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FILED

SEP 20 2017

BUREAU OF REAL ESTATE

By *Sybil Denner*

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

| | | |
|---|---|----------------|
| In the Matter of the Accusation Against |) | NO. H-40004 LA |
| |) | L-2016010836 |
| MAXIMUM ASSETS, INC.; |) | |
| ARCH REALTY GROUP, INC.; |) | |
| KYLE LYNN BOSEMAN, individually |) | |
| and as Designated Officer of |) | |
| Maximum Assets, Inc. and |) | |
| Arch Realty Group; and |) | |
| E. PAUL LAWRENCE, |) | |
| |) | |
| Respondents. |) | |

| | | |
|--|---|----------------|
| In the Matter of the Order of Suspension |) | NO. H-23355 LA |
| Against |) | L-2016040902 |
| |) | |
| E. PAUL LAWRENCE, |) | |
| |) | |
| Respondent. |) | |

DECISION AFTER REJECTION

These consolidated matters were heard by Eric Sawyer, Administrative Law Judge ("ALJ") of the Office of Administrative Hearings on November 30, December 1, 2, and 16, 2016.

The Complainant was represented by Lissete Garcia, Counsel for the Bureau of Real Estate.

1 Respondent MAXIMUM ASSETS, INC. filed a Notice of Defense to the
2 Accusation, but was not represented by anyone at the hearing. The hearing proceeded against
3 MAXIMUM ASSETS, INC. as a default.

4 Respondent KYLE LYNN BOSEMAN ("BOSEMAN") was present and
5 represented both himself and Respondent ARCH REALTY GROUP, INC.

6 Respondent E. PAUL LAWRENCE ("LAWRENCE") was present and
7 represented himself.

8 Evidence was received, the hearing was closed, and the matter was left open for
9 the filing of closing argument briefs by the parties. On March 14, 2017, the matter was closed
10 and submitted for decision.

11 On April 7, 2017, ALJ Sawyer signed a Proposed Decision which I declined to
12 adopt as my Decision herein.

13 Pursuant to Section 11517(c) of the Government Code of the State of California,
14 Respondents were served with notice of my determination to not adopt the Proposed Decision of
15 the ALJ along with a copy of said Proposed Decision. Respondents were notified that the case
16 would be decided by me upon the record, the transcript of proceedings held on November 30,
17 December 1, 2, and 16, 2016, and upon any written argument offered by Respondents and
18 Complainant.

19 On August 3, 2017, written argument was submitted by Respondent
20 LAWRENCE. On August 4, 2017, written argument was submitted by Respondent BOSEMAN.
21 On August 11, 2017, written argument was submitted on behalf of Complainant.

22 I have given careful consideration to the record in this case including the
23 transcript of proceedings of November 30, December 1, 2, and 16, 2016. I have also considered
24 the arguments submitted by Respondents and the argument submitted on behalf of Complainant.

25 The following shall constitute the Decision of the Real Estate Commissioner in
26 this proceeding:

27 ///

1 FACTUAL FINDINGS

2 The Factual Findings of the ALJ's Proposed Decision in this matter, dated
3 April 7, 2017, are hereby adopted.

4 LEGAL CONCLUSIONS

5 The Legal Conclusions and Discussion of the ALJ's Proposed Decision in this
6 matter, dated April 7, 2017, are hereby adopted as to Respondents MAXIMUM ASSETS,
7 INC., ARCH REALTY GROUP, INC., and LAWRENCE.

8 As to Respondent BOSEMAN, the Legal Conclusions and Discussion of the
9 ALJ's Proposed Decision in this matter, dated April 7, 2017, are hereby adopted as to
10 paragraph 22, subsections A. through C. only. Subsection D. of that paragraph 22, is not
11 adopted.

12 Respondent BOSEMAN was the Designated Officer of Respondent
13 MAXIMUM ASSETS, INC. and responsible for that corporate real estate broker's compliance
14 with the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code ("Code").
15 The entire statutory scheme requires that a broker actively conduct his brokerage business and
16 supervise the activities of its employees. *Norman v. Department of Real Estate* (1979) 93 Cal.
17 App. 3d 768, 777. It is patently clear that Respondent BOSEMAN did not supervise the
18 activities of MAXIMUM ASSETS, INC., or any of the other corporations for which he was the
19 designated officer.

20 Instead, Respondent BOSEMAN left Respondent MAXIMUM ASSETS, INC.
21 in the hands of a person who had previously surrendered her real estate salesperson license, in
22 connection with Bureau discipline, with virtually no oversight. The designated broker must
23 exercise reasonable supervision over the activities of the corporation or risk the suspension or
24 revocation of his own license pursuant to Code Section 10177(h). See also, *Grand v.*
25 *Griesinger* (1958) 160 Cal. App. 2d 397; *People v. Asuncion* (1984) 152 Cal. App. 3d 422.

26 I disagree with the conclusion of the ALJ that Respondent BOSEMAN could
27 safely function under the supervision of a broker willing to accept responsibility for him as a

1 restricted real estate salesperson. A restricted license allows licensees to perform the same acts
2 as a non-restricted licensee. It is not certain that the required broker oversight would control
3 Respondent's activities and protect the public as Respondent BOSEMAN has already
4 demonstrated his disregard for the Real Estate Law. Disciplinary procedures are to protect the
5 public not only from conniving real estate salespeople but also from the uninformed, negligent,
6 or unknowledgeable salespeople. *Handeland v. Department of Real Estate* 58 Cal.App.3d 513,
7 518. Their purpose is not to punish but to afford protection to the public. *Norman v.*
8 *Department of Real Estate* (1979) 93 Cal. App. 3d 768.

9 The public's interest will not be adequately protected if Respondent BOSEMAN
10 is permitted to retain any real estate license at this time.

11 ORDER

12 WHEREFORE, THE FOLLOWING ORDER is hereby made:

13 The Order in the Proposed Decision dated April 7, 2017, is hereby adopted as to
14 Respondents MAXIMUM ASSETS, INC., ARCH REALTY GROUP, INC., and
15 LAWRENCE, but not as to Respondent BOSEMAN. The Order as to Respondent BOSEMAN
16 shall therefore be as follows:

17 All licenses and licensing rights of Respondent KYLE LYNN BOSEMAN
18 under the Real Estate Law are revoked. Prior to being eligible for the reinstatement of any real
19 estate license, Respondent BOSEMAN shall pay to the Bureau of Real Estate the costs of audit,
20 investigation and enforcement in connection with this matter in the amount of \$4,570.85.

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

22 OCT 09 2017

23 IT IS SO ORDERED

24 Sept. 12, 2017
25 WAYNE S. BELL
26 Real Estate Commissioner
27 

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MAXIMUM ASSETS, INC.,
ARCH REALTY GROUP, INC.,
KYLE LYNN BOSEMAN, and
E. PAUL LAWRENCE,

Respondents.

Case No. H-40004 LA

OAH No. 2016010836

In the Matter of the Order of Suspension
Against:

EDDIE PAUL LAWRENCE,

Respondent.

Case No. H-23355 LA

OAH No. 2016040902

PROPOSED DECISION

These consolidated matters were heard by Administrative Law Judge (ALJ) Eric Sawyer, Office of Administrative Hearings, on November 30, and December 1, 2 and 16, 2016, in Los Angeles.

Lissete Garcia, Counsel, represented Veronica Kilpatrick (complainant).

Respondent Kyle Lynn Boseman represented himself and Arch Realty Group, Inc. (ARGI). Respondent Eddie P. Lawrence, aka E. Paul Lawrence, represented himself.

No appearance was made by or on behalf of respondent Maximum Assets, Inc. (MAI). The matter proceeded as a default against respondent MAI.

The record was held open after the hearing concluded so the parties could submit closing argument briefs. The events that transpired while the record was held open are described in orders dated January 24, 2017, February 16, 2017, March 8, 2017, and March 14, 2017. The record was closed and the matter submitted for decision on March 14, 2017.

SUMMARY

Complainant seeks to discipline the broker licenses of respondents Boseman and Lawrence and the real estate corporation licenses of respondents MAI and ARG1. The common allegations are that respondents Boseman and Lawrence allowed and facilitated an unlicensed person, Deangela Christin Harrell, to engage in acts requiring a real estate license with respect to three residential property sales. Complainant also alleges that audits of respondents MAI and Boseman revealed violations of the Real Estate Law, including that respondent Boseman allowed unlicensed branch office activity. Complainant also contends respondent Lawrence provided a misleading main office address to the Bureau.

Respondents deny all allegations. Respondent Boseman contends Ms. Harrell's actions, to the extent they constituted unlicensed activity, were unknown to and unconsented by him. Respondent Lawrence contends he did not facilitate Ms. Harrell to engage in unlicensed activity, but merely utilized her as a transaction coordinator and compensated her with a "finder's fee," a legal doctrine allowing brokers to compensate unlicensed individuals engaged in limited referral activity. Both deny they otherwise violated the Real Estate Law.

The causes for discipline asserted against respondents were established by clear and convincing evidence to a reasonable certainty, with the exception of the first count against respondent MAI. In aggravation, respondents Boseman and Lawrence provided false information during the Bureau's investigation and the hearing. Respondent MAI is now defunct, it defaulted at hearing, and its license therefore should be revoked. Since no cause for discipline was asserted against respondent ARG1, the accusation against it should be dismissed. Because respondent Lawrence has a prior record of discipline and was not candid in this proceeding, his restricted broker license should be revoked. Respondent Boseman's misconduct, while serious, should warrant his being issued a restricted salesperson license. Finally, the Bureau is entitled to its costs, but the amount requested should be fairly apportioned among the respondents and reduced for various reasons.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity as a Supervising Special Investigator of the Bureau.
2. As explained in more detail below, each respondent is licensed by the Bureau. A Notice of Defense was submitted on behalf of each respondent, which notices contained a request for a hearing to contest the Accusation.
3. A. The Accusation was served by mail various times on respondent MAI's address of record with the Bureau, but each time returned by the United States Postal Service with stamps, "Moved Left No Address," "Unable to Forward," and "Return to Sender."

B. Nonetheless, a Notice of Defense on behalf of respondent MAI was submitted by the attorney who was representing respondent Boseman in this case at the time. As explained below, respondent Boseman had been the designated officer of respondent MAI until September 3, 2014. However, the attorney representing respondent Boseman withdrew as his counsel and respondent Boseman thereafter represented himself and respondent ARG1.

C. During the hearing, respondent Boseman stated that he was not representing respondent MAI. No other person or entity appeared on behalf of respondent MAI during the hearing. The matter as to MAI proceeded by default.

4. As explained in more detail below, at the time the Accusation was issued, respondent Lawrence was acting under a restricted broker license. One condition of his restricted license is that it could be suspended prior to a hearing by order of the Real Estate Commissioner (Commissioner) upon evidence satisfactory that respondent Lawrence had violated specified laws, including the Real Estate Law.

5. On March 30, 2016, the Commissioner issued an Order of Suspension against respondent Lawrence's restricted broker license, alleging that, as described in the Accusation, respondent Lawrence violated the Real Estate Law. The suspension remains in effect through the present time. Respondent Lawrence timely submitted a written request for a hearing to challenge the suspension.

Respondent Lawrence's Licensing History

6. A. Bureau records indicate respondent Lawrence was originally issued a real estate salesperson license on November 21, 1973, and that he was originally issued a real estate broker license on July 17, 1974. (Ex. 5). Those licenses were issued by the Department of Real Estate (Department), as the Bureau was previously known.

B. Respondent Lawrence disputes the Bureau's records to the extent he testified he first received his real estate salesperson license in 1969 and thereafter worked as a licensed salesperson for Cook & Hayes Realty until 1974, when he received his real estate broker license. However, respondent Lawrence submitted no documents or evidence corroborating his testimony that he was first licensed as a salesperson in 1969. In any event, there is no dispute over when he was first licensed as a broker.

7. A. Effective March 2, 1989, in Department Case No. H-23355 LA, respondent Lawrence's broker license was disciplined pursuant to his stipulation. (Ex. 3A). As a result, respondent Lawrence's broker license was revoked, with the right to the issuance of a restricted salesperson license if he submitted the necessary application and complied with the terms set forth in the Commissioner's Decision. (Ex. 3A.)

B. The discipline was based on an accusation filed against respondent Lawrence, in which it was alleged that he had transmitted false statements to a lender on in connection with a residential real estate purchase. As part of the stipulation, respondent Lawrence admitted he had done as alleged.

C. During the instant hearing, however, respondent Lawrence testified that lenders were receptive to "creative financing" in the mid-1980s (when the events in question occurred) because the economy and the housing markets were bad. Respondent Lawrence also testified he and his wife lived in the house in question, along with their daughter, and that he convinced several other people to sign loan papers indicating they would also live on the property. He asked them to do that in order to prevent a foreclosure. Respondent Lawrence added that it was not the lender who complained to the Department about the loan application, but rather the mortgage insurance company auditing the lender's loan portfolio. Respondent Lawrence stipulated to the discipline of his license because he felt it was appropriate to accept responsibility for the situation. (See also ex. 108.)

8. Respondent Lawrence did not timely request issuance of a restricted salesperson license. He testified that he missed the deadline by one day, because he was busy working as a licensed contractor.

9. On September 16, 1996, respondent Lawrence petitioned the Department for reinstatement of his broker license. The Department denied the petition by an order effective September 11, 1997. In that matter, the Commissioner concluded respondent Lawrence had failed to demonstrate sufficient rehabilitation. For example, the Commissioner noted that during an interview with Department staff concerning his prior discipline, respondent Lawrence "claims a person in his office arranged the loan and that Respondent was innocent of any wrongdoing." (Ex. 4A. p. 2.) Moreover, the Commissioner noted respondent Lawrence at the time owed back taxes of \$113,000 to the Franchise Tax Board. (*Ibid.*) Finally, the Commissioner noted there was evidence that respondent Lawrence had acted as an unlicensed broker by being involved in several real estate deals for a company he co-owned with a licensed broker who had lost his hearing and was unable to write well due to a stroke. (*Id.* at p. 3.) During the hearing, respondent Lawrence denied he acted as a broker without a license for the mortgage loan broker in question, a "Mr. Gordon," but that instead he had simply accepted \$20 for credit reports from three clients seeking mortgage loans.

10. Bureau licensing records indicate respondent Lawrence's salesperson license was reissued, through examination, on February 8, 1999. (Ex. 5.)

11. A. Respondent Lawrence again petitioned for reinstatement of his broker license on April 10, 2007. By an order effective January 21, 2008, the Commissioner denied the petition, again concluding that respondent Lawrence had not demonstrated sufficient rehabilitation. This time, the Commissioner noted respondent Lawrence had not satisfied a \$6,500 civil judgment against him and still "did not accept responsibility for the acts which led to the discipline against him." (Ex. 5A. p. 4.) Respondent Lawrence testified he had accepted responsibility for his prior discipline by essentially agreeing to surrender his broker

license in 1989. He also testified that he had not satisfied the civil judgment because it had expired without renewal and was therefore no longer enforceable against him; and that the plaintiff said he would not enforce the judgment because it had been entered "by mistake." While it is plausible the judgment had not been paid by respondent Lawrence because it was stale, the remainder of his testimony about the judgment was not convincing or corroborated.

B. After reconsidering the matter, the Commissioner decided to issue a restricted broker license to respondent Lawrence, if he satisfied specified conditions within two years, by an order effective May 1, 2008. (Exs. 5 and 5A). Respondent did not appeal the decision and it became final.

12. As discussed above, respondent Lawrence's restricted broker license was issued on September 24, 2008, subject to the provisions of Business and Professions Code sections 10156.7 and 10156.6, including that the restricted license could be suspended prior to a hearing by order of the Commissioner upon evidence satisfactory that respondent Lawrence had violated the provisions of the Real Estate Law, the Subdivided Lands Law, Regulations of the Commissioner or conditions attached to his license. (Ex. 5A.) Bureau records show that respondent Lawrence had not requested removal of his restricted status. Respondent Lawrence was not clear in his testimony why he did not.

Licensing History of Respondents Boseman and ARGI

13. Respondent Boseman was licensed as a real estate salesperson from June 16, 2007, through March 11, 2012. From March 12, 2012, through the present, respondent Boseman has been licensed by the Bureau as a real estate broker, license number 01753525.

14. From April 7, 2014, through the present, respondent ARGI has been licensed by the Bureau as a real estate corporation.

15. From April 7, 2014, to the present, respondent Boseman has been licensed as the broker-officer of respondent ARGI. As such, and pursuant to Business and Professions Code section 10211,¹ respondent Boseman was responsible for the supervision and control of the activities conducted on behalf of respondent ARGI by its officers and employees as necessary to secure full compliance with the Real Estate Law.

Licensing History of Respondent MAI

16. From May 6, 2014, respondent MAI has been licensed by the Bureau as a real estate corporation, license number 01526977. As of September 3, 2014, and thereafter, respondent MAI's license status has been "NBA," meaning non-working status for no broker affiliation and no main business address on file. Under this designation, the corporation is not authorized to perform acts that require a real estate license.

¹ Further undesignated statutory references are to the Business and Professions Code.

17. From May 6, 2014, through September 3, 2014, respondent Boseman was licensed as the broker-officer of respondent MAI. As such, and pursuant to section 10211, respondent Boseman was responsible for the supervision and control of the activities conducted on behalf of respondent MAI by its officers and employees as necessary to secure full compliance with the Real Estate Law.

The Formation of Respondent MAI

18. Respondent MAI was incorporated in South Dakota on October 10, 2013. (Ex. 7, p. 5.) The incorporator was listed as David DeLoach (DeLoach).² On October 22, 2013, Mr. DeLoach executed a resolution for respondent MAI, which appointed respondent Boseman as a director and Deangela Christin Harrell (Harrell) as its president. (Ex. 10, p. 12.)

19. Ms. Harrell was formerly licensed by the Bureau as a real estate salesperson, under the name of Christin Bell. Effective December 3, 2003, she surrendered her license in Bureau case number H-29527 LA, in which it was alleged that she and another Bureau licensee had made false representations to a lender. (Ex. 6.)

20. Respondent MAI was registered with the California Secretary of State as a foreign corporation by Mr. DeLoach on October 25, 2013. (Ex. 7, p. 4.) At that time, a Statement and Designation by Foreign Corporation was also filed with the Secretary of State, listing respondent MAI's corporate address as 3297 Arlington Avenue #208, Riverside, California 92506. (Ex. 10, p. 8.) This address was Ms. Harrell's business address.

21. Respondent Boseman denies knowing Mr. DeLoach or that he signed the above documents. It was not established that respondent Boseman was involved in 2013 with the incorporation of MAI.

22. However, it was established that Ms. Harrell and respondent Boseman began doing business together by no later than early 2014. Both agreed in their testimony that they started their business relationship at or about the time that the broker Ms. Harrell worked for, Steve Uyemura, had his license revoked by the Bureau, which was on February 3, 2014, with an effective date of March 3, 2014. (Ex. 13, pp. 1, 10-19.) Respondent Boseman had previously worked under Mr. Uyemura's broker license in 2004. Respondent Boseman testified Mr. Uyemura introduced him to Ms. Harrell and suggested the two work together. Ms. Harrell agreed to the same in her testimony.

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² In 2003, Mr. DeLoach was licensed by the Bureau as a real estate broker. In 2011, his license status became NBA, for lack of a main business address on file. (Ex. 8.) Bureau records indicate his broker license expired on September 24, 2015. (*Ibid.*)

23. In early 2014, respondent Boseman was involved in many enterprises. For example, on February 20, 2014, he formally replaced Mr. Uyemura as designated officer for Chunyk & Adduci Realty Group LA, Inc. (Chunyk & Adduci), who is licensed with the Bureau to do business as CA Realty Group LA, Inc. (Ex. 13, p. 1.) Beginning in February 2014, and for the next several months, respondent Boseman also replaced Mr. Uyemura as the designated officer for 12 other real estate corporations licensed with the Bureau. (Ex. 4, p. 1.) At this time, respondent Boseman was also an undergraduate student at California State University, Long Beach.

24. A. Respondent Boseman and Ms. Harrell also testified they decided to become involved together with respondent MAI in early 2014. At or before that time, respondent Boseman asked Ms. Harrell to file the necessary papers to allow the corporation to operate in California and for it to be licensed by the Bureau.

B. Bureau records indicate the application for respondent MAI's real estate corporation license was filed with the Bureau on April 21, 2014. The application listed respondent Boseman as the designated officer and noted respondent MAI would also do business under the fictitious business name "Superior Escrow Solutions - Non Independent Escrow" (Superior Escrow Solutions). Ms. Harrell's business address was listed as MAI's address of record with the Bureau. The application materials bore signatures attributed to respondent Boseman and purportedly dated in February 2014. Respondent Boseman admitted in his testimony that he signed the first page of the application showing he agreed to be the designated officer of respondent MAI (ex. 10, p. 4) and that he knew Ms. Harrell was submitting license application documents to the Bureau.

C. Respondent Boseman also testified that, although he had discussions with Ms. Harrell about setting up an escrow company through respondent MAI, he did not sign the parts of the application showing MAI would also do business as Superior Escrow Solutions or showing Ms. Harrell's business address as a branch office of respondent MAI. However, Ms. Harrell testified respondent Boseman signed all of the application materials and she denied signing his name on any of them. Given the conflicting testimony, and the fact that the signatures attributed to respondent Boseman on the various documents do not look similar, it was not established that respondent Boseman signed the pages in dispute.

D. On April 24, 2014, a Fictitious Business Name Statement was filed with the Riverside County Recorder, indicating respondent MAI would also do business under the name of "Superior Escrow Solutions Non Independent Escrow." That document was completed and signed by Ms. Harrell and her business address was again listed as MAI's address of record. Respondent Boseman's name is not listed on that document.

E. According to Bureau records, the license application for respondent MAI was processed by the Bureau on May 6, 2014, which is when respondent MAI's Bureau license became effective.

25. Respondent Boseman testified he was aware documents Ms. Harrell submitted to the Bureau for MAI's license had her business address listed as MAI's address of record. He also testified that Ms. Harrell "would be in charge initially" of MAI's escrow business, as it was her idea and she came up with the name of the escrow business.

26. Ms. Harrell also testified she set up a corporate trust account for respondent MAI to which she added respondent Boseman's name with his knowledge and consent. She produced a copy of a JP Morgan Chase NA (Chase) Business Account Add Signer's Form she executed for MAI, which added respondent Boseman as a signer to the account and bore his purported signature dated April 30, 2014. (Ex. 19, p. 18.)

27. Ms. Harrell also produced a number of e-mails between her and respondent Boseman between early February and late April 2014 which corroborated her testimony that the two worked together in early 2014 to establish respondent MAI. (Ex. 31.) Those e-mails were admitted for the limited purpose of complainant's attempt to impeach respondent Boseman's contention that Ms. Harrell stole his identity. They did so. In addition, respondent Boseman admitted in his testimony that he and Ms. Harrell worked together on an application to join the Inland Valleys Association of Realtors (IVAR), which respondent Boseman signed; and they communicated with each other about offers that could be made on various properties.

28. A. Respondent Boseman testified he only wanted to hire Ms. Harrell as a secretary for respondent MAI and utilize any business referrals she could provide to him. He has consistently maintained that he never formally hired Ms. Harrell or gave her authority to engage in real estate activities on behalf of respondent MAI. He also testified respondent MAI would not be open for business until he could finalize all the required filings and have an attorney review them, which he contends never happened. His testimony was not persuasive, as it is inconsistent with the events discussed above, as well as those described below concerning the three specific transactions in question. (See, e.g., Factual Findings 30.F, 33.B, 35, 41.B, 45, 46, 47, 50, 51, 52.C. & 53(a).)

B. In addition, respondent Boseman has made prior inconsistent statements about the situation. For example, when he was interviewed by a Bureau auditor about the situation on September 24, 2015, he said that Ms. Harrell was "in full charge of the escrow division and did not let [me] be involved in MAI's business." (Ex. 18, p. 12.) In a written statement he later provided to the auditor, respondent Boseman wrote that Ms. Harrell initially told him she wanted to open a real estate office and have respondent Boseman "serve as the broker of record." (Ex. 19, p. 12.) Respondent Boseman also acknowledged that Ms. Harrell began filing the appropriate documents to do so. (*Ibid.*) No evidence was presented, including respondent Boseman's testimony, in which it is apparent that respondent Boseman gave Ms. Harrell any limiting instructions or specifically told her to not begin operating respondent MAI until any condition precedent was satisfied. No evidence presented indicates that once he became aware of Ms. Harrell's activities on behalf of respondent MAI, which are discussed in more detail below, that respondent Boseman instructed her to stop or curtail her activity.

C. Under these circumstances, it is clear that respondent Boseman knew Ms. Harrell was taking actions to establish and begin operating respondent MAI and he agreed.

The Bodewin Court Transaction

29. By or about early March 2014, Ms. Harrell became interested in purchasing residential property located at 7313 Bodewin Court, Riverside, California 92506 (Bodewin Court) as an investment. For reasons not explained, Ms. Harrell enlisted the aid of Anitra T. Murphy, either a friend or relative, and Cleveland Harrell Jr., her husband, to participate in making a formal offer to purchase the property.

30. A. On or about March 9, 2014, Ms. Harrell executed a California Residential Purchase Agreement and Joint Escrow Instructions (purchase agreement) in which Ms. Murphy and Mr. Harrell offered to purchase the property for \$1,750,000.

B. On the bottom of the first page of the purchase agreement, the pre-printed name of the selling agent was listed as "Anastasia Stamatii Uyemura" and the selling broker was listed as "CA Realty Group."³

C. On the first page, Section 2C (Agency), of this purchase agreement, "Maximum Assets Realty" is listed as the broker representing the buyers.

D. In Section 3A (Initial Deposit) of the purchase agreement, a \$15,000 initial deposit was to be delivered within three business days after acceptance to "Superior Escrow Solutions." In Section 4C (Escrow and Title) of the purchase agreement, the buyers selected "Superior Escrow Solutions" as the escrow holder.

E. On page eight of this purchase agreement, in the Real Estate Brokers section, the real estate broker for the buyers is listed as "Maximum Assets Realty" with Bureau license number of 01753525, which is respondent Boseman's broker number issued by the Bureau. In this section, a signature purporting to be respondent Boseman's is on the form next to Boseman's pre-printed name. In a letter he sent to the Bureau in connection with its investigation of this matter, respondent Boseman denied that he signed this purchase agreement.

