

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
) DRE No. H-05710 SD
DAMIEN DONALD MCNELLIS;)
MISHICOT SERVICES, INC.; and)
 KEVIN H. WONG, individually and as)
 designated officer of Mishicot Services,)
 Inc.,)
 Respondents.)

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on June 5, 2023 and the Findings of Fact set forth herein, which are based on one or more of the following: (1) The express admissions of Respondents, DAMIEN DONALD MCNELLIS (“MCNELLIS”) and MISHICOT SERVICES, INC. (“MSI”), (2) affidavits, and (3) other evidence, is informed and alleges as follows:

This Decision revokes one or more real estate licenses on the grounds of the violation of the Real Estate Law, Part 1 commencing with Section 10000 of the Business and Professions Code (“Code”) and/or the Regulations of the Real Estate Commissioner, Title 10, Chapter 6 of the California Code of Regulations (“Regulations”).

Pursuant to Government Code Section 11521, the California Department of Real Estate (“Department”) may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department’s power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license, or to the reduction of a penalty, is controlled by Section 11522 of the Government Code. A copy of Government Code Sections 11521 and 11522 and a copy of the Commissioner’s Criteria of Rehabilitation are attached hereto for the information of respondent.

FINDINGS OF FACT

1.

On April 10, 2023, Veronica Kilpatrick made the Accusation in her official capacity as a Supervising Special Investigator of the Department. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, to Respondents MCNELLIS's and MSI's last known mailing addresses on file with the Department on April 11, 2023.

2.

On May 11, 2023, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, the default of MCNELLIS and MSI were entered herein.

(LICENSE HISTORY)

3.

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

4.

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

5.

Attached as Exhibit "A" is a true and correct copy of the Accusation filed on April 11, 2023, which is incorporated herein as part of this Decision.

DETERMINATION OF ISSUES

1.

The allegations contained in the Accusation, incorporated herein by reference made in Paragraph 5, above, constitute cause for the suspension or revocation of all the licenses, license endorsements, and license rights of Respondents under the provisions of Sections 10177(d), 10177(g), 10177(h), and 10176(i)/10177(j) of the Business and Professions Code.

2.

The standard of proof applied was clear and convincing evidence to a reasonable certainty.

ORDER

All licenses and licensing rights of Respondents DAMIEN DONALD MCNELLIS and MISHICOT SERVICES, INC. under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on July 25, 2023.

DATED: 6/26/2023.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

FILED

JUN 05 2023

DEPT. OF REAL ESTATE

By



1 Department of Real Estate
2 320 West Fourth St, Ste 350
3 Los Angeles, CA, 90013
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8 **BEFORE THE DEPARTMENT OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 * * *

| | | |
|--|---|---------------------------|
| 11 In the Matter of the Accusation of: |) | DRE NO. <i>H-05710 SD</i> |
| |) | |
| 12 DAMIEN DONALD MCNELLIS, |) | <u>DEFAULT ORDER</u> |
| |) | |
| 13 Respondent. |) | |
| 14 _____ |) | |

15 Respondent DAMIEN DONALD MCNELLIS, having failed to file a Notice
16 of Defense within the time required by Section 11506 of the Government Code, is now in
17 default. It is, therefore, ordered that a default be entered on the record in this matter.

18 **IT IS SO ORDERED MAY 11, 2023.**

19 DOUGLAS R. McCAULEY
20 REAL ESTATE COMMISSIONER

21
22 By



23 CHIKA SUNQUIST
24 Assistant Commissioner, Enforcement
25
26
27

APR 11 2023

DEPT. OF REAL ESTATE

By [Redacted Signature]

1 DIANE LEE, Counsel (SBN 247222)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6907

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.,)
17 Respondents.)

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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2.

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

(LICENSE HISTORY)

3.

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

4.

Respondent MSI² is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code as a real

¹ Respondent MCNELLIS is the only identified individual in Respondent MSI's Articles of Incorporation filed on or about February 28, 2018, Statement of Information filed on or about March 30, 2020, and Statement of Information filed on or about May 14, 2021 with the California Secretary of State. Respondent MCNELLIS is the president, secretary, chief financial officer ("CFO"), sole director, and agent for service of process for Respondent MSI.

² Respondent MSI was initially incorporated as Damien DM, Inc. on or about February 28, 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”).

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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
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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
12265 El Camino Real, Suite 100
San Diego, CA 92130

BA 1

18
19 Undetermined account name

20 Undetermined account number

21 Southern California Bank
12265 El Camino Real, Suite 100
San Diego, CA 92130

BA 2

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23 ///

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13.

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

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

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

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

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

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

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³ The Department of Real Estate was not able to assess the separate records for BA 2 because
26 they were not provided to the Department of Real Estate.
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1 agreements, in violation of Code section 10148.⁴ 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 ⁴ 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.

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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.

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