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**FILED**

**MAY 19 2017**

**BUREAU OF REAL ESTATE**

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	
	)	CalBRE No. H-40160 LA
JOHN KEVIN MELONAS,	)	
	)	OAH No. 2016041083
Respondent.	)	
_____	)	

ORDER DENYING RECONSIDERATION

On, March 14, 2017, a Decision was rendered in the above-entitled matter. The Decision was to become effective on April 12, 2017, and was stayed by separate Order to May 12, 2017. The Decision was again stayed by separate Order to May 22, 2017.

On May 2, 2017, Respondent petitioned for reconsideration of the Decision of March 14, 2017.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of March 14, 2017, and reconsideration is hereby denied.

IT IS SO ORDERED 5/16/2017.

WAYNE S. BELL  
REAL ESTATE COMMISSIONER

*[Signature]*

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**FILED**

MAY 12 2017

BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation Against	)	
JOHN KEVIN MELONAS,	)	CalBRE NO. H-40160 LA
Respondent.	)	OAH NO. L-2016041083

ORDER STAYING EFFECTIVE DATE

On March 14, 2017, a Decision was rendered in the above-entitled matter to become effective April 12, 2017. On April 11, 2017, Respondent requested and received a 30-day stay of the effective date until May 12, 2017, so that he could file a Request for Reconsideration of that Decision. On May 2, 2017, the Bureau received Respondent's petition for reconsideration.

IT IS HEREBY ORDERED that the effective date of the Decision of March 14, 2017, is stayed for a period of ten (10) days to allow time to consider Respondent's petition.

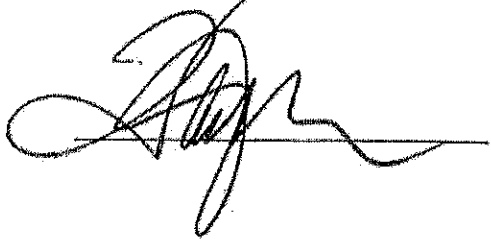
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The Decision of March 14, 2017, shall become effective at 12 o'clock noon on  
May 22, 2017.

DATED: 5/10/2017

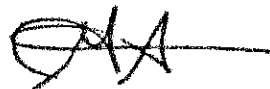
WAYNE S. BELL  
Real Estate Commissioner

A handwritten signature in black ink, appearing to read 'Wayne S. Bell', is written over a horizontal line. The signature is stylized and cursive.

FILED

April 11, 2017

BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation Against	)	
	)	CalBRE NO. H-40160 LA
JOHN KEVIN MELONAS,	)	OAH NO. L-2016041083
	)	
Respondent.	)	

ORDER STAYING EFFECTIVE DATE

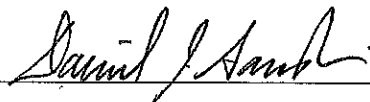
On March 14, 2017, a Decision was rendered in the above-entitled matter to become effective April 12, 2017.

IT IS HEREBY ORDERED that the effective date of the Decision of March 14, 2017, is stayed for a period of thirty (30) days to allow Respondent JOHN KEVIN MELONAS to file a petition for reconsideration.

The Decision of March 14, 2017, shall become effective at 12 o'clock noon on May 12, 2017.

DATED 4/11/17.

WAYNE S. BELL  
Real Estate Commissioner




By: DANIEL J. SANDRI  
Chief Deputy Commissioner

**FILED**

MAR 23 2017

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	CalBRE No. H-40160 LA
	)	
JOHN KEVIN MELONAS,	)	OAH No. 2016041083
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated February 16, 2017, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

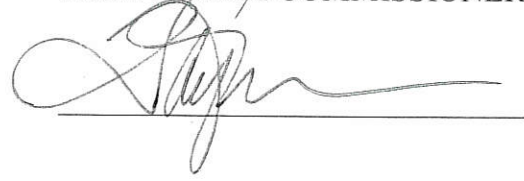
The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on APR 12 2017

IT IS SO ORDERED 3/14/2017

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation  
Against:

JOHN KEVIN MELONAS,

Respondent.