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³ At the time, Anastasia Stamatii was licensed as a real estate salesperson, and was licensed under the employment of broker Chunyk & Adduci. Steve Uyemura was the designated officer of Chunyk & Adduci, through February 20, 2014, at which time he cancelled his designated officer status after the revocation of his license. CA Realty Group is a licensed fictitious business name of Chunyk & Adduci.

F. Ms. Harrell testified this was the purchase agreement used for this transaction. She had e-mailed this version of the purchase agreement to respondent Boseman on a date not established. As discussed in more detail below, when Bureau auditors questioned respondent Boseman about his association with MAI, this was the version of the purchase agreement he produced to them. (Ex. 19, pp. 1-13.)

31. A. The owner of the property in question was Michelle W. Ortega. She was and is a licensed real estate salesperson who negotiated with Ms. Harrell on this transaction. Ms. Ortega testified she had received a different version of the purchase agreement for the Bodewin Court property. She produced a second such version during the hearing. (Ex. 29.) The second version was attached to an e-mail Ms. Ortega received from Ms. Harrell on March 14, 2014, with the subject heading "Offer on bodewin!!!!!!!!!!!!!!!" (Ex. 29, p. 1.)

B. This second version of the purchase agreement is different from the first in many ways. For example, it was dated March 14, 2014; Ms. Harrell was added as a third buyer; and the purchase price was increased to \$1,850,000.

C. In addition, respondent Boseman was listed as the broker representing the buyers instead of "Maximum Assets Realty." But on the bottom of the first page of this purchase agreement, the pre-printed name of the selling agent is listed as "Kyle L. Boseman Uyemura."

D. On page eight of this purchase agreement, in the Real Estate Brokers section, "Maximum Assets Realty" was replaced as the real estate broker for the buyers with "Kyle L. Boseman." Respondent Boseman's Bureau license number of 01753525 is still listed. This section also contains a signature purporting to be respondent Boseman's.

32. Based on the persuasive testimony of Ms. Ortega, and the timing of the two versions of the purchase agreement, it was established that the second purchase agreement bearing the date of March 14, 2014 was the purchase agreement that was received and accepted by Ms. Ortega. According to Ms. Ortega, however, the transaction was not completed. Ms. Ortega convincingly testified that she cancelled the transaction while it was in escrow because title research revealed the listed buyers did not own property as represented in their purchase offer documents, and there were 11 liens recorded against them, which had not been previously disclosed to Ms. Ortega.

33. A. It is clear that Ms. Harrell executed both of the purchase agreements in question and, at the least, submitted the second version to Ms. Ortega. It is also clear that respondent Boseman knew she was doing so, in that he testified that he received e-mails from Ms. Harrell concerning Bodewin Court (he testified he received them "after-the-fact"); he also conceded that he knew Ms. Harrell was buying the property "on her own, she did not need help," and he "did not need to know about her actions."

B. Interestingly, respondent Boseman denied signing any purchase agreement for Bodewin Court when initially contacted by a Bureau auditor many months later. Nonetheless, in his prehearing (ex. A) and closing (ex. B) briefs, he does not deny signing either purchase agreement. In addition, when testifying, respondent Boseman specifically denied signing a purchase agreement for an unrelated property, but when asked questions about the first version of the Bodewin Court purchase agreement (ex. 31, p. 47), he commented on erroneous information contained in the document but did not testify his signature was forged. Under these circumstances, it was established that respondent Boseman signed both versions of the Bodewin Court property purchase agreements, though it is equally clear he did not diligently proofread or edit them, resulting in his failure to catch many errors contained in both. The fact he was busy with many business interests and some college courses at the time is the most reasonable explanation for that lack of diligence.

The Brandon Court Transaction

34. On or about March 10, 2014, a purchase agreement was submitted on behalf of buyers Anitra T. Murphy and Cleveland Harrell, Jr. for the purchase of a residential property located at 7261 Brandon Court, Riverside, California 92506 (Brandon Court). The purchase price of the property was \$1,468,000. The purchase agreement was negotiated with and received by Brooks Bailey, a licensed real estate salesperson with Tri-Star Equity Group, Inc. (Tri-Star), who represented the property owner. This transaction also appears to have been intended as an investment property for Ms. Harrell.

35. Ms. Harrell looked at the property with the proposed buyers. She also communicated with Mr. Brooks, and later the salesperson who replaced him, Yesenia Corado-Baker. Tri-Star records show that Ms. Harrell visited the Brandon Court property on four separate occasions, using the lock-box key-code number belonging to respondent Boseman. (Ex. 15, p. 3.) Ms. Harrell also executed a number of documents connected with the offer, including the purchase agreement and documents described below.

36. A. On the bottom of the first page of the Brandon Court purchase agreement, the pre-printed name of the selling agent and the selling broker were redacted from the form.

B. On the first page, Section 2C (Agency) of the purchase agreement, "Maximum Assets Realty" is listed as the broker representing the buyers. In Section 3A (Initial Deposit), a \$15,000 initial deposit was to be delivered within three business days after acceptance to "Superior Escrow Solutions." In Section 4C (Escrow and Title), the buyers selected "Superior Escrow Solutions" as the escrow holder.

C. On page eight, in the Real Estate Brokers section, the real estate broker for the buyers is listed as "Maximum Assets Realty," along with respondent Boseman's Bureau license number of 01753525. However, respondent Boseman's signature was not included on the purchase agreement.

37. Ms. Murphy provided to the seller's agent cashier's check no. 4000 for \$15,000 made payable to "Superior Escrow Solutions" and dated March 10, 2014. (Ex. 14, p. 13.)

38. Superior Escrow Solutions provided Supplemental Escrow Instructions dated March 20, 2014 for the Brandon Court transaction. (Ex. 14, p. 17.) The escrow instructions did not state whether Superior Escrow Solutions was licensed, nor did they list a license number. (*Ibid.*) According to the escrow instructions, "the buyer" (who was now identified to be solely Ms. Murphy) was to execute and deliver a new First Conventional Deed of Trust in the amount of \$1,100,000 and a new Second Deed of Trust in the amount of \$250,000. (*Ibid.*)

39. On April 7, 2014, Ms. Murphy signed an addendum which stated: 1) the "selling agency is Arch Realty Group Agent is Kyle L. Boseman;" 2) buyer Cleveland Harrell "will not be part of the purchase;" and 3) "All other terms and conditions to remain the same." (Ex. 14, p. 14.)

40. By late April 2014, the licensed broker of Tri-Star, John B. Spear, had taken over the transaction from the two licensed salespeople from his office who had previously worked on the file. He did so because he was becoming increasingly alarmed about the viability of the transaction, for several reasons. One such reason was that his research revealed "Maximum Assets Realty" was not licensed by the Bureau and that "Superior Escrow Solutions" was not licensed by the California Department of Business Oversight (DBO), which he expected for an escrow company. As discussed above, respondent MAI's license application had not been processed by the Bureau at this time. Mr. Spear also was concerned that the listed individual broker, respondent Boseman, was the designated officer of so many other realty companies.

41. A. Mr. Spear also had discovered by this time that Ms. Harrell was not licensed. Based on vague and misleading comments and actions taken by Ms. Harrell, the Tri-Star salespeople who dealt with her believed Ms. Harrell was either "Kyle Boseman" (the licensed broker) or a licensed individual affiliated with respondent Boseman. Once he discovered Ms. Harrell was not licensed, Mr. Spear decided to communicate with the licensed individual he knew to be affiliated with the buyer, who was respondent Boseman.

B. Mr. Spear established by his persuasive testimony and corroborating documents that he spoke with respondent Boseman by phone approximately three times. The first time they spoke, respondent Boseman told Mr. Spear to work with Ms. Harrell because she "was my right arm." Mr. Spear also sent texts to and received responses from respondent Boseman. In fact, Mr. Spear produced records of texts received from respondent Boseman. Mr. Boseman did not deny in his testimony speaking with Mr. Spear; nor did he deny telling Mr. Spear that Ms. Harrell was his "right arm;" he simply denied being party to one phone conversation described by Ms. Harrell and Mr. Spear in their testimony in which he had purportedly called from Las Vegas and yelled at Mr. Spear.

42. A dispute ensued between the parties after Mr. Spear became involved. Mr. Spear did not receive a response to his concerns described above satisfactory to him. Ms. Harrell was upset that the property owner was trying to get out of a negotiated contract. (See, e.g., ex. 14, pp. 26-37.) By this time, Mr. Spear had hired an attorney to advise him how to cancel the transaction.

43. A. On April 30, 2014, Mr. Spear, on behalf of his client, executed a Cancellation of Contract, Release of Deposit and Joint Escrow Instructions (notice of cancellation), which demanded the cancellation of Superior Escrow Solutions Escrow No. 3069 for the Brandon Court transaction and instructed the escrow holder to split the \$15,000 initial deposit between the parties to cover legal fees. (Ex. 15, pp. 29-30.)

B. A letter from Mr. Spear's attorney was attached to the notice of cancellation. The letter explained the cancellation was requested because respondent MAI and Ms. Harrell had refused to submit proof that MAI or Superior Escrow Solutions were licensed entities authorized to engage in real estate and escrow activities. (Ex. 15, p. 30.) The letter also noted the property owner had lost faith in the fairness of the escrow process after it was learned that the escrow company was operated by the wife (Ms. Harrell) of one of the initial proposed buyers (Cleveland Harrell, Jr.). (*Ibid.*)

44. By no later than April 28, 2014, Mr. Spear also submitted a written complaint to the DBO, concerning what he believed to be unlicensed escrow activity by Ms. Harrell and/or Superior Escrow Solutions. (Ex. 14.) The DBO forwarded the complaint to the Bureau on or about June 19, 2014. (Ex. 14, p. 1.) At that time, the Bureau began investigating respondent MAI, respondent Boseman and Ms. Harrell.

45. The dispute between the parties dragged on through September 2014. By or about that time, respondent Boseman had made a verbal offer to Mr. Spear to settle the dispute by distributing \$3,500 from the deposit in escrow to the property owner. Mr. Spear sent respondent Boseman a text response on September 3, 2014; respondent Boseman responded "I'm in class." (Ex. 16, p. 6.) On September 9, 2014, respondent Boseman sent Mr. Spear another text. "I am no longer employed by Maximum. Christine and her new brokers will be taking control of this matter going forward." (*Id.* at pp. 6-8.) Mr. Spear thought this was a bizarre response, because a licensed broker such as respondent Boseman could not be "employed" in a real estate corporation by an unlicensed individual such as Ms. Harrell and, in any event, respondent Boseman was the licensed broker affiliated with MAI at the time the purchase agreement had been accepted and was therefore responsible for the deal. Mr. Spear so advised respondent Boseman by a text. (*Ibid.*)

46. At no time during his communications with Mr. Spear did respondent Boseman advise him that Ms. Harrell did not have authority to undertake any action, that she was acting without his knowledge or that she had stolen his identity.

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47. Ms. Harrell persuasively testified that by early September 2014, respondent Boseman had become panicked after being contacted by the Bureau and he had decided to settle with Mr. Spear and cancel the transaction. Her testimony was corroborated by the testimony of Mr. Spear and the evidence showing respondent Boseman had made a settlement offer by this time. The transaction was cancelled at or about this time. However, contrary to Mr. Spear's written direction, Superior Escrow Solutions returned the entire \$15,000 initial deposit to Ms. Murphy, instead of splitting the deposit between the parties as instructed. The relationship between she and Ms. Murphy certainly was the reason why Ms. Harrell disregarded Mr. Spear's directive.

The Audit of Respondent MAI (SD 14001)

48. After being forwarded Mr. Spear's complaint about the Brandon Court transaction, the Bureau began investigating respondents Boseman and MAI. By August 2014, the Bureau decided to audit the books and records of respondents MAI and Boseman. On August 22, 2014, the Bureau auditor assigned to that task first contacted Ms. Harrell and respondent Boseman. On September 3, 2014, the Bureau received a letter from respondent Boseman indicating that he wished to resign as designated officer for respondent MAI, effective immediately. (Ex. 10, p. 2; ex. 18, pp. 11-12.)

49. From approximately August 22, 2014, through November 13, 2014, Bureau General Auditor III Zaky Wanis examined books and records related to respondent MAI's real estate activities. The scope of the audit was from May 6, 2014, when the corporate entity was licensed, through September 2, 2014, the last day before respondent Boseman resigned as its designated officer. The purpose of the audit was to determine whether respondent MAI handled and accounted for trust funds and conducted its real estate activities in accordance with the Real Estate Law. As part of his audit, Mr. Wanis requested from respondents MAI and Boseman copies of the following documents from October 2013 (when the corporate entity was established) through September 2014: bank statements, control records, trust account reconciliations, buyer's earnest money deposit checks, escrow receipts, escrow records, deposit slips/tickets, and cancelled checks.

50. On September 9, 2014, respondent Boseman spoke to Mr. Wanis by telephone. Respondent Boseman told Mr. Wanis that "he had a fight with Christin [Harrell] who refused to let him in MAI's office or give him access to any records." (Ex. 18, p. 12.)

51. On September 24, 2014, Mr. Wanis met with respondent Boseman at his main office affiliated with his individual broker license. Respondent Boseman advised Mr. Wanis that "Christin [Harrell] was in full charge of the escrow division and did not let him be involved in MAI's business." (Ex. 18, p. 12.) Respondent Boseman also admitted that Ms. Harrell had possession of respondent MAI's files even though he was the designated officer. (Ex. 18, p. 12.) It was established that Ms. Harrell maintained the transaction files for respondent MAI because she worked out of a location separate from respondent Boseman, i.e., her business office in Riverside.

52. A. Both respondent Boseman and Ms. Harrell retained attorneys to represent them during the audit. Ms. Harrell's attorney initially tried to convince Mr. Wanis to not go forward with the audit. On October 21, 2014, respondent Boseman submitted to Mr. Wanis a statement written by himself, as well as a letter from his attorney.

B. In his written statement, respondent Boseman contended that he had never hired Ms. Harrell, never authorized her to conduct any business on behalf of respondent MAI, and she had forged his signature on at least one purchase agreement. (Ex. 19, pp. 12-13.) Respondent Boseman also wrote that he believed he had been the victim of identity theft by Ms. Harrell and that he had filed a complaint with the Riverside Police Department. (*Ibid.*) Mr. Wanis requested a copy of the police report, but he never received one; respondent Boseman did not present a copy of such a document during the hearing either.

C. In his written statement, respondent Boseman also acknowledged that he had spoken to Mr. Spear on the telephone concerning the Brandon Court transaction on April 29, 2014. (Ex. 19, p. 12.) During a subsequent interview, Mr. Wanis asked respondent Boseman why it took him four months after that conversation with Mr. Spear to withdraw as respondent MAI's designated officer if he did not know about the transaction when he initially spoke to Mr. Spear. Respondent Boseman told Mr. Wanis he had panicked, did not know what to do, and could not afford to hire an attorney. (Ex. 18, p. 14.)

53. Mr. Wanis received the following documents pursuant to his requests:

(a) Ms. Harrell provided, via e-mail, copies of bank signature cards. The bank signature cards showed that on April 30, 2014, respondent Boseman was added as a signer to the Chase bank account belonging to respondent MAI. Those records also showed that on August 29, 2014, Ms. Harrell removed respondent Boseman as a signer from that account.

(b) Mr. Wanis also received information and documents concerning the Brandon Court transaction showing that the check for \$15,000 from Ms. Murphy had been received and deposited into escrow by Superior Escrow Solutions.

54. A. Mr. Wanis completed his examination of respondent MAI's books and records by November 20, 2014, at which time he signed an Audit Report Transmittal Memo. (Ex. 18, pp. 7-24.) Mr. Wanis concluded from his audit examination that respondent MAI had violated the provisions of the Real Estate Law described below.

B. Mr. Wanis concluded that respondent MAI and Ms. Harrell performed, or offered to perform, engaged, or attempted to engage, in activities that required a real estate license during a time that neither was licensed in any capacity by the Bureau, in violation of section 10130. Mr. Wanis cited as support the first version of the purchase agreement for Bodewin Court dated March 9, 2014, as well as the purchase agreement for Brandon Court. (Mr. Wanis was never provided with the second version of the Bodewin Court purchase agreement that had been accepted by the property owner.)

C. Mr. Wanis correctly concluded that respondents MAI and Boseman failed to retain complete books and records in connection with MAI's transactions for which a real estate broker license was required, in violation of sections 10145 and 10148, as well as California Code of Regulations, title 10, section (Regulation) 2950, subdivision (e). Despite repeated requests for such books and documents, respondents MAI and Boseman never produced copies of bank statements, control records or trust account reconciliations. Such documents would have existed, given evidence that respondent MAI had a bank account, had submitted at least one purchase agreement that was accepted and went into escrow, and was generally in operation.

D. Despite repeated requests, Mr. Wanis never received copies of buyer's earnest money deposit checks, escrow receipts, escrow records, deposit slips/tickets, or cancelled checks. Such documents would, by necessity, have been required and created for at least the Brandon Court transaction, as evidenced by the fact that Ms. Murphy's check for \$15,000 had been deposited into escrow and those funds later disbursed back to her. (Ex. 18, pp. 18-19). Mr. Wanis therefore correctly concluded that respondent MAI had violated section 10148 and Regulation 2950, subdivision (e).

E. Mr. Wanis correctly concluded that he was unable to conduct a complete audit to verify the trust fund accountability and balances because respondent MAI's complete books and records were not provided to him for examination. However, he did not specify in his report a statute or regulation violated thereby.

The Audit of Respondent Boseman (SD 140012)

55. Mr. Wanis was also assigned to audit the books and records of respondent Boseman's real estate activities for the period of January 1, 2013, through July 31, 2014, pertaining to his individual broker license number 01753525. The purpose of the audit was to determine whether respondent Boseman handled and accounted for trust funds and conducted real estate activities in accordance with the Real Estate Law.

56. In an interview, respondent Boseman advised Mr. Wanis that during the period in question he closed three transactions valued at \$885,000, but did not collect any earnest money deposits or maintain a trust account. (Ex. 18, p. 24.)

57. On November 21, 2014, Mr. Wanis completed his examination of respondent Boseman's books and records, at which time he signed an Audit Report (Short Form) Transmittal Memo. (Ex. 18, pp. 23-24.)

58. During his audit, Mr. Wanis obtained from respondent Boseman a number of documents in which he was listed as the broker representing one of the parties to residential property purchases but with listed addresses of either (a) 29910 Murrieta Hot Springs Road #G431, Murrieta, California (Murrieta) or (b) 867 Colorado Avenue #C, Chula Vista, California (Chula Vista). (Ex. 20.) Each of the documents in question had signatures attributed to respondent Boseman. At no time has he denied signing any of those documents.

59. During the hearing, respondent Boseman testified the documents in question were filled out by the employees he inherited after taking over some of Steve Uyemura's realty companies. The various documents are dated between December 2013 and March 2014, which generally bears out respondent Boseman's testimony. In his closing brief (ex. B, pp. 5-6), respondent Boseman argued that when those documents were created, he had not the time to meet those individuals to determine whether he wanted to retain them; the individual salespeople involved wrote their own mailing addresses not intending to reflect that such were branch offices; he corrected that practice once he realized what those employees were doing; and this "was excusable neglect caused by an emergency transition that was hectic at best." (*Id.* at p. 6.)

60. A. Mr. Wanis correctly concluded in his audit that the documents showing the Murrieta and Chula Vista addresses constituted respondent Boseman's use of unlicensed branch offices to perform or offer to perform activities that required a real estate license, in violation of section 10163 and Regulation 2715. The documents in question clearly depict respondent Boseman's name and individual broker license. However, he had never advised the Bureau that he had any branch office affiliated with his own broker license other than his main office address, which was not located in Murrieta or Chula Vista.

B. The licensed salespeople in question may have all been employed by Mr. Uyemura's former realty companies, but they should have reflected on the relevant documents those entities licensed by the Bureau of which respondent Boseman became the designated officer. Respondent Boseman's contention that this was an emergency situation misses the point. The process of taking over Mr. Uyemura's former realty companies may have been hectic to him, but such was an emergency, if so, created entirely by his own decision to assume control over so many companies in such a short time. His decision to do so did not excuse him from the responsibility of properly supervising his employees, including reading the paper-work he signed to make sure the correct addresses were stated.

The Charina Road Transaction

61. On August 19, 2014, Ms. Harrell contacted listing agent Darla Espinoza, a licensed real estate salesperson, regarding the sale of a residential property located at 25051 Charina Road, Hemeland, California 92548 (Charina Road). Based on how she represented herself to Ms. Espinoza the first several times the two communicated, Ms. Espinoza reasonably believed Ms. Harrell was "Kyle Boseman," a Bureau licensee. For example, in her initial text sent to Ms. Espinoza, Ms. Harrell wrote, in part, "I wanted to bring my client [to see the property]. Thank You Kyle Lynn arch realty group." (Ex. 21, p. 10.)

62. On or about August 21, 2014, Ms. Harrell submitted a purchase agreement on behalf of buyers M.P. and L.P.,⁴ her friends, who offered to purchase the Charina Road property for \$395,000. The selling broker listed on the purchase agreement is respondent

⁴ Their names are omitted to protect their privacy.

ARGI. Respondent Boseman's name is listed as the selling agent for ARGI. A signature purported to be respondent Boseman's is on the purchase agreement. The buyers selected Superior Escrow Solutions as the escrow holder. (Ex. 23, pp. 3-10.) Respondent ARGI has never been licensed to do business as Superior Escrow Solutions.

63. On August 22, 2014, the property owner made a counter offer to the purchase agreement, including a sales price of \$415,000 and a different escrow holder. (Ex. 23, p. 11.) Buyers M.P. and L.P. accepted the seller's counter offer on August 25, 2014. The designated escrow holder was Lawyers Title. The transaction went into escrow. (*Ibid.*)

64. As established by the testimony of Ms. Harrell, Ms. Espinoza, and records of texts communications between those two (ex. 21, pp. 10-18), Ms. Harrell was the only person on behalf of the buyers who Ms. Espinoza dealt with on this transaction before it went into escrow. No evidence suggests respondent Boseman was involved in any aspect of this transaction. For example, Ms. Harrell visited the property with "her clients" on several occasions. (*Id.* at pp. 10-11.) She prepared all the documents for the buyers. She negotiated the counter offer. As explained in more detail below, she negotiated a \$6,500 credit the buyers would receive from their broker's commission. She set up and orchestrated inspections of the home. She sent documents into escrow. (*Id.* at pp. 10-18.) In fact, Ms. Harrell testified that, on this transaction, she "did all of what Boseman was supposed to do; on Charina Road I was his right hand." Respondent Boseman did not dispute her testimony. In sum, Ms. Harrell engaged in acts requiring a Bureau license in handling this transaction.

65. Throughout the transaction, Ms. Espinoza continued to believe she was dealing and communicating with respondent Boseman, when in fact, it was Ms. Harrell. On October 21, 2014, Ms. Espinoza finally sent a text to Ms. Harrell for clarification, asking, "Christy [is] your name Christy or Kyle?" When Ms. Harrell advised her name was "Chrissy," Ms. Espinoza explained that when she received texts from Ms. Harrell, "your cell number is coming up under Kyle?"⁵ (Ex. 21, p. 15.)

66. As this transaction was going into escrow, Bureau staff had begun contacting respondent Boseman and Ms. Harrell. Ms. Harrell testified that is when respondent Boseman panicked. Respondent Lawrence testified that Ms. Harrell contacted him at this time to inquire if he would replace respondent Boseman as the buyers' broker. Respondent Lawrence testified Ms. Harrell told him she and respondent Boseman "got into a fight." Respondent Lawrence also testified that when he spoke to respondent Boseman on the phone, respondent Boseman agreed to be replaced on the Charina Road transaction because "of a conflict" with Ms. Harrell.

⁵ The confusion was also experienced by escrow agent Anna Martinez of Lawyers Title. On October 2, 2014, Ms. Harrell sent an e-mail to Ms. Martinez. The following day, Ms. Martinez responded to Ms. Harrell, greeting her as "Kyle." (Ex. 23, p. 28.) In response, Ms. Harrell sent an e-mail to Ms. Martinez noting, in part, "I am a Broker for Arch Realty Group." (*Ibid.*)

67. In his closing brief, respondent Boseman denies ever speaking with respondent Lawrence, agreeing to be replaced as broker on this deal, or knowing anything about the Charina Road transaction. (Ex. B, p. 7.) However, respondent Boseman did not so testify; instead he simply testified he did not execute the instruction to escrow to have him replaced as broker on this transaction. However, that document (ex. 23, p. 14) was executed by the parties to the transaction, not the licensed representatives.

68. An addendum was submitted to escrow in which the parties agreed that respondent Lawrence would replace respondents Boseman and ARGI as the buyers' broker for this transaction. (Ex. 23, p. 14.) Although the addendum is dated August 28, 2014, it was back-dated well after-the-fact. This is demonstrated by the fact correspondence between Ms. Harrell and Ms. Martinez concerning this change began in late September and early October 2014. (Ex. 23, pp. 28-31.)

69. A. Respondent Lawrence and Ms. Harrell both estimated in their testimony that respondent Lawrence did not become involved in the Charina Road transaction until early October. No other witness disputed this timing.

B. Respondent Lawrence was told by Ms. Harrell that she needed a broker to replace respondent Boseman and that her friends were in jeopardy of losing their deposit and "dream home" if the transaction was cancelled because of the lack of a broker. Respondent Lawrence agreed to replace respondent Boseman.

C. Both respondent Lawrence and Ms. Harrell also agreed in their testimony that virtually all of the work on the transaction had been completed by that time, and that all respondent Lawrence did was speak to the buyers on the phone once, have some documents rewritten at the request of escrow, and haggle with Ms. Espinoza over possession of the property once escrow closed.

70. A. At or about the time respondent Lawrence got involved in the transaction, Ms. Harrell prepared a letter agreement for the two of them to sign. (Ex. 22, p. 5.) Ms. Harrell back-dated the agreement to August 28, 2014. In this agreement, respondent Lawrence agreed to "allow you [Ms. Harrell] to continue as the transaction coordinator on this file to the end of closing. Your compensation will be \$2,000 Flat." (*Ibid.*) Both Ms. Harrell and respondent Lawrence signed the agreement.

