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AUG 11 2011

DEPARTMENT OF REAL ESTATE



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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-2415 FRESNO
	)	
BRANDON LEE YAGER,	)	
	)	
Respondent.	)	
	)	

ORDER SUSPENDING REAL ESTATE SALESPERSON LICENSE  
(Professional Responsibility Examination)

TO: BRANDON LEE YAGER ("Respondent");

On November 24, 2010, in Case No. H-2415 FRESNO, Respondent's real estate salesperson license was suspended by the Department of Real Estate for sixty (60) days on the terms, conditions and restrictions set forth in Sections 10156.6 and 10156.7 of the Business and Professions Code (Code). Among those terms and conditions, the Order required Respondent to take and pass the Professional Responsibility Examination (hereinafter "the condition") within six (6) months after November 24, 2010, the effective date of the Order, and provided that if Respondent failed to satisfy this condition, the Commissioner may order suspension of the license until Respondent passes the examination.

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1 As of July 14, 2011, Respondent has failed to submit proof satisfactory to the  
2 Commissioner of successfully passing the above-ordered examination.

3 NOW, THEREFORE, IT IS ORDERED under authority of Section 10156.7 of the  
4 Code that Respondent's real estate salesperson license and the exercise of any privileges  
5 thereunder is hereby suspended until such time as Respondent provides proof satisfactory to the  
6 Commissioner of compliance with the condition referred to above, or pending final  
7 determination made after hearing (see "Hearing Rights" set forth below).

8 IT IS FURTHER ORDERED that all license certificates and identification cards  
9 issued by the Department of Real Estate which are in the possession of Respondent be  
10 immediately surrendered by personal delivery or by mailing in the enclosed self-addressed,  
11 stamped envelope:

12 DEPARTMENT OF REAL ESTATE  
13 ATTN: Flag Section  
14 P. O. Box 187000  
15 Sacramento, CA 95818-7000

16 HEARING RIGHTS: You have the right to a hearing to contest the  
17 Commissioner's determination that you are not in compliance with this condition. If you desire a  
18 hearing, you must submit a written request. The request may be in any form, as long as it is in  
19 writing and indicates that you want a hearing. Unless a written request for a hearing, signed by  
20 or on behalf of you, is delivered or mailed to the Department, Legal Section, at 2201 Broadway,  
21 P. O. Box 187007, Sacramento, California 95818-7007, within twenty (20) days after the date  
22 that this Order was mailed to or served on you, the Department will not be obligated or required  
23 to provide you with a hearing.

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This Order shall be effective immediately.

DATED: August 8, 2011

BARBARA J. BIGBY  
Acting Real Estate Commissioner

William E. Moran

By WILLIAM E. MORAN  
Assistant Commissioner, Enforcement

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**FILED**  
JUN 27 2011

DEPARTMENT OF REAL ESTATE  
By R. MAR

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	
	)	DRE No. H-2415 FR
BRADLEY R. MCINTIRE and	)	
BRANDON LEE YAGER,	)	OAH No. 2009080973
	)	
Respondents.	)	

**DECISION AFTER REJECTION**

This matter came on for hearing before Marilyn A. Woollard, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on October 25, 2010.

Richard Uno, Counsel, represented the Complainant. Bradley R. McIntire (hereafter "Respondent") appeared without counsel.

Prior to the hearing, Brandon Lee Yager (hereafter "YAGER") entered into a Stipulation and Agreement in Settlement and Order in this matter admitting to violations of Section 2870 of Title 10, California Code of Regulations (hereafter "the Regulations") and Sections 10085.5 and 10146, in conjunction with Sections 10177(d) and 10177(g) of the California Business and Professions Code (hereafter "the Code"), and is not a party to the present Decision After Rejection.

1 Evidence was received, the record closed after the allowance of time for the  
2 parties to submit written closing arguments, and the matter submitted for decision on November  
3 29, 2010.

4 On January 24, 2011, the Administrative Law Judge rendered a Proposed  
5 Decision (hereafter "the Proposed Decision") which the Real Estate Commissioner declined to  
6 adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State  
7 of California, Respondent was served with notice of the Real Estate Commissioner's  
8 determination not to adopt the Proposed Decision along with a copy of the Proposed Decision.  
9 Respondent was notified that the case would be decided by the Real Estate Commissioner upon  
10 the record, the transcript of the proceedings held on October 25, 2010, and upon written  
11 argument offered by Respondent and Complainant.

12 Written argument was submitted by Complainant on April 21, 2011. Written  
13 argument was submitted by Respondent on April 4, 2011.

14 I have given careful consideration to the record in this case, including the  
15 transcript of proceedings of October 25, 2010, and written argument offered by Complainant  
16 and Respondent.

17 The following shall constitute the Decision of the Real Estate Commissioner in  
18 these proceedings.

19 **FINDINGS OF FACT**

20 1. Respondent is licensed and/or has license rights through the Department as a real  
21 estate broker, License No. 01140690, and has been so licensed since January 13, 2006.  
22 Respondent's real estate broker license expired on January 12, 2010. Respondent is also  
23 licensed by the Department as a Designated Corporate Officer under Realty Property  
24 Management, Inc., License No. 01279922, and has been so licensed since June 27, 2008.

25 2. Complainant, John D. Sweeney, filed the Accusation in his official capacity on  
26 August 11, 2009.

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1 admitting violations of Section 2970 of the Regulations and Sections  
2 10085.5 and 10146, under Sections 10177(d) and 10177(g) of the Code.

3 e. Respondent, as supervising broker of YAGER, failed to exercise  
4 reasonable control and supervision of YAGER's acts, which violated  
5 Section 2725 of the Regulations and Section 10159.2 of the Code, and  
6 constitutes grounds for discipline under Sections 10177(d) and 10177(h)  
7 of the Code.

8 5. Respondent has worked in the real estate industry in California and other states  
9 since 1962, with no prior history of discipline or audits.

10 6. Respondent testified that he was familiar with the rules related to trust accounts,  
11 but clarified that he "did not do that many trust transactions". After the activities involved in  
12 the present matter, Respondent closed Trust Account #1. He now holds funds in check form for  
13 three (3) days until a transaction is accepted or rejected. Thereafter, Respondent sends the  
14 money to the title company.

#### 15 LAW APPLIED TO THE FACTS

16 Section 2725 of the Regulations provides in relevant part:

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

21 Section 2831.2 of the Regulations provides in relevant part:

22 "The balance of all separate beneficiary or transaction records  
23 maintained pursuant to the provisions of Section 2831.1 must be  
24 reconciled with the record of all trust funds received and  
25 disbursed required by Section 2831, at least once a month...."