BRE No. H-40160 LA

OAH No. 2016041083

**PROPOSED DECISION**

This matter was heard on January 17, 2017, in Los Angeles, California, by Laurie R. Pearlman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California. Veronica Kilpatrick (Complainant), a Supervising Special Investigator for the State of California, was represented by Amelia V. Vetrone, Counsel for the Bureau of Real Estate (Bureau). John Kevin Melonas (Respondent) was present and was represented by Cyrus S. Tabibnia, Attorney at Law.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on January 17, 2017.

**FACTUAL FINDINGS**

*Jurisdiction*

1. Complainant brought the Accusation in her official capacity. Respondent filed a timely notice of defense and this matter ensued.

2. Respondent was originally licensed by the Bureau as a real estate salesperson on November 6, 1997, and as a real estate broker on May 6, 2006. Respondent's real estate broker license is scheduled to expire on May 5, 2018.

*Audit Examination*

3. On December 1, 2015, the Bureau completed an audit examination (audit) of Respondent's books and records with regard to the real estate activities he performed. The audit covered the period of time from January 1, 2014, to July 31, 2015 (audit period).

4. The primary purpose of the audit was to determine Respondent's compliance with the Real Estate Law, contained in Business and Professions Code (Code) section 10100 et seq. The audit revealed numerous violations of the Code and of the California Code of Regulations, title 10 (Regulations). The audit was undertaken after a complaint was filed by a property owner regarding a delayed disbursement of funds to her by Respondent, following a medical emergency in Respondent's family. This complaint did not result in a finding that any monies were owing to that client, but it led to the Bureau's audit.

5. Respondent performed property management services for property owners for compensation. His activities included soliciting listings of places for rent, soliciting prospective tenants, and managing residential rental real property for his clients. During the audit period, Respondent managed 22 tenant-occupied single-family homes for 22 property owners. He charged management fees based on 4 percent to 10 percent of the base rent or a flat fee ranging from \$100 to \$150. Respondent handled an annual trust fund volume of approximately \$1,022,592 during the audit period.

#### *Violations of Real Estate Laws*

6a. In connection with his real property management activities, Respondent accepted or received funds from parties, including funds to be held in trust (trust funds), which he deposited or disbursed. During the audit period, Respondent deposited or maintained the funds in two bank accounts at Citibank in Westlake Village. Neither account was designated as a trust account.

6b. Respondent used one bank account (B/A 1) to deposit and disburse trust funds for all property owners. This bank account was designated as "Melonas & Associates, Inc. Security Deposit Control Account." He used B/A 1 as a depository for multiple clients for rent and security deposits which he collected from tenants. Respondent made disbursements from B/A 1 for expenses related to the properties managed, owner remittances, and his management fees.

6c. The second bank account (G/A 1) was Respondent's general account for operating expenses. It was designated as "Melonas & Associates, Inc. General Account." Respondent utilized this account for his income and broker operating expenses. He transferred his management fees to account G/A 1 from account B/A 1.

7. During the audit period, Respondent permitted, allowed, or caused the disbursement of trust funds from bank account B/A 1 which, on July 31, 2015, was \$76,533.27 less than the existing aggregate trust fund liability to the owners of these funds, without first obtaining the prior written consent of the owners of these funds, in violation of Code section 10145 and Regulations, section 2832.1. (All Code sections and Regulations are discussed in more detail in the Legal Conclusions below.) The shortage was caused by making disbursements for properties which had insufficient funds, bank charges, unauthorized disbursements of trust funds, and poor recordkeeping.

8. During the audit period, Respondent failed to maintain an accurate control record of the deposit and disbursal of trust funds in bank account B/A 1, in violation of Code section 10145 and Regulations, section 2831.

9. During the audit period, Respondent failed to maintain a separate record for each beneficiary of trust funds, in violation of Code section 10145 and Regulations, section 2831.1.