B. Respondent Lawrence testified that he later decided Ms. Harrell's letter agreement was "not right," so he wrote his own. He also back-dated the agreement to August 28, 2014. He also wrote that he would allow Ms. Harrell to "continue as the Transaction Coordinator on this file to the end of closing." (Ex. 22, p. 4.) He also wrote that, "We have agreed upon a flat fee of 30% of the commission or \$3,115 (whichever is higher), which will be paid out of the earned commission at the close of escrow. This amount will include your services and the use of your office as a temporary workplace, for this transaction only." (*Ibid.*) Both Ms. Harrell and respondent Lawrence signed the agreement.

C. Neither letter agreement states that Ms. Harrell's compensation was based on a "finder's fee."

71. Commission instructions were submitted to escrow changing the recipient of the "selling broker compensation" from respondent ARG1 to respondent Lawrence. (Ex. 23, pp. 14-15.) Respondent Lawrence's bank account information was provided in order for the commission to be sent to him. Respondent Lawrence also instructed Ms. Harrell to make sure the commission payment was sent to his bank account. However, Ms. Harrell admitted in her testimony that she did not contact escrow to have the commission payment sent to respondent Lawrence. In fact, records produced from the escrow file show that someone had written in Ms. Harrell's business address as respondent Lawrence's business address. (Ex. 23, p. 15.)

72. The transaction was completed and escrow closed on October 29, 2014. The property had been on the market for almost two years before it finally sold. Buyers M.P. and L.P. took possession of the property after a brief tussle over receipt of the house keys, but no evidence suggests either they or the seller of the property voiced any complaint about the transaction.

73. A. On October 30, 2014, the sum of \$3,799.08 was wired to the Chase bank account then controlled by Ms. Harrell. That amount was the commission for the broker representing the property buyers. However, the Outbound Wire Notification document indicates the wire was sent in the name of "Lawrence Realty & Financial Services." (Ex. 23, p. 19.)

B. The total commission should have been approximately \$10,500. However, Ms. Harrell had previously negotiated a \$6,500 credit to be received by the buyers from escrow. Ms. Harrell testified that she "forgot" to tell respondent Lawrence about this credit when she asked him to replace respondent Boseman. However, her testimony was not persuasive. For example, there is no reason to believe Ms. Harrell would not have remembered the credit when going over the final escrow documents and certainly when she executed the letter agreements with respondent Lawrence concerning the compensation she would receive. Instead, it is clear Ms. Harrell intentionally omitted this information from respondent Lawrence because he probably would have refused to replace respondent Boseman if he realized his commission would have been so modest.

C. Based on the version of the letter agreement written by respondent Lawrence, Ms. Harrell kept \$3,115 out of the \$3,799.08 wired to the bank account she controlled. She took action to have the remaining amount of \$560 wired to respondent Lawrence's account, which he received on or about October 31, 2014.

74. Respondent Lawrence expected the commission amount to be wired directly to his account from escrow and for it to be in excess of \$8,000. He was instantly alarmed when he discovered only \$560 had been deposited into his account.

75. On November 1, 2014, respondent Lawrence sent Ms. Harrell an e-mail questioning his commission. Ms. Harrell responded by explaining the deduction for the buyers' credit, which was unknown to respondent Lawrence at the time, and that another deduction had been made to purchase a buyers' home warranty. Respondent Lawrence became upset and felt he had been cheated by Ms. Harrell. Respondent Lawrence testified that he no longer trusted Ms. Harrell and he will never work with her again.

76. On October 31, 2014, just after escrow closed, Ms. Espinoza submitted a written complaint to the Bureau concerning the transaction. (Ex. 21.) Her main complaints focused on the actions of Ms. Harrell, who Ms. Espinoza had essentially accused of engaging in unlicensed real estate activity. The extent of her discussion concerning respondent Lawrence was that he was "aggressive" with her. That complaint related to the dispute she had with him over how the house keys were exchanged after escrow closed. On that subject, Ms. Espinoza was in the wrong and respondent Lawrence was justifiably upset with her.

77. As a result of Ms. Espinoza's complaint, the Bureau included the Charina Road transaction as part of its investigation concerning Ms. Harrell and respondent Boseman. In May 2015, respondent Lawrence was contacted by Bureau investigator Kathryn Stanbra about this transaction. Respondent Lawrence wrote a letter in response, explaining, in part, "Other than the money that was paid to Christin [Harrell] as the Transaction Coordinator, there were no commissions or finder's fee paid to anyone." (Ex. 22, p. 3.)

78. During the hearing, respondent Lawrence testified the compensation Ms. Harrell received was a "finder's fee," related to her role finding the property buyers. He never adequately explained in his testimony why the phrase "finder's fee" was not contained in either version of the letter agreement he executed with Ms. Harrell, nor why the amount of her compensation in each letter agreement was different. Respondent Lawrence also testified Ms. Harrell took no action requiring a Bureau license while they worked together. He testified that while he was involved in the transaction, Ms. Harrell simply sent documents to escrow, which non-licensed individuals typically perform. Respondent Lawrence testified that he did nothing wrong on the Charina Road transaction and violated no provision of the Real Estate Law.

79. A. Ms. Harrell testified that her fee structure on this transaction mirrored prior arrangements she had with respondent Lawrence. She testified that respondent Lawrence had before given her "referral fees," though she could not remember the amounts; she believed she typically received 10-15 percent of the overall commission earned by respondent Lawrence. Ms. Harrell also testified that her fee on this transaction was greater than the referral fee respondent Lawrence typically paid her because she also worked as a transaction coordinator. Ms. Harrell's testimony was unpersuasive, as it is inconsistent with the terms contained in the two letter agreements she signed with respondent Lawrence. Moreover, and as discussed above, she did not act simply as a "transaction coordinator;" she engaged in acts requiring a real estate license. Her testimony therefore was aimed at hiding the fact that she engaged in unlicensed activity.

B. In his testimony, respondent Lawrence did not elaborate on the fee amount he agreed to pay Ms. Harrell in the letter agreement he wrote.

C. Bureau Investigator Stanbra persuasively testified she was dubious Ms. Harrell acted as, and was compensated to be, a transaction coordinator. Her primary skepticism is that, according to the two letter agreements with respondent Lawrence, Ms. Harrell was promised either a flat fee or percentage of the total commission, involving amounts greatly in excess of what transaction coordinators typically receive. For example, Investigator Stanbra testified transaction coordinators are typically paid \$250 through \$500 per file, or can earn about \$3,000 per month for all their activity on multiple files if employed by a licensee. She has never seen a transaction coordinator paid over \$3,000 for a single file. In addition, Ms. Harrell was allowed to work out of her own office without supervision by respondent Lawrence, and she was paid directly out of escrow and not by the licensed broker, which Investigator Stanbra persuasively testified suggest unlicensed activity.

Respondent Lawrence's Main Office Address

80. For many years, respondent Lawrence has worked as a real estate broker from his home. However, since at least the time his restricted broker license was issued to him in 2008, respondent Lawrence has listed with the Bureau his main office address as 17128 Colima Road #718, Hacienda Heights, California. That address was the location of Postal Plus, a private mailbox rental business. In 2016, it became The UPS Store, but it is still a private mailbox rental business.

81. The mailbox rental agreement respondent Lawrence executed with Postal Plus indicates he had the option of designating his mailing address as either "Box #" or simply "#." (Ex. 24, p. 2.) Respondent Lawrence has used only "#." In fact, Bureau records show that since September 2008, respondent Lawrence has never used "Box #" when indicating his main office address to the Bureau. (Ex. 5, p. 1.)

82. In 2012, respondent Lawrence renewed his restricted real estate broker license. Question No. 13 on his Broker Renewal Application asked him to supply his "MAIN OFFICE ADDRESS-STREET ADDRESS (Do not list a Post Office box)." In response, respondent Lawrence listed "17128 Colima Road, #718, Hacienda Heights, CA." despite being directed on the form to not list a post office box. (Ex. 30, p. 1.)

83. Respondent Lawrence currently lists his main office with the Bureau as 17128 Colima Rd. #718, Hacienda Heights, California.

84. In May 2016, the Bureau subpoenaed from The UPS Store all documents in connection with respondent Lawrence for the property located at 17128 Colima Road #718, Hacienda Heights. (Ex. 24, pp. 7-10.) The only agreement provided by The UPS Store was the mailbox rental agreement for postal box #718.

85. Respondent Lawrence testified that the Bureau knew the Colima Road address was a postal box as far back as 1994, when investigators interviewed him at his home. In his closing brief, respondent Lawrence also alludes to an audit report written in 1995 which he asserts contains the same information. However, Bureau records do not reflect that assertion and respondent Lawrence submitted no evidence (including the report in question) corroborating his testimony.

86. Respondent Lawrence also testified that he initially provided to the Bureau the Colima Road address as his main office and mailing address "by mistake," and that he only did that once, in 2008. However, when shown the aforementioned broker renewal application he submitted in 2012 with the same information, respondent Lawrence testified he did it on that occasion "by force of habit."

87. Respondent Lawrence also testified that he provided the Colima Road address as his main office address because he "could use that address as an executive office if needed." In support of his testimony, respondent Lawrence offered photographs he recently took of the outside and inside of The UPS Store. (Ex. 125.) Those photographs show what would be expected of a business where one could pack and mail items, make photocopies, buy business supplies, and rent postal boxes. The "work stations" labelled on the photos are nothing but photocopiers and locked cabinets holding a trash box underneath with a hard counter surface on top. There is no private office or meeting area depicted in the photographs. There is no area depicted where any sort of license was or could be displayed.

88. Respondent Lawrence's testimony concerning using The UPS Store as a place where he could have displayed his broker license, or have personal consultations with clients, was not persuasive. First, it was inconsistent with his initial testimony that he listed the Colima Road address by mistake and then a force of habit. Second, respondent Lawrence failed to present evidence corroborating that he did or could have used The UPS Store to display his broker license and meet clients. As discussed above, the records provided by The UPS Store did not include any such agreement. Finally, there is no evidence suggesting respondent Lawrence ever used The UPS Store as his office. As anecdotal evidence, Ms. Harrell testified she knew respondent Lawrence worked from his home. In fact, respondent Lawrence never testified he actually used The UPS Store as his office; he simply testified that he "could use that as an executive office if needed." It is also clear that respondent Lawrence used "#" instead of "Box #" when providing his main office address to the Bureau because he did not want it to know he was using a postal box.

Respondent Boseman's Other Evidence and Arguments

89. Respondent Boseman has no prior disciplinary record with the Bureau.

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90. In his hearing brief, which was admitted into evidence as his direct testimony, respondent Boseman indicates he currently "is working on a Bachelor of Science [degree] at California State University Long Beach." (Ex. A, p. 1.) During the hearing, respondent Boseman testified he is not currently involved in real estate, but does "odd jobs not in real estate" for financial support.

91. In his closing brief, respondent Boseman contends Ms. Harrell was purchasing the properties in question for herself "using her husband and a relative" (ex. B. p. 6), and therefore no broker was necessary. While it is true that she viewed the Brandon Court and Bodewin Court transactions as investment property, Ms. Harrell herself was only listed, belatedly, as a buyer on the Bodewin Court transaction. Her husband was removed from the first two transactions. Regardless of her relationship with Ms. Murphy, Ms. Harrell was still representing Ms. Murphy on the first two transactions and then two independent parties on the Charina Road transaction.

92. In his closing brief, respondent Boseman argues Mr. Wanis's complaint about a lack of records produced by respondent MAI during his audit was because "there are NO records." (Ex. B, p. 6.) Respondent Boseman did not offer testimony on that point during the hearing and the fact he turned over to Mr. Wanis a copy of the Bodewin Court purchase agreement undercuts the veracity of that argument.

93. In their closing briefs, respondents Boseman and Lawrence both attack the credibility of the main complaining witnesses for the three transactions in question. Their arguments are not persuasive, in that the involved witnesses appeared credible, offered testimony that was generally consistent and logical, and provided corroborating documentation. Respondents' joint attacks are discussed as follows:⁶

(a) It was argued that John Spear, the broker involved in the Brandon Court transaction, ignored red flags apparent in the transaction and conspired with Ms. Harrell to continue with an illegal escrow. Nothing could be farther from the truth. Mr. Spear immediately identified many problems with the transaction once he got involved. He contacted Ms. Harrell early and often when he first became suspicious of the deal in order to cancel it. After getting no assistance from her and discovering she was unlicensed, he contacted respondent Boseman several times, also attempting to cancel the transaction. Mr. Spear complained about the transaction to the DBO, and then to the Bureau, which prompted the investigation underlying this case.

⁶ In determining witness credibility, the ALJ is guided by the general principle that the trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) Moreover, discrepancies in a witness's testimony, or between that witness's testimony and that of others, does not necessarily mean that the testimony should be discredited. (*Wilson v. State Personnel Bd.* (1976) 58 Cal App.3d 865, 879.)

(b) Respondents established that Michelle Ortega, the salesperson involved in the Bodewin Court transaction, failed to disclose in the local Multiple Listing Service she used to promote the sale of the property, that she owned it. Section 10177, subdivision (o), prohibits Bureau licensees from not disclosing their personal interests in real estate sales. However, as discussed above, Ms. Ortega's testimony was generally consistent, corroborated and persuasive. The fact she failed to state in a listing that she owned the property did not alone erode her credibility such that her corroborated testimony was unbelievable.

(c) It was argued that Darla Espinoza, the salesperson involved in the Charina Road transaction, worked for different brokers or engaged in acts exceeding the scope of her salesperson license. Those arguments were speculative and not established. Respondents also point out inconsistencies in the bottom portions of some of the sales documents generated by Ms. Espinoza, and argue she violated the same provisions of the Real Estate Law asserted against respondent Boseman. The merits of that argument are better discussed in Legal Conclusion number 3 below. While both respondents contend Ms. Espinoza "lied" in many aspects of her testimony, such was not established. It is true that her version of how the keys to the house were turned over after close of escrow was discredited by respondent Lawrence. It is also disappointing that Ms. Espinoza did not immediately complain to the Bureau concerning Ms. Harrell's actions, but instead waited until the transaction had been completed. However, the parts of her testimony used to establish the factual findings for this transaction were persuasive and corroborated by documentation. Moreover, her testimony had little bearing on establishing the relationships between respondent Boseman, respondent Lawrence, and Ms. Harrell, which are the pivotal facts involved in that transaction. Her testimony regarding the actual mechanics of the Charina Road transaction were met with little or no dispute or contradiction by respondents.

94. In his closing brief, respondent Boseman complains several times that the Bureau did not conduct a valid forensic audit. However, he provides no specifics of what was lacking, other than his contention that a handwriting expert should have been used to examine the signatures attributed to him in some of the purchase agreements and related documents. On the other hand, while Mr. Wanis had to rely on the cooperation of respondent Boseman and Ms. Harrell, it was established that respondent Boseman was minimally cooperative with the audit. In fact, Mr. Wanis detailed in his audit report how his audit was hindered by the lack of full cooperation from respondent Boseman and Ms. Harrell. For example, respondent Boseman delayed scheduled meetings and conversations with Mr. Wanis; told him he did not have certain documents because they were in the possession of Ms. Harrell; and failed to attend at least one meeting he had scheduled with Mr. Wanis. (See, ex. 18, pp. 11-16.) In addition, his statements to Mr. Wanis were not candid or consistent, but changed over time.

95. In his closing brief, respondent Boseman remains unrepentant. With the exception of the vague reference in his closing brief that the unlicensed branch office addresses may have been due to excusable neglect on his part (due to an alleged emergency situation), he contends that he violated no part of the Real Estate Law. Instead, respondent Boseman argues the Bureau employees involved in his investigation "need additional

training” and “should be reprimanded and retrained so that no other broker or salesperson have to go through this type of undo [sic] agony ever again.” (Ex. B, pp. 1, 9.)

96. Respondent Boseman’s remaining factual arguments were aimed at the allegations made against him in the Accusation. To the extent not specifically addressed above or in the Factual Findings regarding those allegations, his arguments were deemed to be either unpersuasive or irrelevant.

Respondent Lawrence’s Other Evidence and Arguments

97. Respondent Lawrence’s prior disciplinary history with the Bureau is described in great detail above. Distilled to its root, respondent Lawrence essentially surrendered his broker license in 1989, with a right to a restricted salesperson license that he failed to exercise. He was subsequently reinstated as a restricted broker in 2008, after his second request for the Commissioner to do so. The only prior misconduct established against him was based on his stipulation that he made false statements to a lender on one mortgage application, which occurred in the mid-1980s.

98. Since the reinstatement of his restricted broker license in 2008, respondent Lawrence has been involved in significant and impressive community service as follows:

(a) He consults with corporations on major real estate projects, both domestic and off-shore; consults with or sits on the board of directors of five non-profit organizations; and consults with a large international church organization.

(b) Respondent Lawrence is an ordained Deacon in the Baptist Church and was recently asked by his pastor to join the Board of Deacons at his church. He also serves as Chaplain for his church’s Health Ministry and as a member of its “Prayer Posse.”

(c) He works with the Black MBA Association, and helps to identify and recruit young black boys and girls to join its mentoring program.

(d) Respondent Lawrence has pledged that in 2017 he will work with Florence Mckoy, World Cleric of the Jesus Christ Institutional Holiness Assemblies, Inc., to establish a training center in Los Angeles, and 75 other cities, for black men between the ages of 18-45, to receive help getting off the streets, out of gangs, and into jobs.

(e) More recently, he established the National Coalition for Equality and Fairness, which he hopes will correct what he believes to be injustices in society and bring about economic improvement in the inner city area.

99. Respondent Lawrence presented several character reference letters from friends, colleagues in real estate and from spiritual organizations, which corroborate his accomplishments and activities described above. (Exs. 123 & 124.)

100. A. Two character witnesses also testified on behalf of respondent Lawrence.

B. The first such witness was Vincent Strebe, a real estate developer and mortgage lender who has known respondent Lawrence since 2003. His company used respondent Lawrence as a consultant on a major, multi-million dollar project; they found his advice "very helpful." He also described how respondent Lawrence has shown great compassion by assisting those in danger of losing their homes due to foreclosure.

C. The second such witness was Belinda Carter-Johnson. She has known respondent Lawrence for over 20 years. He has served on the Board of Directors of the non-profit school she operates. She has a good opinion of his business acumen and character.

101. Respondent Lawrence's attacks on the credibility of the complaining witnesses for the three involved transactions were discussed above in combination with respondent Boseman's similar attacks.

102. In addition, in his closing brief respondent Lawrence lists a series of complaints about the conduct of complainant's counsel before and during the hearing. (Ex. 126, pp. 8-10 & 18-19.) This complaint is best addressed in discussing respondent Lawrence's affirmative defense of unclean hands in Legal Conclusion numbers 6-8 below.

103. A. Respondent Lawrence describes in his closing brief a number of what he perceives to be short-comings with Investigator Stanbra's investigation of the Charina Road transaction and his main office address situation. (Ex. 126, pp. 13-16.) Though respondent Lawrence accurately describes steps Investigator Stanbra could have taken but did not, he fails to establish that her failure to take any of them impacted her investigation or undercut her credibility. For example, respondent Lawrence fails to describe what probative information would have been obtained from her engaging in the activity in question.

B. Respondent Lawrence's critiques of the conclusions Investigator Stanbra reached regarding the proper payment of a "finder's fee" and the type of address that should be submitted to the Bureau as a licensee's main office address are better discussed in Legal Conclusion numbers 15-18 below.

C. However, it should be noted that in his closing briefs respondent Lawrence inaccurately characterizes Investigator Stanbra's cross-examination testimony concerning his main office address. For example, she did not testify, as he contends, that respondent Lawrence "had met the requirement of the law as it is written." (Ex. 127, p. 5) Instead, she testified that the involved statutes require a broker to provide the Bureau with an address where the broker actually transacts business, which could include leased temporary office space where one could/would display his/her license. She clearly testified that listing a postal box where one did not actually conduct business did not meet the requirements of the Real Estate Law.

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104. A review of respondent Lawrence's three closing briefs (exs. 126-128) reveals he is as unrepentant as respondent Boseman. He accepts no responsibility for any misconduct, in any degree or to any extent. Instead, he blames Bureau staff for pursuing a "frivolous" accusation against him. (Ex. 126, p. 16.)

105. Respondent Lawrence's remaining factual arguments in his closing briefs were aimed at the allegations made against him in the Accusation or Order of Suspension. To the extent not specifically addressed above or in the Factual Findings regarding those allegations, his arguments were deemed to be either unpersuasive or irrelevant.

Costs

106. The audit costs for Audit No. SD 140011 relating to the real estate activities of respondent MAI were \$3,155.75. (Ex. 25.)

107. The audit costs for Audit No. SD 140012 relating to the real estate activities of respondent Boseman were \$1,596.71. (Ex. 26.)

108. A. As established by the Bureau's Certified Statement of Investigation Costs (ex. 27), the Bureau's combined investigation costs for both consolidated cases were \$11,049.70. Pursuant to section 10106, subdivision (c), the Bureau's certified copy of its actual costs is prima facie evidence of the reasonableness of those costs. Respondents presented no evidence or argument rebutting the reasonableness of these costs. In light of the size, scope and complexity of these cases, the costs are deemed to be reasonable.

B. The investigation activities were attributed to either investigation case number "002" pertaining to the Brandon Court and Bodewin Court transactions, or investigation case number "008" pertaining to the Charina Road transaction. The total investigation costs attributed to case number "002" were \$6,556.70. The total investigation costs attributed to case number "008" were \$4,493.20.

109. As established by the declaration of complainant's counsel (ex. 28), the Bureau's enforcement costs (legal fees) for Bureau Case No. H-40004 LA (Accusation against all respondents) were \$7,075.50. The prima facie presumption concerning the reasonableness of these costs pursuant to section 10106, subdivision (c), is not applicable because counsel's declaration is neither a certification of actual costs nor a good faith estimate of such costs where actual costs are not available. There was no explanation provided in the declaration why actual costs were not available. However, respondents presented no evidence or argument rebutting the reasonableness of these costs. In light of the size, scope and complexity of these cases, these costs are deemed to be reasonable.

110. A. As established by the declaration of complainant's counsel (ex. 6A), the Bureau's enforcement costs (legal fees) for Bureau Case No. H-23355 LA (Order of Suspension against respondent Lawrence) were \$4,156.30.

B. For the same reason explained immediately above, the prima facie presumption concerning the reasonableness of these costs pursuant to section 10106, subdivision (c), is not applicable to these costs. However, respondent Lawrence did not present evidence or argument rebutting the reasonableness of these costs. They are deemed to be reasonable.

C. Complainant's counsel represented that these costs were attributed to Bureau Case No. H-23355 LA (Order of Suspension against respondent Lawrence) because they related mainly to her efforts to consolidate both cases for hearing and oppose respondent Lawrence's efforts to separate them. Her declaration shows one hour of time spent (\$89) preparing the Suspension Order and exhibits 1A through 6A for the hearing. The other 45.70 hours of time reflected relate to the consolidation efforts described above. While the block notation for the 45.70 hours includes other activities, the declaration is not specific as to how much time was allotted to each specified activity. Therefore, it is assumed all of this time was dedicated to efforts in consolidating both cases for hearing.

D. In a prior order of the ALJ resolving complainant's request to consolidate both cases for hearing and respondent Lawrence's efforts to separate them, the ALJ held, "Analysis of the pleadings supports respondent Lawrence's contention [that the cases should be separated for hearing]. The only alleged commonality between the allegations concerning him and the other respondents is the same actor, Ms. Harrell (who is not a party in this case)." (Order dated July 25, 2016, contained in ex. 1.) Nonetheless, the ALJ granted the motion to consolidate the cases for hearing based on reasons of judicial economy, avoiding delays to the respondents caused by having successive hearings, and avoiding the potential prejudice to the parties of having two similar hearings with different sets of evidence due to possible witness unavailability.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. As the party bringing administrative charges and seeking discipline against the respective licensees in this case, complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.)

2. In an action seeking discipline against professional licenses, the governing agency bears the burden of establishing cause for discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.)

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Respondents' Affirmative Defenses

SELECTIVE PROSECUTION

3. Respondents Lawrence and Boseman argue the Bureau has selectively prosecuted them. As alluded to above, both respondents contend the complaining witnesses involved in the three sales transactions in question committed their own violations of the Real Estate Law but were not similarly prosecuted by the Bureau. Respondents argue those witnesses should be disbelieved and/or the charges against respondents dismissed.

4. A. Generally, parties to administrative or criminal proceedings cannot show they should be excused from findings they violated the law because others who similarly violated the law were not prosecuted. This is because a prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 451.)

B. Such claims have merit only when offered to establish selective prosecution, in which one must show he was the subject of an invidious discrimination, i.e., "(1) 'that he has been deliberately singled out for prosecution on the basis of some invidious criterion;' and (2) that 'the prosecution would not have been pursued except for the discriminatory design of the prosecuting authorities.'" (*People v. Owens* (1997) 59 Cal.App.4th 798, 801.)

C. Unequal treatment which results simply from an alleged laxity of enforcement or which reflects a non-arbitrary basis for selective enforcement of a statute does not deny equal protection and is not constitutionally prohibited discriminatory enforcement. (*People v. Owens, supra*, 59 Cal.App.4th at p. 801.)

5. In this case, it was not established that either respondent was selectively prosecuted. Many of respondents' claims of wrongdoing by the involved witnesses were not established. In other instances, the alleged wrongdoing, if established, was dissimilar from that alleged against respondents. Moreover, the Bureau began investigating respondents after receiving complaints about them; no evidence suggests similar complaints were made against the three witnesses in question. In any event, the primary deficiency in respondents' argument is their failure to point to any invidious discriminatory motive for the Bureau to prosecute them but not the others, such as sex, age, race, religion, etc. The most generous reading of respondents' closing arguments is that they believe the Bureau has been harassing them for personal reasons. Though it was not established that such is the case, even if true that kind of motive would not support a claim of selective prosecution.

