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**BUREAU OF REAL ESTATE**

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of )

KELLY LYNN BROWN, )  
TAMI S. SANER, )  
KENNETH ANDREW PATTERSON, )  
KYMM MICHELLE EMBRY, and )  
DANCE HALL INVESTORS, Inc., )  
A Corporation, )

NO. H-06145 SAC

ACCUSATION

Respondents. )

The Complainant, TRICIA PARKHURST, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity against KELLY LYNN BROWN (herein "BROWN"), TAMI S. SANER (herein "SANER"), KENNETH ANDREW PATTERSON (herein "PATTERSON"), KYMM MICHELLE EMBRY (herein "EMBRY"), and DANCE HALL INVESTORS, INC. (herein "DANCE HALL") dba Keller Williams Realty (herein "Keller Williams") (collectively herein "Respondents"), is informed and alleges as follows:

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

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At all times herein mentioned, Respondents BROWN, SANER and EMBRY were and are licensed by the Bureau of Real Estate (Bureau) as real estate salespersons; Respondent PATTERSON was and is licensed by the Bureau as a real estate broker.

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At all times herein mentioned, DANCE HALL was and now is licensed by the Bureau as a corporate real estate broker by and through Wayne Thomas Hall as designated officer-broker of DANCE HALL to qualify said corporation and to act for said corporation as a real estate broker. BROWN, SANER and PATTERSON were and/or are employed by DANCE HALL through Keller Williams, Roseville, CA.

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Whenever reference is made in an allegation in this Accusation to an act or omission of DANCE HALL, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with DANCE HALL committed such act or omission while engaged in the furtherance of the business or operations of such corporate respondent and while acting within the course and scope of their authority and employment.

5

At all times herein mentioned, Respondents BROWN, SANER, PATTERSON and DANCE HALL engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate licensees for compensation or in expectation of compensation within the State of California within the meaning of Section 10131(a) of the Code, wherein Respondents sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity.

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1 SUMMARY

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3 Respondents BROWN, SANER, PATTERSON, and EMBRY, and the buyer  
4 Tom G. (herein "Tom") conspired together and devised a plan, whereby BROWN, through a  
5 short sale:

- 6 1) would be released from her first mortgage obligation of about  
7 \$916,023 with Bank of America (herein "BoA") and from her second  
8 mortgage of about \$252,412.00 with Wells Fargo Bank (herein  
9 "Wells Fargo") (herein collectively "Lenders"), by short selling her  
10 residence to Tom, a relative by marriage, without marketing the  
11 residence, thereby defrauding the Lenders out of their fair share of  
12 the profits from the sale;  
13 2) received \$17,185.00 back from the short sale, a second fraud on the  
14 Lenders; and  
15 3) continued living in the residence after the sale, a third fraud on the  
16 Lenders.

17 7

18 BROWN listed her residence with SANER, a Keller Williams' salesperson.

19 Three (3) days after listing the residence, BROWN accepted an offer from Tom,  
20 who was represented by PATTERSON, a Keller Williams' broker.

21 Two (2) days after BROWN accepted Tom's offer, SANER then put the residence  
22 on the Multiple Listing Service (herein "MLS"), showing the status as "Pending."

23 EMBRY, BROWN's sister, shepherded the transaction through escrow, directing  
24 a portion of the proceeds back to BROWN.

25 BROWN continued living at the residence for 10 months after the close of  
26 escrow, finally moving out in about August 2012, after the Bureau began its investigation.

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1 CAUSES OF ACCUSATION

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3 On about July 13, 2011, BROWN entered into a Residential Listing Agreement  
4 with SANER for BROWN's residence, located on Ravensworth Place in Sacramento, CA,  
5 (herein, "the Property"), at a listed price of \$550,000.00.

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7 On about July 16, 2011, BROWN and Tom entered into a California Residential  
8 Purchase Agreement and Joint Escrow Instructions (herein "Purchase Agreement") and Short  
9 Sale Addendum, for the listed price of \$550,000.00, when BROWN knew or should have known  
10 that the short sale would have been prohibited due to BROWN's relationship to Tom, in  
11 violation of Section 10177(j) (fraud or dishonest dealing as a principal) of the Code.

12 10

13 On the same day, about July 16, 2011, DANCE HALL, through SANER and  
14 PATTERSON, signed the Purchase Agreement as DANCE HALL dba Keller Williams' Listing  
15 and Selling Agents, respectively, when SANER and PATTERSON knew or should have known  
16 the transaction was a short sale, that BROWN and Tom were related and that the short sale  
17 would have been prohibited due to said personal relationship, in violation of Sections 10176(a)  
18 (substantial misrepresentation) and (i) (fraud or dishonest dealing) and/or 10177(g) (negligence)  
19 of the Code.

20 11

21 On about July 18, 2011, two days after the Purchase Agreement was entered into,  
22 DANCE HALL, through SANER, put the Property into the Multiple Listing Service (herein  
23 "MLS"), and made the following inputs:

- 24 1) at approximately 12:33 p.m., SANER input the status of the Property as  
25 "Active";  
26 2) about a minute later, at approximately 12:34 p.m., SANER changed the  
27 status of the Property to "Active Short Sale"; and

3) about two minutes later, at approximately 12:36 p.m., SANER again changed the status of the Property to "Pending."