26 Section 2832.1 of the Regulations provides in relevant part:

27 "The written consent of every principal who is an owner of the  
funds in the account shall be obtained by a real estate broker prior  
to each disbursement if such disbursement will reduce the balance  
of funds in the account to an amount less than the existing  
aggregate trust fund liability of the broker to all owners of the  
funds."

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Section 10145 of the Code provides in relevant part:

"(a)(1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds."

Section 10159.2 of the Code provides in relevant part:

"(a) The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees..."

Section 10177 of the Code provides in relevant part:

"The commissioner may suspend or revoke the license of a real estate licensee . . . if [he] has done any of the following:

...

(d) Willfully disregarded or violated the Real Estate Law...or the rules and regulation so the commissioner...

...

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

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons...."

Section 10240 of the Code provides in relevant part:

"(a) Every real estate broker, upon acting within the meaning of subdivision (d) of Section 10131, who negotiates a loan to be secured directly or collaterally by a lien on real property shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note...cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241...."



1 In her Proposed Decision, the Administrative Law Judge concluded the evidence  
2 demonstrated that Respondent violated Sections 2725, 2831.2 and 2832.1 of the Regulations  
3 and Sections 10145, 10159.2 and 10240 of the Code and were grounds for discipline under  
4 Section 10177(d), 10177(g) and 10177(h) of the Code.

5 **Burden of Proof**

6 The burden of proof is clear and convincing evidence to a reasonable certainty  
7 (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853). The Department  
8 has met this burden. As discussed above, Respondent committed violations of the California  
9 Business and Professions Code and the California Code of Regulations related to the practice of  
10 real estate. Consequently, there are grounds for the revocation of Respondent's license under  
11 Sections 10177(d), 10177(g) and 10177(h) of the Code.

12 **Public Purpose of Disciplinary Action**

13 Section 10050 of the Code provides that, "It shall be the principal responsibility  
14 of the commissioner to enforce all laws in this part...in a manner which achieves the maximum  
15 protection for the purchasers of real property and those persons dealing with real estate  
16 licensees." The proposed discipline of Respondent's license must be considered in that context.  
17 When the Commissioner denies, suspends or revokes a license based on a criminal conviction  
18 that involves moral turpitude, it is a conclusion that the applicant or licensee has engaged in acts  
19 that characterize him or her as being unfit or unsuitable for the particular real estate license in  
20 question. (*Golde v. Fox* (1979) 98 Cal.App.3d 167).

21 **CONCLUSION**

22 The evidence herein clearly provides evidence to support discipline of  
23 Respondent's real estate license and license rights. The Auditor proved there was a shortage of  
24 \$13,000.00, there was no written consent from owners of the trust funds to allow the balance  
25 drop below accountability, and that Respondent failed to perform monthly reconciliations of the  
26 trust funds. Respondent admitted that he did not perform monthly reconciliations. The Auditor  
27 demonstrated that Respondent failed to provide or maintain copies of Mortgage Loan

1 Disclosure Statements. Respondent also admitted that “things fall between the cracks”. The  
2 Auditor showed that the salesperson under Respondent’s supervision drafted and provided  
3 confusing and contradictory documents for a single transaction, an attempted lease to buy  
4 arrangement, including a Real Property Sales Agreement, Option to Purchase, Commission  
5 Agreement, Lease and two addendums, all for a single transaction. Respondent admitted that  
6 the documentation was confusing when taken as a whole. Respondent suggested that even with  
7 such documentary evidence, it was the Department’s fault for “not understanding what an  
8 option agreement is” and dismissed his failure to properly handle his trust account or maintain  
9 real estate records. Through the trial exhibits, the testimony of the Department Auditor and the  
10 admissions of Respondent, the Department proved each and every allegation against  
11 Respondent contained in the Accusation.

12 When all the facts and circumstances are weighed and balanced, it would be  
13 contrary to the public interest and welfare to allow respondent to remain licensed as a real estate  
14 broker and designated corporate officer.

15 **ORDER**

16 All licenses and licensing rights of Respondent BRADLEY R. MCINTIRE  
17 under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson  
18 license shall be issued to Respondent pursuant to Section 10156.5 of the Business and  
19 Professions Code if Respondent makes application therefore and pays to the Department of  
20 Real Estate the appropriate fee for the restricted license within ninety (90) days from the  
21 effective date of this Decision. The restricted license issued to Respondent shall be subject to  
22 all of the provisions of Section 10156.7 of the Business and Professions Code and to the  
23 following limitations, conditions and restrictions imposed under authority of Section 10156.6  
24 of that Code:

25 1. The restricted license issued to Respondent may be suspended prior to  
26 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or

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1 plea of nolo contendere to a crime which is substantially related to Respondent's fitness or  
2 capacity as a real estate licensee.

3 2. The restricted license issued to Respondent may be suspended prior to  
4 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the  
5 Commissioner that Respondent has violated provisions of the California Real Estate Law, the  
6 Subdivided Lands law, Regulations of the Real Estate Commissioner or conditions attaching  
7 to the restricted license.

8 3. Respondent shall not be eligible to apply for the issuance of an  
9 unrestricted real estate license nor for the removal of any of the conditions, limitations or  
10 restrictions of a restricted license until two (2) years have elapsed from the effective date of  
11 this Decision.

12 4. Respondent shall submit with any application for license under an  
13 employing broker, or any application for transfer to a new employing broker, a statement  
14 signed by the prospective employing real estate broker on a form approved by the Department  
15 of Real Estate which shall certify:

16 (a) That the employing broker has read the Decision of the Commissioner  
17 which granted the right to a restricted license; and

18 (b) That the employing broker will exercise close supervision over the  
19 performance by the restricted licensee relating to activities for which a  
20 real estate license is required.

21 5. Respondent shall, within nine (9) months from the effective date of this  
22 Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has,  
23 since the most recent issuance of an original or renewal real estate license, taken and  
24 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of  
25 the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this  
26 condition, the Commissioner may order the suspension of the restricted license until the  
27 respondent presents such evidence.

1 The Commissioner shall afford Respondent the opportunity for a hearing  
2 pursuant to the Administrative Procedure Act to present such evidence.

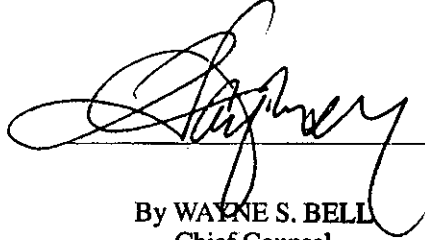
3 This Decision shall become effective at 12 o'clock noon on

4 JUL 18 2011

5 IT IS SO ORDERED

*6/23/2011*

6 BARBARA J. BIGBY  
7 Acting Real Estate Commissioner

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11 By WAYNE S. BELL  
12 Chief Counsel

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FEB 22 2011

DEPARTMENT OF REAL ESTATE

By H. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

BRADLEY R. MCINTIRE and  
BRANDON LEE YAGER,

Respondents.