THE UNCLEAN HANDS DOCTRINE

6. In his closing brief (ex. 126), and in much more detail in his first amended closing brief (ex. 127), respondent Lawrence lists a series of acts or omissions by

complainant's counsel in this case. He argues that under the unclean hands doctrine, such actions should render the Accusation against him null and void.

7. A. The defense of unclean hands arises from the maxim. "'He who comes into Equity must come with clean hands.'" (*Blain v. Doctor's Co.* (1990) 222 Cal.App.3d 1048, 1059.) The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim. (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978, as modified on denial of reh'g (2000).)

B. However, the unclean hands doctrine is not a legal or technical defense to be used as a shield against a particular element of a cause of action. Rather, it is an equitable rationale for refusing a plaintiff seeking relief where principles of fairness dictate that the plaintiff should not recover, regardless of the merits of his claim. It is available to protect the court from having its powers used to bring about an inequitable result in the litigation before it. (*Kendall-Jackson Winery, Ltd. v. Superior Court, supra*, 76 Cal.App.4th at p. 985.)

8. A. The cases cited above are civil actions involving equitable relief. Respondent Lawrence did not cite any case applying the unclean hands doctrine to an administrative disciplinary action such as this, nor is the ALJ aware of any. There are cases applying the doctrine in an administrative setting involving a party's request for benefits against a public entity. (See, e.g., *Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037, 1053 [disability retirement benefits]; *Jaramillo v. County of Orange* (2011) 200 Cal.App.4th 811, 814 [terminated employee seeking back pay against public entity employer].) This is an important distinction. The instant case does not involve a claim by respondent against a public entity. To the contrary, the purpose of this proceeding is to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.2d 161, 164.) Thus, applying the doctrine in a case like this is problematic, because the interests of public protection would be thwarted by the actions of one of the parties involved in the litigation.

B. In any event, even assuming arguendo the doctrine applies here, it was not established that complainant's counsel acted in a manner warranting its application. Many of the actions attributed to her were not established, while others were exaggerated. For example, respondent Lawrence contends the three complaining witnesses "lied" in their testimony and complainant's counsel questioned them knowing that. (Ex. 126, p. 18.) Neither premise was established. While some of those witnesses' testimony was unpersuasive or erroneous, much of it was persuasive and led to key findings. For that matter, some of respondent Lawrence's testimony was unpersuasive and/or erroneous; but such would not warrant disregarding his entire testimony or striking his defenses without consideration. Nor was it established that complainant's counsel "deliberately misled the court" on evidentiary exchanges. (*Id.* at p. 19.) It is true that some of the omissions described in the closing briefs occurred, as recounted in great detail on the record during the hearing when objected to by respondents. But those problems of evidentiary exchange are often encountered in cases like this. The ALJ deemed the problems cured by actions taken during the hearing, which were also described in great detail on the record.

Cause for Discipline Against Respondent MAI

FIRST CAUSE FOR DISCIPLINE

9. A. Section 10130 provides that it is "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 within this state without first obtaining a real estate license." Section 10133, subdivision (a), provides exemptions from the requirement of having a license, but respondents did not argue any apply, nor is it apparent that any do. Section 10159.5 and Regulation 2731 require that a licensee who wants to do business under a fictitious name must also apply to the Bureau for a license to do so.

B. Section 10176, subdivision (a), allows the Commissioner to discipline a licensee for "[m]aking any substantial misrepresentation." In addition, section 10177, subdivision (d), allows the Commissioner to impose discipline against a licensee that has "[w]illfully disregarded or violated the Real Estate Law" or its regulations.

10. A. With respect to the Bodewin Court transaction, it was not established that respondent MAI is subject to discipline pursuant to sections 10176, subdivision (a), and 10177, subdivision (d), for violating sections 10130 and 10159.5, as well as Regulation 2731.

B. Specifically, it was not established that respondent MAI engaged in unlicensed activity by making a written offer on the Bodewin Court property before it had been licensed by the Bureau or that it had made any misrepresentations about its licensed status. Although it is true that respondent MAI was not licensed by the Bureau at the time that either purchase agreement was created by Ms. Harrell for the Bodewin Court transaction, it was not clearly and convincingly established which broker was intended to be the one representing the buyers or presenting the offer. For example, the two purchase agreements produced for this transaction list various licensed persons and entities in that capacity. Respondent Boseman and his individual broker license number were listed in both purchase agreements. The second purchase agreement was the one accepted by Ms. Ortega, yet that document clearly shows respondent Boseman was the buyers' broker, not Maximum Assets Realty or any company affiliated with respondent MAI. (Factual Findings 13-33.)

SECOND CAUSE FOR DISCIPLINE

11. A. With respect to the Brandon Court transaction, it was established that respondent MAI made misrepresentations and engaged in activities requiring a real estate license at a time when it was not licensed, and thereby is subject to discipline pursuant to sections 10176, subdivision (a), and 10177, subdivision (d), for violating sections 10130, 10159.5, as well as Regulation 2731.

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B. Unlike in the Bodewin Court transaction, the sole purchase agreement and related documents for the Brandon Court transaction were made by and on behalf of respondent MAI (misnamed as Maximum Assets Realty) and its affiliated escrow business Superior Escrow Solutions. The only other licensee listed was respondent Boseman, who was the designated officer of respondent MAI. Those documents showed respondent MAI and Superior Escrow Solutions to be properly licensed entities. However, the relevant documents were submitted before respondent MAI was issued its license by the Bureau and before it even submitted the application for the same. Neither Ms. Harrell nor respondent Boseman provided an explanation why the purchase agreement and related documents listed respondent MAI before it was licensed. (Factual Findings 13-47.)

THIRD CAUSE FOR DISCIPLINE

12. Respondent MAI is subject to discipline pursuant to section 10177, subdivision (d), in that it was established that the audit of MAI's books and records revealed it had violated provisions of the Real Estate Law and its regulations. Specifically, the audit correctly showed that respondent MAI had engaged in unlicensed activity with respect to the Brandon Court transaction, in violation of section 10130; it failed to retain complete books and records of its transaction, in violation of section 10148 and Regulation 2950, subdivision (c); and it failed to produce copies of certain requested bank records created and maintained by it, at least for the Brandon Court transaction, in violation of section 10148 and Regulation 2950, subdivision (c). (Factual Findings 48-54.)

Cause for Discipline Against Respondent Boseman

THIRD CAUSE FOR DISCIPLINE

13. A. Section 10159.2, subdivision (a), provides that the officer designated to be in charge of 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 officer and employees as necessary to secure full compliance" with the Real Estate Law.

B. In addition to the parts of the Business and Professions Code cited above, section 10177 allows the Commissioner to discipline a licensee who has: "[d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license" (subd. (g)); and "[a]s 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" (subd. (h)).

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C. In this case, the audit of respondent MAI's books and records established that the overall conduct of respondent Boseman constituted a failure on his part, as the designated officer of a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of respondent MAI, as required by section 10159.2, and to keep MAI in compliance with the Real Estate Law, which therefore subjects respondent Boseman to discipline pursuant to sections 10177, subdivisions (h), (d), and (g).

D. Specifically, the audit of respondent MAI's books and records revealed that respondent Boseman exercised virtually no control over MAI's business and failed to supervise Ms. Harrell. Respondent Boseman knew Ms. Harrell was engaging in real estate activities on behalf of respondent MAI and did nothing to limit her activities or ensure her compliance with the Real Estate Law. His failure to supervise or oversee MAI's business resulted in Ms. Harrell engaging in unlicensed activities during the Bodewin Court and Brandon Court transactions. Because he allowed her unfettered control over MAI's books and records, respondent Boseman was unable to comply with the requests of the Bureau auditor to produce all of its books and records. (Factual Findings 13-54.)

FOURTH CAUSE FOR DISCIPLINE

14. A. Section 10163 requires that if a licensee maintains more than one place of business, he shall apply for and procure an additional license for each branch office so maintained. Section 10165 allows the Commissioner to discipline a licensee who violates section 10163. Regulation 2715 requires every broker to maintain on file his main office address, as well as any branch offices.

B. The audit of respondent Boseman's books and records revealed that he used two unlicensed branch offices in Murrieta and Chula Vista, in violation of section 10163, as well as Regulations 2715 and 2725. By his own admission, respondent Boseman did not realize his employees were doing so because of the "hectic" period after he assumed control of so many realty companies from revoked licensee Steve Uyemura. While respondent Boseman described that situation as an emergency, it was of his own creation. He offered no good excuse for failing to supervise his employees and discover that they were putting incorrect information on purchase agreements and related documents. Respondent Boseman is therefore subject to discipline pursuant to sections 10159.2, 10165, and 10177, subdivisions (d), (g), and (h). (Factual Findings 13-60.)

Cause for Discipline Against Respondent Lawrence

FIFTH CAUSE FOR DISCIPLINE- CHARINA ROAD

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

B. With regard to the Charina Road transaction, it was established that respondent Lawrence compensated Ms. Harrell, directly or indirectly, for performing acts requiring a real estate license, in violation of section 10137, which constitutes grounds to discipline his license pursuant to sections 10165 and 10177, subdivision (d). (Factual Findings 61-79.)

C. In his closing briefs, respondent Lawrence argues some of Ms. Harrell's compensation was for her work as a transaction coordinator and the rest was simply a "finder's fee" allowed pursuant to the reasoning expressed in *Tyrone v. Kelley* (1973) 9 Cal.3d 1 (*Kelley*). Respondent Lawrence cites to *Kelley* for the proposition that "there is no limit on the amount of compensation that can be paid [for a referral]." (Ex. 126, p. 14.) However, that is not precisely the holding of *Kelley*. In fact, the court held, "In general, an unlicensed individual may recover an agreed compensation where he merely finds a buyer, seller, lender, or borrower, but if in addition to finding such person he goes further and helps to conclude the transaction by taking part in negotiating the details of the transaction, compromising or composing differences between the parties, by way of example, he may not recover the agreed compensation." (*Tyrone v. Kelley, supra*, 9 Cal.3d at pp. 11-12; *Rees v. Dept. of Real Estate* (1977) 76 Cal. App. 3d 286, 295; 78 Ops.Cal.Atty.Gen. 71 (1995).)

D1. First, it is clear that the "finder's fee" exception does not apply in this case. Ms. Harrell engaged in far more activity than merely finding buyers and referring them to respondent Lawrence. She actively negotiated the Charina Road transaction, visited the property with the buyers, made an offer to purchase it, executed the relevant documents, communicated exclusively with the broker representing the property owner, and communicated with the escrow officer. She undertook activities that required a Bureau license. It does not matter that she undertook almost all of that activity before respondent Lawrence became involved. There is nothing in *Kelley* making such a distinction; *Kelley* simply holds that one cannot be compensated if she takes any action beyond simply referring a buyer to a licensed person. Moreover, allowing for such a distinction would only create room for mischief, as an unlicensed person could simply engage in licensed activity, then substitute complicit brokers and ask to be legally compensated.

D2. In addition, it is clear that respondent Lawrence did not intend Ms. Harrell to be compensated by way of a "finder's fee." Neither letter agreement created by respondent Lawrence or Ms. Harrell mention her being compensated by a "finder's fee." In fact, respondent Lawrence wrote in a letter to Investigator Stanbra that "there were no commissions or finder's fee paid to anyone." Respondent Lawrence asserted the "finder's fee" exception for the first time after the Accusation was filed and as the hearing approached.

D3. Thus, it is neither believable that respondent Lawrence intended to compensate Ms. Harrell by use of a "finder's fee," nor is that legal exception applicable in this case.

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E. Second, it is clear that Ms. Harrell was not compensated merely as a "transaction coordinator." Though the two letter agreements in question use that label for her work, it is clear that nomenclature was meant as subterfuge for what Ms. Harrell truly did. A transaction coordinator does not engage in licensed activity; Ms. Harrell did. Investigator Stanbra persuasively testified that a transaction coordinator, at best, would be compensated no more than \$500 per file; in this case, Ms. Harrell received more than \$3,000, substantially more than even respondent Lawrence received. Given the late stage at which respondent Lawrence became involved, with the transaction almost out of escrow, it is also impossible to believe that a transaction coordinator could have engaged in enough work to justify a fee over \$3,000. To the extent respondent Lawrence argues her compensation was for her work before he got involved, it is more believable that she was compensated for all of her work on the file, including her activity that required a license. Finally, the letter agreement drafted by respondent Lawrence shows Ms. Harrell's compensation was based on a percentage of his commission, with a maximum cap approaching what a licensed individual would receive by commission. Although respondent Lawrence did not intend Ms. Harrell to be paid directly from escrow, he still intended her to be paid the amount she ultimately received. Thus, the fact his instruction was not carried out to have escrow pay him directly does not matter. Based on the above, the totality of the evidence established respondent Lawrence agreed and allowed Ms. Harrell to be compensated for her unlicensed work on the file, not just for a referral or as a transaction coordinator.

FIFTH CAUSE FOR DISCIPLINE- MAIN OFFICE ADDRESS

16. A. Section 10165 allows the Commissioner to discipline a licensee who violates section 10162. Section 10162 provides, in pertinent part:

(a) Every licensed real estate broker shall have and maintain a definite place of business in the State of California that serves as his or her office for the transaction of business. This office shall be the place where his or her license is displayed and where personal consultations with clients are held.

(b) A real estate license does not authorize the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.

(c)(1) Every real estate broker and salesperson licensee shall provide to the commissioner his or her current office or mailing address, a current telephone number, and a current electronic mail address that he or she maintains or uses to perform any activity that requires a real estate license, at which the bureau may contact the licensee.

(2) Every real estate broker and salesperson licensee shall inform the commissioner of any change to his or her office or mailing address, telephone number, or electronic mail address no later than 30 days after making the change.

B. Regulation 2715 provides, in pertinent part, "Every broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his principal place of business for brokerage activities, the address of each branch business office and his current mailing address, if different from the business address."

17. A. In his closing briefs, respondent Lawrence contends section 10162 allows a broker to submit either his office address where he does business or a separate mail-only address, at his election; and that, to the extent Regulation 2715 eliminates that option, the regulation should be viewed as an attempt to supersede section 10162 and is therefore void.

B. Pursuant to Government Code section 11342.2, "[w]henver by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." Thus, while the construction of a statute by officials charged with its administration is entitled to great weight, nevertheless, administrative regulations that alter or amend the statute or enlarge or impair its scope are void. (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11, as modified on denial of reh'g (Sept. 20, 1990).)

C. Respondent Lawrence's arguments are unpersuasive. First, the Bureau's construction of section 10162 that brokers are required to provide the address where they actually conduct brokerage business is entitled to great weight. That interpretation is consistent with subdivision (c)(1), which requires brokers to provide the Bureau with his/her "current office or mailing address . . . that he or she maintains or uses to perform any activity that requires a real estate license, at which the bureau may contact the licensee." That subdivision, when read in whole, shows the Bureau requires the address where broker activity is actually conducted, allowing the Bureau (or public) to personally contact the licensee there, if necessary. Construing this phrase to allow a broker to provide only a postal box address where he/she does not actually transact business would frustrate the intention of allowing personal contact with the licensee. Subdivision (c)(1) should also be interpreted in the context of subdivision (a), which requires brokers to maintain a "definite place of business . . . for the transaction of business;" and subdivision (b), which provides that a licensee may not do business except from the location stated in the license issued by the Bureau. No good reason comes to mind in requiring a licensee to maintain a definite place of business, but yet not require him/her to provide that address to the Bureau. Allowing brokers to provide the Bureau with only a postal box address would allow licensees to secrete themselves from the Bureau and the public. There is nothing in the statute suggesting that is an intended consequence.

D. Second, Regulation 2715 should be viewed as simply clarifying or carrying out the purpose of section 10162, by requiring brokers to provide the Bureau with the "address of his principal place of business for brokerage activities. . . ." This is more evidence of the Bureau's intent to have on file the address where a licensed broker actually does business, not simply a postal box address. The renewal application form submitted by respondent Lawrence in 2012 is further evidence of this intent, in that the instructions expressly prohibit the renewing broker from providing a post office box as his main office address. The regulation is therefore consistent with section 10162, and it does not require anything beyond what is required by section 10162. The regulation is therefore not void.

E. Finally, respondent Lawrence did not establish that he actually transacts business other than from his home, an address which he has not provided to the Bureau for reasons which are still unclear. Nor did he establish that he has or could conduct business at the place where his postal box is located. His written lease agreement with the owner of that location only covers the postal box. Respondent Lawrence submitted no evidence showing he has ever done brokerage business at that location. The evidence he did submit (the photographs of the UPS Store) tend to show he could not conduct brokerage business there, nor could he display his license.

18. Based on the above, it was established that respondent Lawrence intentionally failed to provide the Bureau with his main office address, i.e., the address of his definite place of business where he transacts brokerage business, in violation of section 10162 and Regulation 2715. He is therefore subject to discipline for intentionally violating the Real Estate Law pursuant to sections 10165 and 10177, subdivision (d). (Factual Findings 80-88.)

Disposition

19. A. The purpose of this proceeding is to protect the public, not to punish an errant licensee. (*Hughes v. Bd. of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786.)

B. In the practice of a real estate license, "[h]onesty and integrity are deeply and daily involved in various aspects of the practice." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) "The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license." (*Id.* at pp. 177-178.) In *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402, the court of appeal found that "the Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear."

RESPONDENT ARG1

20. None of the asserted causes for discipline name respondent ARG1. In her closing brief, complainant does not argue that respondent ARG1 violated any provision of the Real Estate Law or seek any disciplinary action against it. Since there is no basis for discipline against it, the Accusation against respondent ARG1 should be dismissed.

RESPONDENT MAI

21. Cause for discipline was established against respondent MAI for engaging in unlicensed activity and making misrepresentations concerning its license status in connection with the Brandon Court transaction. In addition, the audit of respondent MAI's books and records revealed various violations of the Real Estate Law. Respondent MAI was created by an unlicensed individual, Ms. Harrell, and a licensed broker, respondent Boseman. Both thereafter abandoned the corporation after the Bureau began investigating its operations. Thus, respondent MAI has no licensee responsible for maintaining it and nobody appeared on its behalf during the hearing to defend it. Respondent MAI is a defunct real estate corporation and revocation of its license is warranted. (Factual Findings 3, 16-17, 18-28, and Legal Conclusions 9-12.)

RESPONDENT BOSEMAN

22. A. Cause for discipline was established against respondent Boseman based on the findings of the two audits conducted by Ms. Wanis of the Bureau. The audit of MAI's books and records revealed that respondent Boseman had essentially abdicated his responsibility as the designated officer of that real estate corporation to an unlicensed individual, Ms. Harrell. By doing so, respondent Boseman facilitated her unlicensed activity, as demonstrated by her conduct in the three sales transactions in question. The audit of respondent Boseman's own books and records revealed his lax oversight of licensed employees of the realty companies he took over from a revoked broker, resulting in unlicensed branch office activity.

B. The most reasonable explanation for his failure of supervision is that respondent Boseman had taken responsibility for so many licensed real estate entities in a short period of time that he had neither the time nor the inclination to properly supervise them. That situation was exacerbated by the fact he was enrolled in college. Nonetheless, this was a situation entirely of his own making and there is no evidence suggesting respondent Boseman attempted to remedy the problem, except after the Bureau began investigating him. The fact that respondent Boseman was involved with revoked former licensees (Ms. Harrell and Mr. Uyemura) is also disquieting.

C. Of almost equal concern is respondent Boseman's lack of candor about these issues when questioned by Bureau employees and again during the hearing. He has asserted that he never gave Ms. Harrell authority to engage in activity on behalf of respondent MAI; later that she had stolen his identity; and later that she refused to let him be involved in the operation. Those assertions were false. Respondent Boseman also provided minimal cooperation with the Bureau during its audit of MAI's books and records. He erroneously blamed others for engaging in misconduct but failed to accept any real responsibility for his own misconduct. Finally, respondent Boseman's actions caused some harm to the sellers of the property in the Brandon Court transaction, though it is not possible to quantify the amount of harm based on the record presented.

D. On the other hand, respondent Boseman has no prior record of discipline with the Bureau after almost 10 years as a licensee, and the misconduct established against him weighs more heavily toward errors and omissions, as opposed to fraud, theft or egregious intentional misconduct. He is still a young man who, at the time, simply got in over his head and then panicked. These are all mitigating facts to varying degrees. His shortcomings are better explained by immaturity rather than blatant dishonesty. He is still in school and no longer actively involved in real estate. Thus, the greatest concern about him is his inability to supervise other licensees or to function independently as a broker. However, there is not equal concern with his ability to safely function under the supervision of a broker willing to accept responsibility for him. Under these circumstances, an order revoking his broker license but allowing him to obtain a restricted real estate salesperson license, if requested, is warranted. (Factual Findings 13-15, 16-28, 61-68, 89-96, and Legal Conclusions 13-14.)

Not Adopted

RESPONDENT LAWRENCE

23. A. Cause for discipline was established against respondent Lawrence because he compensated an unlicensed person, Ms. Harrell, for performing acts requiring a real estate license in connection with the Charina Road transaction. In addition, respondent Lawrence intentionally failed to provide the Bureau with his main office address, i.e., where he actually transacts his brokerage business.

B. The misconduct established against respondent Lawrence involves dishonesty and the willful violation of the Real Estate Law. In aggravation, his broker license was revoked in 1989 for making false statements to a lender, which involved similarly dishonest conduct. During the hearing, respondent Lawrence offered excuses for his conduct in the Charina Road transaction and the main office address he provided to the Bureau which were, quite frankly, unbelievable. For example, he testified and argued he compensated Ms. Harrell through use of a "finder's fee," when the two written agreements covering her compensation did not mention such a fee, and he previously had denied to the Bureau that her compensation included such a fee. In explaining why he refused to provide the Bureau with his proper main office address, respondent Lawrence offered various and contradictory explanations, concluding with the assertion that he could have used a UPS Store to conduct his brokerage business, which was frivolous. The fact he made those false assertions also touches upon his honesty and integrity. Respondent Lawrence has never accepted a morsel of responsibility for any of his actions, which is discomfoting.

C. To his credit, respondent Lawrence has been involved in various worthy community activities for many years. His misconduct in this case is therefore perplexing. While one can argue no consumer was harmed by his actions, in that the Charina Road transaction was completed and the parties appeared to be satisfied, it equally can be argued that the public at large was harmed by his facilitating the unlicensed activity of the likes of Ms. Harrell.

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D. It also can be argued that the level of misconduct established in this case against him, while serious, was not egregious. Nonetheless, it is respondent Lawrence's track record of dishonest activity in the real estate business that reasonably would make one hesitate about his integrity. His failure to accept any responsibility for his misconduct and his tendency to blame others is disconcerting. The prior discipline against his broker license was not successful, in that after getting his revoked broker license reinstated many years later, respondent Lawrence again is involved in the disciplinary process. Under these circumstances, the interests of protecting the public warrant revoking his restricted broker license. (Factual Findings 4-5, 6-12, 93, 97-105, and Legal Conclusions 15-18.)

Costs

INVESTIGATION AND ENFORCEMENT COSTS

24. Section 10106 provides, in part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the administrative law judge to direct a licensee found to have violated the Real Estate Law to pay the reasonable costs of the investigation and enforcement of the action. In this case, the Bureau established reasonable investigation costs in the amount of \$11,049.70 and reasonable enforcement costs in the amount of \$7,075.50, for a total of \$18,125.20.

25. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the court allowed a reduction or an elimination of such costs when warranted. Examples cited by the court are: (1) when a licensee would be unfairly penalized by using the hearing process to dismiss some but not all charges or to reduce the severity of proposed discipline; (2) if a licensee will be financially unable to make later payments; and (3) when the involved agency has conducted a disproportionately large investigation to prove a licensee has engaged in relatively innocuously misconduct. (*Id.* at p. 45.)

26. Pursuant to the principles discussed in *Zuckerman*, the investigation costs should be apportioned based on respondents' level of responsibility as follows:

(a) Of the total costs, \$6,556.70 were related to the Bodewin Court and Brandon Court transactions. That part of the investigation was aimed primarily at respondent MAI and the cause for discipline related to those transactions was alleged solely against respondent MAI. However, only one of those two causes for discipline was established. Therefore, respondent MAI should be responsible for half of those investigation costs, or \$3,278.75. (Factual Finding 108 and Legal Conclusions 9-12.)

(b) The remaining investigation costs of \$4,493.20 were related to the Charina Road transaction. That part of the investigation was aimed primarily at respondents MAI and Lawrence. But cause for discipline was established only against respondent Lawrence for that transaction. Respondent Lawrence therefore should be responsible for half of those investigation costs, or \$2,246.60. (Factual Finding 108 and Legal Conclusion 15.)

27. Pursuant to the principles discussed in *Zuckerman*, the enforcement costs (legal fees) should be apportioned based on respondents' level of responsibility as follows:

(a) The total legal fees associated with the Accusation are \$7,075.50. The Accusation contains five discrete causes for discipline, each based on different events or transactions. Therefore, the total legal fees should be divided into five equal segments of \$1,415.10. Cause for discipline was established against respondent MAI in two of the five causes for discipline; it should be liable for legal fees of \$2,830.20. Cause for discipline was established against respondent Boseman for essentially one-fifth of the case (excluding the audit costs, as discussed below); he should be liable for legal fees of \$1,415.10. Finally, discipline was established against respondent Lawrence in one cause for discipline; he should be liable for legal fees of \$1,415.10. (Factual Finding 109 and Legal Conclusions 9-18.)

(b) The total legal fees associated with the Order of Suspension against respondent Lawrence are \$4,156.30. One hour of that time, or \$89, was spent preparing the pleading and exhibits. The remaining time was essentially spent on efforts to consolidate that case for hearing with the Accusation, and resisting respondent Lawrence's efforts to separate the two. In deciding that issue, the ALJ opined the pleadings supported respondent Lawrence's efforts in that regard. The order denying the relief he requested was based on reasons of judicial economy and equity. As articulated in *Zuckerman*, forcing respondent Lawrence to pay the legal fees associated with his efforts to separate the cases for hearing would unfairly penalize him for using the hearing process. He should only be responsible for legal fees of \$89 from the Order of Suspension matter. (Factual Finding 110.)

AUDIT COSTS

28. Pursuant to section 10148, subdivision (b), the Bureau may recover from a licensed broker audit costs if it is found the broker violated section 10145 or a regulation interpreting it. Section 10145 is the provision of the Real Estate Law describing how and when trust funds are to be recorded and handled by licensed brokers and salespersons.

