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**FILED**  
  
FEB 26 2020  
DEPT. OF REAL ESTATE  
By *[Signature]*

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*\*\*

In the Matter of the Accusation of	)	No. H-41526 LA
	)	
KIMBERLEY JANE ROBINSON; and	)	<u>FIRST AMENDED</u>
	)	<u>ACCUSATION</u>
	)	
CATHERINE ELIZABETH PHELAN,	)	
	)	
	)	
Respondents.	)	
	)	

*The Accusation filed on October 22, 2019 is amended in its entirety as follows:*  
The Complainant, Veronica Kilpatrick, is a Supervising Special Investigator of the State of California, for cause of Accusation against Respondents KIMBERLEY JANE ROBINSON, f.k.a. Kimberley Jane Fletcher, and CATHERINE ELIZABETH PHELAN (collectively, "Respondents"), is informed and alleges as follows:

1.



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

4 ///

5 7.

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

9 8.

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

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

13 9.

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

18 10.

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

21 11.

22 According to DRE records to date, PHELAN has one (1) current DBA for Rock  
23 River Realty, active as of April 12, 2000. PHELAN has three (3) prior DBAs for: Homeland  
24 Security Mortgage Co (active from September 17, 2003 to August 15, 2007); Stone Creek  
25

1 Property Management (active from October 15, 2014 to January 21, 2018); and Sunrise  
2 Community Home Loans (active from May 5, 2004 to January 18, 2007).

3 ///

4 ///

5 12.

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

8 13.

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

11 14.

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

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

15 **Broker Supervision – Regulation 2725**

16 15.

17 Pursuant to Regulation 2725 *Broker Supervision*:

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

- 21 a) Transactions requiring a real estate license.  
22 b) Documents which may have a material effect upon the rights or obligations of  
23 a party to the transaction.  
24 c) Filing, storage and maintenance of such documents.  
25

- 1 d) The handling of trust funds.  
2 e) Advertising of any service for which a license is required.  
3 f) Familiarizing salespersons with the requirements of federal and state laws  
4 relating to the prohibition of discrimination.  
5 g) Regular and consistent reports of licensed activities of salespersons.

6 The form and extent of such policies, rules, procedures and systems shall take into  
7 consideration the number of salespersons employed and the number and location of branch  
8 offices.

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

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

14 16.

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

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

19 17.

20 Pursuant to Regulation 2905 *Pest Control Documentation:*

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

1 If more than one real estate broker licensee is acting as an agent of the transferor  
2 in the transaction, the broker who has obtained the offer made by the transferee shall effect  
3 delivery of the required documents to the transferee unless the transferor has given written  
4 directions to another real estate broker licensee acting as agent of the transferor in the transaction  
5 to effect delivery.

6 If the agent cannot obtain the required documents to deliver to the transferee and  
7 does not have written assurance from the transferee that all of said documents have been  
8 received, the agent shall advise the transferee in writing of the transferee's rights under Section  
9 1099.

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

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

13 18.

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

15 “The commissioner may suspend or revoke the license of a real estate licensee,  
16 delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an  
17 applicant, who has done any of the following:

18 . . .

19 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing  
20 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and  
21 regulations of the commissioner for the administration and enforcement of the Real Estate Law  
22 and Chapter 1 (commencing with Section 11000) of Part 2.”

23 . . .

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

3 (h) As a broker licensee, failed to exercise reasonable supervision over the  
4 activities of his or her salespersons, or, as the officer designated by a corporate broker licensee,  
5 failed to exercise reasonable supervision and control of the activities of the corporation for which  
6 a real estate license is required...

7 **FACTS DISCOVERED BY THE DEPARTMENT**

8 19.

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

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

13 20.

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

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

22 21.

