

FILED

AUG 28 2023

DEPT. OF REAL ESTATE

By _____



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
28

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of:

No. H-42390-LA

WINDFALL SPRINGS, INC., IRINA
KERZHANOVICH, and BRIAN L.
THOMPSON,

**STIPULATION AND AGREEMENT AS
TO WINDFALL SPRINGS, INC. ONLY**

Respondent.

It is hereby stipulated and agreed by and between Respondent WINDFALL SPRINGS, INC. ("Respondent" or "WSI"), and WSI's attorney of record, Scott J. Harris, Esq., and the Complainant, acting by and through Laurence Haveson, Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing of the Accusation filed on November 7, 2022 ("Accusation") in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement ("Stipulation").

2. Respondent has received, read, and understand the Statement to Respondent, the Discovery Provisions of the APA, and the Accusation filed by the Department of Real Estate in this proceeding.

1 3. On November 30, 2022, Respondent filed a Notice of Defense pursuant to section
2 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the
3 Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.
4 Respondent acknowledges that Respondent understands that by withdrawing said Notice of
5 Defense, Respondent will thereby waive Respondent's right to require the Real Estate
6 Commissioner ("Commissioner") to prove the allegations in the Accusation at a contested hearing
7 held in accordance with the provisions of the APA and that Respondent will waive other rights
8 afforded to Respondent in connection with the hearing such as the right to present evidence in
9 defense of the allegations in the Accusation and the right to cross-examine witnesses.

10 4. This Stipulation is based on the factual allegations contained in the Accusation. In
11 the interest of expedience and economy, Respondents choose not to contest these allegations, but to
12 remain silent, and understand that, as a result thereof, these factual allegations, without being
13 admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein.
14 The Real Estate Commissioner shall not be required to provide further evidence to prove said factual
15 allegations.

16 5. This Stipulation and Respondents' decision not to contest the Accusation are made
17 for the purpose of reaching an agreed disposition of this proceeding and are expressly limited to this
18 proceeding and any other proceeding or case brought by the Department, or another licensing agency
19 of this state, another state, or the federal government, and otherwise shall not be admissible in any
20 other criminal or civil proceedings.

21 6. It is understood by the parties that the Real Estate Commissioner may adopt the
22 Stipulation and Agreement as his Decision in this matter, thereby imposing the penalty and sanctions
23 on Respondent's real estate license and license rights as set forth in the below "Order." In the event
24 that the Commissioner in his discretion does not adopt the Stipulation, it shall be void and of no
25 effect, and Respondent shall retain the right to a hearing and proceeding on the Accusation under
26 all the provisions of the APA and shall not be bound by any admission or waiver made herein.

27 7. The Order or any subsequent Order of the Commissioner made pursuant to this
28 Stipulation shall not constitute an estoppel, merger, or bar to any further administrative or civil

1 proceedings by the Department with respect to any matters that were not specifically alleged to be
2 causes of accusation in this proceeding.

3 8. Respondent understands that by agreeing to this Stipulation, Respondent agrees to
4 pay, pursuant to Business and Professions Code ("Code") section 10106, one-third of the cost, as of
5 July 10, 2023, of the investigation and enforcement of this matter. As of July 10, 2023, the amount
6 of the investigation costs is \$4,713.80 and the amount of the enforcement costs is \$1,468.80, for a
7 sum total of \$6,182.60.

8 DETERMINATION OF ISSUES

9 By reason of the foregoing stipulations, admissions, and waivers, and solely for the purpose
10 of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
11 following Determination of Issues shall be made:

12 The conduct, acts, and/or omissions of Respondent WSI as described in the Accusation,
13 constitute cause for the suspension or revocation of all real estate licenses and license rights of
14 Respondent under Code sections 10177(d) and/or 10177(g).

15 ORDER

16 1. Any restricted real estate license issued to Respondent WSI pursuant to this Decision
17 shall be suspended for ninety (90) days from the date of issuance of said restricted license; provided,
18 however, that ninety (90) days of said suspension shall be stayed for three (3) years upon the
19 condition that Respondent WSI petitions pursuant to Code Section 10175.2 and pays a monetary
20 penalty pursuant to Code Section 10175.2 at a rate of one hundred dollars (\$100.00) for each day of
21 the suspension for a total monetary penalty of \$9,000 (\$100.00 per day X ninety (90) days = \$9,000),
22 and upon the following terms and conditions:

23 a. Said payment shall be in the form of a cashier's check made payable to the
24 Department of Real Estate. Said check must be delivered to the Department of Real Estate,
25 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date
26 of this Decision and Order. **Payment of said monetary penalty should not be made until**
27 **the Stipulation has been approved by the Commissioner;**

28 ///

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
28

b. Respondent WSI shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California;

c. No further cause for disciplinary action against the Real Estate license(s) of Respondent WSI occurs within three (3) years from the effective date of the Decision and Order in this matter;

d. That no final subsequent determination be made, after hearing or upon stipulation, that cause of disciplinary action occurred within three (3) years from the effective date of this Decision and Order. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent;

e. If Respondent WSI fails to pay the monetary penalty in accordance with the terms and conditions of this Decision and Order, the suspension shall go into effect automatically. Respondent WSI shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision and Order.

f. If Respondent WSI pays the monetary penalty under this Stipulation and Agreement and if no further cause for disciplinary action against the Real Estate license(s) of Respondent WSI occurs within three (3) years from the effective date of this Decision and Order, the entire stay hereby granted pursuant to this Decision and Order, shall become permanent.