29. A. With respect to the audit of respondent MAI, Mr. Wanis found violations of section 10145, as well as Regulation 2950 [concerning record keeping for escrow activity], which involves the handling of trust funds. Respondent Boseman was the responsible broker of respondent MAI at the time it committed those violations. He therefore is liable to the Bureau for the costs of that audit in the amount of \$3,155.75. (Factual Findings 48-54, 106-107, and Legal Conclusions 12-13.)

B. However, the result is different for the audit of respondent Boseman's own books and records. Mr. Wanis did not discover any violations of section 10145 or any related regulation. The violations he discovered related to other provisions of the Real Estate Law. Therefore, respondent Boseman is not liable for the costs of that audit. (Factual Findings 55-60, 106-107, and Legal Conclusion 14.)

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30. Complainant argues all audit costs are recoverable as investigation and prosecution costs under section 10106. That argument is not persuasive. There are separate statutes providing for investigation/enforcement costs on the one hand (section 10106) and audit costs on the other (section 10145). Those statutes detail the circumstances such costs are recoverable. Section 10145 clearly provides audit costs are recoverable only in very limited circumstances. There is nothing in section 10106 hinting that audit costs can be recoverable as investigation costs under any circumstance.

RESPONSIBILITY FOR PAYING COSTS

31. Finally, *Zuckerman* contemplates eliminating or reducing costs if a licensee will be financially unable to make later payments. In this case, respondent Lawrence is elderly, has been suspended from practice for the past year, and is undoubtedly in financial distress. The revocation of his restricted broker license will exacerbate that situation. Respondent Boseman is no longer working in real estate, but supporting himself now by "odd jobs" while he still attends college. He too is not in a steady financial situation. Under these circumstances, an appropriate costs order for both respondents is warranted.

ORDERS

1. The Accusation against respondent Arch Realty Group, Inc., is dismissed.

2. All licenses and licensing rights of respondent Maximum Assets, Inc., under the Real Estate Law, are revoked. Respondent Maximum Assets, Inc., shall pay costs of investigation and enforcement to the Bureau of Real Estate in the amount of \$6,108.95.

3. All licenses and licensing rights of respondent Eddie P. Lawrence, aka E. Paul Lawrence, under the Real Estate Law, are revoked. Respondent Lawrence shall pay costs of investigation and enforcement to the Bureau of Real Estate in the amount of \$3,750.70, if and when any license or licensing right under the Real Estate Law is reinstated.

4. All licenses and licensing rights of respondent Kyle Lynn Boseman, under the Real Estate Law, are revoked; provided, however, a restricted real estate salesperson license shall be issued to him 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:

A. 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.

Not Adopted

Not Adopted

B. 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.

C. 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 three years have elapsed from the effective date of this Decision.

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

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

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

E. 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.

F. Respondent shall, within six 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 suspension of respondent's license until respondent passes the examination.

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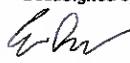
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Not Adopted

G. If and when respondent Boseman obtains a restricted salesperson license, he shall pay to the Bureau of Real Estate costs of audit, investigation and enforcement in the amount of \$4,570.85. Respondent Boseman shall be allowed to pay such costs according to a payment plan approved by the Real Estate Commissioner.

DATED: April 7, 2017

DocuSigned by:

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ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MAXIMUM ASSETS, INC.,
ARCH REALTY GROUP, INC.,
KYLE LYNN BOSEMAN, and
E. PAUL LAWRENCE,

Respondents.

Case No. H-40004 LA

OAH No. 2016010836

In the Matter of the Order of Suspension
Against:

EDDIE PAUL LAWRENCE,

Respondent.

Case No. H-23355 LA

OAH No. 2016040902

PROPOSED DECISION

These consolidated matters were heard by Administrative Law Judge (ALJ) Eric Sawyer, Office of Administrative Hearings, on November 30, and December 1, 2 and 16, 2016, in Los Angeles.

Lisete Garcia, Counsel, represented Veronica Kilpatrick (complainant).

Respondent Kyle Lynn Boseman represented himself and Arch Realty Group, Inc. (ARGI). Respondent Eddie P. Lawrence, aka E. Paul Lawrence, represented himself.

No appearance was made by or on behalf of respondent Maximum Assets, Inc. (MAI). The matter proceeded as a default against respondent MAI.

The record was held open after the hearing concluded so the parties could submit closing argument briefs. The events that transpired while the record was held open are described in orders dated January 24, 2017, February 16, 2017, March 8, 2017, and March 14, 2017. The record was closed and the matter submitted for decision on March 14, 2017.

SUMMARY

Complainant seeks to discipline the broker licenses of respondents Boseman and Lawrence and the real estate corporation licenses of respondents MAI and ARG1. The common allegations are that respondents Boseman and Lawrence allowed and facilitated an unlicensed person, Deangela Christin Harrell, to engage in acts requiring a real estate license with respect to three residential property sales. Complainant also alleges that audits of respondents MAI and Boseman revealed violations of the Real Estate Law, including that respondent Boseman allowed unlicensed branch office activity. Complainant also contends respondent Lawrence provided a misleading main office address to the Bureau.

Respondents deny all allegations. Respondent Boseman contends Ms. Harrell's actions, to the extent they constituted unlicensed activity, were unknown to and unconsented by him. Respondent Lawrence contends he did not facilitate Ms. Harrell to engage in unlicensed activity, but merely utilized her as a transaction coordinator and compensated her with a "finder's fee," a legal doctrine allowing brokers to compensate unlicensed individuals engaged in limited referral activity. Both deny they otherwise violated the Real Estate Law.

The causes for discipline asserted against respondents were established by clear and convincing evidence to a reasonable certainty, with the exception of the first count against respondent MAI. In aggravation, respondents Boseman and Lawrence provided false information during the Bureau's investigation and the hearing. Respondent MAI is now defunct, it defaulted at hearing, and its license therefore should be revoked. Since no cause for discipline was asserted against respondent ARG1, the accusation against it should be dismissed. Because respondent Lawrence has a prior record of discipline and was not candid in this proceeding, his restricted broker license should be revoked. Respondent Boseman's misconduct, while serious, should warrant his being issued a restricted salesperson license. Finally, the Bureau is entitled to its costs, but the amount requested should be fairly apportioned among the respondents and reduced for various reasons.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity as a Supervising Special Investigator of the Bureau.
2. As explained in more detail below, each respondent is licensed by the Bureau. A Notice of Defense was submitted on behalf of each respondent, which notices contained a request for a hearing to contest the Accusation.
3. A. The Accusation was served by mail various times on respondent MAI's address of record with the Bureau, but each time returned by the United States Postal Service with stamps, "Moved Left No Address," "Unable to Forward," and "Return to Sender."

B. Nonetheless, a Notice of Defense on behalf of respondent MAI was submitted by the attorney who was representing respondent Boseman in this case at the time. As explained below, respondent Boseman had been the designated officer of respondent MAI until September 3, 2014. However, the attorney representing respondent Boseman withdrew as his counsel and respondent Boseman thereafter represented himself and respondent ARG1.

C. During the hearing, respondent Boseman stated that he was not representing respondent MAI. No other person or entity appeared on behalf of respondent MAI during the hearing. The matter as to MAI proceeded by default.

4. As explained in more detail below, at the time the Accusation was issued, respondent Lawrence was acting under a restricted broker license. One condition of his restricted license is that it could be suspended prior to a hearing by order of the Real Estate Commissioner (Commissioner) upon evidence satisfactory that respondent Lawrence had violated specified laws, including the Real Estate Law.

5. On March 30, 2016, the Commissioner issued an Order of Suspension against respondent Lawrence's restricted broker license, alleging that, as described in the Accusation, respondent Lawrence violated the Real Estate Law. The suspension remains in effect through the present time. Respondent Lawrence timely submitted a written request for a hearing to challenge the suspension.

Respondent Lawrence's Licensing History

6. A. Bureau records indicate respondent Lawrence was originally issued a real estate salesperson license on November 21, 1973, and that he was originally issued a real estate broker license on July 17, 1974. (Ex. 5). Those licenses were issued by the Department of Real Estate (Department), as the Bureau was previously known.

B. Respondent Lawrence disputes the Bureau's records to the extent he testified he first received his real estate salesperson license in 1969 and thereafter worked as a licensed salesperson for Cook & Hayes Realty until 1974, when he received his real estate broker license. However, respondent Lawrence submitted no documents or evidence corroborating his testimony that he was first licensed as a salesperson in 1969. In any event, there is no dispute over when he was first licensed as a broker.

7. A. Effective March 2, 1989, in Department Case No. H-23355 LA, respondent Lawrence's broker license was disciplined pursuant to his stipulation. (Ex. 3A). As a result, respondent Lawrence's broker license was revoked, with the right to the issuance of a restricted salesperson license if he submitted the necessary application and complied with the terms set forth in the Commissioner's Decision. (Ex. 3A.)

B. The discipline was based on an accusation filed against respondent Lawrence, in which it was alleged that he had transmitted false statements to a lender on in connection with a residential real estate purchase. As part of the stipulation, respondent Lawrence admitted he had done as alleged.

C. During the instant hearing, however, respondent Lawrence testified that lenders were receptive to "creative financing" in the mid-1980s (when the events in question occurred) because the economy and the housing markets were bad. Respondent Lawrence also testified he and his wife lived in the house in question, along with their daughter, and that he convinced several other people to sign loan papers indicating they would also live on the property. He asked them to do that in order to prevent a foreclosure. Respondent Lawrence added that it was not the lender who complained to the Department about the loan application, but rather the mortgage insurance company auditing the lender's loan portfolio. Respondent Lawrence stipulated to the discipline of his license because he felt it was appropriate to accept responsibility for the situation. (See also ex. 108.)

8. Respondent Lawrence did not timely request issuance of a restricted salesperson license. He testified that he missed the deadline by one day, because he was busy working as a licensed contractor.

9. On September 16, 1996, respondent Lawrence petitioned the Department for reinstatement of his broker license. The Department denied the petition by an order effective September 11, 1997. In that matter, the Commissioner concluded respondent Lawrence had failed to demonstrate sufficient rehabilitation. For example, the Commissioner noted that during an interview with Department staff concerning his prior discipline, respondent Lawrence "claims a person in his office arranged the loan and that Respondent was innocent of any wrongdoing." (Ex. 4A, p. 2.) Moreover, the Commissioner noted respondent Lawrence at the time owed back taxes of \$113,000 to the Franchise Tax Board. (*Ibid.*) Finally, the Commissioner noted there was evidence that respondent Lawrence had acted as an unlicensed broker by being involved in several real estate deals for a company he co-owned with a licensed broker who had lost his hearing and was unable to write well due to a stroke. (*Id.* at p. 3.) During the hearing, respondent Lawrence denied he acted as a broker without a license for the mortgage loan broker in question, a "Mr. Gordon," but that instead he had simply accepted \$20 for credit reports from three clients seeking mortgage loans.

10. Bureau licensing records indicate respondent Lawrence's salesperson license was reissued, through examination, on February 8, 1999. (Ex. 5.)

11. A. Respondent Lawrence again petitioned for reinstatement of his broker license on April 10, 2007. By an order effective January 21, 2008, the Commissioner denied the petition, again concluding that respondent Lawrence had not demonstrated sufficient rehabilitation. This time, the Commissioner noted respondent Lawrence had not satisfied a \$6,500 civil judgment against him and still "did not accept responsibility for the acts which led to the discipline against him." (Ex. 5A, p. 4.) Respondent Lawrence testified he had accepted responsibility for his prior discipline by essentially agreeing to surrender his broker

license in 1989. He also testified that he had not satisfied the civil judgment because it had expired without renewal and was therefore no longer enforceable against him; and that the plaintiff said he would not enforce the judgment because it had been entered "by mistake." While it is plausible the judgment had not been paid by respondent Lawrence because it was stale, the remainder of his testimony about the judgment was not convincing or corroborated.

B. After reconsidering the matter, the Commissioner decided to issue a restricted broker license to respondent Lawrence, if he satisfied specified conditions within two years, by an order effective May 1, 2008. (Exs. 5 and 5A). Respondent did not appeal the decision and it became final.

12. As discussed above, respondent Lawrence's restricted broker license was issued on September 24, 2008, subject to the provisions of Business and Professions Code sections 10156.7 and 10156.6, including that the restricted license could be suspended prior to a hearing by order of the Commissioner upon evidence satisfactory that respondent Lawrence had violated the provisions of the Real Estate Law, the Subdivided Lands Law, Regulations of the Commissioner or conditions attached to his license. (Ex. 5A.) Bureau records show that respondent Lawrence had not requested removal of his restricted status. Respondent Lawrence was not clear in his testimony why he did not.

Licensing History of Respondents Boseman and ARGI

13. Respondent Boseman was licensed as a real estate salesperson from June 16, 2007, through March 11, 2012. From March 12, 2012, through the present, respondent Boseman has been licensed by the Bureau as a real estate broker, license number 01753525.

14. From April 7, 2014, through the present, respondent ARGI has been licensed by the Bureau as a real estate corporation.

15. From April 7, 2014, to the present, respondent Boseman has been licensed as the broker-officer of respondent ARGI. As such, and pursuant to Business and Professions Code section 10211,¹ respondent Boseman was responsible for the supervision and control of the activities conducted on behalf of respondent ARGI by its officers and employees as necessary to secure full compliance with the Real Estate Law.

Licensing History of Respondent MAI

16. From May 6, 2014, respondent MAI has been licensed by the Bureau as a real estate corporation, license number 01526977. As of September 3, 2014, and thereafter, respondent MAI's license status has been "NBA," meaning non-working status for no broker affiliation and no main business address on file. Under this designation, the corporation is not authorized to perform acts that require a real estate license.

¹ Further undesignated statutory references are to the Business and Professions Code.

17. From May 6, 2014, through September 3, 2014, respondent Boseman was licensed as the broker-officer of respondent MAI. As such, and pursuant to section 10211, respondent Boseman was responsible for the supervision and control of the activities conducted on behalf of respondent MAI by its officers and employees as necessary to secure full compliance with the Real Estate Law.

The Formation of Respondent MAI

18. Respondent MAI was incorporated in South Dakota on October 10, 2013. (Ex. 7, p. 5.) The incorporator was listed as David DeLoach (DeLoach).² On October 22, 2013, Mr. DeLoach executed a resolution for respondent MAI, which appointed respondent Boseman as a director and Deangela Christin Harrell (Harrell) as its president. (Ex. 10, p. 12.)

19. Ms. Harrell was formerly licensed by the Bureau as a real estate salesperson, under the name of Christin Bell. Effective December 3, 2003, she surrendered her license in Bureau case number H-29527 LA, in which it was alleged that she and another Bureau licensee had made false representations to a lender. (Ex. 6.)

20. Respondent MAI was registered with the California Secretary of State as a foreign corporation by Mr. DeLoach on October 25, 2013. (Ex. 7, p. 4.) At that time, a Statement and Designation by Foreign Corporation was also filed with the Secretary of State, listing respondent MAI's corporate address as 3297 Arlington Avenue #208, Riverside, California 92506. (Ex. 10, p. 8.) This address was Ms. Harrell's business address.

21. Respondent Boseman denies knowing Mr. DeLoach or that he signed the above documents. It was not established that respondent Boseman was involved in 2013 with the incorporation of MAI.

22. However, it was established that Ms. Harrell and respondent Boseman began doing business together by no later than early 2014. Both agreed in their testimony that they started their business relationship at or about the time that the broker Ms. Harrell worked for, Steve Uyemura, had his license revoked by the Bureau, which was on February 3, 2014, with an effective date of March 3, 2014. (Ex. 13, pp. 1, 10-19.) Respondent Boseman had previously worked under Mr. Uyemura's broker license in 2004. Respondent Boseman testified Mr. Uyemura introduced him to Ms. Harrell and suggested the two work together. Ms. Harrell agreed to the same in her testimony.

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² In 2003, Mr. DeLoach was licensed by the Bureau as a real estate broker. In 2011, his license status became NBA, for lack of a main business address on file. (Ex. 8.) Bureau records indicate his broker license expired on September 24, 2015. (*Ibid.*)

23. In early 2014, respondent Boseman was involved in many enterprises. For example, on February 20, 2014, he formally replaced Mr. Uyemura as designated officer for Chunyk & Adduci Realty Group LA, Inc. (Chunyk & Adduci), who is licensed with the Bureau to do business as CA Realty Group LA, Inc. (Ex. 13, p. 1.) Beginning in February 2014, and for the next several months, respondent Boseman also replaced Mr. Uyemura as the designated officer for 12 other real estate corporations licensed with the Bureau. (Ex. 4, p. 1.) At this time, respondent Boseman was also an undergraduate student at California State University, Long Beach.

24. A. Respondent Boseman and Ms. Harrell also testified they decided to become involved together with respondent MAI in early 2014. At or before that time, respondent Boseman asked Ms. Harrell to file the necessary papers to allow the corporation to operate in California and for it to be licensed by the Bureau.

B. Bureau records indicate the application for respondent MAI's real estate corporation license was filed with the Bureau on April 21, 2014. The application listed respondent Boseman as the designated officer and noted respondent MAI would also do business under the fictitious business name "Superior Escrow Solutions - Non Independent Escrow" (Superior Escrow Solutions). Ms. Harrell's business address was listed as MAI's address of record with the Bureau. The application materials bore signatures attributed to respondent Boseman and purportedly dated in February 2014. Respondent Boseman admitted in his testimony that he signed the first page of the application showing he agreed to be the designated officer of respondent MAI (ex. 10, p. 4) and that he knew Ms. Harrell was submitting license application documents to the Bureau.

C. Respondent Boseman also testified that, although he had discussions with Ms. Harrell about setting up an escrow company through respondent MAI, he did not sign the parts of the application showing MAI would also do business as Superior Escrow Solutions or showing Ms. Harrell's business address as a branch office of respondent MAI. However, Ms. Harrell testified respondent Boseman signed all of the application materials and she denied signing his name on any of them. Given the conflicting testimony, and the fact that the signatures attributed to respondent Boseman on the various documents do not look similar, it was not established that respondent Boseman signed the pages in dispute.

D. On April 24, 2014, a Fictitious Business Name Statement was filed with the Riverside County Recorder, indicating respondent MAI would also do business under the name of "Superior Escrow Solutions Non Independent Escrow." That document was completed and signed by Ms. Harrell and her business address was again listed as MAI's address of record. Respondent Boseman's name is not listed on that document.

E. According to Bureau records, the license application for respondent MAI was processed by the Bureau on May 6, 2014, which is when respondent MAI's Bureau license became effective.

25. Respondent Boseman testified he was aware documents Ms. Harrell submitted to the Bureau for MAI's license had her business address listed as MAI's address of record. He also testified that Ms. Harrell "would be in charge initially" of MAI's escrow business, as it was her idea and she came up with the name of the escrow business.

26. Ms. Harrell also testified she set up a corporate trust account for respondent MAI to which she added respondent Boseman's name with his knowledge and consent. She produced a copy of a JP Morgan Chase NA (Chase) Business Account Add Signer's Form she executed for MAI, which added respondent Boseman as a signer to the account and bore his purported signature dated April 30, 2014. (Ex. 19, p. 18.)

27. Ms. Harrell also produced a number of e-mails between her and respondent Boseman between early February and late April 2014 which corroborated her testimony that the two worked together in early 2014 to establish respondent MAI. (Ex. 31.) Those e-mails were admitted for the limited purpose of complainant's attempt to impeach respondent Boseman's contention that Ms. Harrell stole his identity. They did so. In addition, respondent Boseman admitted in his testimony that he and Ms. Harrell worked together on an application to join the Inland Valleys Association of Realtors (IVAR), which respondent Boseman signed; and they communicated with each other about offers that could be made on various properties.

28. A. Respondent Boseman testified he only wanted to hire Ms. Harrell as a secretary for respondent MAI and utilize any business referrals she could provide to him. He has consistently maintained that he never formally hired Ms. Harrell or gave her authority to engage in real estate activities on behalf of respondent MAI. He also testified respondent MAI would not be open for business until he could finalize all the required filings and have an attorney review them, which he contends never happened. His testimony was not persuasive, as it is inconsistent with the events discussed above, as well as those described below concerning the three specific transactions in question. (See, e.g., Factual Findings 30.F, 33.B, 35, 41.B, 45, 46, 47, 50, 51, 52.C. & 53(a).)

B. In addition, respondent Boseman has made prior inconsistent statements about the situation. For example, when he was interviewed by a Bureau auditor about the situation on September 24, 2015, he said that Ms. Harrell was "in full charge of the escrow division and did not let [me] be involved in MAI's business." (Ex. 18, p. 12.) In a written statement he later provided to the auditor, respondent Boseman wrote that Ms. Harrell initially told him she wanted to open a real estate office and have respondent Boseman "serve as the broker of record." (Ex. 19, p. 12.) Respondent Boseman also acknowledged that Ms. Harrell began filing the appropriate documents to do so. (*Ibid.*) No evidence was presented, including respondent Boseman's testimony, in which it is apparent that respondent Boseman gave Ms. Harrell any limiting instructions or specifically told her to not begin operating respondent MAI until any condition precedent was satisfied. No evidence presented indicates that once he became aware of Ms. Harrell's activities on behalf of respondent MAI, which are discussed in more detail below, that respondent Boseman instructed her to stop or curtail her activity.

C. Under these circumstances, it is clear that respondent Boseman knew Ms. Harrell was taking actions to establish and begin operating respondent MAI and he agreed.

The Bodewin Court Transaction

29. By or about early March 2014, Ms. Harrell became interested in purchasing residential property located at 7313 Bodewin Court, Riverside, California 92506 (Bodewin Court) as an investment. For reasons not explained, Ms. Harrell enlisted the aid of Anitra T. Murphy, either a friend or relative, and Cleveland Harrell Jr., her husband, to participate in making a formal offer to purchase the property.

30. A. On or about March 9, 2014, Ms. Harrell executed a California Residential Purchase Agreement and Joint Escrow Instructions (purchase agreement) in which Ms. Murphy and Mr. Harrell offered to purchase the property for \$1,750,000.

B. On the bottom of the first page of the purchase agreement, the pre-printed name of the selling agent was listed as "Anastasia Stamatii Uyemura" and the selling broker was listed as "CA Realty Group."³

C. On the first page, Section 2C (Agency), of this purchase agreement, "Maximum Assets Realty" is listed as the broker representing the buyers.

D. In Section 3A (Initial Deposit) of the purchase agreement, a \$15,000 initial deposit was to be delivered within three business days after acceptance to "Superior Escrow Solutions." In Section 4C (Escrow and Title) of the purchase agreement, the buyers selected "Superior Escrow Solutions" as the escrow holder.

E. On page eight of this purchase agreement, in the Real Estate Brokers section, the real estate broker for the buyers is listed as "Maximum Assets Realty" with Bureau license number of 01753525, which is respondent Boseman's broker number issued by the Bureau. In this section, a signature purporting to be respondent Boseman's is on the form next to Boseman's pre-printed name. In a letter he sent to the Bureau in connection with its investigation of this matter, respondent Boseman denied that he signed this purchase agreement.

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³ At the time, Anastasia Stamatii was licensed as a real estate salesperson, and was licensed under the employment of broker Chunyk & Adduci. Steve Uyemura was the designated officer of Chunyk & Adduci, through February 20, 2014, at which time he cancelled his designated officer status after the revocation of his license. CA Realty Group is a licensed fictitious business name of Chunyk & Adduci.

F. Ms. Harrell testified this was the purchase agreement used for this transaction. She had e-mailed this version of the purchase agreement to respondent Boseman on a date not established. As discussed in more detail below, when Bureau auditors questioned respondent Boseman about his association with MAI, this was the version of the purchase agreement he produced to them. (Ex. 19, pp. 1-13.)

31. A. The owner of the property in question was Michelle W. Ortega. She was and is a licensed real estate salesperson who negotiated with Ms. Harrell on this transaction. Ms. Ortega testified she had received a different version of the purchase agreement for the Bodewin Court property. She produced a second such version during the hearing. (Ex. 29.) The second version was attached to an e-mail Ms. Ortega received from Ms. Harrell on March 14, 2014, with the subject heading "Offer on bodewin!!!!!!!!!!!!!!!" (Ex. 29, p. 1.)

B. This second version of the purchase agreement is different from the first in many ways. For example, it was dated March 14, 2014; Ms. Harrell was added as a third buyer; and the purchase price was increased to \$1,850,000.

C. In addition, respondent Boseman was listed as the broker representing the buyers instead of "Maximum Assets Realty." But on the bottom of the first page of this purchase agreement, the pre-printed name of the selling agent is listed as "Kyle L. Boseman Uyemura."

D. On page eight of this purchase agreement, in the Real Estate Brokers section, "Maximum Assets Realty" was replaced as the real estate broker for the buyers with "Kyle L. Boseman." Respondent Boseman's Bureau license number of 01753525 is still listed. This section also contains a signature purporting to be respondent Boseman's.

32. Based on the persuasive testimony of Ms. Ortega, and the timing of the two versions of the purchase agreement, it was established that the second purchase agreement bearing the date of March 14, 2014 was the purchase agreement that was received and accepted by Ms. Ortega. According to Ms. Ortega, however, the transaction was not completed. Ms. Ortega convincingly testified that she cancelled the transaction while it was in escrow because title research revealed the listed buyers did not own property as represented in their purchase offer documents, and there were 11 liens recorded against them, which had not been previously disclosed to Ms. Ortega.

33. A. It is clear that Ms. Harrell executed both of the purchase agreements in question and, at the least, submitted the second version to Ms. Ortega. It is also clear that respondent Boseman knew she was doing so, in that he testified that he received e-mails from Ms. Harrell concerning Bodewin Court (he testified he received them "after-the-fact"); he also conceded that he knew Ms. Harrell was buying the property "on her own, she did not need help," and he "did not need to know about her actions."

