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DEPT. OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
KITTY HAWK REALTY INC., and
TERRY LEE KAZMAIER,
individually and as former designated
officer of Kitty Hawk Realty Inc.,
Respondents.

No. H-05688-SD

ACCUSATION

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the Department of Real Estate ("Department" or "DRE") of the State of California, for cause of Accusation against KITTY HAWK REALTY INC. ("KHRI") and TERRY LEE KAZMAIER ("KAZMAIER") ("Respondents"), alleges as follows:

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

LICENSE HISTORY

3. Respondent KHRI was licensed by the Department as a real estate corporation ("REC"), License ID 02043527, from on or about October 12, 2017, through on or about October 11, 2021, at which time KHRI's license expired. The DRE retains jurisdiction pursuant to Code section 10103.

1 4. KHRI was previously licensed through KAZMAIER's real estate broker ("REB")
2 license, ID 00813959, and KAZMAIER was the designated officer ("D.O.") from on or about
3 October 12, 2017, through on or about October 11, 2021.

4 5. Respondent KAZMAIER has been licensed by the Department as a REB from on
5 or about August 8, 1986 through the present, with KAZMAIER's license scheduled to expire on
6 September 8, 2026, unless renewed. According to Department records to date KAZMAIER:
7 maintains the licensed fictitious business name, "Kitty Hawk Realty" which has been active as of
8 November 30, 1998, to the present; maintains one branch office; and employs one broker
9 associate, REB Marc Mowry Ethington ("Ethington"), DRE License ID 01310488; and employs
10 no salespersons.

11 **BROKERAGE: KHRI**

12 6. At all times mentioned, in Orange County, California, KHRI acted as a REC,
13 conducting licensed activities within the meaning of Code section 10131(b): leasing or renting,
14 offering to lease or rent, or collecting rents from real property for others. At all times mentioned,
15 KHRI was acting by and through KAZMAIER as its D.O. pursuant to Code section 10159.2 and
16 KAZMAIER was responsible for ensuring compliance with the Real Estate Law.

17 **AUDIT OF KHRI: AUDIT NO. SD210021**

18 7. On August 8, 2022, the Department completed an audit examination of the books
19 and records of KHRI's real estate activities that require a real estate license under Code section
20 10131. The audit examination, SD210021, covered the time period May 1, 2020 to December 31,
21 2021 ("audit period"), and was limited to KHRI's property management activities.

22 8. According to KAZMAIER, KAZMAIER was the chief executive officer, chief
23 financial officer, secretary, director, and sole owner of KHRI.

24 9. According to KAZMAIER and records examined, KHRI managed approximately
25 two hundred and sixty-four (264) properties with approximately two hundred sixty-eight (268)
26 units for one hundred seventy-eighty (178) property owners. KHRI collected approximately
27 \$4,649,562.37 in trust funds during the audit period. KHRI charged a management fee of 6-9% of
28 monthly rent collected per month.

1 10. KHRI maintained one (1) trust account for multiple beneficiaries for the handling
2 of trust fund receipts and disbursements related to its property management activities, as follows:

3 a. Trust Account 1 ("TA1")

4 Bank: California Credit Union
5 Account Name: Kitty Hawk Realty Inc. Client Trust
6 Account #: XXXXXXXX9904
7 Signatories: KAZMAIER (D.O./REB)
 Ethington (REB)
8 Signatures required: One (1) signature
9 Description: TA1 was used for handling of rent receipts and disbursements
 during the audit period.

10 Audit Violations in Audit No. SD210021

11 11. The Complainant realleges and incorporates by reference all of the allegations
12 contained in paragraphs 1 through 10 above, with the same force and effect as though fully set
13 forth herein.

14 12. The audit examination revealed violations of the Code and the Regulations, as set
15 forth in the following paragraphs, and more fully discussed in Audit No. SD210021 and the
16 exhibits and work papers attached to the audit report:

17 Issue One (1). Code Section 10145 and Regulation 2832.1: Handling of Trust Funds; Trust
18 Fund Handling for Multiple Beneficiaries

19 13. As of audit cutoff date of October 11, 2021, TA1 had a shortage of <\$5,673.90>.
20 The cause of the shortage could not be identified. KHRI had \$316.30 of its own funds in TA1 as
21 of October 11, 2021.

22 14. KHRI provided no evidence that the owners of the trust funds had given their
23 written consent to allow KHRI to reduce the balance of the funds in TA1 to an amount less than
24 the existing aggregate trust fund liabilities, in violation of **Code section 10145 and Regulation**
25 **2831.1.**

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1 **Issue Two (2). Code Sections 10145 and 10176(e) and Regulation 2835: Handling of Trust**
2 **Funds; Commingling**

3 15. During the audit period, KHRI kept more than \$200 of its own funds in TA1. An
4 examination of "Kitty Hawk Realty Property Account" revealed a starting balance of \$316.30 as
5 of July 1, 2021. As of October 11, 2021, KHRI had \$116.30 in excess of allowable broker funds
6 in TA1 for more than 25 days.

