

*Flag - facts*

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*Hynd Dennis*

9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \* \* \*

12 In the Matter of the Accusation of )  
13 KIMBERLEY JANE ROBINSON; and )  
14 CATHERINE ELIZABETH PHELAN, )  
15 Respondents. )  
16 )  
17 )

No. H-41526 LA  
ACCUSATION

18 The Complainant, Veronica Kilpatrick, is a Supervising Special Investigator of  
19 the State of California, for cause of Accusation against Respondents KIMBERLEY JANE  
20 ROBINSON, f.k.a. Kimberley Jane Fletcher, and CATHERINE ELIZABETH PHELAN  
21 (collectively, "Respondents"), is informed and alleges as follows:

22 1.

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

1 2.

2 All references to the "Code" are to the California Business and Professions Code  
3 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

4 **DRE LICENSE HISTORY**

5 **RESPONDENT KIMBERLEY JANE ROBINSON ("ROBINSON")**

6 3.

7 KIMBERLEY JANE ROBINSON ("ROBINSON") is presently licensed and/or  
8 has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a real estate  
9 broker ("REB"), Department of Real Estate ("Department" or "DRE") license ID 00882129.  
10 ROBINSON's main and mailing address of record on file with the DRE are the same: 4795 Bain  
11 St, Mira Loma, CA 91752 ("Mira Loma address").

12 4.

13 According to DRE records to date, ROBINSON was first licensed as a REB on or  
14 about March 7, 2008. Prior to her licensure as a REB, ROBINSON was licensed by the DRE as  
15 a real estate salesperson ("RES") on or about March 1, 1985.

16 5.

17 According to DRE records to date, ROBINSON has two (2) current DBAs for:  
18 Shining Star Management, active as of October 24, 2011, and Shining Star Real Estate, active as  
19 of July 14, 2008.

20 6.

21 According to DRE records to date, ROBINSON has two (2) branch offices,  
22 including one located at 6550 Van Buren Blvd, Ste C, Riverside, CA 92503 ("Riverside  
23 address")

24 ///

1 7.

2 According to DRE records to date, ROBINSON has two (2) REB associates and  
3 one (1) RES under her DRE license. One of ROBINSON's REB associates is CATHERINE  
4 ELIZABETH PHELAN.

5 8.

6 According to DRE records to date, ROBINSON's REB license will expire on  
7 March 6, 2020.

8 **RESPONDENT CATHERINE ELIZABETH PHELAN ("PHELAN")**

9 9.

10 CATHERIE ELIZABETH PHELAN ("PHELAN") is presently licensed and/or  
11 has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a REB, DRE  
12 license ID 01270712. PHELAN's main and mailing address of record on file with the DRE is  
13 ROBINSON's Riverside address.

14 10.

15 According to DRE records to date, PHELAN was first licensed as a REB on or  
16 about December 17, 1999.

17 11.

18 According to DRE records to date, PHELAN has one (1) current DBA for Rock  
19 River Realty, active as of April 12, 2000. PHELAN has three (3) prior DBAs for: Homeland  
20 Security Mortgage Co (active from September 17, 2003 to August 15, 2007); Stone Creek  
21 Property Management (active from October 15, 2014 to January 21, 2018); and Sunrise  
22 Community Home Loans (active from May 5, 2004 to January 18, 2007).

23 ///

24 ///

1 12.

2 According to DRE records to date, PHELAN has nine (9) branch offices,  
3 including one located at ROBINSON's Mira Loma address.

4 13.

5 According to DRE records to date, PHELAN is a REB associate for eight (8)  
6 REBs, including ROBINSON, and is a branch/division manager for two (2) REBs.

7 14.

8 According to DRE records to date, PHELAN's REB license will expire on  
9 December 16, 2019.

10 **APPLICABLE SECTIONS OF THE REAL ESTATE LAW**

11 **Broker Supervision - Regulation 2725**

12 15.

13 Pursuant to Regulation 2725 *Broker Supervision*:

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

- 17 a) Transactions requiring a real estate license.  
18 b) Documents which may have a material effect upon the rights or obligations of  
19 a party to the transaction.  
20 c) Filing, storage and maintenance of such documents.  
21 d) The handling of trust funds.  
22 e) Advertising of any service for which a license is required.  
23 f) Familiarizing salespersons with the requirements of federal and state laws  
24 relating to the prohibition of discrimination.  
25

1 g) Regular and consistent reports of licensed activities of salespersons.

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

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

9 **Use of False or Fictitious Name - Regulation 2731**

10 16.

11 Pursuant to Regulation 2731 *Use of False or Fictitious Name:*

12 “(a) A licensee shall not use a fictitious name in the conduct of any activity for  
13 which a license is required under the Real Estate Law unless the licensee is the holder of a  
14 license bearing the fictitious business name...”

