

1 LISSETE GARCIA, Counsel (SBN 211552)  
Bureau of Real Estate  
2 320 West 4th Street, Suite 350  
Los Angeles, California 90013-1105  
3 Telephone: (213) 576-6982  
Direct: (213) 576-6914  
4 Fax: (213) 576-6917  
*Attorney for Complainant*

**FILED**

**JAN 05 2017**

**BUREAU OF REAL ESTATE**

By *John C. Garcia*

8 BEFORE THE BUREAU OF REAL ESTATE

9 DEPARTMENT OF CONSUMER AFFAIRS

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation against	)	CalBRE No. H-04863 SD
	)	
13 HOGTAMER INVESTMENTS, INC.;	)	
14 MARY BELMONT WATKINS, individually and	)	<u>ACCUSATION</u>
as former designated officer for Hogtamer	)	
Investments, Inc.; and	)	
15 MARSHALLA SHARIFAN, individually and	)	
as former designated officer for Hogtamer	)	
16 Investments, Inc.,	)	
Respondents.	)	
	)	

18 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of  
19 California, for cause of Accusation against HOGTAMER INVESTMENTS, INC.; MARY  
20 BELMONT WATKINS, individually and as former designated officer for Hogtamer  
21 Investments, Inc.; and MARSHALLA SHARIFAN, individually and as former designated  
22 officer for Hogtamer Investments, Inc. (collectively "Respondents"), is informed and alleges as  
23 follows:  
24

1.

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

2.

Unless otherwise noted, all references to "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

3.

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

4.

From October 23, 2004 through October 21, 2016, Respondent HOGTAMER INVESTMENTS, INC. ("HII") was licensed by the Bureau of Real Estate ("Bureau") as a real estate corporation, License ID 01422560. HII's license expired on October 21, 2016. Respondent HII has renewal rights pursuant to Code Section 10201. The Bureau retains jurisdiction pursuant to Code Section 10103. HII was licensed to do business as Borrego Rentals from May 4, 2012 through October 21, 2016. HII was licensed to do business as Borrego Rental Management Group from October 23, 2004 through October 21, 2016. HII was also previously licensed to do business as Coldwell Banker Borrego, Palm Canyon Real Estate, and Palm Canyon Realty.

5.

From October 17, 2006 through the present, Respondent MARY BELMONT WATKINS ("WATKINS") has been licensed by the Bureau as a real estate broker, License ID 01415879.

1. WATKINS was licensed as a real estate salesperson from May 6, 2004 through October 16,  
2 2006. Respondent WATKINS has been licensed to do business as Borrego Valley Realty since  
3 November 2, 2006. Respondent WATKINS is also licensed to do business as Borrego Valley  
4 Realty and Granite Mountain Realty.

5 6.

6 From April 11, 2015 through the present, Respondent MARSHALLA SHARIFAN  
7 ("SHARIFAN") has been licensed by the Bureau as a real estate broker, License ID 01851614.  
8 SHARIFAN was licensed as a real estate salesperson from September 23, 2008 through April 10,  
9 2015.

10 7.

11 From October 31, 2013 through June 29, 2015, Respondent HII was licensed as a real  
12 estate corporation, acting by and through Respondent WATKINS as its designated broker-  
13 officer. As the broker-officer designated by Respondent HII pursuant to Section 10211 of the  
14 Code, WATKINS was responsible for the supervision and control of the activities conducted on  
15 behalf of Respondent HII, by its officers and employees, as necessary to secure full compliance  
16 with Real Estate Law as set forth in Code Section 10159.2 and Regulation 2725. WATKINS  
17 cancelled her designation as broker-officer for HII effective June 29, 2015.

18 8.

19 From June 29, 2015, through September 27, 2016, Respondent HII was licensed as a real  
20 estate corporation, acting by and through Respondent SHARIFAN as its designated broker-  
21 officer. As the broker-officer designated by Respondent HII pursuant to Section 10211 of the  
22 Code, SHARIFAN was responsible for the supervision and control of the activities conducted on  
23 behalf of Respondent HII, by its officers and employees, as necessary to secure full compliance  
24

1 with Real Estate Law as set forth in Code Section 10159.2 and Regulation 2725. SHARIFAN  
2 cancelled her designation as broker-officer for HII effective September 27, 2016. HII's expired  
3 license is currently in non-working status or "NBA" with no designated broker-officer.

