 at MCR Escrow the sum of \$10,000 as an escrow fee deposit. Thereafter, no further action was
13 taken with respect to processing the escrow for the purchase and sale of the Paramount
14 Boulevard Property. When escrow failed to progress, Carlos and Maria S. sought the return of
15 their \$10,000 deposit, but Respondent has failed and refused to return their funds to them or to
16 communicate with them.

17 24.

18 Respondent's representation that he would faithfully perform the duties of an
19 escrow holder with respect to the funds of Carlos and Maria S. was false and fraudulent in that
20 Respondent had no intention of using their funds to effectuate the completion of the sale of the
21 Paramount Boulevard Property, and instead intended to convert the funds of Carlos and Maria S.
22 to his own use and benefit.

23 John Z.

24 25.

25 On or about October 29, 2015, John Z. executed an offer to purchase the real
26 property located at 10987 White Oak Lane, Fontana 92337 ("White Oak Lane Property") for a
27 purchase price of \$250,000. The agreement between the parties provided that escrow would be

1 handled by Respondent's escrow division, MCR Escrow. Escrow was subsequently opened at
2 MCR Escrow as No. 1421-PM. On or about November 9, 2015, John Z. paid into escrow at
3 MCR Escrow the sum of \$10,000 as an escrow fee deposit. Thereafter, no further action was
4 taken with respect to processing the escrow for the purchase and sale of the White Oak Lane
5 Property. When escrow failed to progress, John Z. sought the return of his \$10,000 deposit, but
6 Respondent has failed and refused to return John Z.'s funds to him or to communicate with John
7 Z.

8 26.

9 The conduct, acts and/or omissions of Respondent as described herein above
10 constitute making a substantial misrepresentation, the making of false promise(s) of a character
11 likely to influence, persuade or induce, the taking of a secret profit and fraud or dishonest
12 dealing, and is cause for the suspension or revocation of all real estate licenses and license
13 rights of Respondent under the provisions of Code Sections 10176(a), 10176(b), 10176(g),
14 10176(i) and/or 10177(j) and 10177(g).

15 THIRD CAUSE OF ACCUSATION

16 (Failure to Supervise)

17 27.

18 Complainant hereby incorporates by referenced the allegations set forth in
19 Paragraphs 1 through 26, above.

20 28.

21 The conduct, acts and/or omissions of Respondent in violating the Real Estate
22 Law, as set forth above, constitutes a failure by Respondent to exercise supervision and control
23 over the activities of MCR Escrow and its employees as required by Code Section 10177(h),
24 and is cause to suspend or revoke the real estate licenses and license rights of Respondent
25 under said Code Section.

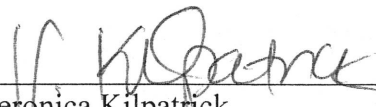
26 Code Section 10106 provides, in pertinent part, that in any order issued in
27 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the

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 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 imposing
5 disciplinary action against all the licenses and license rights of Respondent MARIO C.
6 GONZALEZ under the Real Estate Law (Part 1 of Division 4 of the Business and Professions
7 Code), for the cost of investigation and enforcement as permitted by law, for the cost of the
8 audit and follow-up audit as provided in Code Section 10148, and for such other and further
9 relief as may be proper under other applicable provisions of law.

10 Dated at San Diego, California

11 this 10th day of January, 2017.

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14 _____
Veronica Kilpatrick
Supervising Special Investigator

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23 cc: MARIO C. GONZALEZ
Veronica Kilpatrick
24 Sacto