B. Interestingly, respondent Boseman denied signing any purchase agreement for Bodewin Court when initially contacted by a Bureau auditor many months later. Nonetheless, in his prehearing (ex. A) and closing (ex. B) briefs, he does not deny signing either purchase agreement. In addition, when testifying, respondent Boseman specifically denied signing a purchase agreement for an unrelated property, but when asked questions about the first version of the Bodewin Court purchase agreement (ex. 31, p. 47), he commented on erroneous information contained in the document but did not testify his signature was forged. Under these circumstances, it was established that respondent Boseman signed both versions of the Bodewin Court property purchase agreements, though it is equally clear he did not diligently proofread or edit them, resulting in his failure to catch many errors contained in both. The fact he was busy with many business interests and some college courses at the time is the most reasonable explanation for that lack of diligence.

The Brandon Court Transaction

34. On or about March 10, 2014, a purchase agreement was submitted on behalf of buyers Anitra T. Murphy and Cleveland Harrell, Jr. for the purchase of a residential property located at 7261 Brandon Court, Riverside, California 92506 (Brandon Court). The purchase price of the property was \$1,468,000. The purchase agreement was negotiated with and received by Brooks Bailey, a licensed real estate salesperson with Tri-Star Equity Group, Inc. (Tri-Star), who represented the property owner. This transaction also appears to have been intended as an investment property for Ms. Harrell.

35. Ms. Harrell looked at the property with the proposed buyers. She also communicated with Mr. Brooks, and later the salesperson who replaced him, Yesenia Corado-Baker. Tri-Star records show that Ms. Harrell visited the Brandon Court property on four separate occasions, using the lock-box key-code number belonging to respondent Boseman. (Ex. 15, p. 3.) Ms. Harrell also executed a number of documents connected with the offer, including the purchase agreement and documents described below.

36. A. On the bottom of the first page of the Brandon Court purchase agreement, the pre-printed name of the selling agent and the selling broker were redacted from the form.

B. On the first page, Section 2C (Agency) of the purchase agreement, "Maximum Assets Realty" is listed as the broker representing the buyers. In Section 3A (Initial Deposit), a \$15,000 initial deposit was to be delivered within three business days after acceptance to "Superior Escrow Solutions." In Section 4C (Escrow and Title), the buyers selected "Superior Escrow Solutions" as the escrow holder.

C. On page eight, in the Real Estate Brokers section, the real estate broker for the buyers is listed as "Maximum Assets Realty," along with respondent Boseman's Bureau license number of 01753525. However, respondent Boseman's signature was not included on the purchase agreement.

37. Ms. Murphy provided to the seller's agent cashier's check no. 4000 for \$15,000 made payable to "Superior Escrow Solutions" and dated March 10, 2014. (Ex. 14, p. 13.)

38. Superior Escrow Solutions provided Supplemental Escrow Instructions dated March 20, 2014 for the Brandon Court transaction. (Ex. 14, p. 17.) The escrow instructions did not state whether Superior Escrow Solutions was licensed, nor did they list a license number. (*Ibid.*) According to the escrow instructions, "the buyer" (who was now identified to be solely Ms. Murphy) was to execute and deliver a new First Conventional Deed of Trust in the amount of \$1,100,000 and a new Second Deed of Trust in the amount of \$250,000. (*Ibid.*)

39. On April 7, 2014, Ms. Murphy signed an addendum which stated: 1) the "selling agency is Arch Realty Group Agent is Kyle L. Boseman;" 2) buyer Cleveland Harrell "will not be part of the purchase;" and 3) "All other terms and conditions to remain the same." (Ex. 14, p. 14.)

40. By late April 2014, the licensed broker of Tri-Star, John B. Spear, had taken over the transaction from the two licensed salespeople from his office who had previously worked on the file. He did so because he was becoming increasingly alarmed about the viability of the transaction, for several reasons. One such reason was that his research revealed "Maximum Assets Realty" was not licensed by the Bureau and that "Superior Escrow Solutions" was not licensed by the California Department of Business Oversight (DBO), which he expected for an escrow company. As discussed above, respondent MAI's license application had not been processed by the Bureau at this time. Mr. Spear also was concerned that the listed individual broker, respondent Boseman, was the designated officer of so many other realty companies.

41. A. Mr. Spear also had discovered by this time that Ms. Harrell was not licensed. Based on vague and misleading comments and actions taken by Ms. Harrell, the Tri-Star salespeople who dealt with her believed Ms. Harrell was either "Kyle Boseman" (the licensed broker) or a licensed individual affiliated with respondent Boseman. Once he discovered Ms. Harrell was not licensed, Mr. Spear decided to communicate with the licensed individual he knew to be affiliated with the buyer, who was respondent Boseman.

B. Mr. Spear established by his persuasive testimony and corroborating documents that he spoke with respondent Boseman by phone approximately three times. The first time they spoke, respondent Boseman told Mr. Spear to work with Ms. Harrell because she "was my right arm." Mr. Spear also sent texts to and received responses from respondent Boseman. In fact, Mr. Spear produced records of texts received from respondent Boseman. Mr. Boseman did not deny in his testimony speaking with Mr. Spear; nor did he deny telling Mr. Spear that Ms. Harrell was his "right arm;" he simply denied being party to one phone conversation described by Ms. Harrell and Mr. Spear in their testimony in which he had purportedly called from Las Vegas and yelled at Mr. Spear.

42. A dispute ensued between the parties after Mr. Spear became involved. Mr. Spear did not receive a response to his concerns described above satisfactory to him. Ms. Harrell was upset that the property owner was trying to get out of a negotiated contract. (See, e.g., ex. 14, pp. 26-37.) By this time, Mr. Spear had hired an attorney to advise him how to cancel the transaction.

43. A. On April 30, 2014, Mr. Spear, on behalf of his client, executed a Cancellation of Contract, Release of Deposit and Joint Escrow Instructions (notice of cancellation), which demanded the cancellation of Superior Escrow Solutions Escrow No. 3069 for the Brandon Court transaction and instructed the escrow holder to split the \$15,000 initial deposit between the parties to cover legal fees. (Ex. 15, pp. 29-30.)

B. A letter from Mr. Spear's attorney was attached to the notice of cancellation. The letter explained the cancellation was requested because respondent MAI and Ms. Harrell had refused to submit proof that MAI or Superior Escrow Solutions were licensed entities authorized to engage in real estate and escrow activities. (Ex. 15, p. 30.) The letter also noted the property owner had lost faith in the fairness of the escrow process after it was learned that the escrow company was operated by the wife (Ms. Harrell) of one of the initial proposed buyers (Cleveland Harrell, Jr.). (*Ibid.*)

44. By no later than April 28, 2014, Mr. Spear also submitted a written complaint to the DBO, concerning what he believed to be unlicensed escrow activity by Ms. Harrell and/or Superior Escrow Solutions. (Ex. 14.) The DBO forwarded the complaint to the Bureau on or about June 19, 2014. (Ex. 14, p. 1.) At that time, the Bureau began investigating respondent MAI, respondent Boseman and Ms. Harrell.

45. The dispute between the parties dragged on through September 2014. By or about that time, respondent Boseman had made a verbal offer to Mr. Spear to settle the dispute by distributing \$3,500 from the deposit in escrow to the property owner. Mr. Spear sent respondent Boseman a text response on September 3, 2014; respondent Boseman responded "I'm in class." (Ex. 16, p. 6.) On September 9, 2014, respondent Boseman sent Mr. Spear another text, "I am no longer employed by Maximum. Christine and her new brokers will be taking control of this matter going forward." (*Id.* at pp. 6-8.) Mr. Spear thought this was a bizarre response, because a licensed broker such as respondent Boseman could not be "employed" in a real estate corporation by an unlicensed individual such as Ms. Harrell and, in any event, respondent Boseman was the licensed broker affiliated with MAI at the time the purchase agreement had been accepted and was therefore responsible for the deal. Mr. Spear so advised respondent Boseman by a text. (*Ibid.*)

46. At no time during his communications with Mr. Spear did respondent Boseman advise him that Ms. Harrell did not have authority to undertake any action, that she was acting without his knowledge or that she had stolen his identity.

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47. Ms. Harrell persuasively testified that by early September 2014, respondent Boseman had become panicked after being contacted by the Bureau and he had decided to settle with Mr. Spear and cancel the transaction. Her testimony was corroborated by the testimony of Mr. Spear and the evidence showing respondent Boseman had made a settlement offer by this time. The transaction was cancelled at or about this time. However, contrary to Mr. Spear's written direction, Superior Escrow Solutions returned the entire \$15,000 initial deposit to Ms. Murphy, instead of splitting the deposit between the parties as instructed. The relationship between she and Ms. Murphy certainly was the reason why Ms. Harrell disregarded Mr. Spear's directive.

The Audit of Respondent MAI (SD 14001)

48. After being forwarded Mr. Spear's complaint about the Brandon Court transaction, the Bureau began investigating respondents Boseman and MAI. By August 2014, the Bureau decided to audit the books and records of respondents MAI and Boseman. On August 22, 2014, the Bureau auditor assigned to that task first contacted Ms. Harrell and respondent Boseman. On September 3, 2014, the Bureau received a letter from respondent Boseman indicating that he wished to resign as designated officer for respondent MAI, effective immediately. (Ex. 10, p. 2; ex. 18, pp. 11-12.)

49. From approximately August 22, 2014, through November 13, 2014, Bureau General Auditor III Zaky Wanis examined books and records related to respondent MAI's real estate activities. The scope of the audit was from May 6, 2014, when the corporate entity was licensed, through September 2, 2014, the last day before respondent Boseman resigned as its designated officer. The purpose of the audit was to determine whether respondent MAI handled and accounted for trust funds and conducted its real estate activities in accordance with the Real Estate Law. As part of his audit, Mr. Wanis requested from respondents MAI and Boseman copies of the following documents from October 2013 (when the corporate entity was established) through September 2014: bank statements, control records, trust account reconciliations, buyer's earnest money deposit checks, escrow receipts, escrow records, deposit slips/tickets, and cancelled checks.

50. On September 9, 2014, respondent Boseman spoke to Mr. Wanis by telephone. Respondent Boseman told Mr. Wanis that "he had a fight with Christin [Harrell] who refused to let him in MAI's office or give him access to any records." (Ex. 18, p. 12.)

51. On September 24, 2014, Mr. Wanis met with respondent Boseman at his main office affiliated with his individual broker license. Respondent Boseman advised Mr. Wanis that "Christin [Harrell] was in full charge of the escrow division and did not let him be involved in MAI's business." (Ex. 18, p. 12.) Respondent Boseman also admitted that Ms. Harrell had possession of respondent MAI's files even though he was the designated officer. (Ex. 18, p. 12.) It was established that Ms. Harrell maintained the transaction files for respondent MAI because she worked out of a location separate from respondent Boseman, i.e., her business office in Riverside.

52. A. Both respondent Boseman and Ms. Harrell retained attorneys to represent them during the audit. Ms. Harrell's attorney initially tried to convince Mr. Wanis to not go forward with the audit. On October 21, 2014, respondent Boseman submitted to Mr. Wanis a statement written by himself, as well as a letter from his attorney.

B. In his written statement, respondent Boseman contended that he had never hired Ms. Harrell, never authorized her to conduct any business on behalf of respondent MAI, and she had forged his signature on at least one purchase agreement. (Ex. 19, pp. 12-13.) Respondent Boseman also wrote that he believed he had been the victim of identity theft by Ms. Harrell and that he had filed a complaint with the Riverside Police Department. (*Ibid.*) Mr. Wanis requested a copy of the police report, but he never received one; respondent Boseman did not present a copy of such a document during the hearing either.

C. In his written statement, respondent Boseman also acknowledged that he had spoken to Mr. Spear on the telephone concerning the Brandon Court transaction on April 29, 2014. (Ex. 19, p. 12.) During a subsequent interview, Mr. Wanis asked respondent Boseman why it took him four months after that conversation with Mr. Spear to withdraw as respondent MAI's designated officer if he did not know about the transaction when he initially spoke to Mr. Spear. Respondent Boseman told Mr. Wanis he had panicked, did not know what to do, and could not afford to hire an attorney. (Ex. 18, p. 14.)

53. Mr. Wanis received the following documents pursuant to his requests:

(a) Ms. Harrell provided, via e-mail, copies of bank signature cards. The bank signature cards showed that on April 30, 2014, respondent Boseman was added as a signer to the Chase bank account belonging to respondent MAI. Those records also showed that on August 29, 2014, Ms. Harrell removed respondent Boseman as a signer from that account.

(b) Mr. Wanis also received information and documents concerning the Brandon Court transaction showing that the check for \$15,000 from Ms. Murphy had been received and deposited into escrow by Superior Escrow Solutions.

54. A. Mr. Wanis completed his examination of respondent MAI's books and records by November 20, 2014, at which time he signed an Audit Report Transmittal Memo. (Ex. 18, pp. 7-24.) Mr. Wanis concluded from his audit examination that respondent MAI had violated the provisions of the Real Estate Law described below.

B. Mr. Wanis concluded that respondent MAI and Ms. Harrell performed, or offered to perform, engaged, or attempted to engage, in activities that required a real estate license during a time that neither was licensed in any capacity by the Bureau, in violation of section 10130. Mr. Wanis cited as support the first version of the purchase agreement for Bodewin Court dated March 9, 2014, as well as the purchase agreement for Brandon Court. (Mr. Wanis was never provided with the second version of the Bodewin Court purchase agreement that had been accepted by the property owner.)

C. Mr. Wanis correctly concluded that respondents MAI and Boseman failed to retain complete books and records in connection with MAI's transactions for which a real estate broker license was required, in violation of sections 10145 and 10148, as well as California Code of Regulations, title 10, section (Regulation) 2950, subdivision (e). Despite repeated requests for such books and documents, respondents MAI and Boseman never produced copies of bank statements, control records or trust account reconciliations. Such documents would have existed, given evidence that respondent MAI had a bank account, had submitted at least one purchase agreement that was accepted and went into escrow, and was generally in operation.

D. Despite repeated requests, Mr. Wanis never received copies of buyer's earnest money deposit checks, escrow receipts, escrow records, deposit slips/tickets, or cancelled checks. Such documents would, by necessity, have been required and created for at least the Brandon Court transaction, as evidenced by the fact that Ms. Murphy's check for \$15,000 had been deposited into escrow and those funds later disbursed back to her. (Ex. 18, pp. 18-19). Mr. Wanis therefore correctly concluded that respondent MAI had violated section 10148 and Regulation 2950, subdivision (e).

E. Mr. Wanis correctly concluded that he was unable to conduct a complete audit to verify the trust fund accountability and balances because respondent MAI's complete books and records were not provided to him for examination. However, he did not specify in his report a statute or regulation violated thereby.

The Audit of Respondent Boseman (SD 140012)

55. Mr. Wanis was also assigned to audit the books and records of respondent Boseman's real estate activities for the period of January 1, 2013, through July 31, 2014, pertaining to his individual broker license number 01753525. The purpose of the audit was to determine whether respondent Boseman handled and accounted for trust funds and conducted real estate activities in accordance with the Real Estate Law.

56. In an interview, respondent Boseman advised Mr. Wanis that during the period in question he closed three transactions valued at \$885,000, but did not collect any earnest money deposits or maintain a trust account. (Ex. 18, p. 24.)

57. On November 21, 2014, Mr. Wanis completed his examination of respondent Boseman's books and records, at which time he signed an Audit Report (Short Form) Transmittal Memo. (Ex. 18, pp. 23-24.)

58. During his audit, Mr. Wanis obtained from respondent Boseman a number of documents in which he was listed as the broker representing one of the parties to residential property purchases but with listed addresses of either (a) 29910 Murrieta Hot Springs Road #G431, Murrieta, California (Murrieta) or (b) 867 Colorado Avenue #C, Chula Vista, California (Chula Vista). (Ex. 20.) Each of the documents in question had signatures attributed to respondent Boseman. At no time has he denied signing any of those documents.

59. During the hearing, respondent Boseman testified the documents in question were filled out by the employees he inherited after taking over some of Steve Uyemura's realty companies. The various documents are dated between December 2013 and March 2014, which generally bears out respondent Boseman's testimony. In his closing brief (ex. B, pp. 5-6), respondent Boseman argued that when those documents were created, he had not the time to meet those individuals to determine whether he wanted to retain them; the individual salespeople involved wrote their own mailing addresses not intending to reflect that such were branch offices; he corrected that practice once he realized what those employees were doing; and this "was excusable neglect caused by an emergency transition that was hectic at best." (*Id.* at p. 6.)

60. A. Mr. Wanis correctly concluded in his audit that the documents showing the Murrieta and Chula Vista addresses constituted respondent Boseman's use of unlicensed branch offices to perform or offer to perform activities that required a real estate license, in violation of section 10163 and Regulation 2715. The documents in question clearly depict respondent Boseman's name and individual broker license. However, he had never advised the Bureau that he had any branch office affiliated with his own broker license other than his main office address, which was not located in Murrieta or Chula Vista.

B. The licensed salespeople in question may have all been employed by Mr. Uyemura's former realty companies, but they should have reflected on the relevant documents those entities licensed by the Bureau of which respondent Boseman became the designated officer. Respondent Boseman's contention that this was an emergency situation misses the point. The process of taking over Mr. Uyemura's former realty companies may have been hectic to him, but such was an emergency, if so, created entirely by his own decision to assume control over so many companies in such a short time. His decision to do so did not excuse him from the responsibility of properly supervising his employees, including reading the paper-work he signed to make sure the correct addresses were stated.

The Charina Road Transaction

61. On August 19, 2014, Ms. Harrell contacted listing agent Darla Espinoza, a licensed real estate salesperson, regarding the sale of a residential property located at 25051 Charina Road, Homeland, California 92548 (Charina Road). Based on how she represented herself to Ms. Espinoza the first several times the two communicated, Ms. Espinoza reasonably believed Ms. Harrell was "Kyle Boseman," a Bureau licensee. For example, in her initial text sent to Ms. Espinoza, Ms. Harrell wrote, in part, "I wanted to bring my client [to see the property]. Thank You Kyle Lynn arch realty group." (Ex. 21, p. 10.)

62. On or about August 21, 2014, Ms. Harrell submitted a purchase agreement on behalf of buyers M.P. and L.P.,⁴ her friends, who offered to purchase the Charina Road property for \$395,000. The selling broker listed on the purchase agreement is respondent

⁴ Their names are omitted to protect their privacy.

ARGI. Respondent Boseman's name is listed as the selling agent for ARGI. A signature purported to be respondent Boseman's is on the purchase agreement. The buyers selected Superior Escrow Solutions as the escrow holder. (Ex. 23, pp. 3-10.) Respondent ARGI has never been licensed to do business as Superior Escrow Solutions.

63. On August 22, 2014, the property owner made a counter offer to the purchase agreement, including a sales price of \$415,000 and a different escrow holder. (Ex. 23, p. 11.) Buyers M.P. and L.P. accepted the seller's counter offer on August 25, 2014. The designated escrow holder was Lawyers Title. The transaction went into escrow. (*Ibid.*)

64. As established by the testimony of Ms. Harrell, Ms. Espinoza, and records of texts communications between those two (ex. 21, pp. 10-18), Ms. Harrell was the only person on behalf of the buyers who Ms. Espinoza dealt with on this transaction before it went into escrow. No evidence suggests respondent Boseman was involved in any aspect of this transaction. For example, Ms. Harrell visited the property with "her clients" on several occasions. (*Id.* at pp. 10-11.) She prepared all the documents for the buyers. She negotiated the counter offer. As explained in more detail below, she negotiated a \$6,500 credit the buyers would receive from their broker's commission. She set up and orchestrated inspections of the home. She sent documents into escrow. (*Id.* at pp. 10-18.) In fact, Ms. Harrell testified that, on this transaction, she "did all of what Boseman was supposed to do; on Charina Road I was his right hand." Respondent Boseman did not dispute her testimony. In sum, Ms. Harrell engaged in acts requiring a Bureau license in handling this transaction.

65. Throughout the transaction, Ms. Espinoza continued to believe she was dealing and communicating with respondent Boseman, when in fact, it was Ms. Harrell. On October 21, 2014, Ms. Espinoza finally sent a text to Ms. Harrell for clarification, asking, "Christy [is] your name Christy or Kyle?" When Ms. Harrell advised her name was "Chrissy," Ms. Espinoza explained that when she received texts from Ms. Harrell, "your cell number is coming up under Kyle?"⁵ (Ex. 21, p. 15.)

66. As this transaction was going into escrow, Bureau staff had begun contacting respondent Boseman and Ms. Harrell. Ms. Harrell testified that is when respondent Boseman panicked. Respondent Lawrence testified that Ms. Harrell contacted him at this time to inquire if he would replace respondent Boseman as the buyers' broker. Respondent Lawrence testified Ms. Harrell told him she and respondent Boseman "got into a fight." Respondent Lawrence also testified that when he spoke to respondent Boseman on the phone, respondent Boseman agreed to be replaced on the Charina Road transaction because "of a conflict" with Ms. Harrell.

⁵ The confusion was also experienced by escrow agent Anna Martinez of Lawyers Title. On October 2, 2014, Ms. Harrell sent an e-mail to Ms. Martinez. The following day, Ms. Martinez responded to Ms. Harrell, greeting her as "Kyle." (Ex. 23, p. 28.) In response, Ms. Harrell sent an e-mail to Ms. Martinez noting, in part, "I am a Broker for Arch Realty Group." (*Ibid.*)

67. In his closing brief, respondent Boseman denies ever speaking with respondent Lawrence, agreeing to be replaced as broker on this deal, or knowing anything about the Charina Road transaction. (Ex. B, p. 7.) However, respondent Boseman did not so testify; instead he simply testified he did not execute the instruction to escrow to have him replaced as broker on this transaction. However, that document (ex. 23, p. 14) was executed by the parties to the transaction, not the licensed representatives.

68. An addendum was submitted to escrow in which the parties agreed that respondent Lawrence would replace respondents Boseman and ARGI as the buyers' broker for this transaction. (Ex. 23, p. 14.) Although the addendum is dated August 28, 2014, it was back-dated well after-the-fact. This is demonstrated by the fact correspondence between Ms. Harrell and Ms. Martinez concerning this change began in late September and early October 2014. (Ex. 23, pp. 28-31.)

69. A. Respondent Lawrence and Ms. Harrell both estimated in their testimony that respondent Lawrence did not become involved in the Charina Road transaction until early October. No other witness disputed this timing.

B. Respondent Lawrence was told by Ms. Harrell that she needed a broker to replace respondent Boseman and that her friends were in jeopardy of losing their deposit and "dream home" if the transaction was cancelled because of the lack of a broker. Respondent Lawrence agreed to replace respondent Boseman.

C. Both respondent Lawrence and Ms. Harrell also agreed in their testimony that virtually all of the work on the transaction had been completed by that time, and that all respondent Lawrence did was speak to the buyers on the phone once, have some documents rewritten at the request of escrow, and haggle with Ms. Espinoza over possession of the property once escrow closed.

70. A. At or about the time respondent Lawrence got involved in the transaction, Ms. Harrell prepared a letter agreement for the two of them to sign. (Ex. 22, p. 5.) Ms. Harrell back-dated the agreement to August 28, 2014. In this agreement, respondent Lawrence agreed to "allow you [Ms. Harrell] to continue as the transaction coordinator on this file to the end of closing. Your compensation will be \$2,000 Flat." (*Ibid.*) Both Ms. Harrell and respondent Lawrence signed the agreement.

B. Respondent Lawrence testified that he later decided Ms. Harrell's letter agreement was "not right," so he wrote his own. He also back-dated the agreement to August 28, 2014. He also wrote that he would allow Ms. Harrell to "continue as the Transaction Coordinator on this file to the end of closing." (Ex. 22, p. 4.) He also wrote that, "We have agreed upon a flat fee of 30% of the commission or \$3,115 (whichever is higher), which will be paid out of the earned commission at the close of escrow. This amount will include your services and the use of your office as a temporary workplace, for this transaction only." (*Ibid.*) Both Ms. Harrell and respondent Lawrence signed the agreement.

C. Neither letter agreement states that Ms. Harrell's compensation was based on a "finder's fee."

71. Commission instructions were submitted to escrow changing the recipient of the "selling broker compensation" from respondent ARG1 to respondent Lawrence. (Ex. 23, pp. 14-15.) Respondent Lawrence's bank account information was provided in order for the commission to be sent to him. Respondent Lawrence also instructed Ms. Harrell to make sure the commission payment was sent to his bank account. However, Ms. Harrell admitted in her testimony that she did not contact escrow to have the commission payment sent to respondent Lawrence. In fact, records produced from the escrow file show that someone had written in Ms. Harrell's business address as respondent Lawrence's business address. (Ex. 23, p. 15.)

72. The transaction was completed and escrow closed on October 29, 2014. The property had been on the market for almost two years before it finally sold. Buyers M.P. and L.P. took possession of the property after a brief tussle over receipt of the house keys, but no evidence suggests either they or the seller of the property voiced any complaint about the transaction.

73. A. On October 30, 2014, the sum of \$3,799.08 was wired to the Chase bank account then controlled by Ms. Harrell. That amount was the commission for the broker representing the property buyers. However, the Outbound Wire Notification document indicates the wire was sent in the name of "Lawrence Realty & Financial Services." (Ex. 23, p. 19.)

B. The total commission should have been approximately \$10,500. However, Ms. Harrell had previously negotiated a \$6,500 credit to be received by the buyers from escrow. Ms. Harrell testified that she "forgot" to tell respondent Lawrence about this credit when she asked him to replace respondent Boseman. However, her testimony was not persuasive. For example, there is no reason to believe Ms. Harrell would not have remembered the credit when going over the final escrow documents and certainly when she executed the letter agreements with respondent Lawrence concerning the compensation she would receive. Instead, it is clear Ms. Harrell intentionally omitted this information from respondent Lawrence because he probably would have refused to replace respondent Boseman if he realized his commission would have been so modest.

C. Based on the version of the letter agreement written by respondent Lawrence, Ms. Harrell kept \$3,115 out of the \$3,799.08 wired to the bank account she controlled. She took action to have the remaining amount of \$560 wired to respondent Lawrence's account, which he received on or about October 31, 2014.

74. Respondent Lawrence expected the commission amount to be wired directly to his account from escrow and for it to be in excess of \$8,000. He was instantly alarmed when he discovered only \$560 had been deposited into his account.