4 9.

5 From September 17, 2013 through the present, Muriel Gwen Berry ("Berry") has been  
6 licensed by the Bureau as a real estate salesperson, License ID 01924386. Berry was licensed  
7 under the employment of WATKINS from April 19, 2014 through June 25, 2015. Berry was  
8 licensed under the employment of HII from June 26, 2016 through July 4, 2016.

9 10.

10 From June 27, 2011 through June 26, 2015, Leslie A. Greathouse ("Greathouse") was  
11 licensed by the Bureau as a real estate salesperson, License ID 01898821. Greathouse's license  
12 expired on June 26, 2015.

13 11.

14 Jennifer Joann Gallardo ("Gallardo") has never been licensed in any capacity by the  
15 Bureau.

16 STATUTORY PROVISIONS

17 12.

18 Code section 10130 states:

19 It is unlawful for any licensed real estate broker to employ or compensate,  
20 directly or indirectly, any person for performing any of the acts within the scope of this  
21 chapter who is not a licensed real estate broker, or a real estate salesperson licensed under  
22 the broker employing or compensating him or her, or to employ or compensate, directly  
23 or indirectly, any licensee for engaging in any activity for which a mortgage loan  
24 originator license endorsement is required, if that licensee does not hold a mortgage loan  
originator license endorsement; provided, however, that a licensed real estate broker may  
pay a commission to a broker of another state.

No real estate salesperson shall be employed by or accept compensation from  
any person other than the broker under whom he or she is at the time licensed.

1. It is unlawful for any licensed real estate salesperson to pay any compensation  
2. for performing any of the acts within the scope of this chapter to any real estate licensee  
except through the broker under whom he or she is at the time licensed.

3. For a violation of any of the provisions of this section, the commissioner may  
temporarily suspend or permanently revoke the license of the real estate licensee, in  
4. accordance with the provisions of this part relating to hearings.

5. 13.

6. Code section 10131 states, in pertinent part:

7. A real estate broker within the meaning of this part is a person who, for a  
compensation or in expectation of a compensation, regardless of the form or time of  
8. payment, does or negotiates to do one or more of the following acts for another or others:

9. (b) Leases or rents or offers to lease or rent, or places for rent, or solicits  
listings of places for rent, or solicits for prospective tenants, or negotiates the sale,  
10. purchase or exchanges of leases on real property, or on a business opportunity, or collects  
rents from real property, or improvements thereon, or from business opportunities.

11. 14.

12. Code section 10131.01 states:

13. (a) Subdivision (b) of Section 10131 does not apply to (1) the manager of a  
hotel, motel, auto and trailer park, to the resident manager of an apartment building,  
14. apartment complex, or court, or to the employees of that manager, or (2) any person  
or entity, including a person employed by a real estate broker, who, on behalf of  
15. another or others, solicits or arranges, or accepts reservations or money, or both, for  
transient occupancies described in paragraphs (1) and (2) of subdivision (b) of  
16. Section 1940 of the Civil Code, in a dwelling unit in a common interest development,  
as defined in Section 4100 of the Civil Code, in a dwelling unit in an apartment  
17. building or complex, or in a single-family home, or (3) any person other than the  
resident manager or employees of that manager, performing the following functions,  
18. who is the employee of the property management firm retained to manage a  
residential apartment building or complex or court and who is performing under the  
19. supervision and control of a broker of record who is an employee of that property  
management firm or a salesperson licensed to the broker who meets certain minimum  
20. requirements as specified in a regulation issued by the commissioner:

21. (A) Showing rental units and common areas to prospective tenants.

22. (B) Providing or accepting preprinted rental applications, or responding to  
23. inquiries from a prospective tenant concerning the completion of the  
application.

1. (C) Accepting deposits or fees for credit checks or administrative costs and  
2 accepting security deposits and rents.

3 (D) Providing information about rental rates and other terms and provisions of  
4 a lease or rental agreement, as set out in a schedule provided by an employer.

5 (E) Accepting signed leases and rental agreements from prospective tenants.

6 (b) A broker or salesperson shall exercise reasonable supervision and control  
7 over the activities of nonlicensed persons acting under paragraph (3) of subdivision  
8 (a).

