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FILED

MAY 18 2020

DEPT. OF REAL ESTATE

By 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H- 41675 LA
12)
13 WINDFALL SPRINGS, INC.; and)
14 BARBARA BAKER, individually) ACCUSATION
15 and as designated officer of)
16 Windfall Springs, 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 WINDFALL
20 SPRINGS, INC. ("WSI") and BARBARA BAKER aka Barbara Ohmann ("BAKER"),
21 individually and as designated officer of Windfall Springs, Inc., is informed and alleges as
22 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.

a. WSI is presently licensed and/or issued by the Department Real Estate as a real estate corporation (license no. 01847410). WSI was originally licensed on or about June 14, 2008, and remains licensed to date. At all pertinent times herein, BAKER was and is the designated officer of WSI. WSI has had the following registered fictitious business names:

Fictitious Business Names	Active Dates
Realty ONE Group SW	January 28, 2015 – present
ROGSW	January 28, 2015 – present
Realty One Group Southwest	October 4, 2012 – present
Southwest Escrow "A Non-Independent Broker Escrow"	October 4, 2012 – present
Rentsmart Property Management	March 30, 2015 – October 22, 2018
RentSmart of California	June 14, 2008 – October 22, 2018
The Ireland Group	September 22, 2014 – March 26, 2018

b. BAKER is presently licensed and/or issued by the Department of Real Estate as a real estate broker (license no. 00524780). BAKER was originally licensed as a real estate broker on April 25, 2008. Prior to becoming a real estate broker, BAKER was licensed as a real estate salesperson.

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1 (Prior License Discipline)

2 4.

3 On or about January 13, 2017, in Department of Real Estate case no. H-40186
4 LA, the Department of Real Estate filed an order suspending all licenses and license rights of
5 Respondents WSI and BAKER for sixty (60) days; provided, however, these suspensions
6 would be stayed for two (2) years pursuant to certain terms and conditions. This order
7 contained within a Stipulation and Agreement became effective on or about February 2, 2017.
8 As more fully set forth in the Stipulation and Agreement and Accusation, discipline was based
9 upon various audit violations committed by Respondents WSI and BAKER.

10 5.

11 Whenever acts referred to below are attributed to WSI and/or BAKER, those
12 acts are alleged to have been done by WSI and/or BAKER, acting by itself/herself/themselves,
13 or by and/or through one or more agents, associates, affiliates, and/or co-conspirators.

14 6.

15 At all times mentioned, in the County of Riverside, WSI and BAKER were
16 engaged in the business of a real estate broker conducting licensed activities within the
17 meaning of Code sections 10131(a) (“[s]ells or offers to sell, buys or offers to buy, solicits
18 prospective sellers or buyers of, solicits or obtains listings of, or negotiates the purchase, sale,
19 or exchange of real property or a business opportunity”) and 10131(b) (“[l]eases or rents or
20 offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for
21 prospective tenants, or negotiates the sale, purchase, or exchanges of leases on real property, or
22 on a business opportunity, or collects rents from real property, or improvements thereon, or
23 from business opportunities”) and California Financial Code section 17006(a)(4) (“[a]ny broker
24 licensed by the Real Estate Commissioner while performing acts in the course of or incidental
25 to a real estate transaction in which the broker is an agent or a party to the transaction and in
26 which the broker is performing an act for which a real estate license is required”).

1 (Real Estate Sales and Broker Escrow Audit)

2 7.

3 On or about October 31, 2019, the Department of Real Estate completed
4 an audit examination of the books and records of WSI to determine whether WSI and BAKER
5 handled and accounted for trust funds and conducted their real estate activities in accordance
6 with the Real Estate Law and Regulations. The audit examination covered a period of time
7 beginning on February 2, 2017 and ending on July 31, 2019. The audit examination revealed
8 violations of the Code and the Regulations set forth in the following paragraphs, and more fully
9 discussed in Audit Report SD190006/SD190010 and the exhibits and work papers attached to
10 said audit report.

11
12 Trust Account

13 8.

14 At all times mentioned, in connection with the activities described in Paragraph
15 6, above, WSI and BAKER accepted or received funds including funds in trust ("trust funds")
16 from or on behalf of actual or prospective parties, such as sellers and buyers of real property,
17 and thereafter made deposits and/or disbursements of such funds. From time to time herein
18 mentioned, during the audit period, said trust funds were deposited and/or maintained by WSI
19 and BAKER in the following trust account:

20 *****0497
21 California Bank & Trust, Temecula Office
22 41615 Winchester Road
Temecula, CA 92590

23 9.

24 In the course of activities described in Paragraphs 6 and 8, above, and during the
25 audit examination period in Paragraph 7, above, Respondents WSI and BAKER acted in
26 violation of the Code and the Regulations as set forth below:

1 (a) BAKER failed to disclose in writing to all parties of her financial interest
2 and ownership of WSI as required by Code sections 10145 and 10176(g) and Regulations
3 section 2950(h). These include, but are not limited to, escrow numbers 19122, 19031, 19027,
4 19025, and 19017.

5 (b) Met the escrow threshold, but failed to submit an escrow activity report (RE
6 890) within sixty (60) days after the end of the calendar years 2017 and 2018, in violation of
7 Code section 10141.6.

8 (c) The overall conduct of Respondent BAKER constitutes a failure on
9 Respondent BAKER's part, as officer designated by a corporate broker licensee, to exercise the
10 reasonable supervision and control over the licensed activities of WSI as required by Code
11 section 10159.2 and Regulation section 2725, and to keep WSI in compliance with the Real
12 Estate Law, requiring a real estate license, and is cause for discipline of the real estate license
13 and real estate license rights of Respondent BAKER pursuant to the Code sections 10177(d)
14 (willful disregard or violation of Real Estate Law) and 10177(h) (failure to exercise reasonable
15 supervision).