)  
) DRE No. H-2415 FR

)  
) OAH No. 2009080973

NOTICE

TO: BRADLEY R. MCINTIRE, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 24, 2011, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 24, 2011, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on October 25, 2010, and any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of October 25, 2010, at the

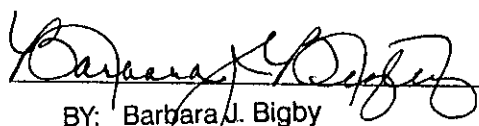
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1 Sacramento office of the Department of Real Estate unless an extension of the time is granted for  
2 good cause shown.

3 Written argument of Complainant to be considered by me must be submitted  
4 within 15 days after receipt of the argument of Respondent at the Sacramento office of the  
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 2/17/11

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8 JEFF DAVI  
9 Real Estate Commissioner

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11 BY: Barbara J. Bigby  
12 Chief Deputy Commissioner

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BRADLEY R. MCINTIRE and  
BRANDON LEE YAGER,

Respondents.

Case No. H-2415 FR

OAH Case No. 2009080973

**PROPOSED DECISION**

Administrative Law Judge (ALJ) Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on October 25, 2010.

Richard Uno, Real Estate Counsel, Department of Real Estate (Department), represented complainant John W. Sweeney, a Deputy Real Estate Commissioner of the State of California (complainant).

Bradley R. McIntire (respondent) appeared and represented himself.

There was no appearance by or on behalf of Brandon Lee Yager (Mr. Yager). Prior to hearing, Mr. Yager and the Department entered into a Stipulation and Agreement in Settlement and Order in this matter. At the time of hearing, the settlement agreement was pending final approval by the Department.

Oral and documentary evidence was received. At the conclusion of the hearing, the record remained open to allow the parties to submit written closing arguments. Closing briefs, timely received on November 15, 2010, were marked for identification as Department Exhibit 10 and respondent Exhibit B. The record remained open to November 29, 2010 for receipt of the Real Estate Commissioner's signed Decision (Stipulation and Agreement) against Mr. Yager. This document was received, marked and admitted as Department Exhibit 6A. The record was then closed and the matter was submitted for decision on November 29, 2010.

## FACTUAL FINDINGS

1. Respondent is licensed by the Department as a real estate broker, license number B/01140690, and does business as Estate Mortgage, Estate Management and Estate Homes & Land. Respondent's broker license expires January 12, 2010.<sup>1</sup> Respondent is also licensed as an officer of Realty Property Management, Inc., license number C/01279922. His corporate officer license expires May 30, 2012.

As a real estate broker, respondent has engaged in business activities for compensation, or expectation of compensation, that have involved: (a) the operation and conduct of a property management business, including leasing, renting, or offering to lease or rent, soliciting listings for lease or rent, collecting rents from tenants and lessees, or performing other services for real property owners and tenants or lessees; and (b) the operation and conduct of a residential resale brokerage, including buying, selling, or offering to buy and sell, soliciting or obtaining listings of, and negotiating the purchase, sale or exchange of real property or business opportunities, within the meaning of Business and Professions Code section 10131, subdivisions (a) and (b).<sup>2</sup>

2. Mr. Yager is licensed by the Department as a real estate salesperson. From August 22, 2006 through August 25, 2006, Mr. Yager's conditional salesperson license was activated with respondent as his employing broker. After his conditional license was briefly suspended pending completion of education requirements, Mr. Yager's salesperson license was reinstated on October 4, 2006. From October 21, 2006 through January 31, 2008, respondent was Mr. Yager's employing broker.

3. *Accusation:* On August 6, 2009, complainant made and signed an Accusation against respondent and Mr. Yager (referred to collectively as respondents) in his official capacity only. Complainant alleged that its audit of respondents' sales activities and property management business for the audit period of October 1, 2006 through October 31, 2008 revealed that respondents received and disbursed funds held in trust for others; maintained a trust fund (Trust Account #1) which had a fund shortage of \$13,000 as of January 18, 2007; and that this shortage resulted from a transaction concerning real property owned by Mr. Mapson (seller), located at 2231 Sylmar Avenue, #4, in Clovis, California (the property).

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<sup>1</sup> Complainant provided a certified copy of respondent's licensure history dated September 23, 2009.

<sup>2</sup> Unless indicated otherwise, all references to statutes are to the California Business and Professions Code.



Complainant further alleged that respondents received \$13,000 in trust funds from Ellen Frazier (buyer) who attempted to purchase the property through a "rent to own" agreement arranged by respondents. In documents prepared by respondents, these funds were referred to variously as a down payment, as a security deposit, and as an option payment. Before any real property transaction closed or before the property was vacated by Ms. Frazier, respondent allegedly disbursed \$8,000 to Mr. Mapson and \$5,000 to himself as commission, in violation of section 10145 and California Code of Regulations, title 10 (CCR), section 2832.1. As Mr. Yager's employing broker, respondent allegedly failed to exercise reasonable supervision and control over his sales and property management activities. Complainant further alleged that respondent: (a) failed to reconcile balances of all separate beneficiary records with the balance of all trust funds received and disbursed for Trust Fund #1 as required by CCR section 2831.2, and (b) failed to retain copies of the Mortgage Loan Disclosure Statements (MLDS). Respondents' conduct was alleged to violate sections 10145, 10159.2, 10240, 10146 and CCR sections 2832.1, 2832.2, 2970 and 2725. As a consequence, respondent subjected his license to discipline under section 10177, subdivisions (d), (g) and (h).

4. On August 19, 2009, respondent signed his Notice of Defense and requested a hearing. Thereafter, the matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et. seq.

5. At the hearing, respondent appeared and identified himself as the Executor of the Estate of Bradley Ryth McIntire. After questioning by the ALJ, respondent conceded that he held a real estate license and was Bradley McIntire. The matter proceeded to hearing.

#### *Salesperson Yager's Conduct Regarding the Property*

6. On October 8, 2010, Mr. Yager signed a "Stipulation and Agreement in Settlement and Order" (Stipulation and Agreement) in this matter. Pursuant to Paragraph 4 of the Stipulation and Agreement, Mr. Yager "admit[s] that the factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are true and correct and the Real Estate Commissioner shall not be required to provide further evidence of such allegations."

On November 1, 2010, the Real Estate Commissioner, by Chief Deputy Commissioner Barbara J. Bigby, adopted the Stipulation and Agreement as his Decision and Order, effective November 24, 2010.