9 (c) A broker employing nonlicensed persons to act under paragraph (3) of  
10 subdivision (a) shall comply with Section 10163 for each apartment building or  
11 complex or court where the nonlicensed persons are employed.

12 15.

13 Civil Code section 1940 in pertinent parts, states:

14 (a) Except as provided in subdivision (b), this chapter shall apply to all  
15 persons who hire dwelling units located within this state including tenants, lessees,  
16 boarders, lodgers, and others, however denominated.

17 (b) The term "persons who hire" shall not include a person who maintains  
18 either of the following:

19 (1) Transient occupancy in a hotel, motel, residence club, or other facility  
20 when the transient occupancy is or would be subject to tax under Section 7280 of the  
21 Revenue and Taxation Code. The term "persons who hire" shall not include a person to  
22 whom this paragraph pertains if the person has not made valid payment for all room and  
23 other related charges owing as of the last day on which his or her occupancy is or would  
24 be subject to tax under Section 7280 of the Revenue and Taxation Code.

(D) Occupancy for periods of less than seven days.

(d) Nothing in this section shall be construed to limit the application of any  
provision of this chapter to tenancy in a dwelling unit unless the provision is so limited  
by its specific terms.

16.

Revenue and Taxation Code section 7280 provides:

(a) The legislative body of any city, county, or city and county may levy a tax  
on the privilege of occupying a room or rooms, or other living space, in a hotel, inn,

1 tourist home or house, motel, or other lodging unless the occupancy is for a period of  
2 more than 30 days. The tax, when levied by the legislative body of a county, applies  
3 only to the unincorporated areas of the county.

17.

4 Code section 10137 states:

5 It is unlawful for any licensed real estate broker to employ or compensate,  
6 directly or indirectly, any person for performing any of the acts within the scope of this  
7 chapter who is not a licensed real estate broker, or a real estate salesperson licensed under  
8 the broker employing or compensating him or her, or to employ or compensate, directly  
9 or indirectly, any licensee for engaging in any activity for which a mortgage loan  
originator license endorsement is required, if that licensee does not hold a mortgage loan  
originator license endorsement; provided, however, that a licensed real estate broker may  
pay a commission to a broker of another state.

10 No real estate salesperson shall be employed by or accept compensation from any  
person other than the broker under whom he or she is at the time licensed.

11 It is unlawful for any licensed real estate salesperson to pay any compensation for  
12 performing any of the acts within the scope of this chapter to any real estate licensee  
except through the broker under whom he or she is at the time licensed.  
13 For a violation of any of the provisions of this section, the commissioner may temporarily  
suspend or permanently revoke the license of the real estate licensee, in accordance with  
14 the provisions of this part relating to hearings.

18.

15 Code section 10140.6 states:

16 (a) A real estate licensee shall not publish, circulate, distribute, or cause to be  
17 published, circulated, or distributed in any newspaper or periodical, or by mail, any  
18 matter pertaining to any activity for which a real estate license is required that does  
not contain a designation disclosing that he or she is performing acts for which a real  
estate license is required.

19 (b)(1) A real estate licensee shall disclose his or her license identification  
20 number and, if that licensee is a mortgage loan originator, the unique identifier  
21 assigned to that licensee by the Nationwide Mortgage Licensing System and Registry,  
on all solicitation materials intended to be the first point of contact with consumers  
22 and on real property purchase agreements when acting as an agent in those  
transactions. The commissioner may adopt regulations identifying the materials in  
23 which a licensee must disclose a license identification number and, if that licensee is  
a mortgage loan originator, the unique identifier assigned to that licensee by the  
24

1 Nationwide Mortgage Licensing System and Registry.

2 (2) For purposes of this section, "solicitation materials intended to be the first  
3 point of contact with consumers" includes business cards, stationery, advertising  
4 fliers, and other materials designed to solicit the creation of a professional  
relationship between the licensee and a consumer, and excludes an advertisement in  
print or electronic media and "for sale" signs.

5 (3) Nothing in this section shall be construed to limit or change the  
6 requirement described in Section 10236.4 as applicable to real estate brokers.

7 (c) The provisions of this section shall not apply to classified rental  
8 advertisements reciting the telephone number at the premises of the property offered  
for rent or the address of the property offered for rent.

