

1 TRULY SUGHRUE, Counsel
State Bar No. 223266
2 Department of Real Estate
P.O. Box 137007
3 Sacramento, CA 95813-7007

4 Telephone: (916) 576-8700
(916) 576-7847 (Direct)
5
6 Fax: (916) 263-3767

FILED

AUG 17 2020

DEPARTMENT OF REAL ESTATE
By B. Nicholas

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

12 STONE CREEK REALTY, INC., and TIMOTHY
13 FRANCIS WESELY,

14 Respondents.

No. H-6980 SAC

ACCUSATION

15 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
16 of the State of California, for cause of Accusation against STONE CREEK REALTY, INC., and
17 TIMOTHY FRANCIS WESELY (collectively "Respondents"), are informed and allege as
18 follows:

19 PRELIMINARY ALLEGATIONS

20 1

21 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
22 of the State of California, makes this Accusation in her official capacity.

23 2

24 Respondents are presently licensed and/or have license rights under the Real
25 Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3

At all times mentioned, Respondent STONE CREEK REALTY, INC. (SCRI) was and is licensed by the State of California Department of Real Estate (Department) as a real estate broker corporation.

4

At all times mentioned, Respondent TIMOTHY FRANCIS WESELY (WESELY) was and is licensed by the Department individually as a restricted real estate broker, and as the designated broker officer of SCRI. As said designated broker officer, WESLEY was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of SCRI for which a license is required.

On or about March 23, 2018, in case H-6560 SAC, WESELY's real estate broker license was revoked with the right to a restricted broker license for violation of Sections 10145, 10159.5, 10177(g), and 10177(d) of the Business and Professions Code (Code), and Sections 2831 and 2832 of Title 10, Chapter 6, of the California Code of Regulations (Regulations).

5

Whenever reference is made in an allegation in this Accusation to an act or omission of SCRI, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with SCRI committed such acts or omissions while engaged in furtherance of the business or operation of SCRI and while acting within the course and scope of their corporate authority and employment.

6

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of Section 10131(b) of the Code in the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of

1 real property or improvements thereon, and collected rents from real property or improvements
2 thereon.

3 FIRST CAUSE OF ACTION

4 7

5 Each and every allegation in Paragraphs 1 through 6, inclusive, is incorporated by
6 this reference as if fully set forth herein.

7 8

8 On or about September 30, 2019, through April 1, 2019, an audit was conducted
9 of the records of SCRI. The auditor herein examined the records for the period of August 1,
10 2018, through July 31, 2019.

11 9

12 While acting as a real estate broker as described in Paragraph 6, Respondents
13 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in
14 connection with the leasing, renting, and collection of rents on real property or improvements
15 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust
16 funds.

17 10

18 The trust funds accepted or received by Respondents as described in Paragraph 9
19 were deposited or caused to be deposited by Respondents into trust accounts which were
20 maintained by Respondents for the handling of trust funds, and thereafter from time-to-time
21 Respondents made disbursements of said trust funds, identified as follows:

22

ACCOUNT # 1	
Bank Name and Location:	Wells Fargo Bank P.O. Box 6995 Portland, OR 97228-6995

23
24
25
26
27

Account No.:	XXXXXX2366
Entitled:	Stone Creek Realty, Inc.

ACCOUNT # 2	
Bank Name and Location:	Wells Fargo Bank P.O. Box 6995 Portland, OR 97228-6995
Account No.:	XXXXXX7672
Entitled:	Stone Creek Realty, Inc.

ACCOUNT # 3	
Bank Name and Location:	Wells Fargo Bank P.O. Box 6995 Portland, OR 97228-6995
Account No.:	XXXXXX8738
Entitled:	Stone Creek Realty, Inc.

11

In the course of the activities described in Paragraph 6, Respondents:

(a) caused; suffered, or permitted the balance of funds in Account #2 to be reduced to an amount which, as of July 31, 2019, was approximately \$15,924.62¹ less than the aggregate liability of Account #2 to all owners of such funds in violation of Section 10145 of the Code;

(b) failed to deposit trust funds into a trust fund account in the name of

¹ On or about April 16, 2020, WESLY, on behalf of SCRI, submitted additional accounting records in response to the audit findings. The Department auditor reviewed these documents and found, based on the additional records, the balance of funds in Account #2 to be reduced to an amount, as of July 31, 2019, was approximately \$15,347.54 less than the aggregate liability of Account #2.

1 Respondent as trustee at a bank or other financial institution, in conformance with Section 10145
2 of the Code and Section 2832 of the Regulations;

3 (c) failed to keep accurate separate records for each beneficiary or transaction,
4 accounting therein for all funds which were deposited into Account #1, 2, and 3 containing all of
5 the information required by Section 2831.1 of the Regulations; and

6 (d) failed to reconcile the balance of separate beneficiary or transaction
7 records with the control record of trust funds received and disbursed at least once a month,
8 and/or failed to maintain a record of such reconciliations for Account #1, as required by Section
9 2831.2 of the Regulations.

10 12

11 The facts alleged in the First Cause of Action are grounds for the suspension or
12 revocation of Respondents' licenses and license rights under the following Sections of the Code
13 and Regulations:

14 As to Paragraph 11(a), under Sections 10177(d) and/or 10177(g) of the Code in
15 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

16 As to Paragraph 11(b), under Sections 10177(d) and/or 10177(g) of the Code in
17 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

18 As to Paragraph 11(c), under Sections 10177(d) and/or 10177(g) of the Code in
19 conjunction with Section 2831.1 of the Regulations; and

20 As to Paragraph 11(d), under Sections 10177(d) and/or 10177(g) of the Code in
21 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations.

22 SECOND CAUSE OF ACTION

23 13

24 Each and every allegation in Paragraphs 1 through 12, inclusive, is incorporated
25 by this reference as if fully set forth herein.

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

14

Respondent WESLEY failed to exercise reasonable supervision over the acts of SCRI in such a manner as to allow the acts and events described above to occur.

15

The acts and/or omissions of WESLEY as described in Paragraph 14, constitutes failure on the part of WESLEY, as designated broker-officer for SCRI, to exercise reasonable supervision and control over the licensed activities of SCRI as required by Section 10159.2 of the Code and Section 2725 of the Regulations.

16

The facts described above as to the Second Cause of Action constitute cause for the suspension or revocation of the licenses and license rights of Respondent WESLEY under Section 10177(g) and/or Section 10177(h) of the Code, and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

COST RECOVERY

17

The acts and/or omissions of Respondents as alleged above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund handling violation) of the Code.

18

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, 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 the investigation and enforcement of the case.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing discipline on all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the

1 Business and Professions Code), for the cost of the investigation and enforcement of this case as
2 permitted by law, for the cost of the Department's audit as permitted by law, and for such other
3 and further relief as may be proper under the provisions of law.
4

5
6 
7 TRICIA D. PARKHURST
8 Supervising Special Investigator
9

10 Dated at Sacramento, California,
11 this 20th day of July, 2020
12
13
14
15
16
17
18

19 DISCOVERY DEMAND

20 Pursuant to Sections 11507.6, *et seq.* of the *Government Code*, the Department of Real
21 Estate hereby makes demand for discovery pursuant to the guidelines set forth in the
22 *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate
23 may result in the exclusion of witnesses and documents at the hearing or other sanctions that the
24 Office of Administrative Hearings deems appropriate.
25
26
27