10. During the audit period, Respondent failed to perform a monthly reconciliation of the separate record to the control record of trust funds handled, in violation of Code section 10145 and Regulations, section 2831.2.

11. During the audit period, Respondent failed to maintain funds collected for the benefit of another in a trust account in the name of the broker, in violation of Code section 10145 and Regulations, section 2832.

12. During the audit period, Respondent failed to maintain written agreements with property owners regarding the handling of trust funds, in violation of Code section 10145, subdivision (a).

13. During the audit period, Respondent converted trust funds held for the benefit of another to his own use, in violation of Code sections 10145 and 10176, subdivision (i).

14. During the audit period, Respondent commingled trust funds with Respondent's personal and operating expenses by transferring funds from bank account B/A 1 to bank account G/A 1 without authorization of the funds' owners, in violation of Code sections 10145 and 10176, subdivision (e), and Regulations, section 2832.

15. During the audit period, Respondent failed to notify the Bureau of his current main office address, in violation of Code section 10162. As of November 4, 2015, Respondent listed his main office address with the Bureau as 32107 Lindero Canyon Road, Westlake Village. However beginning in June 2015, he maintained a new main office at 2900 Townsgate Road in Westlake Village. Respondent failed to notify the Bureau of this change.

16. During the audit period, Respondent used the fictitious business names "Melonas and Associates Inc.," "Melonas And Associates.com" and "City Wide Leases Property Management" without first obtaining a license from the Bureau to conduct real estate activities using those fictitious business names, in violation of Code section 10159.5 and Regulations, section 2731.

17. During the audit period, Respondent failed to retain records and provide them upon request to the auditor, in violation of Code section 10148.

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*Respondent's Evidence*

18. Respondent testified credibly to the relevant events. He denied that he commingled funds or misappropriated any of the missing money. Respondent admitted that he failed to perform a monthly reconciliation of the separate record to the control record of trust funds he handled. He explained that he made unintentional mistakes due to the fact that he has no background or training in accounting, but contended that no clients were harmed. Respondent testified that the amounts taken out of the bank accounts to pay for his services were fully in accordance with the terms of the property management agreements. He admitted that he forgot to notify the Bureau of the change in his office address. However, Respondent did so as soon as the auditor brought it to his attention.

19. Respondent has worked in the real estate industry for 20 years handling real estate sales and property management. He originally held a corporate license under the name Melonas and Associates. Because that corporation had been operating with a delinquent tax identification number, Respondent agreed to surrender that corporate license in May 2015, as the result of a disciplinary action by the Bureau. Respondent then began doing business under the corporate name JMAS Holdings.

20. When he closed Melonas and Associates, Respondent had client funds in an account at Citibank under Melonas and Associates' name. He left those funds in that account until he established JMAS Holdings. Once the new corporation was established, Respondent transferred all of the funds from the first Citibank account into a second Citibank account under JMAS Holdings' name in August 2015.

21. As of August 31, 2015, the first bank account had a zero balance and the second bank account had a balance of \$84,610.85. Respondent asserted that the funds at issue in the Accusation never left a trust account.<sup>1</sup> He simply moved the funds from the first bank account to the second bank account upon creation of the new corporation. When the auditor told Respondent that \$76,000 was missing from the trust fund, he informed her that the "missing" funds were in the JMAS Holdings' bank account. The auditor replied that she was not auditing JMAS Holdings and did not review bank statements pertaining to JMAS Holdings.

22. Respondent "opened [his] file cabinet" and permitted the auditor to review and copy any of the documents. The auditor requested cancelled checks, but Respondent encountered a delay in getting them from the bank. The auditor states that Respondent did not provide property management agreements, but Respondent denies this. His denial is self-serving and not credible.

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<sup>1</sup> Respondent testified that the bank labels accounts for property managers' client trust funds as "Control Accounts."

