

OCT 02 2019

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:	)	DRE No. H-3151 FR
KEVIN EARL CHRISTIANSEN and	)	
CAROL ANN GAIDOS,	)	OAH No. 2018070079.1
Respondents.	)	

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DECISION

The Proposed Decision dated July 12, 2019, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

1. Page 3, Factual Findings 5, Line 1, is corrected to read as follows:  
"January 24...";
2. Page 6, Factual Findings 14, Line 2, is corrected to read as follows:  
"\$3650...";
3. Page 18, Legal Conclusions 24, Line 6, is corrected to read as follows:  
"\$3650...".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker license is granted to Respondent KEVIN EARL CHRISTIANSEN.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent CAROL ANN GAIDOS.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or

analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on OCT 23 2019.

IT IS SO ORDERED September 6, 2019

DANIEL J. SANDRI  
ACTING REAL ESTATE COMMISSIONER

*Daniel J. Sandri*



## FACTUAL FINDINGS

### Background Information and Jurisdiction

1. On March 29, 1985, respondent Christiansen was licensed as a real estate broker by the Department, license number B/00695968. At all times relevant to the allegations in this proceeding, respondent Christiansen was licensed as a real estate broker. On July 16, 1996, respondent Gaidos was licensed as a real estate salesperson by the Department. At all times relevant to the allegations in this proceeding, respondent Gaidos was licensed as a real estate salesperson.

2. Respondent Gaidos was employed with Cristobal, Mullikin, Morales, Inc. (CMMI) from January 6, 2014, until May 3, 2017. The Department was not informed of respondent Gaidos's termination of her employment from CMMI until May 5, 2017.

3. On June 9, 2011, the Department issued a broker corporation license to Sierra-Coastal Enterprises (Sierra), with respondent Christiansen as its designated broker-officer. On July 13, 2011, respondent Christiansen filed a notice with the Department to add DBA (doing business as) names "Classic Property Management" (Classic) and "K&K Property Management" (K&K) to Sierra's broker corporation license. On June 8, 2015, Sierra's broker corporation license expired. On April 13, 2017, Sierra's broker corporation license was renewed. At all times relevant to this proceeding, respondents conducted real estate activity under respondent Christiansen's individual broker license and Sierra's broker corporation license DBA Classic and K&K.

4. As Sierra's designated broker-officer, respondent Christiansen was responsible for supervising the activities of Sierra's officers, agents, real estate

licensees, and employees for which a real estate license is required, to ensure the corporation's compliance with real estate laws and regulations.

5. On January <sup>24</sup>~~19~~, 2018, complainant filed the Accusation in her official capacity. Complainant seeks to discipline respondents' licenses for alleged violations of the Real Estate Law for: the mismanagement in the maintenance of three bank accounts audited by the Department; the mismanagement of funds in two accounts due to insufficient funds; entering into property management and lease agreements under Sierra's licensure when its license was expired; respondent Christiansen paying compensation to respondent Gaidos under the DBA of Classic, when at the time, respondent Gaidos was not licensed under respondent Christiansen or Sierra; respondent Christiansen, employing respondent Gaidos and licensed real estate salesperson Lisa C. Mount, when neither were listed as salespersons on his license; respondent Christiansen failing to notify the Department within five days after employing respondent Gaidos of her employment; and respondent Christiansen for failing to properly supervise respondent Gaidos and Sierra employees.<sup>1</sup>

6. Respondents timely filed a Notice of Defense, pursuant to Government Code section 11506. All jurisdictional requirements have been met.

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<sup>1</sup> The First Cause of Action listed nine allegations: three pertaining to bank account shortages, and six pertaining to other violations allegedly committed by both respondents. The cause of action repeatedly ascribed violations to "Respondents." However, this reference is inaccurate, as eight of the nine allegations are applicable only to respondent Christiansen, as the broker. Only one violation – for commingling, pursuant to Business and Professions Code section 10176, subdivision (e) – can be ascribed to respondent Gaidos.

## March 2017 Audit

7. From March 27 to March 30, 2017, Amanda N. Patterson, an Auditor II with the Department, conducted an audit and review of respondent Christiansen's office records for the period of January 1, 2015, through January 31, 2017 (audit period). As part of the audit, respondent Christiansen provided all of the documents and records Ms. Patterson requested, and allowed her to interview him regarding his business and accounting practices. Respondent Gaidos also cooperated with Ms. Patterson during the audit. Ms. Patterson credibly testified at hearing, and wrote a report detailing the audit's findings.