7. As set forth in the Accusation's Second Cause of Action, Mr. Yager engaged in the following conduct regarding the property while he was a salesperson operating under respondent's broker license:

a. Seller Mr. Mapson advertised the property on Craig's List. Mr. Yager responded to this advertisement and told seller that he had a buyer for the property.

b. On January 8, 2007, Mr. Yager prepared and buyer Ms. Frazier executed a Residential Purchase Agreement (Buyer's Offer). The purchase price was \$179,000, with \$10,000 as a down payment.

c. On January 8, 2007, Mr. Yager prepared and seller executed an Option Agreement, with a \$10,000 payment designated as consideration.

d. On January 10, 2007, Mr. Yager prepared and executed with seller, a Commission Agreement, stating that \$5,000 was an advance commission and was due at the same time as the down payment. Respondent insisted on immediate payment of the advance commission with the threat of "taking the Buyer elsewhere", if it was not paid.

e. On January 10, 2007, Mr. Yager prepared and the parties executed seller's Counter Offer to Purchase Offer, which provided for a \$13,000 down payment and provided that buyer could rent the property for 12 months before purchasing the same.

f. On or about January 18, 2007, buyer paid an additional \$3,000 to respondents. On January 18, 2007, Mr. Yager disbursed \$8,000 of the trust funds to seller and \$5,000 to himself as the advance commission.

g. On January 22, 2007, Mr. Yager executed a Receipt for Increased Deposit/Liquidated Damages stating the amount as \$13,000.

h. On January 23, 2007, Mr. Yager prepared and buyer and seller executed a Month to Month Rental Agreement, stating that \$13,000 was a security deposit.

i. Despite the different and contradicting documents and designation of funds, the total amount paid by the buyer was \$13,000.

#### *Audit and Audit Findings*

8. Anthony L. Boiteux holds a Bachelor of Arts degree in business administration with a concentration in accounting. For the past 28 years, Mr. Boiteux has been an auditor for the Department. In this capacity, Mr. Boiteux has conducted over 1,000 audits and he testified for the Department regarding his audit findings in numerous hearings.

Mr. Boiteux's stated purpose in conducting the audit in this matter was to determine whether respondent handled and accounted for trust funds in accordance with Department laws and regulations. At the time of the audit, respondent had approximately 10 licensees working under his broker's license. The audit period examined was October 1, 2006 through October 31, 2008. The audit, which began in mid-November 2008, involved an initial conference with respondent. Mr. Boiteux requested documents, copied original documents and returned them to respondent, reviewed random documents and prepared an audit report with supporting working papers.<sup>3</sup> The audit culminated in the March 28, 2009 Audit Report for Audit Numbers FR070050, FR080028 and 29. Mr. Boiteux's relevant findings, as contained in the Audit Report and testimony, are summarized below.

9. *Trust Fund Shortage:* Respondent maintained one trust fund bank account located at Central Valley Community Bank in Fresno, California, entitled "Bradley McIntire DBA Estate Management Trust Account," account number 8114269 (Trust No. 1). Mr. Boiteux compared respondent's trust fund accountability to the amount of trust funds actually in Trust No. 1 at two different dates of January 18, 2007 and October 31, 2008, the audit's closing date. The January 18, 2007 date was selected after Mr. Boiteux reviewed respondent's records regarding the property described in Factual Finding 3.

On January 18, 2007, and for some uncertain time thereafter, Trust No. 1 had a \$13,000 trust fund shortage. As of this date, Mr. Boiteux determined that the \$13,000 involved transactions regarding the property that should have been held in Trust No. 1.<sup>4</sup> The January 18, 2007 audit date is the day after respondent disbursed the \$13,000 from buyer Ms. Frazier (\$10,000 plus \$3,000) by providing \$8,000 to seller Mapson and \$5,000 to himself as a commission. Mr. Boiteux concluded that the property's buyer and seller had:

agreed in writing to conflicting provisions on three or more related but separate agreements (the Offer [Buyer's Purchase Agreement], the Option Agreement, and the Counter Offer) where said agreements incorporate each other and possibly additional agreements. Two of said three agreements were agreed to under signatures dated 1-10-2007, and the Option Agreement appears to have been signed by 1-9-2007 at the latest.

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<sup>3</sup> As a standard practice, Mr. Boiteux does not leave a licensee's office with original documents; he makes copies and returns the originals.

<sup>4</sup> Mr. Boiteux was not able to determine whether or not all of this shortage had been cured by the audit's October 31, 2008 ending date.

The money was not in Trust No. 1 on January 18, 2007, four days before Mr. Yager issued a receipt to Ms. Frazier for \$13,000. On January 22, 2007 when Ms. Frazier received this receipt, it was fair for her to assume that these funds were being held in trust. By this time, however, the funds had already been disbursed.

Ultimately, Ms. Frazier moved into the property but was never able to buy it. The value of the property decreased. Mr. Mapson sued respondent and received a small claims judgment for \$2,500, representing one half of respondents' commission fee. In his interview with Mr. Boiteux as well as in his testimony, respondent stated that the small claims judge was confused by the transactions regarding the property (as described in Factual Findings 7 and 10) and simply divided the fee between the parties.

10. The separate agreements, with conflicting provisions, were described in the audit and in Mr. Yager's admissions, as follows:

a. *Offer/Buyer's Purchase Agreement:* On January 8, 2007, pursuant to the Buyer's Purchase Agreement, Ms. Frazier gave a \$10,000 personal check, payable to Mr. Mapson, to Estate Management through Mr. Yager as an earnest money deposit in connection with her Offer (see Factual Finding 7(b)). The "instructions directed Estate Management to hold said check uncashed until acceptance and then to deposit it (a \$10,000 check made out to Mapson) within three business days (after acceptance) with an escrow holder." The Purchase Agreement was accepted January 10, 2007.

b. *The Option Agreement:* Seller Mapson's Option Agreement (see Factual Finding 7(c)) provided that buyer would pay him \$10,000 with a personal check payable to Estate Management as consideration for an option to purchase the property. The \$10,000 was to be paid upon acceptance, which occurred no later than January 9, 2007.

c. *The Counter Offer:* This document (see Factual Finding 7(e)), represented that respondent would deposit \$13,000 into Trust No. 1 as earnest money. The Counter Offer provides that the Option Agreement is subject to an attached Addendum Number One (Addendum). The Audit Report described the terms and conditions of the Addendum, and explained that the Addendum:

further incorporates its terms and conditions to become a part of the "Residential Purchase Agreement With Option to Purchase Agreement." The Option Agreement then (in referencing the Purchase Agreement, which is incorporated by its clause 8.C., page 2) says that all of the time limits which begin on the date of acceptance of the Purchase Agreement shall instead begin to run on the date the Option is exercised. Accordingly, the \$13,000 shall be held as a

down payment (C-7) in Trust 1 until the option is exercised—the only exception to that would appear to be if the \$13,000 were to be deposited and held with Financial Title Company pursuant to the Addendum's term and condition number 7. . . The Counter Offer was dated and accepted on January 10, 2007.

