

FILED

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DEPT. OF REAL ESTATE

By 

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-42377 LA
12)
13 515 INC. and BARBARA LYNN) **ACCUSATION**
14 SIMMONS, individually and as)
15 designated officer for 515 Inc.,)
16 Respondents.)

17 The Complainant, Jason Parson, a Supervising Special Investigator for the
18 Department of Real Estate (“Department” or “DRE”) of the State of California, for cause of
19 Accusation against 515 INC. and BARBARA LYNN SIMMONS, individually and as a
20 designated officer for 515 Inc. (collectively “Respondent”) alleges as follows:

21 1.

22 The Complainant, Jason Parson, a Supervising Special Investigator of the State
23 of California, makes this Accusation in his official capacity.

24 2.

25 All references to the “Code” are to the California Business and Professions
26 Code, all references to the “Real Estate Law” are to Part 1 of Division 4 of the Code, and all
27 references to “Regulations” are to the Regulations of the Real Estate Commissioner, Title 10,

1 Chapter 6, California Code of Regulations.

2 3.

3 Respondents are presently licensed and/or have license rights under the Real
4 Estate Law (Part 1 of Division 4 of the Code). Respondents have renewal rights pursuant to
5 Code section 10201. The Department retains jurisdiction pursuant to Code section 10103.

6 LICENSE HISTORY

7 4.

8 a. On January 22, 2020, the Department issued a real estate corporation license
9 (DRE license ID no. 02108588) to Respondent 515 INC. ("5I"), which is set to expire on
10 January 21, 2024, unless renewed.

11 b. According to Department records to date, 5I maintains one (1) active licensed
12 fictitious business name "Essence Real Estate Consultants" effective as of January 22, 2020.

13 c. According to Department records to date, 5I maintains its main office at 1008
14 W. Avenue M-14, Suite F in Palmdale, California.

15 d. According to Department records to date, 5I is the employing broker to five
16 (5) salespersons.

17 5.

18 a. On June 9, 2006, the Department issued a real estate broker license (DRE
19 license ID no. 01341994) to Respondent BARBARA LYNN SIMMONS ("SIMMONS"),
20 which is set to expire on June 8, 2026, unless renewed.

21 b. According to Department records to date, SIMMONS is the employing
22 broker to one (1) salesperson.

23 c. According to discussions with the Department auditor, SIMMONS is the
24 President of 5I and has a 100% ownership interest in 5I.

25 d. According to Department records to date, SIMMONS is the designated
26 officer ("D.O.") for 5I, pursuant to Code section 10211. As 5I's D.O., SIMMONS was, at all
27 times mentioned herein, responsible for the supervision of the activities of the officers, agent,

1 real estate licensees, and employees of 5I for which a license is required, pursuant to Code
2 section 10159.2.

3 BROKER ACTIVITIES

4 6.

5 At all times relevant herein, Respondents engaged in the business of, acted in
6 the capacity of, advertised or assumed to act as a real estate broker, within the meaning of
7 section 10131(b) of the Code. Respondents' activities included performing the rental and
8 collection of rents for real property on behalf of others for compensation or in expectation of
9 compensation.

10 CAUSE FOR ACCUSATION

11 (AUDIT LA210065)

12 7.

13 On or about April 29, 2022, the Department completed an audit examination of
14 the books and records of 5I's property management activities, which require a real estate
15 license pursuant to Code section 10131(b). The audit examination covered the period of time
16 from January 22, 2020 to December 31, 2021. The primary purpose of the examination was to
17 determine whether 5I conducted its real estate activities in accordance with the Real Estate
18 Law and the Commissioner's Regulations. The audit examination revealed numerous
19 violations of the Code and the Regulations as set forth in the following paragraphs, and more
20 fully discussed in Audit Report No. LA210065 and the exhibits and work papers attached to
21 said audit report.

22 8.

23 On or about March 9, 2021, the Department's auditor held an entrance interview
24 with SIMMONS. The Department requested 5I's property management records.

25 9.

26 According to the auditor's discussions with SIMMONS during the audit
27 entrance interview and the documents examined, 5I performed property management activities

1 for a fee during the audit period. Based on records examined and discussions with SIMMONS
2 during the audit, 5I managed seven (7) one-to-four family residence units for six (6) property
3 owners and collected \$111,000 in rental receipts during the last twelve (12) months prior to the
4 audit cutoff date. 5I charged a management fee of 8% to 10% of the rents collected.

5 10.

6 On January 6, 2022, SIMMONS was served with a letter from the Department
7 confirming an appointment to examine the books and records relating to licensed real estate
8 activity for January 27, 2022 at 10:00 a.m. via telephone. In the said letter, SIMMONS was
9 instructed to email requested documents to the assigned auditor for the Department.

10 11.

11 At all times mentioned herein, and in connection with the property management
12 activities described in Paragraph 9 above, Respondents accepted or received funds, including
13 funds in trust ("trust funds") from or on behalf of owners of the real properties managed by 5I,
14 and thereafter made deposits and/or disbursements of such funds.

15 12.

16 Based on the examination of records provided for the audit examination and
17 discussions with SIMMONS, 5I maintained the following one (1) bank account at U.S. Bank
18 for multiple beneficiaries, which was used for the handling of trust fund receipts and
19 disbursements for 5I's property management activity /during the audit period:

20 Bank Account ("B/A 1")

21 Bank: U.S. Bank

22 Account Name: 515 Inc.

23 Account Number: xxxxxxxx0413

24 Signatory: Barbara Lynn Simmons

25 Description: During the audit period, B/A 1 was used for the handling of trust funds
26 pertaining to rental receipts and disbursements for multiple beneficiaries
27 in connection with Respondent's property management activities.

1 Violations of the Real Estate Law

2 13.