8. Respondent Christiansen engaged in property management activities and in so doing, accepted or received funds from or on behalf of various owners, lessees, and others related to those activities, and deposited funds into three bank accounts: Trust Account No. 1 – Chase Bank, Scotts Valley, CA (Acct. no. 6064), entitled "Classic Property Management Trust Account;" Bank Account No. 1 – Yosemite Bank, Mariposa, CA (Acct. no. 5078), entitled "Sierra-Coastal Enterprises DBA Classic Property Management;" and Bank Account No. 2 – Central Valley Community Bank, Prather, CA (Acct. No. 0982), entitled "Sierra-Coastal Enterprises DBA K and K Property Management." Respondent Christiansen also thereafter made various disbursements of trust funds. Ms. Patterson performed an accountability audit on respondent Christiansen's three bank accounts. The audit revealed several discrepancies.

9. As of January 31, 2017: Trust Account No. 1 revealed a shortage in funds of \$1,721.41; Bank Account No. 1 revealed a shortage in funds of \$13,451.26; and Bank Account No. 2 revealed a shortage in funds of \$17,266.75. Respondent Christiansen failed to obtain written permission from the owners of trust funds in these three accounts to allow the balances to drop below accountability. Respondent Christiansen

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failed to designate Bank Account No. 1 and Bank Account No. 2 in the name of a holder of a real estate license as trustee,<sup>2</sup> nor were the accounts designated as trust accounts as required by law.

10. Respondents Christiansen and Gaidos caused or permitted funds of others received and held by respondents to be commingled with respondents' own property account in the amount of \$1,574.76, in Bank Account No. 2. Respondents Christiansen and Gaidos caused or permitted funds of others received and held by respondents to be commingled with broker funds in excess of \$200, in Bank Account No. 2.

11. Respondent Christiansen failed to reconcile, at least once per month, the total balance of all separate beneficiary or transaction records with the control records for Trust Account No. 1, Bank Account No. 1, and Bank Account No. 2.

12. Respondent Christiansen allowed respondent Gaidos, a salesperson not licensed to respondent Christiansen as broker, to be a signatory on Trust Account No. 1 and Bank Account No. 2.

13. From January 17 through 19, 2017, funds from Bank Account No. 1 were used to pay for bank fees, owner distributions, and management fees despite there being insufficient funds in that account to cover those costs.

14. From May 7, 2015, through January 5, 2017, funds from Bank Account No. 2 were used to pay for bank fees, non-sufficient funds (NSF) fees, and checks despite there being insufficient funds in that account to cover those costs. Ms.

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<sup>2</sup> At the time of the violations, respondent Christiansen was the sole signatory on both accounts.

Patterson's audit revealed that on December 21, 2015, and December 22, 2016, respondent Christiansen's then staff employee, Julie D., transferred <sup>3,650</sup> \$3,550 and \$9,300, respectively, out of Bank Account No. 2, without respondent Christiansen's knowledge or consent and when there were insufficient funds on deposit.<sup>3</sup>

### **Property Management**

15. Respondents acted as real estate brokers, including the operation and conduct of a property management business with the public, where, on behalf of others for compensation or expected compensation, respondents leased or rented or offered to lease or rent or solicited listings of places for rent, or solicited for prospective tenants. Respondents also negotiated the sale, purchase, or exchange of leases on real property, or on a business opportunity, or collected rent from tenants.

From June 25, 2015, until December 6, 2016, respondents entered into nine property management agreements under Sierra's broker corporation license while Sierra's license was expired. From August 17, 2015, until February 10, 2017, respondents entered into five lease agreements under Sierra's broker corporation license while Sierra's license was expired. Respondent Christiansen credibly testified that the license expiration was due to simple oversight on his part. As soon as he became aware of the expiration he renewed the licensure. During the expiration period, respondent Christiansen's broker license and respondent Gaidos's salesperson license were both current.

16. On September 1, 2010, respondent Christiansen employed respondent Gaidos to perform property management activities as described in Finding 15, and as

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<sup>3</sup> Julie D. embezzled the transferred funds and was criminally prosecuted.