9 (d) "Mortgage loan originator," "unique identifier," and "Nationwide  
10 Mortgage Licensing System and Registry" have the meanings set forth in Section  
10166.01."

11 19.

12 Code section 10159.2 states:

13 (a) The officer designated by a corporate broker licensee pursuant to Section  
14 10211 shall be responsible for the supervision and control of the activities conducted  
15 on behalf of the corporation by its officers and employees as necessary to secure full  
compliance with the provisions of this division, including the supervision of  
salespersons licensed to the corporation in the performance of acts for which a real  
estate license is required.

16 (b) A corporate broker licensee that has procured additional licenses in  
17 accordance with Section 10158 through officers other than the officer designated  
18 pursuant to Section 10211 may, by appropriate resolution of its board of directors, assign  
supervisory responsibility over salespersons licensed to the corporation to its broker-  
officers.

19 (c) A certified copy of any resolution of the board of directors assigning  
20 supervisory responsibility over real estate salespersons licensed to the corporation shall  
21 be filed with the Real Estate Commissioner within five days after the adoption or  
22 modification thereof.

23 ///

24 ///



20.

Regulation 2725 states:

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.
- (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- (g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

21.

Code section 10176, in pertinent part, states:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

- (a) Making any substantial misrepresentation.

///

///

Code section 10177, in pertinent parts, states:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.

#### FIRST CAUSE OF ACCUSATION

(De Anzo Property)

During the previous three years, Gallardo, Respondents HII, and WATKINS, while doing business as Borrego Valley Realty, engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Code Section 10131, subdivision (b), in that MPMI offered to lease or rent, place for rent, solicit listings of rentals, solicit for prospective tenants, negotiate the leases on real property, or collect rents from real properties for others.

24.

On or about November 18, 2015, the Bureau received a complaint from R.M.G.<sup>1</sup> against Gallardo, WATKINS, and Borrego Valley Realty. R.M.G.'s complaint alleged, among other things, that Gallardo acted as a property manager for rental periods exceeding thirty days of R.M.G.'s rental property located at 1559 De Anza Dr., Borrego Springs, California 92004 ("De Anza property").

25.

On or about September 5, 2014, Gallardo and WATKINS negotiated an exclusive Lease Listing Agreement between Borrego Valley Realty and R.M.G. for the De Anza property. The type of tenancy was to be month-to-month for one year or a 30-day minimum. The broker compensation was to be 15 percent of the monthly rent for the DeAnza property. The broker was to collect a \$5,000 security deposit from tenants, which was to be held in the broker's trust account. WATKINS signed the lease listing agreement as agent on behalf of broker, Borrego Valley Realty.

26.

On or about December 11, 2014, Gallardo and WATKINS negotiated the rental of the De Anza property to tenant-R.B. Gallardo and WATKINS used a Vacation Rental Agreement ("rental agreement") which was not approved by R.M.G. According to the rental agreement, the rental period was to be from February 15, 2015 through April 1, 2015. The rental agreement noted that a "reservation fee" of \$1,312.50 was collected from the tenant. A security deposit of \$1,000 was also noted on the rental agreement. Rent payment checks were to be made payable to Borrego Valley Realty. According to the agreement, the tenant was to pay for Traveler's

<sup>1</sup> Initials are used in place of individuals' full names to protect their privacy. Documents containing individuals' full names will be provided during the discovery phase of this case to Respondent(s) and/or their attorneys, after service of a timely and proper request for discovery on Complainant's counsel.

1 Insurance for up to \$5,000 worth of damage. As the property owner's representatives,  
2 WATKINS signed the rental agreement on behalf of Borrego Valley Realty and Gallardo signed  
3 the rental agreement on behalf of Borrego Rentals. The tenant was given four different versions  
4 of the rental agreement for the De Anza property.

5 27.

6 On or about December 11, 2014, Gallardo collected a "reservation fee" from tenant R.B.  
7 in the form of a check no. 1968 for \$1,312.50 made payable to Borrego Rentals. On or about  
8 January 13, 2015, Gallardo collected a security deposit of \$1,000 and rental fee of \$3,937.50  
9 from tenant R.B. for the De Anza property. On or about February 13, 2015, Gallardo executed  
10 an Addendum to Vacation Rental Agreement on behalf of Borrego Rentals. The Addendum  
11 gave tenant R.B. notice of the CSA Vacation Rental Insurance and gave notice of an option to  
12 purchase a vacation rental damage protection plan. Gallardo is listed as the "Vacation Rental  
13 Agent."