Accordingly, as of 10-31-2008 it was still not determinable as to exactly how the \$13,000 should have been allotted. When it was disbursed, it appears to have been the buyer's earnest money deposit that should have been held in Trust 1 or a neutral escrow depository. . . As time went on, it (the \$13,000) may have become characterized (in part or in whole) differently, but that determination can not be made from the existing documents due to the conflicting or erroneous provisions in them, and due to the lack of written agreement by the parties.

In any event, at 1-18-2007 and for some time thereafter, there was a \$13,000 shortage in Trust 1 without a clear understanding as to its final resolution. . . It is accordingly established that (at 1-18-2007) McIntire allowed trust funds to be disbursed in such a manner that the balance of funds in Trust 1 was reduced to an amount less than the aggregate trust fund liability of McIntire to all the owners of the funds. McIntire failed to get the prior written consent of every principal who is an owner of the funds in Trust 1, prior to each disbursement that reduced the balance of funds in such an unauthorized way. McIntire was required to maintain the \$13,000 in Trust 1 (when not immediately placed into the hands of McIntire's entitled principals [or other entitled persons] or a neutral escrow), and maintain it there until disbursed in accordance with the instructions of the person or persons entitled to the funds.

11. Mr. Boiteux concluded that respondent had a \$13,000 shortage in Trust No. 1 because he: (a) allowed the trust funds to be disbursed from Trust No. 1 in a manner that reduced the balance to an amount less than his aggregate trust fund liability to all the owners of the funds, and (b) failed to obtain the prior written consent of every principal who was an owner of funds in Trust No. 1, before disbursing the funds in a way that reduced the balance.

12. The transactions related to the property were undertaken primarily by Mr. Yager, subject to respondent's control and supervision as employing broker. As to these transactions, respondent was the listing broker, the selling broker and the property manager (listing agent for Mapson; selling agent for Fraizer; leasing agent for Mapson; leasing agent for Frazier). The documents described above were

confusing, had conflicting instructions, and were inaccurate in ways as further described in the Audit Report.<sup>5</sup>

13. *Failure to Reconcile Trust Account Funds:* The Audit Report indicated that a real estate broker is required to meet three requirements regarding trust fund record keeping and reconciliation. First, the broker must maintain a record of all trust funds received and disbursed. Second, the broker must maintain separate records for each property, principal or beneficiary showing the allocation of total trust funds to each property or owner. Third, once a month, the broker must reconcile the balance of all of the separate records with the record of all trust funds received and disbursed, and the broker must maintain records of these monthly reconciliations.

This reconciliation "is not the same as a bank reconciliation to show the available cash in the bank at a certain date; and it is not the same as a bank-to-book or a book-to-bank reconciliation." Instead, in this reconciliation,

the broker must identify each property or principal or beneficiary and the trust fund liabilities of the broker to each of said properties or principals or beneficiaries. If one or more of the separate records has a negative or deficit balance (which can not be covered by common ownership), then that separate record's balance shall not be included (netted) with the other separate records' balances. The reason that a negative separate record's balance is not included is because it is not a liability of the broker to a property or principal or beneficiary – rather, it is an example of trust fund mishandling where the broker used other persons' funds to cover another owner's negative cash flow property. This mean that when the reconciliation is prepared, there will be a trust fund shortage, and it is the negative account balance that provides the explanation for the shortage. Additionally, said reconciliation must identify the bank account name and number and the date of the reconciliation.

Mr. Boiteux determined that respondent had complied with the first two requirements. Mr. Boiteux determined that respondent had not complied with the third requirement and did not maintain a reconciliation of the total of all of the separate records balances with the record of trust funds received and disbursed.

14. *Mortgage Loan Disclosures:* Each broker who arranges a loan secured by a lien on real property is required to provide the borrower a written statement on a form approved by the Commissioner that contains all of certain specified information. The approved written statement, which is generally referred to as a Mortgage Loan

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<sup>5</sup> The Audit Report also finds that respondent made certain misrepresentations in relation to transactions respecting the property; however, the Accusation does not allege misrepresentation.

Disclosure Statement or MLDS, must be signed by both the borrower and the broker, or one of the broker's licensees. The broker or licensee may not permit the MLDS to be signed by a borrower if any of the required information is missing. After the MLDS is fully executed, the borrower must be provided with an exact copy and the broker must retain a copy for three years.

Mr. Boiteux reviewed five random loan transactions from respondent and determined that, in three of those transactions, respondent did not retain a copy of the MLDS. There was no persuasive evidence that Mr. Boiteux removed and/or failed to return to respondent any of the original documents he was provided for the audit. Rather, as amply supported by his testimony and the written records, Mr. Boiteux followed his standard practice regarding returning original documents to respondent (see footnote 3, *supra*). Following respondent's inquiries about missing documents, Mr. Boiteux provided respondent with several complete copies of his own copies taken of respondent's original documents used for the audit. The absence of the MLDS cannot be attributed to any conduct by Mr. Boiteux.

15. In light of his education, training and experience as an auditor, Mr. Boiteux's testimony and findings in the Audit Report as set forth in Factual Findings 8 through 14, are persuasive and credible.

#### *Respondent's Testimony*

16. Respondent offered no independent or persuasive evidence to contradict Mr. Boiteux's testimony and key audit findings described above. His testimony is summarized in relevant part as follows:

Respondent testified that he has worked in the real estate industry in California and other states since 1962. Prior to this case, respondent had never received any reprimands or been subject to an audit. Respondent conceded that some of disclosure forms were missing from some of files; however, he believed that Mr. Boiteux removed some of his original documents and did not return them all.

Respondent stated that he was familiar with rules pertaining to trust accounts, but clarified that he "did not do that many trust transactions." Following this experience, respondent closed Trust No. 1, his single trust account. He now holds funds in a check for three days until the transaction is accepted or rejected; he then sends the money to the title company.

Respondent acknowledged Mr. Yager had done "a sloppy job," and he took responsibility for the conduct of Mr. Yager as his employing broker. While respondent reiterated his understanding that he is ultimately responsible for the acts of his salesperson licensees, he stated that he cannot stop an agent from doing something when he is not there. Respondent never saw any of the paperwork relating to the property until it was "signed, sealed, and delivered" to him by Mr. Yager with Ms.

Frazier's check. The check was blank so he endorsed it to Estate Management and deposited it into trust.

Respondent stated that the documents Mr. Yager created in connection with the property were not confusing when carefully read. He later agreed that, as whole, the transactions regarding the property were confusing and contradictory. In his view, if any one of the three documents were removed, what was intended by the transaction was clear. When all three documents were added together, the result "was odd."