2. All licenses and licensing rights of Respondent WSI under the Real Estate Law are revoked; provided, however, a restricted real estate corporation license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

///

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
28

a. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

b. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.


c. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

3. Respondent WSI shall pay one-third of the Commissioner's reasonable costs, determined as of July 10, 2023, for the investigation and enforcement which led to this disciplinary action, **within one-hundred and eighty (180) days from the effective date of this Decision and Order.** As of July 10, 2023, the Commissioner's total costs for investigation and enforcement were \$6,182.60. Therefore Respondent WSI shall pay one-third of \$6,182.60, or \$2,060.87, **within one-hundred and eighty (180) days from the effective date of this Decision and Order.** Said payment shall be in the form of a cashier's check made payable to the Department of Real Estate. **The investigative and enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013. Payment of investigation and enforcement costs should not be made until the Stipulation has been approved by the Commissioner.** If Respondent WSI fails to satisfy this condition in a timely manner as provided for herein, Respondent WSI's real estate license shall automatically be suspended until payment is made in full, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

///
///

1 4. Respondent's signature below indicates full agreement to the terms of this
2 Stipulation and Agreement and to the terms set forth herein.

3
4 DATED: 07/17/2023


5 Laurence D. Haveson
6 Counsel for Complainant

7 * * *

8 EXECUTION OF THE STIPULATION

9 Respondent has read the Stipulation and Agreement. Respondent understands its terms and
10 they are agreeable and acceptable. Respondent understands that it is waiving rights given to
11 Respondent by the California Administrative Procedure Act (including but not limited to Sections
12 11506, 11508, 11509 and 11513 of the Government Code), and Respondent willingly, intelligently
13 and voluntarily waive those rights, including the right of requiring the Commissioner to prove the
14 allegations in the Accusation at a hearing at which Respondent would have the right to cross-
15 examine witnesses against it and to present evidence in defense and mitigation of the charges.

16 Respondent can signify acceptance and approval of the terms and conditions of this
17 Stipulation by causing the Stipulation to be e-mailed with Respondent's digital signature to
18 Laurence Haveson, Real Estate Counsel at Laurence.Haveson@dre.ca.gov, or by sending a hard
19 copy of the original signed signature page of the Stipulation herein to Laurence D. Haveson,
20 Department of Real Estate, Legal Section, 320 W. Fourth St., Suite 350, Los Angeles, CA 90013-
21 1105. In the event of time constraints before an administrative hearing, Respondent can signify
22 acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing or
23 e-mailing a scanned copy of the signature page, as actually signed by Respondent, to the Department
24 counsel assigned to this case. Respondent agrees, acknowledges, and understands that by
25 electronically sending the Stipulation and Agreement to the Department with Respondent's digital
26 signature or a scan of Respondent's actual signature as it appears on the Stipulation and Agreement,
27 that receipt of the Stipulation and Agreement with Respondent's digital signature or a scan of the
28 actual signature by the Department shall be as binding on Respondent as if the Department had


1 received the original signed Stipulation and Agreement. By signing this Stipulation and Agreement,
2 Respondent understands and agrees that Respondent may not withdraw its agreement or seek to
3 rescind the Stipulation and Agreement prior to the time the Commissioner considers and acts upon
4 it or prior to the effective date of the Stipulation and Order.

5 MAILING

6 In the event that Respondent declines to digitally sign the Stipulation, Respondent shall,
7 within five (5) business days from signing the Stipulation, mail the original signed signature page(s)
8 of the Stipulation herein to Laurence Haveson, Attention: Legal Section, Department of Real
9 Estate, 320 W. Fourth St., Room 350, Los Angeles, California 90013-1105.

10 Respondent's signature below constitutes acceptance and approval of the terms and
11 conditions of this Stipulation. Respondent agrees, acknowledges, and understands that by signing
12 this Stipulation Respondent is bound by its terms as of the date of such signature and that this
13 agreement is not subject to rescission or amendment at a later date except by a separate Decision
14 and Order of the Real Estate Commissioner.

15
16 DATED: 07/19/2023 
17 Respondent WINDFALL SPRINGS, INC.
18 By (Printed Name): Clarke Van Deventer
19 Title: Owner

20
21 DATED: 07/17/2023 
22 Scott J. Harris
23 Attorney for Respondent WINDFALL SPRINGS, INC.
Approved as to Form

24 ///
25 ///
26 ///
27 ///
28 ///

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
28

* * *

The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on Sept. 18, 2023.

IT IS SO ORDERED 8-22-23.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