75. On November 1, 2014, respondent Lawrence sent Ms. Harrell an e-mail questioning his commission. Ms. Harrell responded by explaining the deduction for the buyers' credit, which was unknown to respondent Lawrence at the time, and that another deduction had been made to purchase a buyers' home warranty. Respondent Lawrence became upset and felt he had been cheated by Ms. Harrell. Respondent Lawrence testified that he no longer trusted Ms. Harrell and he will never work with her again.

76. On October 31, 2014, just after escrow closed, Ms. Espinoza submitted a written complaint to the Bureau concerning the transaction. (Ex. 21.) Her main complaints focused on the actions of Ms. Harrell, who Ms. Espinoza had essentially accused of engaging in unlicensed real estate activity. The extent of her discussion concerning respondent Lawrence was that he was "aggressive" with her. That complaint related to the dispute she had with him over how the house keys were exchanged after escrow closed. On that subject, Ms. Espinoza was in the wrong and respondent Lawrence was justifiably upset with her.

77. As a result of Ms. Espinoza's complaint, the Bureau included the Charina Road transaction as part of its investigation concerning Ms. Harrell and respondent Boseman. In May 2015, respondent Lawrence was contacted by Bureau investigator Kathryn Stanbra about this transaction. Respondent Lawrence wrote a letter in response, explaining, in part, "Other than the money that was paid to Christin [Harrell] as the Transaction Coordinator, there were no commissions or finder's fee paid to anyone." (Ex. 22, p. 3.)

78. During the hearing, respondent Lawrence testified the compensation Ms. Harrell received was a "finder's fee," related to her role finding the property buyers. He never adequately explained in his testimony why the phrase "finder's fee" was not contained in either version of the letter agreement he executed with Ms. Harrell, nor why the amount of her compensation in each letter agreement was different. Respondent Lawrence also testified Ms. Harrell took no action requiring a Bureau license while they worked together. He testified that while he was involved in the transaction, Ms. Harrell simply sent documents to escrow, which non-licensed individuals typically perform. Respondent Lawrence testified that he did nothing wrong on the Charina Road transaction and violated no provision of the Real Estate Law.

79. A. Ms. Harrell testified that her fee structure on this transaction mirrored prior arrangements she had with respondent Lawrence. She testified that respondent Lawrence had before given her "referral fees," though she could not remember the amounts; she believed she typically received 10-15 percent of the overall commission earned by respondent Lawrence. Ms. Harrell also testified that her fee on this transaction was greater than the referral fee respondent Lawrence typically paid her because she also worked as a transaction coordinator. Ms. Harrell's testimony was unpersuasive, as it is inconsistent with the terms contained in the two letter agreements she signed with respondent Lawrence. Moreover, and as discussed above, she did not act simply as a "transaction coordinator;" she engaged in acts requiring a real estate license. Her testimony therefore was aimed at hiding the fact that she engaged in unlicensed activity.

B. In his testimony, respondent Lawrence did not elaborate on the fee amount he agreed to pay Ms. Harrell in the letter agreement he wrote.

C. Bureau Investigator Stanbra persuasively testified she was dubious Ms. Harrell acted as, and was compensated to be, a transaction coordinator. Her primary skepticism is that, according to the two letter agreements with respondent Lawrence, Ms. Harrell was promised either a flat fee or percentage of the total commission, involving amounts greatly in excess of what transaction coordinators typically receive. For example, Investigator Stanbra testified transaction coordinators are typically paid \$250 through \$500 per file, or can earn about \$3,000 per month for all their activity on multiple files if employed by a licensee. She has never seen a transaction coordinator paid over \$3,000 for a single file. In addition, Ms. Harrell was allowed to work out of her own office without supervision by respondent Lawrence, and she was paid directly out of escrow and not by the licensed broker, which Investigator Stanbra persuasively testified suggest unlicensed activity.

Respondent Lawrence's Main Office Address

80. For many years, respondent Lawrence has worked as a real estate broker from his home. However, since at least the time his restricted broker license was issued to him in 2008, respondent Lawrence has listed with the Bureau his main office address as 17128 Colima Road #718, Hacienda Heights, California. That address was the location of Postal Plus, a private mailbox rental business. In 2016, it became The UPS Store, but it is still a private mailbox rental business.

81. The mailbox rental agreement respondent Lawrence executed with Postal Plus indicates he had the option of designating his mailing address as either "Box #" or simply "#." (Ex. 24, p. 2.) Respondent Lawrence has used only "#." In fact, Bureau records show that since September 2008, respondent Lawrence has never used "Box #" when indicating his main office address to the Bureau. (Ex. 5, p. 1.)

82. In 2012, respondent Lawrence renewed his restricted real estate broker license. Question No. 13 on his Broker Renewal Application asked him to supply his "MAIN OFFICE ADDRESS-STREET ADDRESS (Do not list a Post Office box)." In response, respondent Lawrence listed "17128 Colima Road, #718, Hacienda Heights, CA," despite being directed on the form to not list a post office box. (Ex. 30, p. 1.)

83. Respondent Lawrence currently lists his main office with the Bureau as 17128 Colima Rd. #718, Hacienda Heights, California.

84. In May 2016, the Bureau subpoenaed from The UPS Store all documents in connection with respondent Lawrence for the property located at 17128 Colima Road #718, Hacienda Heights. (Ex. 24, pp. 7-10.) The only agreement provided by The UPS Store was the mailbox rental agreement for postal box #718.

85. Respondent Lawrence testified that the Bureau knew the Colima Road address was a postal box as far back as 1994, when investigators interviewed him at his home. In his closing brief, respondent Lawrence also alludes to an audit report written in 1995 which he asserts contains the same information. However, Bureau records do not reflect that assertion and respondent Lawrence submitted no evidence (including the report in question) corroborating his testimony.

86. Respondent Lawrence also testified that he initially provided to the Bureau the Colima Road address as his main office and mailing address "by mistake," and that he only did that once, in 2008. However, when shown the aforementioned broker renewal application he submitted in 2012 with the same information, respondent Lawrence testified he did it on that occasion "by force of habit."

87. Respondent Lawrence also testified that he provided the Colima Road address as his main office address because he "could use that address as an executive office if needed." In support of his testimony, respondent Lawrence offered photographs he recently took of the outside and inside of The UPS Store. (Ex. 125.) Those photographs show what would be expected of a business where one could pack and mail items, make photocopies, buy business supplies, and rent postal boxes. The "work stations" labelled on the photos are nothing but photocopiers and locked cabinets holding a trash box underneath with a hard counter surface on top. There is no private office or meeting area depicted in the photographs. There is no area depicted where any sort of license was or could be displayed.

88. Respondent Lawrence's testimony concerning using The UPS Store as a place where he could have displayed his broker license, or have personal consultations with clients, was not persuasive. First, it was inconsistent with his initial testimony that he listed the Colima Road address by mistake and then a force of habit. Second, respondent Lawrence failed to present evidence corroborating that he did or could have used The UPS Store to display his broker license and meet clients. As discussed above, the records provided by The UPS Store did not include any such agreement. Finally, there is no evidence suggesting respondent Lawrence ever used The UPS Store as his office. As anecdotal evidence, Ms. Harrell testified she knew respondent Lawrence worked from his home. In fact, respondent Lawrence never testified he actually used The UPS Store as his office; he simply testified that he "could use that as an executive office if needed." It is also clear that respondent Lawrence used "#" instead of "Box #" when providing his main office address to the Bureau because he did not want it to know he was using a postal box.

Respondent Boseman's Other Evidence and Arguments

89. Respondent Boseman has no prior disciplinary record with the Bureau.

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90. In his hearing brief, which was admitted into evidence as his direct testimony, respondent Boseman indicates he currently “is working on a Bachelor of Science [degree] at California State University Long Beach.” (Ex. A, p. 1.) During the hearing, respondent Boseman testified he is not currently involved in real estate, but does “odd jobs not in real estate” for financial support.

91. In his closing brief, respondent Boseman contends Ms. Harrell was purchasing the properties in question for herself “using her husband and a relative” (ex. B, p. 6), and therefore no broker was necessary. While it is true that she viewed the Brandon Court and Bodewin Court transactions as investment property, Ms. Harrell herself was only listed, belatedly, as a buyer on the Bodewin Court transaction. Her husband was removed from the first two transactions. Regardless of her relationship with Ms. Murphy, Ms. Harrell was still representing Ms. Murphy on the first two transactions and then two independent parties on the Charina Road transaction.

92. In his closing brief, respondent Boseman argues Mr. Wanis’s complaint about a lack of records produced by respondent MAI during his audit was because “there are NO records.” (Ex. B, p. 6.) Respondent Boseman did not offer testimony on that point during the hearing and the fact he turned over to Mr. Wanis a copy of the Bodewin Court purchase agreement undercuts the veracity of that argument.

93. In their closing briefs, respondents Boseman and Lawrence both attack the credibility of the main complaining witnesses for the three transactions in question. Their arguments are not persuasive, in that the involved witnesses appeared credible, offered testimony that was generally consistent and logical, and provided corroborating documentation. Respondents’ joint attacks are discussed as follows:⁶

(a) It was argued that John Spear, the broker involved in the Brandon Court transaction, ignored red flags apparent in the transaction and conspired with Ms. Harrell to continue with an illegal escrow. Nothing could be farther from the truth. Mr. Spear immediately identified many problems with the transaction once he got involved. He contacted Ms. Harrell early and often when he first became suspicious of the deal in order to cancel it. After getting no assistance from her and discovering she was unlicensed, he contacted respondent Boseman several times, also attempting to cancel the transaction. Mr. Spear complained about the transaction to the DBO, and then to the Bureau, which prompted the investigation underlying this case.

⁶ In determining witness credibility, the ALJ is guided by the general principle that the trier of fact may “accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted.” (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) Moreover, discrepancies in a witness’s testimony, or between that witness’s testimony and that of others, does not necessarily mean that the testimony should be discredited. (*Wilson v. State Personnel Bd.* (1976) 58 Cal App.3d 865, 879.)

(b) Respondents established that Michelle Ortega, the salesperson involved in the Bodewin Court transaction, failed to disclose in the local Multiple Listing Service she used to promote the sale of the property, that she owned it. Section 10177, subdivision (o), prohibits Bureau licensees from not disclosing their personal interests in real estate sales. However, as discussed above, Ms. Ortega's testimony was generally consistent, corroborated and persuasive. The fact she failed to state in a listing that she owned the property did not alone erode her credibility such that her corroborated testimony was unbelievable.

(c) It was argued that Darla Espinoza, the salesperson involved in the Charina Road transaction, worked for different brokers or engaged in acts exceeding the scope of her salesperson license. Those arguments were speculative and not established. Respondents also point out inconsistencies in the bottom portions of some of the sales documents generated by Ms. Espinoza, and argue she violated the same provisions of the Real Estate Law asserted against respondent Boseman. The merits of that argument are better discussed in Legal Conclusion number 3 below. While both respondents contend Ms. Espinoza "lied" in many aspects of her testimony, such was not established. It is true that her version of how the keys to the house were turned over after close of escrow was discredited by respondent Lawrence. It is also disappointing that Ms. Espinoza did not immediately complain to the Bureau concerning Ms. Harrell's actions, but instead waited until the transaction had been completed. However, the parts of her testimony used to establish the factual findings for this transaction were persuasive and corroborated by documentation. Moreover, her testimony had little bearing on establishing the relationships between respondent Boseman, respondent Lawrence, and Ms. Harrell, which are the pivotal facts involved in that transaction. Her testimony regarding the actual mechanics of the Charina Road transaction were met with little or no dispute or contradiction by respondents.

94. In his closing brief, respondent Boseman complains several times that the Bureau did not conduct a valid forensic audit. However, he provides no specifics of what was lacking, other than his contention that a handwriting expert should have been used to examine the signatures attributed to him in some of the purchase agreements and related documents. On the other hand, while Mr. Wanis had to rely on the cooperation of respondent Boseman and Ms. Harrell, it was established that respondent Boseman was minimally cooperative with the audit. In fact, Mr. Wanis detailed in his audit report how his audit was hindered by the lack of full cooperation from respondent Boseman and Ms. Harrell. For example, respondent Boseman delayed scheduled meetings and conversations with Mr. Wanis; told him he did not have certain documents because they were in the possession of Ms. Harrell; and failed to attend at least one meeting he had scheduled with Mr. Wanis. (See, ex. 18, pp. 11-16.) In addition, his statements to Mr. Wanis were not candid or consistent, but changed over time.

95. In his closing brief, respondent Boseman remains unrepentant. With the exception of the vague reference in his closing brief that the unlicensed branch office addresses may have been due to excusable neglect on his part (due to an alleged emergency situation), he contends that he violated no part of the Real Estate Law. Instead, respondent Boseman argues the Bureau employees involved in his investigation "need additional

training” and “should be reprimanded and retrained so that no other broker or salesperson have to go through this type of undo [*sic*] agony ever again.” (Ex. B, pp. 1, 9.)

96. Respondent Boseman’s remaining factual arguments were aimed at the allegations made against him in the Accusation. To the extent not specifically addressed above or in the Factual Findings regarding those allegations, his arguments were deemed to be either unpersuasive or irrelevant.

Respondent Lawrence’s Other Evidence and Arguments

97. Respondent Lawrence’s prior disciplinary history with the Bureau is described in great detail above. Distilled to its root, respondent Lawrence essentially surrendered his broker license in 1989, with a right to a restricted salesperson license that he failed to exercise. He was subsequently reinstated as a restricted broker in 2008, after his second request for the Commissioner to do so. The only prior misconduct established against him was based on his stipulation that he made false statements to a lender on one mortgage application, which occurred in the mid-1980s.

98. Since the reinstatement of his restricted broker license in 2008, respondent Lawrence has been involved in significant and impressive community service as follows:

(a) He consults with corporations on major real estate projects, both domestic and off-shore; consults with or sits on the board of directors of five non-profit organizations; and consults with a large international church organization.

(b) Respondent Lawrence is an ordained Deacon in the Baptist Church and was recently asked by his pastor to join the Board of Deacons at his church. He also serves as Chaplain for his church’s Health Ministry and as a member of its “Prayer Posse.”

(c) He works with the Black MBA Association, and helps to identify and recruit young black boys and girls to join its mentoring program.

(d) Respondent Lawrence has pledged that in 2017 he will work with Florance Mckoy, World Cleric of the Jesus Christ Institutional Holiness Assemblies, Inc., to establish a training center in Los Angeles, and 75 other cities, for black men between the ages of 18-45, to receive help getting off the streets, out of gangs, and into jobs.

(e) More recently, he established the National Coalition for Equality and Fairness, which he hopes will correct what he believes to be injustices in society and bring about economic improvement in the inner city area.

99. Respondent Lawrence presented several character reference letters from friends, colleagues in real estate and from spiritual organizations, which corroborate his accomplishments and activities described above. (Exs. 123 & 124.)

100. A. Two character witnesses also testified on behalf of respondent Lawrence.

B. The first such witness was Vincent Strebe, a real estate developer and mortgage lender who has known respondent Lawrence since 2003. His company used respondent Lawrence as a consultant on a major, multi-million dollar project; they found his advice "very helpful." He also described how respondent Lawrence has shown great compassion by assisting those in danger of losing their homes due to foreclosure.

C. The second such witness was Belinda Carter-Johnson. She has known respondent Lawrence for over 20 years. He has served on the Board of Directors of the non-profit school she operates. She has a good opinion of his business acumen and character.

101. Respondent Lawrence's attacks on the credibility of the complaining witnesses for the three involved transactions were discussed above in combination with respondent Boseman's similar attacks.

102. In addition, in his closing brief respondent Lawrence lists a series of complaints about the conduct of complainant's counsel before and during the hearing. (Ex. 126, pp. 8-10 & 18-19.) This complaint is best addressed in discussing respondent Lawrence's affirmative defense of unclean hands in Legal Conclusion numbers 6-8 below.

103. A. Respondent Lawrence describes in his closing brief a number of what he perceives to be short-comings with Investigator Stanbra's investigation of the Charina Road transaction and his main office address situation. (Ex. 126, pp. 13-16.) Though respondent Lawrence accurately describes steps Investigator Stanbra could have taken but did not, he fails to establish that her failure to take any of them impacted her investigation or undercut her credibility. For example, respondent Lawrence fails to describe what probative information would have been obtained from her engaging in the activity in question.

B. Respondent Lawrence's critiques of the conclusions Investigator Stanbra reached regarding the proper payment of a "finder's fee" and the type of address that should be submitted to the Bureau as a licensee's main office address are better discussed in Legal Conclusion numbers 15-18 below.

C. However, it should be noted that in his closing briefs respondent Lawrence inaccurately characterizes Investigator Stanbra's cross-examination testimony concerning his main office address. For example, she did not testify, as he contends, that respondent Lawrence "had met the requirement of the law as it is written." (Ex. 127, p. 5) Instead, she testified that the involved statutes require a broker to provide the Bureau with an address where the broker actually transacts business, which could include leased temporary office space where one could/would display his/her license. She clearly testified that listing a postal box where one did not actually conduct business did not meet the requirements of the Real Estate Law.

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104. A review of respondent Lawrence's three closing briefs (exs. 126-128) reveals he is as unrepentant as respondent Boseman. He accepts no responsibility for any misconduct, in any degree or to any extent. Instead, he blames Bureau staff for pursuing a "frivolous" accusation against him. (Ex. 126, p. 16.)

105. Respondent Lawrence's remaining factual arguments in his closing briefs were aimed at the allegations made against him in the Accusation or Order of Suspension. To the extent not specifically addressed above or in the Factual Findings regarding those allegations, his arguments were deemed to be either unpersuasive or irrelevant.

Costs

106. The audit costs for Audit No. SD 140011 relating to the real estate activities of respondent MAI were \$3,155.75. (Ex. 25.)

107. The audit costs for Audit No. SD 140012 relating to the real estate activities of respondent Boseman were \$1,596.71. (Ex. 26.)

108. A. As established by the Bureau's Certified Statement of Investigation Costs (ex. 27), the Bureau's combined investigation costs for both consolidated cases were \$11,049.70. Pursuant to section 10106, subdivision (c), the Bureau's certified copy of its actual costs is prima facie evidence of the reasonableness of those costs. Respondents presented no evidence or argument rebutting the reasonableness of these costs. In light of the size, scope and complexity of these cases, the costs are deemed to be reasonable.

B. The investigation activities were attributed to either investigation case number "002" pertaining to the Brandon Court and Bodewin Court transactions, or investigation case number "008" pertaining to the Charina Road transaction. The total investigation costs attributed to case number "002" were \$6,556.70. The total investigation costs attributed to case number "008" were \$4,493.20.

109. As established by the declaration of complainant's counsel (ex. 28), the Bureau's enforcement costs (legal fees) for Bureau Case No. H-40004 LA (Accusation against all respondents) were \$7,075.50. The prima facie presumption concerning the reasonableness of these costs pursuant to section 10106, subdivision (c), is not applicable because counsel's declaration is neither a certification of actual costs nor a good faith estimate of such costs where actual costs are not available. There was no explanation provided in the declaration why actual costs were not available. However, respondents presented no evidence or argument rebutting the reasonableness of these costs. In light of the size, scope and complexity of these cases, these costs are deemed to be reasonable.

110. A. As established by the declaration of complainant's counsel (ex. 6A), the Bureau's enforcement costs (legal fees) for Bureau Case No. H-23355 LA (Order of Suspension against respondent Lawrence) were \$4,156.30.

B. For the same reason explained immediately above, the prima facie presumption concerning the reasonableness of these costs pursuant to section 10106, subdivision (c), is not applicable to these costs. However, respondent Lawrence did not present evidence or argument rebutting the reasonableness of these costs. They are deemed to be reasonable.

C. Complainant's counsel represented that these costs were attributed to Bureau Case No. H-23355 LA (Order of Suspension against respondent Lawrence) because they related mainly to her efforts to consolidate both cases for hearing and oppose respondent Lawrence's efforts to separate them. Her declaration shows one hour of time spent (\$89) preparing the Suspension Order and exhibits 1A through 6A for the hearing. The other 45.70 hours of time reflected relate to the consolidation efforts described above. While the block notation for the 45.70 hours includes other activities, the declaration is not specific as to how much time was allotted to each specified activity. Therefore, it is assumed all of this time was dedicated to efforts in consolidating both cases for hearing.

D. In a prior order of the ALJ resolving complainant's request to consolidate both cases for hearing and respondent Lawrence's efforts to separate them, the ALJ held, "Analysis of the pleadings supports respondent Lawrence's contention [that the cases should be separated for hearing]. The only alleged commonality between the allegations concerning him and the other respondents is the same actor, Ms. Harrell (who is not a party in this case)." (Order dated July 25, 2016, contained in ex. 1.) Nonetheless, the ALJ granted the motion to consolidate the cases for hearing based on reasons of judicial economy, avoiding delays to the respondents caused by having successive hearings, and avoiding the potential prejudice to the parties of having two similar hearings with different sets of evidence due to possible witness unavailability.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. As the party bringing administrative charges and seeking discipline against the respective licensees in this case, complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.)

2. In an action seeking discipline against professional licenses, the governing agency bears the burden of establishing cause for discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.)

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Respondents' Affirmative Defenses

SELECTIVE PROSECUTION

3. Respondents Lawrence and Boseman argue the Bureau has selectively prosecuted them. As alluded to above, both respondents contend the complaining witnesses involved in the three sales transactions in question committed their own violations of the Real Estate Law but were not similarly prosecuted by the Bureau. Respondents argue those witnesses should be disbelieved and/or the charges against respondents dismissed.

4. A. Generally, parties to administrative or criminal proceedings cannot show they should be excused from findings they violated the law because others who similarly violated the law were not prosecuted. This is because a prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 451.)

B. Such claims have merit only when offered to establish selective prosecution, in which one must show he was the subject of an invidious discrimination, i.e., "(1) 'that he has been deliberately singled out for prosecution on the basis of some invidious criterion;' and (2) that 'the prosecution would not have been pursued except for the discriminatory design of the prosecuting authorities.'" (*People v. Owens* (1997) 59 Cal.App.4th 798, 801.)

C. Unequal treatment which results simply from an alleged laxity of enforcement or which reflects a non-arbitrary basis for selective enforcement of a statute does not deny equal protection and is not constitutionally prohibited discriminatory enforcement. (*People v. Owens, supra*, 59 Cal.App.4th at p. 801.)

5. In this case, it was not established that either respondent was selectively prosecuted. Many of respondents' claims of wrongdoing by the involved witnesses were not established. In other instances, the alleged wrongdoing, if established, was dissimilar from that alleged against respondents. Moreover, the Bureau began investigating respondents after receiving complaints about them; no evidence suggests similar complaints were made against the three witnesses in question. In any event, the primary deficiency in respondents' argument is their failure to point to any invidious discriminatory motive for the Bureau to prosecute them but not the others, such as sex, age, race, religion, etc. The most generous reading of respondents' closing arguments is that they believe the Bureau has been harassing them for personal reasons. Though it was not established that such is the case, even if true that kind of motive would not support a claim of selective prosecution.

THE UNCLEAN HANDS DOCTRINE

6. In his closing brief (ex. 126), and in much more detail in his first amended closing brief (ex. 127), respondent Lawrence lists a series of acts or omissions by

complainant's counsel in this case. He argues that under the unclean hands doctrine, such actions should render the Accusation against him null and void.

7. A. The defense of unclean hands arises from the maxim, "He who comes into Equity must come with clean hands." (*Blain v. Doctor's Co.* (1990) 222 Cal.App.3d 1048, 1059.) The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim. (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978, as modified on denial of reh'g (2000).)

B. However, the unclean hands doctrine is not a legal or technical defense to be used as a shield against a particular element of a cause of action. Rather, it is an equitable rationale for refusing a plaintiff seeking relief where principles of fairness dictate that the plaintiff should not recover, regardless of the merits of his claim. It is available to protect the court from having its powers used to bring about an inequitable result in the litigation before it. (*Kendall-Jackson Winery, Ltd. v. Superior Court, supra*, 76 Cal.App.4th at p. 985.)

8. A. The cases cited above are civil actions involving equitable relief. Respondent Lawrence did not cite any case applying the unclean hands doctrine to an administrative disciplinary action such as this, nor is the ALJ aware of any. There are cases applying the doctrine in an administrative setting involving a party's request for benefits against a public entity. (See, e.g., *Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037, 1053 [disability retirement benefits]; *Jaramillo v. County of Orange* (2011) 200 Cal.App.4th 811, 814 [terminated employee seeking back pay against public entity employer].) This is an important distinction. The instant case does not involve a claim by respondent against a public entity. To the contrary, the purpose of this proceeding is to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.2d 161, 164.) Thus, applying the doctrine in a case like this is problematic, because the interests of public protection would be thwarted by the actions of one of the parties involved in the litigation.

B. In any event, even assuming arguendo the doctrine applies here, it was not established that complainant's counsel acted in a manner warranting its application. Many of the actions attributed to her were not established, while others were exaggerated. For example, respondent Lawrence contends the three complaining witnesses "lied" in their testimony and complainant's counsel questioned them knowing that. (Ex. 126, p. 18.) Neither premise was established. While some of those witnesses' testimony was unpersuasive or erroneous, much of it was persuasive and led to key findings. For that matter, some of respondent Lawrence's testimony was unpersuasive and/or erroneous; but such would not warrant disregarding his entire testimony or striking his defenses without consideration. Nor was it established that complainant's counsel "deliberately misled the court" on evidentiary exchanges. (*Id.* at p. 19.) It is true that some of the omissions described in the closing briefs occurred, as recounted in great detail on the record during the hearing when objected to by respondents. But those problems of evidentiary exchange are often encountered in cases like this. The ALJ deemed the problems cured by actions taken during the hearing, which were also described in great detail on the record.

Cause for Discipline Against Respondent MAI

FIRST CAUSE FOR DISCIPLINE

9. A. Section 10130 provides that it is “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 within this state without first obtaining a real estate license.” Section 10133, subdivision (a), provides exemptions from the requirement of having a license, but respondents did not argue any apply, nor is it apparent that any do. Section 10159.5 and Regulation 2731 require that a licensee who wants to do business under a fictitious name must also apply to the Bureau for a license to do so.

