

FILED

MAY 12 2014

BUREAU OF REAL ESTATE

By *Norman Schmitt*

LISSETE GARCIA, Counsel (SBN 211552)
Bureau of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
Direct: (213) 576-6914
Fax: (213) 576-6917

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	CalBRE No. H-39445 LA
	)	
LISA KATHLEEN KOLAR,	)	<u>A C C U S A T I O N</u>
	)	
	)	
Respondents.	)	
	)	

The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against LISA KATHLEEN KOLAR ("Respondent"), is informed and alleges as follows:

1.

The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

All references to the "Code" are to the California Business and Professions Code and all references to

1 "Regulations" are to the Regulations of the Real Estate
2 Commissioner, Title 10, Chapter 6, California Code of
3 Regulations.

4 3.

5 From March 25, 1998, through the present, Respondent
6 has been licensed and/or has license rights by the Bureau of
7 Real Estate ("Bureau") as a real estate broker, License ID
8 00857621. At all times relevant, Respondent was not licensed to
9 do business under any fictitious business name. From on or about
10 June 18, 2012, through March 22, 2014, Respondent listed her
11 main office address with the Bureau as 72335 Rancho Rd., Rancho
12 Mirage, California 92270.

13 4.

14 Susan Marie Small aka Susan M. Small and Su Small
15 ("Small"), Behind the Scenes Management Services, Behind the
16 Scenes Property Management, and Su Small Home Services have
17 never been licensed by the Bureau in any capacity.

18 5.

19 Code Section 10131 defines a real estate broker as a
20 person who:

21 "(b) Leases or rents or offer to lease or rent,
22 or places for rent, or solicits listing of place for
23 rent, or solicits for prospective tenants, or
24 negotiates the sale, purchase or exchanges of leases

1 on real property, or on a business opportunity, or
2 collects rents from real property, or improvements
3 thereon, or from business opportunities."

4 6.

5 Code Section 10131.01 exempts some managers and
6 employees of properties that accept reservations or money for
7 transient occupancies described in Paragraphs (1) and (2) of
8 subdivision (b) of Section 1940 of the Civil Code, in a dwelling
9 unit in a common interest development, as defined in Section
10 4100 of the Civil Code, in a dwelling unit in an apartment
11 building or complex, or in a single-family home, or (3) any
12 person who is performing under the supervision and control of a
13 broker of record who is an employee of that property management
14 firm who meets certain minimum requirements. Subdivision (b) of
15 Code Section 10131.01 requires that a broker or salesperson
16 shall exercise reasonable supervision and control over the
17 activities of nonlicensed persons acting under paragraph (3) of
18 subdivision (a).

19 7.

20 Civil Code Section 1940 provides that the term
21 "persons who hire" excludes transient occupancy in a hotel,
22 motel, residence club, or other facility when the transient
23 occupancy is or would be subject to tax under Section 7280
24 of the Revenue and Taxation Code.

1 8.

2 Revenue and Taxation Code Section 7280,
3 subdivision (a), provides that the legislative body of any
4 city, county, or city and county may levy a transient
5 occupancy tax ("TOT") on the privilege of occupying a room
6 or rooms, or other living space, in a hotel, inn, tourist
7 home or house, motel or other lodging unless the occupancy
8 is for a period of more than 30 day.

9 9.

10 Code Section 10137 provides that it is unlawful
11 for any licensed real estate broker to employ or
12 compensate, directly or indirectly, any person for
13 performing any of the acts within the scope of this chapter
14 who is not a licensed real estate broker, or a real estate
15 salesperson licensed under the broker employing or
16 compensating him or her.

17 10.

18 Code section 10159.5 requires that any person who
19 desires to have a license issued under a fictitious
20 business name to file an application with the Bureau that
21 includes a certified copy of their fictitious business name
22 filed with the county clerk.

23 ///

24 ///

1 CAUSE OF ACTION

2 (Unlicensed Activity)

3 11.

4 On May 23, 2012 in Case No. H-38155 LA, the
5 Commissioner found that Small, while doing business as Su Small
6 Home Services, violated Code Section 10130 by engaging in
7 activities that require a real estate broker license within the
8 State of California and issued an Order to Desist and Refrain
9 against Small. The Order to Desist and Refrain was personally
10 served on Small on June 28, 2012.

