

**FILED**

**AUG - 7 2024**

**DEPT. OF REAL ESTATE**

By 

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation Against	)	
	)	No. H-42873 LA
WINDFALL SPRINGS, INC. and	)	
LINDA JEAN SCARBERRY, individually and as	)	
Designated Officer of Windfall Springs, Inc.,	)	<u>ACCUSATION</u>
	)	
Respondents.	)	
	)	

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, for cause of Accusation against WINDFALL SPRINGS, INC. (“WSI”) and LINDA JEAN SCARBERRY (“SCARBERRY”), individually and as designated officer of Windfall Springs, Inc. (collectively as “Respondents”) alleges as follows:

1.

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

2.

All references to the “Code” are to the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code and all references to “Regulations” are to Title 10, Chapter 6 of the California Code of Regulations.

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1 LICENSE HISTORY

2 Windfall Springs, Inc.

3 3.

4 Respondent WSI is presently licensed and/or has license rights under the Code  
5 as a restricted corporate real estate broker with Department of Real Estate (“Department”)  
6 license ID 01847410. Respondent’s restricted license is set to expire on September 17, 2027,  
7 unless renewed. Since on or about November 12, 2021, Respondent WSI’s designated officer  
8 has been Respondent SCARBERRY. WSI has two (2) active fictitious business names with the  
9 Department, “ROGSW” and “Southwest Escrow ‘A Non-Independent Broker Escrow.’”

10 Linda Jean Scarberry

11 4.

12 Respondent SCARBERRY is presently licensed and/or has license rights under  
13 the Code as a real estate broker with Department license ID 01231745. From November 12,  
14 2021, through the present, SCARBERRY has been the designated officer for WSI. As  
15 designated officer, SCARBERRY is responsible for the supervision of the activities conducted  
16 on behalf of WSI by its officers, agents, real estate licensees, and employees pursuant to  
17 Section 10159.2 of the Code.

18 PRIOR LICENSE DISCIPLINE OF WSI

19 Case No. H-40186 LA

20 5.

21 On or about March 23, 2015, in Case No. H-40186 LA, the Complainant  
22 Veronica Kilpatrick, in her official as a Supervising Special Investigator of the State of  
23 California, issued an Accusation against Respondent WSI and Respondent’s designated officer  
24 at the time of the violations. The Accusation alleged violations of the Code and Regulations  
25 relating to an audit of WSI’s property management activities. On or about January 10, 2017, the  
26 Real Estate Commissioner (“Commissioner”) issued a Decision adopting the parties’ executed  
27 Stipulation and Agreement, effective February 2, 2017, ordering, in part, the suspension of  
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1 WSI's real estate license for sixty (60) days. The suspension was stayed on certain terms and  
2 conditions.

3 Case No. H-41675 LA

4 6.

5 On or about May 6, 2020, in Case No. H-41675 LA, the Complainant Veronica  
6 Kilpatrick, in her official capacity as a Supervising Special Investigator of the State of  
7 California, issued an Accusation against Respondent WSI and WSI's designated officer at the  
8 time of the violations. The Accusation alleged violations of the Code and Regulations relating  
9 to an audit of WSI's real estate sales and broker-escrow activities. On or about February 12,  
10 2021, the Commissioner issued a Decision adopting the parties' executed Stipulation and  
11 Agreement, effective March 26, 2021, ordering, in part, the suspension of WSI's real estate  
12 license for ninety (90) days, thirty (30) days of which were stayed with the payment of a  
13 monetary penalty, and the remaining sixty (60) days were stayed under certain terms and  
14 conditions.

15 Case No. H-05211 SD

16 7.

17 On or about May 10, 2021, in Case No. H-05211 SD, the Complainant Veronica  
18 Kilpatrick, in her official capacity as a Supervising Special Investigator of the State of  
19 California, issued an Accusation against Respondent WSI, WSI's designated officer at the time  
20 of the violations, and one of WSI's salespersons. The Accusation alleged violations of the Code  
21 and Regulations relating to a sales transaction in Murrieta, California. On or about January 18,  
22 2022, the Commissioner issued a Decision adopting the parties' executed Stipulation and  
23 Agreement, effective February 22, 2022, ordering, in part, the suspension of WSI's real estate  
24 license for ninety (90) days, thirty (30) days of which were stayed with the payment of a  
25 monetary penalty, and the remaining sixty (60) days were stayed under certain terms and  
26 conditions.

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1 Case No. H-42390 LA

2 8.

3 On or about November 7, 2022, in Case No. H-42390 LA, the Complainant  
4 Veronica Kilpatrick, in her official capacity as a Supervising Special Investigator of the State  
5 of California, issued an Accusation against Respondent WSI, one of WSI's salespersons, and  
6 one other respondent. The Accusation alleged violations of the Code and Regulations relating  
7 to a sales transaction in Menifee, California. On or about August 22, 2023, the Commissioner  
8 issued a Decision adopting the Stipulation and Agreement, effective September 18, 2023,  
9 ordering, in part, the suspension of WSI's restricted real estate license for ninety (90) days, all  
10 ninety (90) days of which were stayed with the payment of a monetary penalty.