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set forth in a written employment agreement. Respondent Christiansen did not add respondent Gaidos to his broker's license until May 5, 2017, but under the employment agreement, he gave her permission to perform property management activities, which she conducted while under the license of another broker, CMMI. On April 11, 2017, respondent Christiansen issued a check in the amount of \$4,500 to respondent Gaidos as compensation for her services.

17. On February 13, 2014, respondent Christiansen employed licensed real estate salesperson Lisa C. Mount pursuant to a written employment agreement dated the same. Respondent did not notify the Department of Ms. Mount's employment and did not list her on his broker's license. Respondent explained to Ms. Patterson that he did not notify the Department so he could avoid paying the Department's service fee for having Ms. Mount's name appear on his license.

18. The sum of the evidence established that respondent Christiansen failed to exercise reasonable supervision and control over the handling of trust funds, reasonable supervision over his employees including respondent Gaidos and Julie D., and failed to implement company practices and policies to ensure compliance with law and regulations.

### **Respondents' Evidence**

19. Respondents cooperated with the Department's audit process and were forthcoming in their interviews with the Department's investigator; respondent Christiansen provided access to all documentation located at two of his business offices. Respondent Christiansen borrowed money in order to restore funds improperly withdrawn from the three bank accounts subject to the Department audit. When Ms. Patterson informed respondent Christiansen of his failure to properly notify the

Department of his employment of respondent Gaidos, he immediately provided such notice. When Ms. Patterson's audit revealed that Julie D. had embezzled funds, respondent Christiansen fired Julie D., provided evidence of Julie D.'s crime to the police,<sup>4</sup> and replaced the stolen funds with money from his personal Individual Retirement Account. Respondent Christiansen completed a trust accounting course in the spring of 2019.

20. Respondent Christiansen recounted that when someone from the Department audited his business in 2010, he prepared and executed with respondent Gaidos an employment agreement, which he did to satisfy the Department; he then sent a copy of it by fax to the Department but received no response. He further contended that this 2010 audit was a two-week process, conducted telephonically with an auditor whose name he could not recall. The audit apparently revealed no problems, except for a bank signature card that did not designate the account as a trust account. Respondent Christiansen recalled maintaining a file reflecting the audit, but he could not locate any such written documentation of the audit prior to hearing. In sum, the evidence did not establish the parameters of a 2010 Department audit of respondent Christiansen's business. Consequently, respondent Christiansen's testimony on this subject was given little weight.

21. Respondent Christiansen stated Ms. Mount's salesperson license was under his broker's license because she was not selling real estate at the time, and because the Department advised him that Ms. Mount's licensure could be under the Sierra broker-corporation license. Eventually he sold the K&K name of the property management company to Mount, who now works under a different broker. He

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<sup>4</sup> Julie D. was criminally prosecuted and convicted for embezzlement.

admitted that at the time of the alleged violations, he was delegating the responsibility of reconciling the bank accounts to other employees. He was unaware of Sierra's expired license status until Ms. Patterson brought it to his attention, and thereafter immediately reinstated Sierra's license.

22. Respondents Gaidos and Christiansen began working together approximately 12 years ago in a property management business in the Scotts Valley area, which they named Classic; respondents set up the business as co-owners with 50/50 shares. Respondent Gaidos had previously worked with Century 21 Realty under respondent Christiansen's broker license, but respondent Christiansen sold that business and respondent Gaidos thereafter worked selling real estate only under the new owners (CMMI) and Century 21. Respondent Gaidos believed she could work under two brokers – respondent Christiansen while engaging in property management, and CMMI while selling real estate – because they were two separate types of businesses. Respondent Gaidos had no involvement in overseeing the books, accounting, or finances of the property management business. The activities, which encompassed the three bank accounts audited by the Department in 2017, were handled by respondent Christiansen.

## **Discussion**

23. A substantial majority of the allegations in the Accusation are directed at respondent Christiansen. Yet, despite respondent Gaidos's non-involvement in the accounting and finances of the property management business, respondent Gaidos was culpable for commingling, and her lack of interest or engagement with Classic's accounting practices demonstrated negligence or incompetence in that regard.

24. As the licensed broker, respondent Christiansen was responsible for the multiple failures in proper accounting established by the 2017 audit, and although he was willing to admit his mistakes, he appeared to be a broker who ran his businesses without sufficient protocols, systems of accounting and handling of funds, and staff oversight. That an employee could embezzle thousands of dollars essentially in plain sight exemplified his ineffectiveness. His failure to notice that his broker-corporation license had expired, and his inability to describe in any detail another Department audit which occurred several years ago, indicate he was not adequately focused on fulfilling his duties under the real estate law. Nonetheless, respondent Christiansen suffered no client complaints as a result of his violations, and corrected the accounting deficiencies the Department discovered using his own money.