23. Respondent kept separate records for each property in Excel and QuickBooks. Due to lack of knowledge, he made some errors, but he insisted that they did not result in any client harm. For example, for simplicity Respondent always showed the date payment was posted as the first of the month, and then also entered the actual date payment was received. The auditor explained to him that the date posted and the date received should be the same date. Respondent corrected that error as soon as it was explained to him. He also took a training class and hired a bookkeeper.

24. Respondent enjoys working in real estate. He likes to help people find homes and is pleased that he has been able to help owners avoid foreclosure by renting out their properties. Respondent handles real estate sales now and is not working in property management anymore. He has experienced a significant decrease in income. Respondent acknowledges that he needs to improve his "accounting abilities" to do property management and is willing to undertake additional coursework to that end.

25. Respondent is the sole support for his wife and nine-year-old daughter. He earns \$150,000 per year and spends nearly \$80,000 per year for expenses, including leasing his home, car payments, private school, and health insurance. If he were ordered to pay costs, Respondent would need to make installment payments.

26. Respondent is active with the Rotary Club of Westlake Village with whom he delivers Meals on Wheels, feeds the homeless at Thanksgiving and Christmas, and does holiday shopping with underprivileged children. Respondent attends St. Paschal Baylon Church in Thousand Oaks, where he is involved with feeding the homeless and raising money for the underprivileged.

#### *Cost Recovery*

27. Complainant's investigation and enforcement costs in this matter total \$11,128.70. This is comprised of audit costs of \$9,019.45, investigative costs of \$885.50, and prosecution costs of \$1,223.75. These amounts are reasonable.

### LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (*Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531.)

2. Under Code section 10145, a real estate broker is required to deposit, into a trust account, funds belonging to another that are received while performing acts requiring a

real estate license. When trust funds are deposited, certain requirements must be met, including:

a. Under Regulations, section 2832.1, the written consent of all owners of trust funds must be obtained before any disbursement is made that will reduce the balance of the account to an amount less than the aggregate trust fund liability.

b. Under Regulations, section 2831, the broker must record receipt and disbursement of trust funds, with details as to date, amount received and from whom, date of deposit, daily balance, and other required information.

c. Under Regulations, section 2831.1, the broker must keep a separate record of each beneficiary or transaction, and must record deposit of trust funds, with detail as to date, amount received, and other required information.

d. Under Regulations, section 2831.2, at least once per month the broker must reconcile the separate beneficiary records maintained under Regulations, section 2831.1 with the records of trust funds received and disbursed that are required to be maintained under Regulations, section 2831.

e. Under Regulations, section 2832, a broker must place funds accepted on behalf of another into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name.

3. There is cause to suspend or revoke respondent's real estate broker license, pursuant to Code section 10145 and Regulations, sections 2832.1, 2831, 2831.1, 2831.2 and 2832, because Respondent accepted trust funds and did not properly deposit them into a trust fund, maintain the required records or perform the required reconciliations. (See Findings 3 through 18.)

4. A real estate licensee may have his license suspended or revoked for violating Code section 10176, subdivision (e), for commingling his own funds with funds received from others and subdivision (i), any conduct which constitutes fraud or dishonest dealing.

5. There is cause to suspend or revoke Respondent's real estate broker license pursuant to Code section 10176, subdivisions (e) and (i), because the audit revealed unauthorized commingling of funds, and dishonest dealing in that the trust account balances were allowed to be reduced to an amount below the proper trust account liabilities. (See Findings 3 through 17.)

6. Under Code section 10162, a real estate broker is required to have and maintain a definite place of business, and notify the Real Estate Commissioner of that address, and of any change in that address.

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7. There is cause to suspend or revoke Respondent's real estate broker license pursuant to Code section 10162 because Respondent failed to notify the Real Estate Commissioner of his current main office address. (See Findings 3, 4, 15 and 18.)

8. Under Code section 10159.5 and Regulations, section 2731, a licensee shall not use a fictitious business name in the conduct of any activity for which a real estate license is required unless he is the holder of a license bearing the fictitious business name.