SANER changed the status of the Property to "Pending" about three (3) minutes after she had first put the Property into the MLS showing "Active," when in fact the Property was never actually "Active," rather SANER effectively removed the Property from the open market when she changed the status to "Pending," and thereby prevented or discouraged any other good faith bona fide offers from being received or considered, in violation of Sections 10176(a) and (i) and/or 10177(g) of the Code.

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**Short Sale Purchase Contract Addendum:**

On about July 22, 2011, a Short Sale Purchase Contract Addendum (herein “Addendum”) was signed by both BROWN and Tom, wherein they agreed:

- 1) the property must be sold through an “Arm’s Length” Transaction, defined in the Addendum as: “two unrelated parties characterized by a selling price and other terms and conditions that would prevail in a typical real estate sales transaction. No party to the contract is a family member, related by blood or marriage ... ;”
- 2) neither the sellers nor the seller’s agent have any agreements written or oral that will permit the seller or the seller’s family member(s) to remain on the property as renters ... includes if the seller retains a direct or indirect ownership or possessory interest in the property; and
- 3) none of the parties shall receive any proceeds from the transaction except approved sale commissions.

In fact, BROWN sold the property to Tom, a family member by marriage; BROWN remained on the property until August 2012; and Brown received a check in the amount of about \$17,185.00 from proceeds of the sale when BROWN was neither the listing nor the selling agent, all contrary to the terms in the Addendum, in violation of Section 10177(j) of the Code.

BoA Short Sale Approval Letter:

On about October 1, 2011, BROWN and Tom signed the BoA short sale approval letter dated September 28, 2011, wherein they both agreed that the "sellers will not receive any proceeds from this short sale transaction," when in fact, on October 26, 2011, BROWN did receive a check in the amount of about \$17,185.00 from the proceeds of the short sale transaction, in violation of Section 10177(j) of the Code.

EMBRY, BROWN's sister, represented herself as the escrow officer and shepherded the transaction through escrow, directing about \$17,185.00 from the proceeds of the short sale to BROWN, when in fact EMBRY knew or should have known that the terms of the short sale prohibited such payment, in violation of Section 10177(j) of the Code.

Wells Fargo Short Sale Approval Letter:

On about October 15, 2011, BROWN and Tom signed the Wells Fargo short sale approval letter dated October 14, 2011, which included the Lender's Terms and Conditions for Approval Consideration (herein "Wells Fargo Terms") wherein they both agreed:

- 1) the parties are not to knowingly transact the sale with a relative or to whom they have a close personal relationship, i.e., the sale must be an "arm's length," transaction;
- 2) "seller is to net \$0 (zero) from the sale of the property"; and
- 3) seller was not to remain in the property as a tenant.

In fact, BROWN was related to Tom by marriage; BROWN received about \$17,185.00 in proceeds from the sale; and BROWN remained on the property until about August 2012, approximately 10 months after date the transaction closed, which was on about October 26, 2011, contrary to the Wells Fargo Terms, in violation of Section 10177(j) of the Code.

On about October 19, 2011, DANCE HALL, through SANER and PATTERSON, signed the Wells Fargo Terms, when SANER and PATTERSON knew or should have known that BROWN was related to Tom by marriage, which would have prevented the sale from being an "arm's length" transaction, contrary to the Wells Fargo Terms, in violation of Sections 10176(i) and/or 10177(g) of the Code.

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code:

- (a) as to Paragraph 9, BROWN, under Section 10177(j) of the Code;
- (b) as to Paragraph 10, DANCE HALL, SANER and PATTERSON, under Sections 10176(a) and (i) and/or 10177(g) of the Code;
- (c) as to Paragraph 11, DANCE HALL and SANER under Sections 10176(i) and/or 10177(g) of the Code;
- (d) as to Paragraph 12, BROWN, under Section 10177(j) of the Code;
- (e) as to Paragraph 13, BROWN, under Section 10177(j) of the Code;
- (f) as to Paragraph 14, EMBRY, under Section 10177(j) of the Code;
- (g) as to Paragraph 15, BROWN, under Section 10177(j) of the Code; and
- (h) as to Paragraph 16, DANCE HALL, SANER and PATTERSON, under Sections 10176(i) and/or 10177(g) of the Code.

#### PRIOR DISCIPLINE

Effective April 16, 2012, in Case No. H-5482 SAC, the Real Estate Commissioner suspended DANCE HALL's corporate real estate broker license for violating Section 10177(g) of the Code.

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1 COST RECOVERY

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3 Investigation and Enforcement Costs

4 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
5 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the  
6 Administrative Law Judge to direct a licensee found to have committed a violation of this part to  
7 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

8 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
9 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
10 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of  
11 Division 4 of the Business and Professions Code), for the cost of the investigation and  
12 enforcement as permitted by law, and for such other and further relief as may be proper under  
13 other applicable provisions of law.

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16 TRICIA PARKHURST  
17 Deputy Real Estate Commissioner  
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19 Dated at Sacramento, California,

20 this 20th day of June, 2014.  
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