25. Respondent Christiansen has two prior disciplinary matters. On April 20, 1990, the Department suspended respondent Christiansen's license for seven days, with the suspension stayed pursuant to terms and conditions. On March 3, 1997, the Department revoked his license and issued him a restricted real estate broker license pursuant to terms and conditions, due to his violation of title 10, California Code of Regulations (Regulation), section 2831.1 (separate beneficiary or transaction records required) and Business and Professions Code (Code) sections 10177, subdivisions (d) (willful disregard of real estate laws) and (h) (failure to exercise reasonable supervision). These matters are considered aggravating factors in determining discipline, but due to their remoteness in time, they are afforded minimal weight.

26. Respondent Christiansen argued that because Julie D.'s criminal acts were not foreseeable to respondent Christiansen, he could not have knowingly failed to "supervise" her in her thievery. This contention is without merit. The doctrine of *respondeat superior* has long held employers responsible for the acts of their

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employees. If a licensee elects to operate his business through employees, the licensee must be responsible to the licensing authority for the employees' conduct in the exercise of the license. (*Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 144.) By virtue of ownership of a license, the owner has a responsibility to see to it that the license is not used in violation of the law. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360.) Thus, respondent Christiansen is responsible for Julie D.'s misconduct.

27. Both respondents presented as sincere, candid witnesses respectful of the Department's authority, and both cooperated with the audit, Ms. Patterson's inquiries, and Department investigative interviews. Both appear capable of achieving effective rehabilitation through the probationary orders set forth below.

### **Costs**

28. The Board submitted written evidence of its costs of investigating and prosecuting this matter, in the total of \$18,485.67. These costs are itemized for the individuals who billed time on the case. The largest portion of billable time was \$8,862.37, attributed to Ms. Patterson, who performed the audit that formed the basis for most of the allegations in the Accusation; she billed 150 hours of audit time at a rate of \$57 per hour, plus \$177.62 in travel costs and \$134.75 in supervisory review costs. Considering the scope of the audit and the multiple accounting violations it revealed, these costs are reasonable.

29. Special Investigator Araceli Amezola billed 108.8 hours of investigation time at a rate of \$62 per hour. Complainant did not submit any investigation reports from Ms. Amezola. Although Ms. Amezola testified at hearing, her testimony was limited to identifying documentation she retrieved from respondents during interviews

and in preparation for the audit, and authenticating the three "Narrative of Interview" memoranda she prepared, totaling four pages, of the two in-person interviews she conducted with respondents. Considering the scope of the allegations and issues involved in this case and that both respondents cooperated with the Department and essentially admitted most of the alleged violations, the investigator's costs do not appear reasonable. Also, the primary causes for discipline alleged in this matter arise from an audit that did not involve the investigator. Due to these factors, the matter would not require the commitment of 108 hours of investigation. A more reasonable individual total for investigation is 35 hours, which, at \$62 per hour, totals \$2,170. Other non-legal and supervisory Department employees billed time on the case totaling \$221.25, which is reasonable.

30. Complainant's counsel submitted a certified statement of costs detailing her costs for enforcement of the case. In an attached activity log, counsel provides comments on the types of activities she performed in support of her billings. Her original total includes 29.85 hours of time spent working on the case, which, at a rate of \$89 per hour, total \$2,656.65. Considering the scope of the allegations and evidence in complainant's case, these costs are reasonable.

31. At hearing, respondents presented no evidence regarding their ability to pay costs.

32. Based on the preceding analysis, complainant's total recoverable costs are \$13,910.27.

## LEGAL CONCLUSIONS

1. The standard of proof to be used in these proceedings is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856, 185 Cal.Rptr. 601.) This means the burden rests with complainant to offer proof that is clear, explicit and unequivocal — so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

### Statutory Authority

#### FAILURE TO SUPERVISE

2. Code 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.

3. Regulation section 2725 requires a broker to exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes establishing policies, rules, procedures and systems to review, oversee, inspect and manage real estate transactions, real estate documents, filing and storage and maintenance of such documents, and the handling of trust funds.