Respondent's overriding concern was that the Department's auditor and attorney (as well as the small claims judge) simply did not understand the nature of real estate option agreements. The reason the parties entered into an option agreement was that the buyer was unable to qualify for a loan at the time and the seller agreed to it. In his view, the buyer knew she was putting her \$13,000 on line for the option agreement and that if she did not exercise it, it "would be gone" by January 22, 2007. In respondent's view, the disbursement of the funds from the trust account was authorized by the Lease Option Agreement. Respondent's \$5,000 commission was for bringing the parties together, drafting the agreement and getting the parties to sign. It was payable at the time the option was signed.

Due to the property's decline in market value, a later effort to renegotiate with the seller was unacceptable. Mr. Mapson then got angry and complained to the Department.

17. *Discussion:* Respondent's inconsistent testimony about Mr. Yager's conduct regarding the property and whether the documents he created in relation to those transactions were confusing is concerning. Respondent's description of his relationship with Mr. Yager established that he failed to act in a supervisory capacity toward this licensee and that he abdicated this responsibility. Respondent passively accepted the documents created by Mr. Yager regarding the property as a "done deal." This attitude is particularly troublesome because, at the time of the audit, respondent was supervising broker for ten licensees. As a supervising broker, respondent has a duty to actively manage the real estate transactions of the salespersons he employs and to ensure that the documents created by those salespersons in relation to real estate transactions are clear, particularly those "documents which may have a material effect upon the rights or obligations of a party to the transaction..." (CCR, § 2725, subds. (a) and (b).) His failure to do so poses a risk of harm to the public.

Respondent has taken some remedial action regarding handling of trust funds. However, simply eliminating his current use of trust funds does not ensure that he understands how to properly manage and account for trusts that may be established in the future. This lack of knowledge poses a risk of harm to the public. When all facts and circumstances are considered, including respondent's length of licensure and



absence of any prior discipline, a restricted broker license subject to terms and conditions which include trust fund education and a limit on the number of licensees respondent may supervise, is appropriate to protect the public.

## LEGAL CONCLUSIONS

1. In an Accusation seeking to revoke, suspend, or otherwise discipline respondent's professional license, the agency has the burden of proof to establish the allegations in the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App. 3d 853, 856.) As set forth below, complainant has met its burden that respondent's licenses should be revoked pursuant to section 10177, subdivisions (d), (g), and (h).

2. Section 10177, subdivisions (d), (g), and (h), authorize the commissioner to suspend or revoke the license of a real estate licensee or of a real estate corporation, where the individual licensee or an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

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

[¶] . . . [¶]

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

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

The "willful" disregard or violation of the real estate laws and regulations described in subdivision (d) does not require an intent to violate the law; all that is required is an intent to engage in the act or conduct that is prohibited by the law. (*Milner v. Fox* (1980) 102 Cal.App.3d 567, 589.)

3. *Supervision of Salesperson:* The obligation of a broker licensee, including an officer designated by a corporate broker licensee (§ 10159.2, subd. (a))<sup>6</sup>, to responsibly supervise salespersons is further described in CCR section 2725. In pertinent part, this regulation provides that “a broker shall exercise reasonable supervision over the activities of his or her salespersons . . . reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage: (a) transactions requiring a real estate license, (b) documents which may have a material effect upon the rights or obligations of a party to the transaction. . . [and] (d) the handling of trust funds. . .” Further, “a broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.” (*Ibid.*)

4. *Trust Fund Accounts:* Section 10145 provides, in pertinent part, as follows:

(a)(1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker’s principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

[¶] . . . [¶]

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

[¶] . . . [¶]

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<sup>6</sup> Section 10159.2, subdivision (a), provides: “The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.”

The Department's regulations, commencing at CCR section 2830.1, further delineate requirements for brokers regarding the maintenance and handling of trust accounts. For example, CCR section 2831 mandates that brokers "keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal," and specifically details the information required.

CCR section 2832, subdivision (a), provides that "compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson." CCR section 2832.1 provides that "the written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds."

CCR section 2831.2. provides:

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

5. *Mortgage Loan Disclosure Statements:* Section 10240 provides, in pertinent part, that every real estate broker who negotiates a loan to be secured directly or collaterally by a lien on real property "shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of the statement as signed by the borrower. No real estate licensee shall permit the statement to be signed by a borrower if any information required by Section 10241 is omitted."

6. *Legal Cause for License Discipline:* As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 6, 7, and 10 through 12 and Legal Conclusion 3, the Department has met its burden of establishing that respondent violated sections 10159.2 and CCR section 2725 by failing to exercise reasonable supervision and control over Mr. Yager's sales and property management activities. Legal cause is established to revoke respondent's licenses pursuant to section 10177, subdivision (d) and (h).

7. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 10 through 13, the Department has met its burden of establishing that respondent violated sections 10145, 10240, 10159.2 and CCR sections 2725, 2831.2 and 2832.1 based upon the \$13,000 trust fund shortage in Trust No. 1 existing on January 18, 2007, his conduct of failing to properly reconcile the funds in Trust No. 1, and his failure to retain copies of the Mortgage Loan Disclosure Statements. Legal cause is established to revoke respondent's licenses pursuant to section 10177, subdivision (d), (g) and (h).

8. Respondent's testimony established that he had no prior history of discipline by the Department. The Department offered no evidence to rebut this. Based upon the respondent's lengthy licensure, the absence of prior discipline, and the remedial steps he has taken regarding use of trust accounts, it would not be contrary to the public interest to issue a restricted broker license with a period of actual suspension and subject to the terms and conditions set forth below.

#### ORDER

1. *Respondent Yager:* The discipline imposed upon respondent Yager's licensing rights is governed by the Department's November 1, 2010 Decision and Order.

2. *Respondent McIntire:* All licenses and licensing rights of Respondent Bradley R. McIntire under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision.

The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

Not adopted

a. *Actual Suspension:* The restricted real estate license issued to respondent pursuant to this Decision shall be suspended for ninety (90) days from the date of issuance of said restricted license.

b. *Monetary Penalty in Lieu of Partial Suspension:* If respondent petitions, forty five (45) days of said suspension shall be stayed upon condition that:

1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$100 for each day of the suspension for a total monetary penalty of \$4,500.