15 17.

16 Pursuant to Regulation 2905 *Pest Control Documentation:*

17 “In a real estate transaction subject to the provisions of Section 1099 of the Civil  
18 Code, the real estate broker acting as agent for the seller in the transaction shall effect delivery of  
19 the inspection report, certification and the notice of work completed, if any, to the transferee in  
20 accordance with said section.

21 If more than one real estate broker licensee is acting as an agent of the transferor  
22 in the transaction, the broker who has obtained the offer made by the transferee shall effect  
23 delivery of the required documents to the transferee unless the transferor has given written  
24

1 directions to another real estate broker licensee acting as agent of the transferor in the transaction  
2 to effect delivery.

3 If the agent cannot obtain the required documents to deliver to the transferee and  
4 does not have written assurance from the transferee that all of said documents have been  
5 received, the agent shall advise the transferee in writing of the transferee's rights under Section  
6 1099.

7 The broker shall maintain a record of the action taken to effect compliance with  
8 this regulation in accordance with Section 10148 of the Business and Professions Code."

9 **Further Grounds for Disciplinary Action – Code Section 10177**

10 18.

11 Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action:*

12 "The commissioner may suspend or revoke the license of a real estate licensee,  
13 delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an  
14 applicant, who has done any of the following:

15 ...

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

20 ...

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

23 (h) As a broker licensee, failed to exercise reasonable supervision over the  
24 activities of his or her salespersons, or, as the officer designated by a corporate broker licensee,  
25

1 failed to exercise reasonable supervision and control of the activities of the corporation for which  
2 a real estate license is required...

3 **FACTS DISCOVERED BY THE DEPARTMENT**

4 19.

5 **Residential Listing Agreement ("RLA")**

6 On February 18, 2017, ROBINSON DBA Shining Star Real Estate entered into a  
7 Residential Listing Agreement ("RLA") with the Berumen Family Trust ("Seller") to sell real  
8 property located at 7249 Vine Street, Highland, California 92346 ("Vine" or "Vine property")

9 20.

10 **Residential Purchase Agreement ("RPA")**

11 Selfia M. ("Buyer"), through her agent Gerry (Gerardo) Ramos (Tarbell Realtors),  
12 DRE license ID 01379034 ("Ramos") submitted a Residential Purchase Agreement ("RPA") to  
13 purchase the Vine property for \$160,000 with close of escrow to occur "45 days or sooner," with  
14 the condition that the [tenant-occupied] property shall be vacant at least five (5) days prior to  
15 close of escrow, "unless otherwise agreed in writing." Listed separately on page 2 of the RPA  
16 under "Other Terms" was the following: "Tenants to be out of the property prior to close of  
17 escrow."

18 21.

19 **RPA Accepted by Seller; Escrow Instructions**

20 On May 22, 2017, Seller accepted Buyer's offer/RPA on the Vine property, and  
21 ROBINSON opened escrow with "Shining Star Real Estate, Escrow Division, a non-independent  
22 Broker Owned Escrow" located at ROBINSON's Riverside address. Included in the Escrow  
23 Instructions was the condition that, "Seller is to furnish, at seller's expense, a current structural  
24 pest control report showing the accessible portions of the house to be free of visible evidence of  
25



1 active infestation by wood destroying insects, fungi and/or dry rot. Sellers authorize payment for  
2 making the report and/or Notice of Completion.”

3 22.

4 Communications Between Seller's Lender and Agent and PHELAN and  
5 ROBINSON

6 Between June 29, 2017 and June 30, 2017, Seller's agent and ROBINSON  
7 exchanged e-mails regarding, among other topics, termite clearance, including, but not limited to,  
8 the following messages:

9 A. On June 29, 2017 at 10:20AM, Sharon Navarro, DRE license ID 02009996, on  
10 behalf of Ramos, sent an e-mail to ROBINSON which included the inquiry, “We are following  
11 up on Vine's termite repairs. Please advise when can we expect the clearance?”

12 B. On June 30, 2017 at 1:58AM, PHELAN sent an e-mail to Buyer's lender that  
13 stated, “escrow will need the purchase contract addendum and/or termite waiver from the real  
14 estate agents, signed by both sellers and buyers.”

15 C. On June 30, 2017 at 2:05AM, PHELAN sent an e-mail to Buyer's lender that  
16 stated, “If we receive a termite waiver the report will be removed. No prorations are showing  
17 because if we fund and record by July 1<sup>st</sup> – prorations are zero -”

18 D. On June 30, 2017 at 2:11AM, Buyer's lender sent an e-mail to PHELAN that  
19 indicated, “I'm very sorry, I was confused. This is NOT the loan that has the TERMITE  
20 WAIVER. Please proceed to provide the termite invoice.”