9. There is cause to suspend or revoke Respondent's real estate broker license pursuant to Code section 10159.5 and Regulations, section 2731 in that Respondent used fictitious business names in conducting licensed activities, without holding a license bearing the fictitious business names. (See Findings 3, 4 and 16.)

10. Under other subdivisions of Code section 10177, a licensee can be disciplined for various other reasons. Complainant alleges that respondent also violated subdivision (d), willful disregard or violation of the Real Estate Law and Regulations, and subdivision (g), demonstrating negligence or incompetence in performing licensed activities.

11. The terms "willful" or "willful disregard" are not defined in the Code. However, they were interpreted in *Milner v. Fox* (1980) 102 Cal.App.3d 567 as not requiring any intent to violate law but, rather, only the intent to engage in an act. If that act is determined to violate the law, the actor did so willfully.

12. Cause exists to suspend or revoke Respondent's real estate broker license pursuant to Code section 10177, subdivision (d). Respondent failed to follow the various statutes and Regulations noted herein and the evidence presented established that while Respondent may not have intended to violate the law, he did intentionally engage in acts which resulted in commingling of funds, missing funds, and the failure to properly account for funds. (See Findings 3 through 18.)

13. Negligence is generally the failure to act in a reasonable and responsible manner. Respondent is liable for his negligence in failing to follow the various statutes and Regulations noted herein.

14. There is cause to suspend or revoke Respondent's real estate broker license pursuant to Code section 10177, subdivision (g), because Respondent failed to follow the various statutes and Regulations noted herein. (See Findings 3 through 18.)

15. Under Code section 10148, subdivision (b), the Real Estate Commissioner may charge a broker for the cost of any audit if the Commissioner finds that the broker has violated the requirements of Code section 10145 or the Regulations relating to the records that are required to be kept. Under Code section 10106, the Commissioner may recover from a licensee the reasonable costs of investigating and prosecuting a disciplinary matter.

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16. There is cause to order Respondent to pay costs of investigation and enforcement.

17. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Code section 10106. In so doing, however, the Court directed the administrative law judge and the licensing agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Bureau must not assess the full costs where it would unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Bureau must consider a licensee's subjective good faith belief in the merits of his or her position and whether the licensee has raised a colorable challenge; the Bureau must consider a licensee's ability to pay; and the Bureau may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.* at p. 45.) In this case, Respondent had a subjective good faith belief in the merits of his position, the evidence did not establish an intent to violate the law, there was no showing of harm to clients, and Respondent has a limited ability to pay. Accordingly, costs will be reduced to \$7,500.

18. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.* See also *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

19. Respondent did not demonstrate that the public will be adequately protected if he maintains his broker license at this time. However, the evidence established a course of conduct primarily resulting from negligence or lack of skill, rather than any propensity by Respondent to steal from others or disregard his licensed duties. The public will be adequately protected if Respondent is allowed to apply for a restricted salesperson license, as the license requires Respondent to be supervised in his performance of activities that require the license, the Respondent's supervisor must be notified of the decision in this matter, and the Respondent's supervisor must exercise close supervision over Respondent.

#### ORDER

All licenses and licensing rights of Respondent John Kevin Melonas under the Real Estate Law are revoked; provided however a restricted real estate salesperson license shall be issued to Respondent pursuant to Business and Professions Code section 10156.5, if Respondent makes application therefore 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 Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.

2. 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.

3. 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.

4. 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.

5. 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:

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

(b) 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.

6. 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 Respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

7. Respondent shall, within six months from the effective date of this Decision, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in Business and Professions Code section 10170.5, subdivision (a). Such proof may include evidence that Respondent successfully completed the course within 120 days prior to the effective date of the final Decision in this matter.

8. Respondent shall pay costs of \$7,500 to the Real Estate Commissioner in the form of a cashier's check or certified check within 90 days of the effective date of this Decision, or on a payment plan by agreement with the Commissioner.

DATED: February 16, 2017

DocuSigned by:  
*Laurie Pearlman*  
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LAURIE R. PEARLMAN  
Administrative Law Judge  
Office of Administrative Hearings