2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

c. *Term of Restricted License:* Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

d. *Restriction on Supervising Licensees:* During the term of his restricted license, respondent shall be limited to supervising no more than five (5) licensees.

e. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

f. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

g. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Not adopted

h. *Professional Responsibility Examination:* Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

i. *Trust Fund Violations:* Pursuant to Section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable cost for the audit which led to this disciplinary action. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

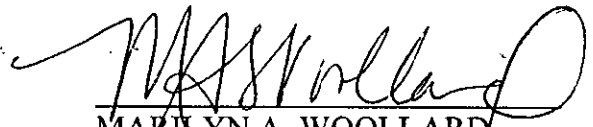
j. *Trust Fund Violation Course Requirement:* Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

k. *Reporting Requirement:* Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent an

Not Adopted

periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

DATED: January 24, 2011



MARILYN A. WOOLLARD  
Administrative Law Judge  
Office of Administrative Hearings

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187007  
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

NOV - 4 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) DRE No. H-2415 FR  
12 )  
13 BRADLEY R. MCINTIRE ) STIPULATION AND AGREEMENT  
14 and BRANDON LEE YAGER, ) IN SETTLEMENT AND ORDER  
15 Respondents. )

16 It is hereby stipulated by and between BRANDON LEE YAGER (Respondent),  
17 his attorney Frank M. Buda and the Complainant, acting by and through Richard K. Uno,  
18 Counsel for the Department of Real Estate; as follows for the purpose of settling and disposing  
19 of the Accusation filed on August 11, 2009, in this matter:

20 1. All issues which were to be contested and all evidence which was to be  
21 presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing  
22 was to be held in accordance with the provisions of the Administrative Procedure Act ("APA"),  
23 shall instead and in place thereof be submitted solely on the basis of the provisions of this  
24 Stipulation and Agreement In Settlement and Order.

25 2. Respondent has received, read and understands the Statement to Respondent,  
26 the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate  
27 in this proceeding.



1                   3. On August 24, 2009, Respondent filed a Notice of Defense pursuant to Section  
2 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the  
3 Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense.  
4 Respondent acknowledges that he understands that by withdrawing said Notice of Defense he  
5 will thereby waive his right to require the Commissioner to prove the allegations in the  
6 Accusation at a contested hearing held in accordance with the provisions of the APA and that  
7 he will waive other rights afforded to him in connection with the hearing such as the right to  
8 present evidence in defense of the allegations in the Accusation and the right to cross-examine  
9 witnesses.

10                   4. Respondent, pursuant to the limitations set forth below, hereby admit that the  
11 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are  
12 true and correct and the Real Estate Commissioner shall not be required to provide further  
13 evidence of such allegations.

14                   5. It is understood by the parties that the Real Estate Commissioner may adopt  
15 the Stipulation and Agreement In Settlement and Order as his Decision in this matter, thereby  
16 imposing the penalty and sanctions on Respondent's real estate license and license rights as set  
17 forth in the below "Order". In the event that the Commissioner in his discretion does not adopt  
18 the Stipulation and Agreement In Settlement and Order, it shall be void and of no effect, and  
19 Respondent shall retain the right to a hearing and proceeding on the Accusation under all the  
20 provisions of the APA and shall not be bound by any admission or waiver made herein.

21                   6. The Order or any subsequent Order of the Real Estate Commissioner made  
22 pursuant to this Stipulation and Agreement In Settlement and Order shall not constitute an  
23 estoppel, merger or bar to any further administrative or civil proceedings by the Department of  
24 Real Estate with respect to any matters which were not specifically alleged to be causes for  
25 accusation in this proceeding.

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1 DETERMINATION OF ISSUES

2 By reason of the foregoing stipulations, admissions and waivers, and solely for  
3 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and  
4 agreed that the acts and/or omissions of Respondent, as described in the Accusation, constitute  
5 grounds for the suspension or revocation of the licenses and license rights of Respondent under  
6 the provisions of Section 2970 of the Regulations and Sections 10146, 10177(d) and 10177(g)  
7 of the Business of Professions Code (the Code).

8 ORDER

9 The real estate salesperson license and license rights of Respondent BRANDON  
10 LEE YAGER (YAGER) under the Real Estate Law are suspended for a period of sixty (60)  
11 days from the effective date of this Order; provided, however, that if Respondent petitions, said  
12 suspension shall be stayed upon condition that:

13 1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the  
14 Business and Professions Code at the rate of \$75.00 per day for thirty (30) days of the  
15 suspension for a total monetary penalty of \$2,250.00. Upon receipt of payment, thirty (30) days  
16 of the suspension will then be stayed.

17 2. Said payment shall be in the form of a cashier's check or certified check made  
18 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the  
19 Department prior to the effective date of the Decision in this matter.

20 3. No further cause for disciplinary action against the real estate license of  
21 Respondent occurs within one year from the effective date of the Decision in this matter.

22 4. If Respondent fails to pay the monetary penalty in accordance with the terms  
23 and conditions of the Decision, the Commissioner may, without a hearing, order the immediate  
24 execution of all or any part of the stayed suspension in which event the Respondent shall not be  
25 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department  
26 under the terms of this Decision.

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5. If Respondent pays the monetary penalty, the remaining thirty (30) days of  
said sixty (60) day suspension will be stayed, and if no further cause for disciplinary action  
against the real estate license of Respondent occurs within one (1) year from the effective date  
of the Decision, the stay hereby granted shall become permanent.

6. Respondent shall, within six months from the effective date of this Decision,  
take and pass the Professional Responsibility Examination administered by the Department  
including the payment of the appropriate examination fee. If Respondent fails to satisfy this  
condition, the Commissioner may order suspension of Respondent's license until Respondent  
passes the examination.

10/14/10  
DATED

Richard K. Uno  
RICHARD K. UNO, Counsel  
DEPARTMENT OF REAL ESTATE

\*\*\*

I have read the Stipulation and Agreement in Settlement and Order and its terms  
are understood by me and are agreeable and acceptable to me. I understand that I am waiving  
rights given to me by the California Administrative Procedure Act (including but not limited to  
Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly,  
intelligently, and voluntarily waive those rights, including the right of requiring the  
Commissioner to prove the allegations in the Accusation at a hearing at which I would have the  
right to cross-examine witnesses against me and to present evidence in defense and mitigation  
of the charges.

October 8, 2010  
DATED

Brandon Lee Vager  
BRANDON LEE VAGER  
Respondent

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*I have reviewed this Stipulation and Agreement as to form and content and have advised my client accordingly.*

10-8-10  
DATED

*Frank M. Buda*  
FRANK M. BUDA  
Attorney For Respondent

\*\*\*

The foregoing Stipulation and Agreement is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on

NOV 24 2010

IT IS SO ORDERED 11-1-2010

JEFF DAVI  
Real Estate Commissioner

*Barbara J. Bigby*

BY: Barbara J. Bigby  
Chief Deputy Commissioner

1 RICHARD K. UNO, COUNSEL (SBN 98275)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007  
5 Telephone: (916) 227-2380  
6  
7

FILED

AUG 11 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 BRADLEY R. MCINTIRE and ) No. H-2415 FR  
13 BRANDON LEE YAGER, ) ACCUSATION  
14 Respondents. )

15 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate Commissioner of  
16 the State of California for cause of accusation against BRADLEY R. MCINTIRE (MCINTIRE),  
17 and BRANDON LEE YAGER (YAGER), (collectively Respondents), is informed and alleges  
18 as follows:

19 1

20 The Complainant makes this Accusation in his official capacity.

21 2

22 Respondent MCINTIRE is presently licensed and/or has license rights under the  
23 Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (the  
24 Code) as a real estate broker and does business as Estate Mortgage, Estate Management and  
25 Estate Homes & Land.