21 E. On July 3, 2017 at 11:48AM, ROBINSON sent an e-mail to PHELAN and  
22 Buyer's agent that stated, “Team [sic] I just got a message from owners that tenants did not move  
23 out as anticipated. They are filing an unlawful detainer and that will take some extra time. Once  
24 tenants have vacated the house it will be fumigated as per agreement, and we will be ready to  
25



1 close. Thank you for your understanding.”

2 23.

3 Close of Escrow

4 A. On July 3, 2017, escrow on the Vine property closed. The tenants in the Vine  
5 property had not vacated by this date. Nor had the pest control certificate documentation been  
6 delivered.

7 B. On July 3, 2017 at 1:14PM, a Grant Deed was recorded on the Vine property in  
8 Buyer's name.

9 CAUSES OF ACTION

10 First Cause of Action

11 Fictitious Business Name - Regulation 2731

12 24.

13 The fictitious business name “Shining Star Real Estate, Escrow Division, a non-  
14 independent Broker Owned Escrow” is not licensed by the Department. ROBINSON's use of  
15 said unlicensed fictitious business name in the conduct of activities for which a license is  
16 required under the Real Estate Law, as described in Paragraphs 19 through 23, is in violation of  
17 **Regulation 2731**, and is cause for the suspension or revocation of the license and license rights  
18 of **Respondent ROBINSON**, pursuant to **Code Sections 10177(d) and (g)**.

19 Second Cause of Action

20 Pest Control Documentation – Regulation 2905

21 25.

22 A. In the Vine property transaction described in Paragraphs 19 through 23,  
23 ROBINSON, as the REB agent for the Seller and as the REB who obtained the offer made by the  
24 Buyer, was required to effect delivery of the pest control inspection report, certification and the  
25

1 notice of work completed to the Buyer. ROBINSON's failure to effect delivery of said pest  
2 control inspection report, certification and notice of work completed to the Buyer is in violation  
3 of **Regulation 2905**, and is cause for the suspension or revocation of the license and license  
4 rights of **Respondent ROBINSON**, pursuant to **Code Sections 10177(d) and (g)**.

5 B. In the Vine property transaction described in Paragraphs 19 through 23,  
6 PHELAN as the REB escrow, closed escrow without effecting delivery of the pest control  
7 inspection report, certification and the notice of work completed to the Buyer. PHELAN's  
8 failure to effect delivery of said pest control inspection report, certification and notice of work  
9 completed to the Buyer is in violation of **Regulation 2905**, and is cause for the suspension or  
10 revocation of the license and license rights of **Respondent PHELAN**, pursuant to **Code Sections**  
11 **10177(d) and (g)**.

12 **Third Cause of Action**

13 **Further Grounds for Disciplinary Action – Code Section 10177 & Regulation 2725**

14 **(ROBINSON only)**

15 26.

16 PHELAN, as a REB associate under ROBINSON, closed the Vine property  
17 transaction without the Sellers' tenants vacating and without delivering to Buyer the pest control  
18 inspection report, certification and notice of work. ROBINSON's failure to exercise reasonable  
19 supervision over the real estate activities of PHELAN is in violation of **Regulation 2725**, and is  
20 cause for the suspension or revocation of the license and license rights of Respondent  
21 ROBINSON, pursuant to **Code Section 10177(h)**.

22 **COSTS**

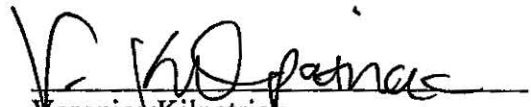
23 27.

24 **Code Section 10106** provides, in pertinent part, that in any order issued in  
25

1 resolution of a disciplinary proceeding before the Department, the Commissioner may request the  
2 administrative law judge to direct a licensee found to have committed a violation of this part to  
3 pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

4 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
5 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
6 action against all the licenses and license rights of Respondents **KIMBERLEY JANE**  
7 **ROBINSON** and **CATHERINE ELIZABETH PHELAN** under the Real Estate Law (Part 1 of  
8 Division 4 of the Business and Professions Code), and for such other and further relief as may be  
9 proper under other applicable provisions of law.

10 Dated at San Diego, California  
11 this 21 day of October 2019.

12  
13  
14   
15 Veronica Kilpatrick  
16 Supervising Special Investigator

17  
18  
19 cc: KIMBERLEY JANE ROBINSON  
20 CATHERINE ELIZABETH PHELAN  
21 V. Kilpatrick  
22 Sacto.