14 28.

15 On May 29, 2015, WATKINS wrote to Gallardo to express WATKIN's inability to  
16 "follow through or micromanage your [Gallardo's] business" and WATKIN's discomfort in  
17 continuing as the broker of record for HII.

18 29.

19 The conduct, acts and/or omissions of Gallardo as described above in Paragraphs 23  
20 through 28, above, constitute engaging in, for compensation or in expectation of compensation,  
21 acts requiring a real estate license, in violation of Code Sections 10130, 10131(b), and 10137.  
22 Said acts do not fall within the exemptions of some managers and employees under Code section  
23 10131.01. Gallardo and HII made substantial misrepresentations concerning their agency as to  
24

1 R.M.G. and the De Anza property, in violation of Code section 10176(a).

2 30.

3 The conduct, acts and/or omissions of Respondents WATKINS and HII as described  
4 above in Paragraphs 23 through 28, above, are in violation of Code Sections 10130, 10131,  
5 10137, and Regulation 2725, and constitute cause for the suspension or revocation of all real  
6 estate licenses and license rights of Respondents WATKINS and HII under the provisions of  
7 Code Sections 10176(a), 10177(h), 10177(d) and/or 10177(g).

8 SECOND CAUSE OF ACCUSATION

9 (Property Management Solicitation and Advertisements)

10 31.

11 There is hereby incorporated in this Second, separate and distinct Cause of  
12 Accusation, all of the allegations contained in Paragraphs 1 through 30, with the same force and  
13 effect as if herein fully set forth.

14 32.

15 For an unknown period of time including up to August 5, 2016, Gallardo has claimed on  
16 her LinkedIn webpage to be a property manager for "close to 50 Vacation Rentals in the Borrego  
17 Springs, CA area" and the property manager for "The Mall in Borrego Springs, CA with over 30  
18 tenants."

19 33.

20 For an unknown period of time including up to August 5, 2016, Borrego Rentals has  
21 solicited services requiring a real estate license including, but not limited to, property  
22 management and the sale or purchase of real property in California on the websites:  
23 <http://borregosun.com> and <http://borregorentals.com>. On <http://borregorentals.com>, Gallardo is  
24

1 listed as the owner, Berry is listed as a realtor, and SHARIFAN is listed as the broker for  
2 Borrego Rentals. Berry's real estate salesperson license status was in a non-working status or  
3 "NBA" with no broker affiliation on August 5, 2016.

4 34.

5 The conduct, acts and/or omissions of Gallardo and Respondent SHARIFAN and HII as  
6 described above in Paragraphs 32 and 33, above, are in violation of Code Sections 10130, 10131,  
7 10137, 10140.6, and Regulation 2725, and constitute cause for the suspension or revocation of  
8 all real estate licenses and license rights of Respondent SHARIFAN and HII under the provisions  
9 of Code Sections 10176(a), 10177(h), 10177(d) and/or 10177(g).

10 COST RECOVERY

11 (Investigation and Enforcement Costs)

12 35.

13 Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a  
14 disciplinary proceeding before the Bureau of Real Estate, the Commissioner may request the  
15 administrative law judge to direct a licensee found to have committed a violation of this part to  
16 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this  
2 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action  
3 against all licenses and/or license rights of Respondents HOGTAMER INVESTMENTS, INC.;  
4 MARY BELMONT WATKINS, individually and as former designated officer for Hogtamer  
5 Investments, Inc.; and MARSHALLA SHARIFAN, individually and as former designated  
6 officer for Hogtamer Investments, Inc., under the Real Estate Law (Part 1 of Division 4 of the  
7 Business and Professions Code), for the cost of investigation and enforcement as permitted by  
8 law, and for such other and further relief as may be proper under other provisions of law.

9 Dated at Los Angeles, California this 14 day of December, 2016.

11   
12 VERONICA KILPATRICK  
13 Supervising Special Investigator

14  
15  
16  
17  
18  
19  
20 cc: Hogtamer Investments, Inc.  
21 Mary Belmont Watkins  
22 Marshalla Sharifan  
23 Veronica Kilpatrick  
24 Sacto.