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Respondent YAGER is presently licensed and/or has license rights under the Code as a real estate salesperson.

4

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131 (a) and (b) of the Code, including the operation and conduct of a property management business wherein Respondents leased, rented, or offered to lease or rent, solicited listings for lease or rent, collected rents from tenants or lessees, or performed other services for real property owners and tenants or lessees; and including the operation and conduct of a residential resale brokerage wherein Respondents bought, sold, or offered to buy or sell, solicited or obtained listings of, and negotiated the purchase, sale or exchange of real property or business opportunities, all for or in expectation of compensation.

FIRST CAUSE OF ACTION

5

Beginning on or about November 19, 2008 and intermittently through March 27, 2009, the Department conducted an audit of Respondents' sales activities and property management business for the period of October 1, 2006 to October 31, 2008 (audit period), as set forth in Audit Nos. FR070050, FR080028 and FR080029, dated March 27, 2009. During the course of the sales activities and property management activities described in Paragraph 4, above, Respondents received and disbursed funds held in trust on behalf of others.

6

The following facts were ascertained by the audit for the period referred to above:  
a. MCINTIRE maintained one trust account at Central Valley Community Bank-080, Fresno, California, which was designated as the "Bradley McIntire DBA Estate Management Trust Account, account number 8114269 (Trust #1).

///

1           b. Trust #1 was used for the processing of trust funds that were collected in the  
2 form of rents, option fees and earnest money deposits.

3           c. As of January 18, 2007, there was one negative account balance (a shortage of  
4 funds) of \$13,000.00. This is related to several transactions which are set forth in the Second  
5 Cause of Action, concerning certain real property known as 2231 Sylmar Avenue, #4, Clovis,  
6 California. Respondents received \$13,000.00 in trust funds from Ellen Frazier (Buyer), who  
7 attempted to purchase the property through a "rent to own" agreement arranged by Respondents.  
8 These funds were variously characterized as a down payment, a security deposit and an option  
9 payment. Before any real property transaction closed or before the property was vacated by  
10 Frazier, MCINTIRE disbursed \$8,000.00 to Mapson, (Seller), of the property and \$5,000.00 to  
11 himself as commission, in violation of Section 2832.1 of Title 10, California Code of  
12 Regulations (Regulations), and Section 10145 of the Code.

13           d. MCINTIRE failed to reconcile the balance of all separate beneficiary records  
14 with the balance of all trust funds received and disbursed for Trust Account #1, as required by  
15 Section 2831.2 of the Regulations.

16           e. MCINTIRE failed to retain copies of the Mortgage Loan Disclosure  
17 Statements in violation of Section 10240 of the Code.

18           f. The acts and/or omissions of MCINTIRE as alleged above violate Sections of  
19 the Code (BPC) and Regulations (Reg.) and constitute grounds for disciplinary action under the  
20 provisions set out below:

<u>Paragraph</u>	<u>Violation</u>	<u>Grounds for Discipline</u>
6 (c)	Reg. 2832.1 BPC 10145	BPC 10177(d)
6 (d)	Reg. 2831.2	BPC 10177(d)
6 (e)	BPC 10240	BPC 10177(d)

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27 ///

1 SECOND CAUSE OF ACTION

2 7

3 Seller advertised on Craig's List the sale of his property known as 2231 Sylmar  
4 Avenue, #4 in Clovis, California. YAGER responded to the ad, indicating to Seller that he had  
5 a buyer for the property.

6 8

7 On January 8, 2007, YAGER prepared and Buyer executed a Residential  
8 Purchase Agreement (Buyer's Offer). The purchase price was \$179,000, with \$10,000 as a  
9 down payment.

10 9

11 On January 8, 2007, YAGER prepared and Seller executed an Option Agreement,  
12 with a \$10,000 payment designated as consideration.

13 10

14 On January 10, 2007, YAGER prepared and executed with Seller, a Commission  
15 Agreement, stating that \$5,000 was an advance commission and was due at the same time as the  
16 down payment. Respondent insisted on immediate payment of the advance commission with  
17 the threat of "taking the Buyer elsewhere", if it was not paid. MCINTIRE did not submit an  
18 advance fee agreement to the Department for approval prior to, or at any time since, January 10,  
19 2007.

20 11

21 On January 10, 2007, YAGER prepared and the parties executed Seller's Counter  
22 Offer to Purchase Offer, which provided for a \$13,000 down payment and provided that Buyer  
23 could rent the property for 12 months before purchasing the same.

24 12

25 On or about January 18, 2007, Buyer paid an additional \$3,000 to Respondents.  
26 On January 18, 2007, YAGER disbursed \$8,000 of the trust funds to Seller and \$5,000 to himself  
27 as the advance commission.



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On January 22, 2007 YAGER executed a Receipt for Increased Deposit/Liquidated Damages stating the amount as \$13,000.

14

On January 23, 2007, YAGER prepared and Buyer and Seller executed a Month to Month Rental Agreement, stating that \$13,000 was a security deposit.

15

Despite the different and contradicting documents and designation of funds, the total amount paid by Buyer was \$13,000.

16

On April 11, 2008, in small claims court, Buyer obtained a judgment against Respondents for \$2,500 in damages arising out of the transactions described above for a cause of action based on breach of contract.

17

The above acts and/or omissions of Respondents violate Section 10085.5 and Section 10146 of the Code and Section 2970 of the Regulations and constitute cause to discipline under Section 10177(d) and (g) of the Code.

THIRD CAUSE OF ACTION

18

At all times herein above mentioned, MCINTYRE, was responsible, as the supervising broker for YAGER, for the supervision and control of the activities conducted on behalf of MCINTYRE'S businesses by its employees. MCINTYRE failed to exercise reasonable supervision and control over the sales and property management activities of YAGER. In particular MCINTYRE permitted, ratified and /or caused the conduct described in the Second Cause of Action, above, to occur, and failed to take reasonable steps, including but not limited

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///

1 to handling of trust funds, supervision of employees, and the implementation of policies, rules,  
2 and systems to ensure the compliance of the business with the Real Estate Law and the  
3 Regulations.

4 19

5 The above acts and/or omissions of MCINTIRE violate Section 10159.2 of the  
6 Code and Section 2725 of the Regulations and constitute ground for disciplinary action under the  
7 provisions of Section 10177(d) and (h) of the Code

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, and for  
11 such other and further relief as may be proper under the provisions of law.

12  
13  
14   
JOHN W. SWEENEY  
Deputy Real Estate Commissioner

15 Dated at Fresno, California,  
16 this 6<sup>th</sup> day of August, 2009.