16 10.

17 The conduct of Respondents WSI and BAKER described in Paragraph 9, above,
18 violated the Code and the Regulations as set forth below:

19 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
20 9(a)	Code sections 10145 and 10176(g) and Regulations section 2950(h)
21 9(b)	Code section 10141.6
22 9(c)	Code section 10159.2 and Regulation section 2725

23 The foregoing violations constitute cause for discipline of the real estate license and license
24 rights of Respondents WSI and BAKER under the provisions of Code sections 10176(g),
25 10177(d), 10177(g), and 10177(h).

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1 (Property Management Audit)

2 11.

3 On or about November 26, 2019, the Department of Real Estate completed a
4 follow-up audit examination of the books and records of WSI to determine whether WSI and
5 BAKER handled and accounted for trust funds and conducted their real estate activities in
6 accordance with the Real Estate Law and Regulations. The audit examination covered a period
7 of time beginning on February 2, 2017 and ending on July 27, 2018. The audit examination
8 revealed violations of the Code and the Regulations set forth in the following paragraphs, and
9 more fully discussed in Audit Report SD190007 and the exhibits and work papers attached to
10 said audit report.

11
12 Trust Account

13 12.

14 At all times mentioned, in connection with the activities described in Paragraph
15 6, above, WSI and BAKER accepted or received funds including funds in trust ("trust funds")
16 from or on behalf of actual or prospective parties, such as sellers and buyers of real property,
17 and thereafter made deposits and/or disbursements of such funds. From time to time herein
18 mentioned, during the audit period, said trust funds were deposited and/or maintained by WSI
19 and BAKER in the following trust account:

20 *****0513
21 California Bank & Trust, Temecula Office
22 41615 Winchester Road
23 Temecula, CA 92590

T/A 1

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2 In the course of activities described in Paragraphs 6 and 12, above, and during
3 the audit examination period in Paragraph 11, above, Respondents WSI and BAKER acted in
4 violation of the Code and the Regulations as set forth below:

5 (a) Permitted, allowed, or caused the disbursement of trust funds from the trust
6 account T/A 1 where the disbursement of funds reduced the total of aggregate funds in T/A 1,
7 to an amount which, on July 27, 2018, was at least \$30.00 less than the existing aggregate trust
8 fund liability to every principal who was an owner of said funds, without first obtaining the
9 prior written consent of the owner(s) of said funds, in violation of Code section 10145 and
10 Regulations section 2832.1. On or about November 22, 2019, this shortage was cured.

11 (b) Failed to maintain accurate control records in the form of a columnar record
12 in chronological order of all trust funds received, deposited, and disbursed from T/A 1 in
13 violation of Code section 10145 and Regulations section 2831.

14 (c) Failed to maintain an accurate and complete separate record for each
15 beneficiary or transaction, thereby failing to account for all trust funds received, deposited, and
16 disbursed from T/A 1, in violation of Code section 10145 and Regulations section 2831.1.

17 (d)(1) On or about June 19, 2017, deposited \$2,375.00 of WSI's escrow fees
18 and commingled these escrow fees in T/A 1, in violation of Code sections 10145 and 10176(e)
19 and Regulations section 2835(b).

20 (d)(2) Deposited WSI's commission fees and commissions in T/A 1 and
21 commingled these commission fees and commissions for over twenty-five (25) days after their
22 deposit into T/A 1, in violation of Code sections 10145 and 10176(e) and Regulations section
23 2835(b).

24 (e) The overall conduct of Respondent BAKER constitutes a failure on
25 Respondent BAKER's part, as officer designated by a corporate broker licensee, to exercise the
26 reasonable supervision and control over the licensed activities of WSI as required by Code
27

1 section 10159.2 and Regulation section 2725, and to keep WSI in compliance with the Real
2 Estate Law, requiring a real estate license, and is cause for discipline of the real estate license
3 and real estate license rights of Respondent BAKER pursuant to the Code sections 10177(d)
4 (willful disregard or violation of Real Estate Law) and 10177(h) (failure to exercise reasonable
5 supervision).

6 14.

7 The conduct of Respondents WSI and BAKER described in Paragraph 9, above,
8 violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
10 13(a)	Code section 10145 and Regulations section 2832.1
11 13(b)	Code section 10145 and Regulations section 2831
12 13(c)	Code section 10145 and Regulations section 2831.1
13 13(d)	Code sections 10145 and 10176(e) and Regulations section 2835(b)
14 13(e)	Code section 10159.2 and Regulation section 2725

15 The foregoing violations constitute cause for discipline of the real estate license and license
16 rights of Respondents WSI and BAKER under the provisions of Code sections 10176(e),
17 10177(d), 10177(g), and 10177(h).

18
19 (COSTS)

20 15.

21 Code section 10106 provides, in pertinent part, that in any order issued in
22 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner
23 may request the administrative law judge to direct a licensee found to have committed a
24 violation of this part to pay a sum not to exceed the reasonable costs of investigation and
25 enforcement of the case.

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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 WINDFALL SPRINGS, INC. and BARBARA BAKER 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: May 6, 2020.

V. Kilpatrick
Veronica Kilpatrick
Supervising Special Investigator

cc: Windfall Springs, Inc.
Barbara Baker
Veronica Kilpatrick
Sacto
Enforcement
Audits – David Quek