4. Code section 10177, subdivision (h), provides that the commissioner of the Bureau may discipline a licensee who fails to exercise reasonable supervision, as a designated officer, over the activities of the corporation for which the licensee's real estate license was required.

### **ACCOUNTING VIOLATIONS**

5. Code section 10145, subdivision (a)(1), provides:

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.

6. Regulations section 2832 states that compliance with Code section 10145 requires that funds held on behalf of another are placed in a neutral escrow depository or trust account.

7. Regulations section 2832.1 requires a broker to obtain the written consent of every principal who is an owner of the funds in the account prior to a disbursement which 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.



8. Regulations section 2834, subdivision (a)(1), provides that withdrawals may be made from an individual broker's trust fund account only upon the signature of the broker or a salesperson licensed to the broker.

9. Code section 10176, subdivision (e), provides that the Department may discipline a real estate licensee for commingling with his or her own money or property the money or other property of others which is received and held by him or her. Regulations section 2835, subdivision (a), provides that commingling is prohibited except for, among other things, the deposit into a trust account of reasonably sufficient funds, not to exceed \$200, to pay service charges or fees levied or assessed against the account by the bank or financial institution where the account is maintained.

#### **ADDITIONAL RELEVANT STATUTES**

10. Code section 10130 makes it unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson without first obtaining a real estate license from the department.

11. Code section 10137 makes it unlawful for any licensed real estate broker to compensate any person for performing any of the acts within the scope of the real estate law who is not a real estate salesperson licensed under the responsible broker retaining or compensating him or her. Furthermore, a real estate salesperson shall not accept compensation for activity requiring a real estate license from any person other than the broker under whom he or she is at the time licensed.

12. Code section 10161.8, subdivision (a), provides that whenever a real estate salesperson or broker acting as a salesperson enters the employ of a real estate

broker, the responsible broker shall immediately notify the Department in writing. Pursuant to Regulations section 2752, the responsible broker shall notify the Department of that fact within five days.

13. Pursuant to Code section 10177, subdivision (d), the Department may discipline the license of a licensee who has willfully disregarded or violated the Real Estate Law or regulations governing real estate practice.

14. Pursuant to Code section 10177, subdivision (g), the Department has grounds to discipline the license of a licensee who has demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

### **Causes for Discipline**

#### **ACCOUNTING VIOLATIONS**

15. Cause exists to discipline respondent Christiansen's broker license and licensing rights under Code section 10145, in that he improperly maintained trust funds, leading to money shortages, in Trust Account No. 1, Bank Account No. 1, and Bank Account No. 2, as set forth in Findings 8 and 9.

16. Cause exists to discipline respondent Christiansen's broker license and licensing rights under Regulations section 2832.1, in that he failed to obtain permission from owners of trust funds when he allowed balances in Trust Account No. 1, Bank Account No. 1, and Bank Account No. 2 to drop below accountability, as set forth in Findings 8 and 9.

17. Cause exists to discipline respondent Christiansen's broker license and licensing rights under Code section 10145 and Regulations section 2832, in that he failed to designate Bank Account No. 1 and Bank Account No. 2 in the name of

himself, as the holder of the license, as trustee, and failed to designate these accounts as trust accounts, as set forth in Finding 9.

18. Cause exists to discipline respondent Christiansen's broker license and licensing rights under Code section 10176, subdivision (e), for suffering or permitting funds received and held in trust to be commingled with respondents' own property in the amount of \$1,574.76 in Bank Account No. 2, as set forth in Finding 10.

19. Cause exists to discipline respondent Gaidos's salesperson license and licensing rights under Code section 10176, subdivision (e), for suffering or permitting funds received and held in trust to be commingled with respondents' own property in the amount of \$1,574.76 in Bank Account No. 2, as set forth in Finding 10.

20. Cause exists to discipline respondent Christiansen's broker license and licensing rights under Code section 10176, subdivision (e), and Regulations section 2835. As set forth in Finding 10, respondent Christiansen caused or permitted funds of others received and held by respondents to be commingled with broker funds in excess of \$200, in Bank Account No. 2.

21. Cause exists to discipline respondent Gaidos's salesperson license under Code section 10176, subdivision (e), and Regulations section 2835. As set forth in Finding 10, respondent Gaidos caused or permitted funds of others received and held by respondents to be commingled with broker funds in excess of \$200, in Bank Account No. 2.