B. Section 10176, subdivision (a), allows the Commissioner to discipline a licensee for “[m]aking any substantial misrepresentation.” In addition, section 10177, subdivision (d), allows the Commissioner to impose discipline against a licensee that has “[w]illfully disregarded or violated the Real Estate Law” or its regulations.

10. A. With respect to the Bodewin Court transaction, it was not established that respondent MAI is subject to discipline pursuant to sections 10176, subdivision (a), and 10177, subdivision (d), for violating sections 10130 and 10159.5, as well as Regulation 2731.

B. Specifically, it was not established that respondent MAI engaged in unlicensed activity by making a written offer on the Bodewin Court property before it had been licensed by the Bureau or that it had made any misrepresentations about its licensed status. Although it is true that respondent MAI was not licensed by the Bureau at the time that either purchase agreement was created by Ms. Harrell for the Bodewin Court transaction, it was not clearly and convincingly established which broker was intended to be the one representing the buyers or presenting the offer. For example, the two purchase agreements produced for this transaction list various licensed persons and entities in that capacity. Respondent Boseman and his individual broker license number were listed in both purchase agreements. The second purchase agreement was the one accepted by Ms. Ortega, yet that document clearly shows respondent Boseman was the buyers’ broker, not Maximum Assets Realty or any company affiliated with respondent MAI. (Factual Findings 13-33.)

SECOND CAUSE FOR DISCIPLINE

11. A. With respect to the Brandon Court transaction, it was established that respondent MAI made misrepresentations and engaged in activities requiring a real estate license at a time when it was not licensed, and thereby is subject to discipline pursuant to sections 10176, subdivision (a), and 10177, subdivision (d), for violating sections 10130, 10159.5, as well as Regulation 2731.

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B. Unlike in the Bodewin Court transaction, the sole purchase agreement and related documents for the Brandon Court transaction were made by and on behalf of respondent MAI (misnamed as Maximum Assets Realty) and its affiliated escrow business Superior Escrow Solutions. The only other licensee listed was respondent Boseman, who was the designated officer of respondent MAI. Those documents showed respondent MAI and Superior Escrow Solutions to be properly licensed entities. However, the relevant documents were submitted before respondent MAI was issued its license by the Bureau and before it even submitted the application for the same. Neither Ms. Harrell nor respondent Boseman provided an explanation why the purchase agreement and related documents listed respondent MAI before it was licensed. (Factual Findings 13-47.)

THIRD CAUSE FOR DISCIPLINE

12. Respondent MAI is subject to discipline pursuant to section 10177, subdivision (d), in that it was established that the audit of MAI's books and records revealed it had violated provisions of the Real Estate Law and its regulations. Specifically, the audit correctly showed that respondent MAI had engaged in unlicensed activity with respect to the Brandon Court transaction, in violation of section 10130; it failed to retain complete books and records of its transaction, in violation of section 10148 and Regulation 2950, subdivision (c); and it failed to produce copies of certain requested bank records created and maintained by it, at least for the Brandon Court transaction, in violation of section 10148 and Regulation 2950, subdivision (c). (Factual Findings 48-54.)

Cause for Discipline Against Respondent Boseman

THIRD CAUSE FOR DISCIPLINE

13. A. Section 10159.2, subdivision (a), provides that the officer designated to be in charge of 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 officer and employees as necessary to secure full compliance" with the Real Estate Law.

B. In addition to the parts of the Business and Professions Code cited above, section 10177 allows the Commissioner to discipline a licensee who has: "[d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license" (subd. (g)); and "[a]s 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" (subd. (h)).

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C. In this case, the audit of respondent MAI's books and records established that the overall conduct of respondent Boseman constituted a failure on his part, as the designated officer of a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of respondent MAI, as required by section 10159.2, and to keep MAI in compliance with the Real Estate Law, which therefore subjects respondent Boseman to discipline pursuant to sections 10177, subdivisions (h), (d), and (g).

D. Specifically, the audit of respondent MAI's books and records revealed that respondent Boseman exercised virtually no control over MAI's business and failed to supervise Ms. Harrell. Respondent Boseman knew Ms. Harrell was engaging in real estate activities on behalf of respondent MAI and did nothing to limit her activities or ensure her compliance with the Real Estate Law. His failure to supervise or oversee MAI's business resulted in Ms. Harrell engaging in unlicensed activities during the Bodewin Court and Brandon Court transactions. Because he allowed her unfettered control over MAI's books and records, respondent Boseman was unable to comply with the requests of the Bureau auditor to produce all of its books and records. (Factual Findings 13-54.)

FOURTH CAUSE FOR DISCIPLINE

14. A. Section 10163 requires that if a licensee maintains more than one place of business, he shall apply for and procure an additional license for each branch office so maintained. Section 10165 allows the Commissioner to discipline a licensee who violates section 10163. Regulation 2715 requires every broker to maintain on file his main office address, as well as any branch offices.

B. The audit of respondent Boseman's books and records revealed that he used two unlicensed branch offices in Murrieta and Chula Vista, in violation of section 10163, as well as Regulations 2715 and 2725. By his own admission, respondent Boseman did not realize his employees were doing so because of the "hectic" period after he assumed control of so many realty companies from revoked licensee Steve Uyemura. While respondent Boseman described that situation as an emergency, it was of his own creation. He offered no good excuse for failing to supervise his employees and discover that they were putting incorrect information on purchase agreements and related documents. Respondent Boseman is therefore subject to discipline pursuant to sections 10159.2, 10165, and 10177, subdivisions (d), (g), and (h). (Factual Findings 13-60.)

Cause for Discipline Against Respondent Lawrence

FIFTH CAUSE FOR DISCIPLINE- CHARINA ROAD

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

B. With regard to the Charina Road transaction, it was established that respondent Lawrence compensated Ms. Harrell, directly or indirectly, for performing acts requiring a real estate license, in violation of section 10137, which constitutes grounds to discipline his license pursuant to sections 10165 and 10177, subdivision (d). (Factual Findings 61-79.)

C. In his closing briefs, respondent Lawrence argues some of Ms. Harrell's compensation was for her work as a transaction coordinator and the rest was simply a "finder's fee" allowed pursuant to the reasoning expressed in *Tyrone v. Kelley* (1973) 9 Cal.3d 1 (*Kelley*). Respondent Lawrence cites to *Kelley* for the proposition that "there is no limit on the amount of compensation that can be paid [for a referral]." (Ex. 126, p. 14.) However, that is not precisely the holding of *Kelley*. In fact, the court held, "In general, an unlicensed individual may recover an agreed compensation where he merely finds a buyer, seller, lender, or borrower, but if in addition to finding such person he goes further and helps to conclude the transaction by taking part in negotiating the details of the transaction, compromising or composing differences between the parties, by way of example, he may not recover the agreed compensation." (*Tyrone v. Kelley, supra*, 9 Cal.3d at pp. 11-12; *Rees v. Dept. of Real Estate* (1977) 76 Cal. App. 3d 286, 295; 78 Ops.Cal.Atty.Gen. 71 (1995).)

D1. First, it is clear that the "finder's fee" exception does not apply in this case. Ms. Harrell engaged in far more activity than merely finding buyers and referring them to respondent Lawrence. She actively negotiated the Charina Road transaction, visited the property with the buyers, made an offer to purchase it, executed the relevant documents, communicated exclusively with the broker representing the property owner, and communicated with the escrow officer. She undertook activities that required a Bureau license. It does not matter that she undertook almost all of that activity before respondent Lawrence became involved. There is nothing in *Kelley* making such a distinction; *Kelley* simply holds that one cannot be compensated if she takes any action beyond simply referring a buyer to a licensed person. Moreover, allowing for such a distinction would only create room for mischief, as an unlicensed person could simply engage in licensed activity, then substitute complicit brokers and ask to be legally compensated.

D2. In addition, it is clear that respondent Lawrence did not intend Ms. Harrell to be compensated by way of a "finder's fee." Neither letter agreement created by respondent Lawrence or Ms. Harrell mention her being compensated by a "finder's fee." In fact, respondent Lawrence wrote in a letter to Investigator Stanbra that "there were no commissions or finder's fee paid to anyone." Respondent Lawrence asserted the "finder's fee" exception for the first time after the Accusation was filed and as the hearing approached.

D3. Thus, it is neither believable that respondent Lawrence intended to compensate Ms. Harrell by use of a "finder's fee," nor is that legal exception applicable in this case.

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E. Second, it is clear that Ms. Harrell was not compensated merely as a "transaction coordinator." Though the two letter agreements in question use that label for her work, it is clear that nomenclature was meant as subterfuge for what Ms. Harrell truly did. A transaction coordinator does not engage in licensed activity; Ms. Harrell did. Investigator Stanbra persuasively testified that a transaction coordinator, at best, would be compensated no more than \$500 per file; in this case, Ms. Harrell received more than \$3,000, substantially more than even respondent Lawrence received. Given the late stage at which respondent Lawrence became involved, with the transaction almost out of escrow, it is also impossible to believe that a transaction coordinator could have engaged in enough work to justify a fee over \$3,000. To the extent respondent Lawrence argues her compensation was for her work before he got involved, it is more believable that she was compensated for all of her work on the file, including her activity that required a license. Finally, the letter agreement drafted by respondent Lawrence shows Ms. Harrell's compensation was based on a percentage of his commission, with a maximum cap approaching what a licensed individual would receive by commission. Although respondent Lawrence did not intend Ms. Harrell to be paid directly from escrow, he still intended her to be paid the amount she ultimately received. Thus, the fact his instruction was not carried out to have escrow pay him directly does not matter. Based on the above, the totality of the evidence established respondent Lawrence agreed and allowed Ms. Harrell to be compensated for her unlicensed work on the file, not just for a referral or as a transaction coordinator.

FIFTH CAUSE FOR DISCIPLINE- MAIN OFFICE ADDRESS

16. A. Section 10165 allows the Commissioner to discipline a licensee who violates section 10162. Section 10162 provides, in pertinent part:

(a) Every licensed real estate broker shall have and maintain a definite place of business in the State of California that serves as his or her office for the transaction of business. This office shall be the place where his or her license is displayed and where personal consultations with clients are held.

(b) A real estate license does not authorize the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.

(c)(1) Every real estate broker and salesperson licensee shall provide to the commissioner his or her current office or mailing address, a current telephone number, and a current electronic mail address that he or she maintains or uses to perform any activity that requires a real estate license, at which the bureau may contact the licensee.

(2) Every real estate broker and salesperson licensee shall inform the commissioner of any change to his or her office or mailing address, telephone number, or electronic mail address no later than 30 days after making the change.

B. Regulation 2715 provides, in pertinent part, "Every broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his principal place of business for brokerage activities, the address of each branch business office and his current mailing address, if different from the business address."

17. A. In his closing briefs, respondent Lawrence contends section 10162 allows a broker to submit either his office address where he does business or a separate mail-only address, at his election; and that, to the extent Regulation 2715 eliminates that option, the regulation should be viewed as an attempt to supersede section 10162 and is therefore void.

B. Pursuant to Government Code section 11342.2, "[w]henver by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." Thus, while the construction of a statute by officials charged with its administration is entitled to great weight, nevertheless, administrative regulations that alter or amend the statute or enlarge or impair its scope are void. (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11, as modified on denial of reh'g (Sept. 20, 1990).)

C. Respondent Lawrence's arguments are unpersuasive. First, the Bureau's construction of section 10162 that brokers are required to provide the address where they actually conduct brokerage business is entitled to great weight. That interpretation is consistent with subdivision (c)(1), which requires brokers to provide the Bureau with his/her "current office or mailing address . . . that he or she maintains or uses to perform any activity that requires a real estate license, at which the bureau may contact the licensee." That subdivision, when read in whole, shows the Bureau requires the address where broker activity is actually conducted, allowing the Bureau (or public) to personally contact the licensee there, if necessary. Construing this phrase to allow a broker to provide only a postal box address where he/she does not actually transact business would frustrate the intention of allowing personal contact with the licensee. Subdivision (c)(1) should also be interpreted in the context of subdivision (a), which requires brokers to maintain a "definite place of business . . . for the transaction of business;" and subdivision (b), which provides that a licensee may not do business except from the location stated in the license issued by the Bureau. No good reason comes to mind in requiring a licensee to maintain a definite place of business, but yet not require him/her to provide that address to the Bureau. Allowing brokers to provide the Bureau with only a postal box address would allow licensees to secrete themselves from the Bureau and the public. There is nothing in the statute suggesting that is an intended consequence.

D. Second, Regulation 2715 should be viewed as simply clarifying or carrying out the purpose of section 10162, by requiring brokers to provide the Bureau with the "address of his principal place of business for brokerage activities. . . ." This is more evidence of the Bureau's intent to have on file the address where a licensed broker actually does business, not simply a postal box address. The renewal application form submitted by respondent Lawrence in 2012 is further evidence of this intent, in that the instructions expressly prohibit the renewing broker from providing a post office box as his main office address. The regulation is therefore consistent with section 10162, and it does not require anything beyond what is required by section 10162. The regulation is therefore not void.

E. Finally, respondent Lawrence did not establish that he actually transacts business other than from his home, an address which he has not provided to the Bureau for reasons which are still unclear. Nor did he establish that he has or could conduct business at the place where his postal box is located. His written lease agreement with the owner of that location only covers the postal box. Respondent Lawrence submitted no evidence showing he has ever done brokerage business at that location. The evidence he did submit (the photographs of the UPS Store) tend to show he could not conduct brokerage business there, nor could he display his license.

18. Based on the above, it was established that respondent Lawrence intentionally failed to provide the Bureau with his main office address, i.e., the address of his definite place of business where he transacts brokerage business, in violation of section 10162 and Regulation 2715. He is therefore subject to discipline for intentionally violating the Real Estate Law pursuant to sections 10165 and 10177, subdivision (d). (Factual Findings 80-88.)

Disposition

19. A. The purpose of this proceeding is to protect the public, not to punish an errant licensee. (*Hughes v. Bd. of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786.)

B. In the practice of a real estate license, "[h]onesty and integrity are deeply and daily involved in various aspects of the practice." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) "The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license." (*Id.* at pp. 177-178.) In *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402, the court of appeal found that "the Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear."

RESPONDENT ARG1

20. None of the asserted causes for discipline name respondent ARG1. In her closing brief, complainant does not argue that respondent ARG1 violated any provision of the Real Estate Law or seek any disciplinary action against it. Since there is no basis for discipline against it, the Accusation against respondent ARG1 should be dismissed.

RESPONDENT MAI

21. Cause for discipline was established against respondent MAI for engaging in unlicensed activity and making misrepresentations concerning its license status in connection with the Brandon Court transaction. In addition, the audit of respondent MAI's books and records revealed various violations of the Real Estate Law. Respondent MAI was created by an unlicensed individual, Ms. Harrell, and a licensed broker, respondent Boseman. Both thereafter abandoned the corporation after the Bureau began investigating its operations. Thus, respondent MAI has no licensee responsible for maintaining it and nobody appeared on its behalf during the hearing to defend it. Respondent MAI is a defunct real estate corporation and revocation of its license is warranted. (Factual Findings 3, 16-17, 18-28, and Legal Conclusions 9-12.)

RESPONDENT BOSEMAN

22. A. Cause for discipline was established against respondent Boseman based on the findings of the two audits conducted by Ms. Wanis of the Bureau. The audit of MAI's books and records revealed that respondent Boseman had essentially abdicated his responsibility as the designated officer of that real estate corporation to an unlicensed individual, Ms. Harrell. By doing so, respondent Boseman facilitated her unlicensed activity, as demonstrated by her conduct in the three sales transactions in question. The audit of respondent Boseman's own books and records revealed his lax oversight of licensed employees of the realty companies he took over from a revoked broker, resulting in unlicensed branch office activity.

B. The most reasonable explanation for his failure of supervision is that respondent Boseman had taken responsibility for so many licensed real estate entities in a short period of time that he had neither the time nor the inclination to properly supervise them. That situation was exacerbated by the fact he was enrolled in college. Nonetheless, this was a situation entirely of his own making and there is no evidence suggesting respondent Boseman attempted to remedy the problem, except after the Bureau began investigating him. The fact that respondent Boseman was involved with revoked former licensees (Ms. Harrell and Mr. Uyemura) is also disquieting.

C. Of almost equal concern is respondent Boseman's lack of candor about these issues when questioned by Bureau employees and again during the hearing. He has asserted that he never gave Ms. Harrell authority to engage in activity on behalf of respondent MAI; later that she had stolen his identity; and later that she refused to let him be involved in the operation. Those assertions were false. Respondent Boseman also provided minimal cooperation with the Bureau during its audit of MAI's books and records. He erroneously blamed others for engaging in misconduct but failed to accept any real responsibility for his own misconduct. Finally, respondent Boseman's actions caused some harm to the sellers of the property in the Brandon Court transaction, though it is not possible to quantify the amount of harm based on the record presented.

D. On the other hand, respondent Boseman has no prior record of discipline with the Bureau after almost 10 years as a licensee, and the misconduct established against him weighs more heavily toward errors and omissions, as opposed to fraud, theft or egregious intentional misconduct. He is still a young man who, at the time, simply got in over his head and then panicked. These are all mitigating facts to varying degrees. His shortcomings are better explained by immaturity rather than blatant dishonesty. He is still in school and no longer actively involved in real estate. Thus, the greatest concern about him is his inability to supervise other licensees or to function independently as a broker. However, there is not equal concern with his ability to safely function under the supervision of a broker willing to accept responsibility for him. Under these circumstances, an order revoking his broker license but allowing him to obtain a restricted real estate salesperson license, if requested, is warranted. (Factual Findings 13-15, 16-28, 61-68, 89-96, and Legal Conclusions 13-14.)

RESPONDENT LAWRENCE

23. A. Cause for discipline was established against respondent Lawrence because he compensated an unlicensed person, Ms. Harrell, for performing acts requiring a real estate license in connection with the Charina Road transaction. In addition, respondent Lawrence intentionally failed to provide the Bureau with his main office address, i.e., where he actually transacts his brokerage business.

B. The misconduct established against respondent Lawrence involves dishonesty and the willful violation of the Real Estate Law. In aggravation, his broker license was revoked in 1989 for making false statements to a lender, which involved similarly dishonest conduct. During the hearing, respondent Lawrence offered excuses for his conduct in the Charina Road transaction and the main office address he provided to the Bureau which were, quite frankly, unbelievable. For example, he testified and argued he compensated Ms. Harrell through use of a "finder's fee," when the two written agreements covering her compensation did not mention such a fee, and he previously had denied to the Bureau that her compensation included such a fee. In explaining why he refused to provide the Bureau with his proper main office address, respondent Lawrence offered various and contradictory explanations, concluding with the assertion that he could have used a UPS Store to conduct his brokerage business, which was frivolous. The fact he made those false assertions also touches upon his honesty and integrity. Respondent Lawrence has never accepted a morsel of responsibility for any of his actions, which is discomfoting.

C. To his credit, respondent Lawrence has been involved in various worthy community activities for many years. His misconduct in this case is therefore perplexing. While one can argue no consumer was harmed by his actions, in that the Charina Road transaction was completed and the parties appeared to be satisfied, it equally can be argued that the public at large was harmed by his facilitating the unlicensed activity of the likes of Ms. Harrell.

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D. It also can be argued that the level of misconduct established in this case against him, while serious, was not egregious. Nonetheless, it is respondent Lawrence's track record of dishonest activity in the real estate business that reasonably would make one hesitate about his integrity. His failure to accept any responsibility for his misconduct and his tendency to blame others is disconcerting. The prior discipline against his broker license was not successful, in that after getting his revoked broker license reinstated many years later, respondent Lawrence again is involved in the disciplinary process. Under these circumstances, the interests of protecting the public warrant revoking his restricted broker license. (Factual Findings 4-5, 6-12, 93, 97-105, and Legal Conclusions 15-18.)

Costs

INVESTIGATION AND ENFORCEMENT COSTS

24. Section 10106 provides, in part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the administrative law judge to direct a licensee found to have violated the Real Estate Law to pay the reasonable costs of the investigation and enforcement of the action. In this case, the Bureau established reasonable investigation costs in the amount of \$11,049.70 and reasonable enforcement costs in the amount of \$7,075.50, for a total of \$18,125.20.

25. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the court allowed a reduction or an elimination of such costs when warranted. Examples cited by the court are: (1) when a licensee would be unfairly penalized by using the hearing process to dismiss some but not all charges or to reduce the severity of proposed discipline; (2) if a licensee will be financially unable to make later payments; and (3) when the involved agency has conducted a disproportionately large investigation to prove a licensee has engaged in relatively innocuously misconduct. (*Id.* at p. 45.)

26. Pursuant to the principles discussed in *Zuckerman*, the investigation costs should be apportioned based on respondents' level of responsibility as follows:

(a) Of the total costs, \$6,556.70 were related to the Bodewin Court and Brandon Court transactions. That part of the investigation was aimed primarily at respondent MAI and the cause for discipline related to those transactions was alleged solely against respondent MAI. However, only one of those two causes for discipline was established. Therefore, respondent MAI should be responsible for half of those investigation costs, or \$3,278.75. (Factual Finding 108 and Legal Conclusions 9-12.)

(b) The remaining investigation costs of \$4,493.20 were related to the Charina Road transaction. That part of the investigation was aimed primarily at respondents MAI and Lawrence. But cause for discipline was established only against respondent Lawrence for that transaction. Respondent Lawrence therefore should be responsible for half of those investigation costs, or \$2,246.60. (Factual Finding 108 and Legal Conclusion 15.)

27. Pursuant to the principles discussed in *Zuckerman*, the enforcement costs (legal fees) should be apportioned based on respondents' level of responsibility as follows:

(a) The total legal fees associated with the Accusation are \$7,075.50. The Accusation contains five discrete causes for discipline, each based on different events or transactions. Therefore, the total legal fees should be divided into five equal segments of \$1,415.10. Cause for discipline was established against respondent MAI in two of the five causes for discipline; it should be liable for legal fees of \$2,830.20. Cause for discipline was established against respondent Boseman for essentially one-fifth of the case (excluding the audit costs, as discussed below); he should be liable for legal fees of \$1,415.10. Finally, discipline was established against respondent Lawrence in one cause for discipline; he should be liable for legal fees of \$1,415.10. (Factual Finding 109 and Legal Conclusions 9-18.)

(b) The total legal fees associated with the Order of Suspension against respondent Lawrence are \$4,156.30. One hour of that time, or \$89, was spent preparing the pleading and exhibits. The remaining time was essentially spent on efforts to consolidate that case for hearing with the Accusation, and resisting respondent Lawrence's efforts to separate the two. In deciding that issue, the ALJ opined the pleadings supported respondent Lawrence's efforts in that regard. The order denying the relief he requested was based on reasons of judicial economy and equity. As articulated in *Zuckerman*, forcing respondent Lawrence to pay the legal fees associated with his efforts to separate the cases for hearing would unfairly penalize him for using the hearing process. He should only be responsible for legal fees of \$89 from the Order of Suspension matter. (Factual Finding 110.)

AUDIT COSTS

28. Pursuant to section 10148, subdivision (b), the Bureau may recover from a licensed broker audit costs if it is found the broker violated section 10145 or a regulation interpreting it. Section 10145 is the provision of the Real Estate Law describing how and when trust funds are to be recorded and handled by licensed brokers and salespersons.

29. A. With respect to the audit of respondent MAI, Mr. Wanis found violations of section 10145, as well as Regulation 2950 [concerning record keeping for escrow activity], which involves the handling of trust funds. Respondent Boseman was the responsible broker of respondent MAI at the time it committed those violations. He therefore is liable to the Bureau for the costs of that audit in the amount of \$3,155.75. (Factual Findings 48-54, 106-107, and Legal Conclusions 12-13.)

B. However, the result is different for the audit of respondent Boseman's own books and records. Mr. Wanis did not discover any violations of section 10145 or any related regulation. The violations he discovered related to other provisions of the Real Estate Law. Therefore, respondent Boseman is not liable for the costs of that audit. (Factual Findings 55-60, 106-107, and Legal Conclusion 14.)

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30. Complainant argues all audit costs are recoverable as investigation and prosecution costs under section 10106. That argument is not persuasive. There are separate statutes providing for investigation/enforcement costs on the one hand (section 10106) and audit costs on the other (section 10145). Those statutes detail the circumstances such costs are recoverable. Section 10145 clearly provides audit costs are recoverable only in very limited circumstances. There is nothing in section 10106 hinting that audit costs can be recoverable as investigation costs under any circumstance.

RESPONSIBILITY FOR PAYING COSTS

31. Finally, *Zuckerman* contemplates eliminating or reducing costs if a licensee will be financially unable to make later payments. In this case, respondent Lawrence is elderly, has been suspended from practice for the past year, and is undoubtedly in financial distress. The revocation of his restricted broker license will exacerbate that situation. Respondent Boseman is no longer working in real estate, but supporting himself now by "odd jobs" while he still attends college. He too is not in a steady financial situation. Under these circumstances, an appropriate costs order for both respondents is warranted.

ORDERS

1. The Accusation against respondent Arch Realty Group, Inc., is dismissed.
2. All licenses and licensing rights of respondent Maximum Assets, Inc., under the Real Estate Law, are revoked. Respondent Maximum Assets, Inc., shall pay costs of investigation and enforcement to the Bureau of Real Estate in the amount of \$6,108.95.
3. All licenses and licensing rights of respondent Eddie P. Lawrence, aka E. Paul Lawrence, under the Real Estate Law, are revoked. Respondent Lawrence shall pay costs of investigation and enforcement to the Bureau of Real Estate in the amount of \$3,750.70, if and when any license or licensing right under the Real Estate Law is reinstated.
4. All licenses and licensing rights of respondent Kyle Lynn Boseman, under the Real Estate Law, are revoked; provided, however, a restricted real estate salesperson license shall be issued to him 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:

A. 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.

B. 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.

C. 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 three years have elapsed from the effective date of this Decision.

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

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

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

E. 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.

F. Respondent shall, within six 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 suspension of respondent's license until respondent passes the examination.

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G. If and when respondent Boseman obtains a restricted salesperson license, he shall pay to the Bureau of Real Estate costs of audit, investigation and enforcement in the amount of \$4,570.85. Respondent Boseman shall be allowed to pay such costs according to a payment plan approved by the Real Estate Commissioner.

DATED: April 7, 2017

DocuSigned by:

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ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings