

MAY 12 2021

DEPT. OF REAL ESTATE

By \_\_\_\_\_

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 7  
 8 BEFORE THE DEPARTMENT OF REAL ESTATE  
 9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H-05211-SD  
 12 WINDFALL SPRINGS, INC., )  
 13 BARBARA BAKER, individually and ) ACCUSATION  
 as designated officer of Windfall )  
 14 Springs, Inc., and MARY )  
 ELIZABETH STORM, )  
 15 Respondents. )

16  
 17 The Complainant, Veronica Kilpatrick, 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 WINDFALL SPRINGS, INC. ("WSI"), BARBARA BAKER ("BAKER"),  
 20 also known as Barbara Ohmann, and MARY ELIZABETH STORM ("STORM"), collectively,  
 21 "Respondents," is informed and alleges in her official capacity as follows:

- 22 1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a  
 23 Supervising Special Investigator, makes this Accusation against Respondents.  
 24 2. All references to the "Code" are to the California Business and Professions Code  
 25 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

26 LICENSE HISTORY

- 27 3. Respondent WSI has been licensed by the Department as a real estate corporation,  
 28 License ID, License ID 01847410, from on or about June 14, 2008, through the present, with

1 WSI's license scheduled to expire on June 13, 2024, unless renewed. WSI is licensed through  
2 BAKER's real estate broker ("REB") license, ID 00524780, and BAKER is the designated officer  
3 ("D.O."). According to Department records to date, WSI has no branch offices, employs seventeen  
4 (17) broker associates and two hundred fifty-two (252), and the following fictitious business  
5 names are currently active and licensed to WSI:

- 6 a. "Realty One Group Southwest," active as of October 4, 2012;
- 7 b. "Realty ONE Group SW," active as of January, 28, 2015;
- 8 c. "ROGSW," active as of January, 28, 2015; and
- 9 d. "Southwest Escrow," "A Non-Independent Broker Escrow," active as of  
10 October 4, 2012.

11 4. Respondent BAKER has been licensed by the Department as a real estate broker  
12 ("REB"), License ID 00524780, from on or about April 25, 2008 through the present, with  
13 BAKER's license scheduled to expire on April 24, 2024 unless renewed. BAKER currently has no  
14 active fictitious business names licensed with the DRE, no branch offices, and employs no  
15 salespersons.

16 5. Respondent STORM has been licensed by the Department as a real estate  
17 salesperson ("RES"), License ID 01399544, from on or about September 25, 2003, through the  
18 present, with STORM's license scheduled to expire on September 24, 2023, unless renewed.

19 **PRIOR DISCIPLINE: DRE CASE NO. H-40186 LA**

20 6. On or about January 13, 2017, in DRE Case No. H-40186 LA, the DRE filed a  
21 Stipulation and Agreement for WSI and BAKER. Under the Stipulation and Agreement, all  
22 licenses and licensing rights of WSI and BAKER under the Real Estate Law were suspended for a  
23 period of 60 days from the effective date of the Commissioner's Decision provided, however, that  
24 the suspensions would be stayed for two years on condition that:

- 25 a. WSI and BAKER obey all laws and regulations governing the rights, duties,  
26 and responsibilities of a real estate licensee in the State of California; and,

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1           b. No final subsequent determination be made, after hearing or upon  
2 stipulation, that cause for disciplinary action occurred within two years from the effective  
3 date of the decision;

4           c. WSI and BAKER pay the sum of \$8,278 for the Commissioner's cost of the  
5 audit that led to this disciplinary action;

6           d. WSI and BAKER pay the Commissioner's reasonable cost, not to exceed  
7 \$12,417 for an audit to determine if Respondents have corrected the violations found in the  
8 Determination of Issues; and

9           e. All licenses and licensing rights of WSI and BAKER be indefinitely  
10 suspended until Respondents pay the sum of \$1,872 for the Commissioner's reasonable  
11 cost of the investigation and enforcement that led to this disciplinary action.

12         7. The Stipulation and Agreement filed January 13, 2017 was adopted as the Decision  
13 of the Real Estate Commissioner, effective February 2, 2017.

14                                   **PRIOR DISCIPLINE: DRE CASE NO. H-41675 LA**

15         8. On or about February 24, 2021, in DRE Case No. H-41675 LA, the DRE filed a  
16 Stipulation and Agreement for WSI and BAKER. Under the Stipulation and Agreement, all  
17 licenses and licensing rights of WSI and BAKER under the Real Estate Law were suspended for a  
18 period of 90 days from the effective date of the Commissioner's Decision provided, however, that  
19 the initial 30 days of the suspensions would be stayed for three years if WSI and BAKER each  
20 paid a monetary penalty of \$75 per day for a total of \$2,250 each, with the remaining 60 days  
21 stayed on condition that:

22           a. WSI and BAKER obey all laws, rules, and regulations governing the rights,  
23 duties, and responsibilities of a real estate licensee in the State of California; and,

24           b. No final subsequent determination be made, after hearing or upon  
25 stipulation, that cause for disciplinary action occurred within three years from the effective  
26 date of the decision;

27           c. WSI and BAKER pay the sum of \$1,355.30 for the Commissioner's  
28 reasonable cost of the investigation and enforcement that led to this disciplinary action;

1 d. WSI and BAKER pay the sum of \$16,205.68 for the Commissioner's cost  
2 of the audit that led to this disciplinary action;

3 e. WSI and BAKER pay the Commissioner's reasonable cost, not to exceed  
4 \$20,257.10 for an audit to determine if Respondents have corrected the violations found in  
5 the Determination of Issues; and

6 f. BAKER successfully complete a continuing education course on trust fund  
7 accounting and handling.

8 9. The Stipulation and Agreement filed February 24, 2021 was adopted as the  
9 Decision of the Real Estate Commissioner, effective March 26, 2021.

10 **BROKERAGE: WSI**

11 10. At all times mentioned, in Riverside County, WSI acted as a real estate broker,  
12 conducting licensed activities within the meaning of Code section 10131(a): selling and buying  
13 real property for others. At all times mentioned, WSI was acting by and through BAKER as its  
14 D.O. pursuant to Code Section 10159.2 who was responsible for ensuring compliance with the  
15 Real Estate Law.

16 **FACTS DISCOVERED BY DRE**

17 11. On or about September 9, 2020, the DRE received a complaint from E.J.<sup>u</sup> and S.J.  
18 ("Sellers") regarding STORM, Realty One Group Southwest (one of WSI's licensed fictitious  
19 business names), and BAKER, alleging that on April 22, 2020, E.J. the Sellers entered a  
20 residential listing agreement with STORM to sell their house in Murrieta, California. The listing  
21 agreement contained additional terms, including that, "Seller intends to include a contingency to  
22 purchase a replacement property as part of any resulting transaction" ("replacement property  
23 contingency"). The replacement property contingency was required because the Sellers would  
24 only be able to sell their house if they could qualify for financing on another house. The property  
25 was listed by the Sellers for \$477,770.

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

1           12.     On or about August 10, 2020, F.B. and M.B. ("Buyers") made an offer to purchase  
2 the Sellers' house for \$465,000, contained in a Residential Purchase Agreement. The proposed  
3 purchase agreement included under "Other Terms" the statement: "Seller to credit buyer \$10,000  
4 towards recurring and non-recurring costs." The Residential Purchase Agreement did not contain  
5 any additional terms regarding the replacement property contingency for the Sellers.

6           13.     On or about August 11, 2020, the Sellers made their first counter offer, prepared by  
7 STORM, stating the sales price as \$472,000, and including seven other items under "Other  
8 Terms." However, the other terms again did not include the replacement property contingency for  
9 the Sellers.

10          14.     Thereafter on or about August 11, 2020, the Buyers made a counter offer regarding  
11 recurring and non-recurring closing costs. The other terms again did not include the replacement  
12 property contingency for the Sellers.

13          15.     Thereafter on or about August 11, 2020, the Sellers made a counter offer to the  
14 Buyers' counter offer prepared by STORM. The other terms again did not include the replacement  
15 property contingency for the Sellers.

16          16.     On or about August 11, 2020, the Buyers and Sellers reached agreement and the  
17 Sellers signed the residential purchase agreement. There was no reference in the purchase  
18 agreement to the replacement property contingency for the Sellers.

19          17.     While the Sellers were working to get prequalified for their replacement property  
20 VA loan, they discovered that they could not get VA financing and they discussed the replacement  
21 property contingency with their listing agent, STORM. The Sellers then learned that the  
22 replacement property contingency was in the multiple listing service advertising for the property,  
23 but was not included in the purchase agreement that the Sellers signed for sale of the property.

24          18.     On or about August 26, 2020, the Sellers sent the Buyers "Notice of Unforeseen  
25 Coronavirus Circumstances," cancellation of contract, release of deposit, and cancellation of  
26 escrow documents, however, the Buyers refused to agree.

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1                    **VIOLATIONS OF THE REAL ESTATE LAW – CAUSES FOR DISCIPLINE**

2            19.     In the course of the activities described above in Paragraph 10, and based on the  
3 facts discovered by the DRE, as described in Paragraphs 11 through 18 above, Respondents acted  
4 in violation of the Code and Regulations as follows.

5                                    **FIRST CAUSE OF ACCUSATION**

6            20.     The Complainant realleges and incorporates by reference all of the allegations  
7 contained in paragraphs 1 through 19 above with the same force and effect as though fully set  
8 forth herein.

9            21.     STORM's acts and/or omissions in failing to ensure that the replacement property  
10 contingency was included in the purchase agreement or the Sellers' counter offers are in violation  
11 of **Code sections 10177(d) and/or 10177(g)** and constitute cause to suspend or revoke the real  
12 estate licenses and license rights of Respondent STORM pursuant to **Code sections 10177(d)**  
13 **and/or 10177(g)**.

14                                    **SECOND CAUSE OF ACCUSATION**

15            22.     The Complainant realleges and incorporates by reference all of the allegations  
16 contained in paragraphs 1 through 21 above with the same force and effect as though fully set  
17 forth herein.

18            23.     WSI's acts and/or omissions, as alleged above in paragraphs 1 through 21, are in  
19 violation of **Code sections 10177(d) and/or 10177(g)** and constitute cause to suspend or revoke  
20 the real estate licenses and license rights of Respondent WSI pursuant to **Code sections 10177(d)**  
21 **and/or 10177(g)**.

22                                    **THIRD CAUSE OF ACCUSATION**

23            24.     The Complainant realleges and incorporates by reference all of the allegations  
24 contained in paragraphs 1 through 23 above with the same force and effect as though fully set  
25 forth herein.

26            25.     BAKER's acts and/or omissions, as alleged above in paragraphs 1 through 23, are  
27 in violation of **Code sections 10159.2, 10177(h), and 10177(d) and/or 10177(g), and Regulation**

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1 2725, and constitute cause to suspend or revoke the real estate licenses and license rights of  
2 Respondent BAKER pursuant to Code sections 10177(h), and 10177(d) and/or 10177(g).

3 COSTS

4 (INVESTIGATION AND ENFORCEMENT COSTS)

5 26. Code section 10106 provides, in pertinent part that in any order issued in  
6 resolution of a disciplinary proceeding before the DRE, the Commissioner may request the  
7 administrative law judge to direct a licensee found to have committed a violation of this part to  
8 pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

9 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this  
10 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action  
11 against all the licenses and license rights of Respondents WINDFALL SPRINGS, INC.,  
12 BARBARA BAKER, and MARY ELIZABETH STORM under the Real Estate Law, for the costs  
13 of investigation and enforcement as permitted by law, and for such other and further relief as may  
14 be proper under other applicable provisions of law.

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16 Dated at San Diego, California this 10 day of May, 2021.

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19 *Veronica Kilpatrick*  
20 \_\_\_\_\_  
Veronica Kilpatrick  
Supervising Special Investigator

21 cc: WINDFALL SPRINGS, INC.  
22 BARBARA BAKER  
23 MARY ELIZABETH STORM  
24 Veronica Kilpatrick  
25 Sacto.  
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