22. Cause exists to discipline respondent Christiansen's broker license and licensing rights under Regulation section 2831.2, by failing to reconcile at least once a month the balance of the beneficiary or transaction records with the control records

for Trust Account No. 1, Bank Account No. 1, and Bank Account No. 2, as set forth in Finding 11.

23. Cause exists to discipline respondent Christiansen's broker license and licensing rights under Regulation section 2834, by allowing respondent Gaidos, who was not licensed to respondent Christiansen as the broker, to be a signatory on Trust Account No. 1, and Bank Account No. 2, as set forth in Finding 12.

#### **NEGLIGENCE OR INCOMPETENCE**

24. Cause exists to discipline respondent Christiansen's broker license and licensing rights pursuant to Code section 10177, subdivision (g), in that he demonstrated negligence or incompetence in performing an act for which he is required to hold a license, by his overall mismanagement of the trust accounts and his accounting duties as set forth above, and when his staff employee, Julie D., transferred <sup>3,650</sup> \$3,550 and \$9,300, respectively, out of Bank Account No. 2, without respondent Christiansen's knowledge or consent and when there were insufficient funds, as set forth in Finding 14.

25. Cause exists to discipline respondent Gaidos's salesperson license pursuant to Code section 10177, subdivision (g), in that she demonstrated negligence or incompetence in performing an act for which she is required to hold a license, by engaging in a real estate property management business with respondent Christiansen and having no involvement with the maintenance of trust funds, such that respondent Christiansen improperly maintained trust funds, leading to money shortages, and commingled funds, as set forth above.

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## **EXPIRED LICENSE**

26. Cause does not exist to discipline either respondents' licensure for their alleged unlicensed activity due to the temporary expiration of Sierra's license. As set forth in Finding 15, the evidence failed to establish that respondents, both of whose individual salesperson and broker's licenses were current when Sierra's corporate license temporarily lapsed, engaged in "unlicensed activity" as contemplated by the language of Code section 10130. Nor was there clear and convincing evidence to establish that this lapse in Sierra's license status was due to willful violations of the Real Estate Law, negligence, or incompetence.

## **VIOLATIONS RELATED TO SALESPERSON LICENSURE**

27. Cause exists to discipline respondent Christiansen's broker license and licensing rights, and respondent Gaidos's salesperson license, pursuant to Code section 10137, in that respondent Christiansen employed respondent Gaidos when she was working under another broker's license, and unlawfully paid respondent Gaidos \$4,500 in compensation during that time, as set forth in Finding 16.

28. Cause exists to discipline respondent Christiansen's broker license and licensing rights under Regulations section 2752, and section 10161.8, subdivision (a), of the Code, for employing two salespersons, respondent Gaidos and Ms. Mount, who were not listed on his broker license, and for failing to notify the Department of either of their employment within five days of when he employed them, as set forth in Findings 16 and 17.

### **FAILURE TO SUPERVISE**

29. Cause exists to discipline respondent's broker license and licensing rights under Code sections 10159.2, and 10177, subdivision (h), in that respondent failed to exercise reasonable supervision and control over the handling of trust funds and the property management activities of respondent Gaidos and other Sierra employees, as set forth in the Factual Findings as a whole.

### **WILLFUL DISREGARD OR VIOLATION OF REAL ESTATE LAWS**

30. Cause does not exist to discipline either respondent Christiansen's broker license and licensing rights, or respondent Gaidos's salesperson license, under Code section 10177, subdivision (d), as the Department did not establish by clear and convincing evidence that respondents willfully disregarded or violated the Real Estate Law, as set forth in the Factual Findings as a whole. Willful or wanton misconduct is defined as "intentional wrongful conduct, done either with a knowledge that serious injury to another will probably result, or with a wanton and reckless disregard of the possible results." (*New v. Consolidated Rock Products Co.* (1985) 171 Cal.App.3d 689, internal citations omitted.) Here, respondent Gaidos's mistake was to not be involved in the financial aspects of the property management business, which she entrusted to respondent Christiansen, the broker and her business partner. Respondent Christiansen's violations were due to his ignorance of specific requirements, poor bookkeeping practices, and because he entrusted important responsibilities to others but failed to ensure they were fulfilling their duties. None of the violations the Department proved indicated intentional wrongful conduct, the presence of an element of knowledge of probable serious injury to another, or a wanton or reckless disregard of the possible outcome.