3 The audit examination revealed violations of the Code and the Regulations, as
4 set forth in the following paragraphs, and more fully discussed in Audit Report No. LA210065
5 and the exhibits and work papers attached to the audit report.

6 14.

7 **a. Trust Fund Handling for Multiple Beneficiaries (Code section 10145 and**
8 **Regulations section 2832.1)**. During the audit period, B/A 1 was used by Respondents to
9 handle trust fund receipts and disbursements related to 5I's property management activity. As
10 of the cut-off date of December 31, 2021, bank reconciliation was prepared for B/A 1. The
11 adjusted bank balance was compared to the total trust fund accountability, which indicated a
12 minimum trust fund shortage of <\$9,751.03> in B/A 1 as of December 31, 2021. The cause of
13 the said minimum trust fund shortage could not be identified.

14 Respondents failed to provide any evidence that the owners of the trust funds
15 had given their written consent to allow Respondents to reduce the balance of the funds in B/A
16 1 to an amount less than the existing aggregate trust fund liabilities, in violation of Code
17 section 10145(a) and Regulations section 2832.1.

18 During the audit period in connection with the collection and disbursement of
19 said trust funds, Respondents failed to maintain an accurate and complete control record and
20 separate records of the receipt and disposition of all trust funds deposited into B/A 1, as
21 required by Code section 10145(g) and Regulations 2831 and 2831.1, in that B/A 1 contained a
22 minimum unidentified shortage of <\$9,751.03> as of December 31, 2021.

23 **b. Trust Fund Records to be Maintained (Code section 10145 and**
24 **Regulations section 2831)**. During the audit period, 5I failed to maintain a complete and/or
25 accurate records of all trust funds receipts and disbursements (control records) for B/A 1, in
26 connection with 5I's property management activity, in violation of Code section 10145 and
27 Regulations section 2381. Respondents provided Deposit Detail and Check Detail printed on

1 March 9, 2022, but they did not have the date that the trust funds were received and did not
2 reflect a running daily balance.

3 **c. Separate Record for Each Beneficiary of Transaction (Code section**
4 **10145 and Regulations section 2831.1).** SI provided as separate records the “Account
5 Ledger,” maintained for all trust fund receipts and disbursements for B/A 1, in connection with
6 SI’s property management activity. Based on the examination of records provided for the audit
7 period, SI failed to maintain a complete and/or accurate separate records for each beneficiary or
8 transaction for B/A 1, in that the separate records for B/A 1 did not always reflect all trust fund
9 receipts and disbursements.

10 An examination of the bank statements and control records of B/A 1 revealed
11 that some receipts and disbursements were not entered properly in the “Account Ledger.” They
12 were as follows:

13

<i>Property (street)</i>	<i>Per B/A 1 Date</i>	<i>Amount</i>	<i>Per Account Ledger Date</i>	<i>Description</i>
Skyline properties	11/19/2021;	\$1,101.00	11/20/2021	Deposited into B/A 1 but entered Void – Tenant stopped payment
	11/24/2021	<\$1,101.00>		
Jonquil Ct.	12/02/2021	\$1,625.00	12/02/2021	Entered \$1,475 balance of Nov. rent

17

18 During the audit period, and in connection with the collection and disbursement
19 of said trust funds, Respondents failed to maintain accurate separate records of the receipt and
20 disposition of all trust funds deposited into B/A 1, in violation of Code section 10145(g) and
21 Regulations section 2831.1, in that B/A 1 had an unidentified shortage of <\$9,751.03> as of
22 December 31, 2021.

23 **d. Trust Account Reconciliation (Code section 10145 and Regulations**
24 **section 2831.2).** During the audit period, SI failed to perform and maintain an accurate
25 monthly reconciliation comparing the balance of all the separate beneficiary or transaction
26 records (separate records) to the balance of all trust funds received and disbursed
27 (control record) for B/A 1, in violation of Code section 10145 and Regulations section 2831.2.

1 **e. Responsibility of Corporate Officer in Charge / Broker Supervision**

2 **(Code sections 10159.2 and Regulations section 2725)**. Based on the violations set forth in
3 Paragraphs 14a through 14d above, SIMMONS failed to exercise adequate supervision and
4 control over the activities of 5I's employees and licensees to ensure compliance with the Real
5 Estate Laws and Regulations, in violation of Code section 10159.2. SIMMONS failed to
6 establish and/or implement policies, rules, procedures and system to review, oversee, inspect
7 and manage transactions requiring a real estate license and the handling of trust funds, in
8 violation of Regulations section 2725.

9 The conduct, acts, or omissions of SIMMONS, as described in Paragraphs 14a
10 through 14d above, in failing to ensure compliance of the Real Estate Law by 5I, is in violation
11 of Code section 10159.2 and Regulations section 2725, and subjects all the licenses, license
12 endorsements, and/or license rights of SIMMONS to suspension or revocation pursuant to
13 Code sections 10177(d), 10177(g), and/or 10177(h).

14 15.

15 The conduct of Respondents described in Paragraph 14 above, violated the Code
16 and Regulations as set forth below:

<u>Paragraph</u>	<u>PROVISIONS VIOLATED</u>
14a	Code section 10145 and Regulations section 2832.1
14b	Code section 10145 and Regulations section 2831
14c	Code section 10145 and Regulations section 2831.1
14d	Code section 10145 and Regulations section 2831.2
14e	Code section 10159.2 and Regulations section 2725

23 Each of the foregoing violations constitute cause for the suspension or
24 revocation of the real estate license and/or license rights of Respondents under the provisions
25 of Code sections 10177(d), 10177(g), 10177(h), and/or 10176(i).

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cc: 515, INC.
BARBARA SIMMONS
Jason Parson
Sacto.
Audits – Godswill Keraoru