11 REAL ESTATE ACTIVITY

12 9.

13 At all times relevant herein WSI engaged in the business of, acted in the  
14 capacity of, advertised or assumed to act as a real estate broker, within the meaning of Code  
15 section 10131(a) by selling or offering to sell, buying or offering to buy, soliciting prospective  
16 sellers or purchasers of, soliciting or obtaining listings of, or negotiating the purchase, sale or  
17 exchange of real property or a business opportunity ("real estate sales"). WSI also engaged in  
18 broker-escrow services in the course of or incidental to real estate transactions in which WSI  
19 was performing an act for which a real estate license is required.

20 CAUSE FOR ACCUSATION

21 (AUDIT NO. SD230004 – BROKER-ESCROW ACTIVITY)

22 10.

23 On or about November 14, 2023, the Department completed an audit  
24 examination of the books and records of WSI pertaining to its broker-escrow activities  
25 described in Paragraph 9 above, to determine whether Respondents are in compliance with the  
26 Code and Regulations and whether Respondent corrected the violations found in the previous  
27 audit in Case No. H-41675 LA. The audit examination covered the period of time from March  
28 26, 2021, to June 30, 2023 ("audit period"). During the audit period, WSI provided broker-

1 escrow services to its own clients and closed approximately sixty-three (63) escrow  
2 transactions. The audit examination revealed violations of the Code and the Regulations as set  
3 forth in the following paragraphs, and more fully discussed in Audit Report No. SD230004 and  
4 the exhibits and work papers attached to said audit report.

5 11.

6 At all times mentioned herein, and in connection with the broker-escrow  
7 activities described in Paragraph 9 above, WSI maintained one trust account account at Zions  
8 Bancorporation, N.A. dba California Bank and Trust (Account No. xxxx0497 ("BA-1") for  
9 handling of receipts and disbursements of trust funds for multiple beneficiaries during the audit  
10 period.

11 Violations of the Real Estate Law

12 12.

13 The audit examination revealed violations of the Code and the Regulations, as  
14 set forth in the following paragraphs, and more fully discussed in Audit Report No. SD230004  
15 and the exhibits and work papers attached to the audit reports:

16 **(a) Trust Fund Records to be Maintained/Broker-Escrow (Code section 10145;**  
17 **Regulations sections 2831, 2950(d), 2951).**

18 Respondents did not maintain complete and accurate records for all trust funds  
19 received and disbursed for BA-1 related to their broker-escrow activity.

20 **(b) Handling of Trust Funds; Separate Records for Each Beneficiary or**  
21 **Transaction/Broker-Escrow (Code section 10145; Regulations sections 2831.1, 2950(d),**  
22 **2951).**

23 During the audit period, there were instances where WSI's separate records for  
24 BA-1 were inaccurate.

25 **(c) Financial Interest When Broker Handles Escrow (Regulations section 2950(h)).**

26 Respondents failed to advise all parties in writing that Respondent  
27 SCARBERRY had an interest as an officer of the agency holding the escrow.

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1 **(d) Use of False or Fictitious Name (Code sections 10159.5); Regulations section 2731).**

2 WSI used the unlicensed fictitious business name "Southwest Escrow," but did  
3 not include the term "A Non-Independent Broker Escrow" after the name while conducting its  
4 broker-escrow activities. The unlicensed fictitious business name "Southwest Escrow" was  
5 used on the Escrow Instructions and Escrow Holding Acknowledgement during the audit  
6 period.

7 13.

8 Each of the foregoing violations in Paragraph 12(a)-(d) above constitute cause  
9 for the suspension or revocation of the real estate license and/or license rights of Respondents  
10 under the provisions of Sections 10177(d) and/or 10177(g).

11 COSTS

12 (AUDIT COSTS)

13 14.

14 Section 10148(b) of the Code, provides, in pertinent part, that the Real Estate  
15 Commissioner shall charge a real estate broker for the costs of any audit if the Commissioner  
16 has found in a final decision, following a disciplinary hearing, that the broker has violated  
17 Section 10145 of the Code or a regulation or rule of the Commissioner interpreting said Code  
18 section.

19 (INVESTIGATION AND ENFORCEMENT COSTS)


20 15.

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

26 WHEREFORE, Complainant prays that a hearing be conducted on the  
27 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing  
28 disciplinary action against all the licenses and/or license rights of Respondents WINDFALL

1 SPRINGS, INC. and LINDA JEAN SCARBERRY under the Real Estate Law, for the costs of  
2 investigation and enforcement as permitted by law, for the cost of the audit, and for such other  
3 and further relief as may be proper under other applicable provisions of law.

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5 Dated at San Diego, California this 31 day of July, 2024.

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10 Veronica Kilpatrick  
11 Supervising Special Investigator

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25 cc: WINDFALL SPRINGS, INC.  
26 LINDA JEAN SCARBERRY  
27 Veronica Kilpatrick  
28 Sacto.  
Audits – Guadalupe Barragan