7 16. KHRI's acts and/or omissions in keeping more than \$200 of its own funds in TA1
8 for more than 25 days was in violation of **Code sections 10145 and 10176(e) and Regulation**
9 **2835.**

10 **Issue Three (3). Code Section 10161.8 and Regulation 2752: Salesperson and Broker**
11 **Associate and Termination; Notice of Change of Broker**

12 17. According to KAZMAIER and records examined, REB Ethington entered into an
13 Independent Contractor Agreement dated February 25, 2019, with KHRI, and Ethington had been
14 KHRI's office manager since February 2019. Also on or about February 25, 2019, KAZMAIER
15 signed a duty statement for Ethington on behalf of KHRI, which specified that Ethington's duties
16 for KHRI's included, among other things, running the day to day business operations of KHRI,
17 performing all accounting for TA1, accepting funds for and from clients, signing checks, doing
18 monthly reconciliations, and signing contracts.

19 18. KHRI failed to notify the DRE within five (5) days regarding the employment of
20 REB Ethington, in violation of **Code section 10161.8 and Regulation 2752.**

21 **Issue Four (4). Code Section 10159.5 and Regulation 2731: Use of False or Fictitious Name**

22 19. According to DRE's licensing records to date, during the audit period, or at any
23 time, KHRI did not have any fictitious business names licensed with the DRE.

24 20. During the audit period, KHRI used the unlicensed fictitious business names
25 "Kitty Hawk Realty Manage Properties" and "Kitty Hawk Realty & Management Services" to
26 conduct property management activities during times when KHRI was not the holder of licenses
27 bearing such fictitious business names, in violation of **Code section 10159.5 and Regulation**
28 **2731.**

Issue Five (5). Code Section 10130: License Required

21. KHRI conducted property management activities and received compensation for services rendered after KHRI's REC license expired on October 12, 2021, in violation of Code Section 10130.

Issue Six (6). Code Section 10159.2 and Regulation 2725: Responsibility of Corporate Officer in Charge; Broker Supervision

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

23. Based on the findings in Issues One (1) through Five (5) above, as the broker and designated officer of KHRI, KAZMAIER did not exercise adequate supervision and control over the real estate activities conducted on behalf of KHRI by its employees and licensees to ensure compliance with the Real Estate Laws and Regulations. KAZMAIER failed to establish policies, rules, procedures, and systems to review, oversee, inspect, and manage transactions requiring a real estate license and the handling of trust funds by KHRI's licensees and employees.

24. KAZMAIER's acts and/or omissions were in violation of Code section 10159.2 and Regulation 2725.

CAUSE OF ACCUSATION

AUDIT VIOLATIONS IN AUDIT NO. SD210021

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

26. KHRI's and KAZMAIER's acts and/or omissions as alleged above in paragraphs 13 through 24 violated the Code and the Regulations as set forth below:

<u>Issue No.</u>	<u>Paragraphs</u>	<u>Violations</u>
1	13-14	Code section 10145; Regulation 2832.1
2	15-16	Code sections 10145 and 10176(e); Regulation 2835
3	17-18	Code section 10161.8; Regulation 2752
4	19-20	Code section 10159.5; Regulation 2731
5	21	Code section 10130
6	22-24	Code section 10159.2; Regulation 2725

1 27. The foregoing violations alleged in Issues 1 through 5 constitute cause for the
2 suspension or revocation of KHRI's real estate license and license rights under the provisions of
3 **Code sections 10176(e), and 10177(d) and/or 10177(g).**

4 28. The foregoing violations alleged in Issue 6 constitute cause for the suspension or
5 revocation of KAZMAIER's real estate license and license rights under the provisions of **Code**
6 **sections 10177(h), and 10177(d) and/or 10177(g).**

7 **INVESTIGATION AND ENFORCEMENT COSTS**

8 29. Code section 10106 provides that in any order issued in resolution of a disciplinary
9 proceeding before the Department of Real Estate, the Commissioner may request the
10 administrative law judge to direct a licensee found to have committed a violation of this part to
11 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

12 **AUDIT COSTS**

13 30. Code section 10148(b) provides, in pertinent part, the Commissioner shall charge a
14 real estate broker for the cost of any audit, if the Commissioner has found in a final decision
15 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation or
16 rule of the Commissioner interpreting said section.

17 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
18 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
19 against all the licenses and license rights of KITTY HAWK REALTY INC. and TERRY LEE
20 KAZMAIER under the Real Estate Law, for the costs of investigation, audit, and enforcement as
21 permitted by law, and for such other and further relief as may be proper under other applicable
22 provisions of law, and for costs of audit.

23 Dated at San Diego this 15 day of November, 2022.

24 *Veronica Kilpatrick*

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26 Veronica Kilpatrick
 Supervising Special Investigator

27 cc: KITTY HAWK REALTY INC.
28 TERRY LEE KAZMAIER
 Veronica Kilpatrick
 Sacto.