11 12.

12 On January 3, 2012, Respondent and Small filed, or
13 caused to be filed, a fictitious business name statement with
14 the Office of the County Clerk for Riverside County. The
15 fictitious business name statement indicates that Respondent and
16 Small are owners of the fictitious business name, Behind the
17 Scenes Management Services. On or about June 18, 2012,
18 Respondent KOLAR submitted a broker change application to the
19 Bureau in order to add "Behind the Scenes Management Services"
20 as a fictitious business name (DBA) to her broker license. On
21 June 28, 2012, the Bureau notified KOLAR that the DBA was not
22 added because the fictitious business name statement for Behind
23 the Scenes Management Services indicates that it is a
24 partnership where not all partners are licensed as brokers,

1 conflict with Code Section 10137.1.

2 13.

3 Small operated Behind the Scenes Management Services,
4 Behind the Scenes Property Management and/or Su Small Home
5 Services from the location of 72335 Rancho Rd., Rancho Mirage,
6 California 92270, without reasonable supervision from Respondent
7 Kolar. Small, while doing business as Behind the Scenes
8 Management Services, Behind the Scenes Property Management
9 and/or Su Small Home Services, solicited and offered to perform
10 long-term property management services for others including, but
11 not limited to Margaret G. Small solicited listings of places
12 for rent, solicited prospective tenants for rental properties,
13 offered to negotiate the lease for real properties, and offered
14 to collect rents for rental properties owned by others on the
15 following website: <http://behindthescenespropertymanagement.com>.
16 On this website, Small claims that Behind the Scenes Management
17 Services has been in business for over 30 years. Small
18 advertises long term rentals on the website. The website claims
19 that Behind the Scenes Management Services is licensed, bonded,
20 and insured.

21 14.

22 On or about November 13, 2012, Margaret G. entered
23 into a rental property management agreement with Small wherein
24 Small agreed to provide property management services for a one-

1 year period for property located at 34 La Cerra Drive, Rancho
2 Mirage, California ("rental property"). According to the
3 agreement, Small was to be compensated ten (10) percent of the
4 monthly rents for long term rentals over six (6) months and
5 twenty (20) percent of the monthly rents for short term rentals
6 up to six (6) months.

7 15.

8 On June 19, 2013, the Bureau received a complaint from
9 Margaret G. against Behind the Scenes Management Services and
10 Small for their business practices. The complaint alleged that
11 Small had engaged in dishonest dealing, failed to return all
12 keys and the garage door opener for the rental property after
13 the rental management agreement was cancelled by Margaret G.,
14 and charged Margaret G. an unapproved fee of \$200 purportedly
15 for the costs of soliciting prospective tenants for Margaret
16 G.'s rental property on Behind the Scenes Management Services'
17 website.

18 16.

19 Small's acts set forth above do not fall within the
20 exemption pursuant to Code section 10131.01, Civil Code section
21 1940, and Revenue and Taxation Code section 7280.

22 ///

23 ///

24 ///

17.

The conduct, acts and/or omissions of Respondent KOLAR as set forth above in Paragraphs 10 through 16, are in violation of Code sections 10131, 10131.01(b), 10137, and 10159.5, and constitute cause for the suspension or revocation of the licenses and license rights of Respondent KOLAR pursuant to Code Sections 10177(d) (violation of the Real Estate Law) and/or 10177(g) (negligence).

18.

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

///

///

///

///

///

///

///

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent
5 LISA KATHLEEN KOLAR under the Real Estate Law (Part 1 of
6 Division 4 of the Business and Professions Code), for the cost
7 of investigation and enforcement as permitted by law, and for
8 such other and further relief as may be proper under other
9 provisions of law.

10 Dated at Los Angeles, California

11 this 7th day of May, 2014.

12
13 
14 VERONICA KILPATRICK

15 Deputy Real Estate Commissioner
16
17
18
19
20

21 cc: Lisa Kathleen Kolar
22 Veronica Kilpatrick
23 Sacto
24