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

24 On May 22, 2017, Seller accepted Buyer's offer/RPA on the Vine property, and  
25

1 ROBINSON opened escrow with "Shining Star Real Estate, Escrow Division, a non-independent  
2 Broker Owned Escrow" located at ROBINSON's Riverside address. Included in the Escrow  
3 Instructions was the condition that, "Seller is to furnish, at seller's expense, a current structural  
4 pest control report showing the accessible portions of the house to be free of visible evidence of  
5 active infestation by wood destroying insects, fungi and/or dry rot. Sellers authorize payment for  
6 making the report and/or Notice of Completion."

7 22.

8 Communications Between Seller's Lender and Agent and PHELAN and  
9 ROBINSON

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

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

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

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

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



1 E. On July 3, 2017 at 11:48AM, ROBINSON sent an e-mail to PHELAN and  
2 Buyer's agent that stated, "Team [sic] I just got a message from owners that tenants did not move  
3 out as anticipated. They are filing an unlawful detainer and that will take some extra time. Once  
4 tenants have vacated the house it will be fumigated as per agreement, and we will be ready to  
5 close. Thank you for your understanding."

6 23.

7 Close of Escrow

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

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

13 **CAUSES OF ACTION**

14 **First Cause of Action**

15 **Fictitious Business Name - Regulation 2731**

16 24.

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

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1 **Second Cause of Action**

2 **Pest Control Documentation – Regulation 2905**

3 25.

4 A. In the Vine property transaction described in Paragraphs 19 through 23,  
5 ROBINSON, as the REB agent for the Seller and as the REB who obtained the offer made by the  
6 Buyer, was required to effect delivery of the pest control inspection report, certification and the  
7 notice of work completed to the Buyer. ROBINSON's failure to effect delivery of said pest  
8 control inspection report, certification and notice of work completed to the Buyer is in violation  
9 of **Regulation 2905**, and is cause for the suspension or revocation of the license and license  
10 rights of **Respondent ROBINSON**, pursuant to **Code Sections 10177(d) and (g)**.

11 B. In the Vine property transaction described in Paragraphs 19 through 23,  
12 PHELAN as the REB escrow, closed escrow without effecting delivery of the pest control  
13 inspection report, certification and the notice of work completed to the Buyer. PHELAN's  
14 failure to effect delivery of said pest control inspection report, certification and notice of work  
15 completed to the Buyer is in violation of **Regulation 2905**, and is cause for the suspension or  
16 revocation of the license and license rights of **Respondent PHELAN**, pursuant to **Code Sections**  
17 **10177(d) and (g)**.

18 **Third Cause of Action**

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

20 **(ROBINSON only)**

21 26.

22 PHELAN, as a REB associate under ROBINSON, closed the Vine property  
23 transaction without the Sellers' tenants vacating and without delivering to Buyer the pest control  
24 inspection report, certification and notice of work. ROBINSON's failure to exercise reasonable  
25

1 supervision over the real estate activities of PHELAN is in violation of **Regulation 2725**, and is  
2 cause for the suspension or revocation of the license and license rights of Respondent  
3 ROBINSON, pursuant to **Code Section 10177(h)**.

4 **AGGRAVATION**

5 **California Department of Business Oversight Desist and Refrain Order (PHELAN only)**

6 27.

7 On or about June 1, 2019, the California Department of Business Oversight, in  
8 Case No. 10555, affirmed a Desist and Refrain Order it issued against Respondent PHELAN and  
9 REB Susan Ramos (DRE license ID 01766128) on October 29, 2018, pursuant to Financial Code  
10 Sections 17403 and 17416 for PHELAN and Ramos' unlicensed escrow activity.

11 **COSTS**

12 28.

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

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

7 Dated at San Diego, California  
8 this 10 day of February 2020.

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10  
11   
12 **Veronica Kilpatrick**  
13 **Supervising Special Investigator**  
14  
15

16 cc: **KIMBERLEY JANE ROBINSON**  
17 **CATHERINE ELIZABETH PHELAN**  
18 **V. Kilpatrick**  
19 **Sacto.**  
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