## OTHER VIOLATIONS

31. The Accusation contained multiple other alleged violations set forth in conclusory fashion, based only upon the "conduct" described in each cause for discipline. Any such alleged violations not discussed above were not established by clear and convincing evidence and do not provide a basis for discipline.

### Costs Award

32. A licensee found to have violated a licensing act may be ordered to pay reasonable costs of investigation and prosecution. (Bus. & Prof. Code § 125.3.) Section 10106 of the Code is similar to section 125.3, in that it provides, in pertinent part, that the Commissioner may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, instructs that the following factors should be considered when determining the reasonableness of costs sought pursuant to regulations such as section 125.3 regarding the recovery of prehearing investigation and enforcement costs:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation . . . does not deter . . . [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a . . . [licensee] who has committed some

misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the . . . [licensee's] "subjective good faith belief in the merits of his or her position" [Citation.] and whether the . . . [licensee] has raised a "colorable challenge" to the proposed discipline. [Citation.] Furthermore, as in the cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [Citation], the Board must determine that the . . . [licensee] will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a . . . [licensee] engaged in relatively innocuous misconduct.

The regulation considered in *Zuckerman* and Business and Professions Code section 10106 have similar language and call for the same type of cost recovery. It is therefore reasonable to extend the *Zuckerman* holding to the cost recovery request in this matter.

33. As set forth in Findings 28 through 32, complainant reasonably incurred investigation and prosecution costs in amounts totaling \$13,910.27, in connection with the investigation and prosecution of this matter. Complainant prevailed on all but one of the alleged causes for discipline, despite failing to prove some of the legal



violations generally alleged with each cause. Thus, consideration of an apportionment of costs is unnecessary.

34. Under *Zuckerman, supra*, a determination must be made regarding respondents' financial ability to make future cost award payments. Respondents submitted no evidence that they lack the financial ability to pay costs. Under these circumstances, respondent shall be jointly and severally liable to pay complainant's costs of investigation and prosecution in an amount totaling \$13,910.27.

## ORDER

### **Respondent Christiansen**

All licenses and licensing rights of Respondent Kevin Earl Christiansen under the Real Estate Law are REVOKED; provided, however, a restricted real estate broker license shall be issued to respondent Christiansen pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau 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:

1. The restricted license issued to respondent Christiansen 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.

2. The restricted license issued to respondent Christiansen 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.

3. Respondent Christiansen 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 four years have elapsed from the effective date of this Decision.

4. Respondent Christiansen 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.

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

6. Pursuant to sections 10106 and 10148 of the Business and Professions Code, respondent Christiansen shall pay the Commissioner's reasonable costs for investigation of the case and audit which led to the disciplinary action in the sum of \$13,910. Respondent Christiansen and respondent Carol Ann Gaidos shall be jointly and severally liable to pay such costs, which the Department may, in its sole discretion, apportion between respondents Christiansen and Gaidos. Respondent Christiansen shall make 12 payments, one for each of the first twelve quarters of his probation. The Department has the discretion to extend the time for repayment.

7. The Commissioner may suspend the license of 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 respondent Christiansen 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.

### **Respondent Gaidos**

All licenses and licensing rights of Respondent Carol Ann Gaidos under the Real Estate Law are REVOKED; provided, however, a restricted real estate salesperson license shall be issued to respondent Gaidos pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau 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:

1. The restricted license issued to respondent Gaidos 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.

2. The restricted license issued to respondent Gaidos 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.

3. Respondent Gaidos 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 years have elapsed from the effective date of this Decision.

4. Respondent Gaidos 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.

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

6. Pursuant to sections 10106 and 10148 of the Business and Professions Code, respondent Gaidos shall pay the Commissioner's reasonable costs for investigation of the case and audit which led to the disciplinary action in the sum of \$13,910. Respondent Gaidos and respondent Kevin Earl Christiansen shall be jointly and severally liable to pay such costs, which the Department may, in its sole discretion, apportion between respondents Gaidos and Christiansen. Respondent Gaidos shall make six payments, one for each of the first six quarters of her probation. The Department has the discretion to extend the time for repayment.

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7. The Commissioner may suspend the license of 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 respondent Christiansen 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.

DATE: July 12, 2019

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*John DeCure*  
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JOHN E. DeCURE

Administrative Law Judge

Office of Administrative Hearings