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FILED
MAY 08 2020
DEPT. OF REAL ESTATE
By Zhi-Ga

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of) DRE No. H-41381 LA
) OAH No. 201907091
)
RANCHO PLAZA REALTY INCORPORATED;)
)
BRADLEY PAUL DICKEY; and)
)
ISABELLA LOUISE STAMPER,)
)
)
Respondents.)

STIPULATION AND AGREEMENT

&

DECISION AFTER REJECTION

The California Department of Real Estate ("Department") filed an Accusation against RANCHO PLAZA REALTY INCORPORATED ("RPRI"); BRADLEY PAUL DICKEY ("DICKEY"); and ISABELLA LOUISA STAMPER ("STAMPER") on June 12,

1 2019. On January 29, 2020, a hearing was held, evidence was received, and the case was
2 deemed submitted on January 29, 2020.

3 On February 11, 2020, the Proposed Decision of Administrative Law Judge
4 ("ALJ") Mary Agnes Matyszewski was issued, and determined, among other things, that:
5 Respondent RPRI's license should be revoked; the Accusation as to Respondent DICKEY
6 should be dismissed; and Respondent STAMPER's real estate salesperson license should be
7 revoked, provided, however, a restricted real estate salesperson license should be issued to her
8 by the Real Estate Commissioner pursuant to section 10156.5 of the Business and Professions
9 Code.

10 The Commissioner has rejected, in part, ALJ Matyszewski's Proposed Decision
11 of February 11, 2020.

12 The parties wish to settle this matter without further proceedings.

13 IT IS HEREBY STIPULATED by and between Respondents RPRI, DICKEY
14 and STAMPER, representing themselves, and the Department of Real Estate, acting by and
15 through Julie To, Counsel for the Department, as follows for the purpose of settling and
16 disposing of the Accusation filed by the Department.

17 1. It is understood by the parties that the Real Estate Commissioner may adopt
18 the Stipulation and Agreement and Decision After Rejection as his decision in this matter,
19 thereby imposing the conditions Respondents' real estate licenses as set forth in the below
20 "Decision and Order". In the event the Commissioner in his discretion does not adopt the
21 Stipulation, the Stipulation shall be void and of no effect; the Commissioner will review the
22 transcript and the evidence in the case, and will issue his Decision after Rejection as his
23 Decision in this matter.

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ORDER AS TO RANCHO PLAZA REALTY INCORPORATED

The Commissioner adopts and incorporates by reference the Order as to RANCHO PLAZA REALTY INCORPORATED of ALJ Matyzszewski's Proposed Decision of February 11, 2020.

ORDER AS TO BRADLEY PAUL DICKEY

The Commissioner adopts and incorporates by reference the Order as to BRADLEY PAUL DICKEY of ALJ Matyzszewski's Proposed Decision of February 11, 2020.

ORDER AS TO ISABELLA LOUISA STAMPER

All licenses and licensing rights of Respondent ISABELLA LOUISA STAMPER under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent STAMPER pursuant to Section 10156.5 of the Code if Respondent STAMPER makes respective application therefore and pays to the Department the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision and Order. The restricted license issued to Respondent STAMPER shall be subject to all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of the Code:

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

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2. The restricted license issued to Respondent STAMPER may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that the Respondent STAMPER 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 licenses.

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

4. Respondent STAMPER 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 Department of Real Estate which shall certify:

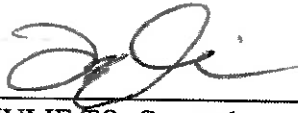
(a) That the employing broker has read the Decisions of the Commissioner which granted the right to a restricted license; and

(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

5. Respondent STAMPER shall, within twelve (12) months from the effective date of this Decision and Order, present evidence satisfactory to the Commissioner that Respondent STAMPER 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 STAMPER fails to satisfy this condition, Respondent STAMPER's real estate license shall automatically be suspended until Respondent STAMPER presents evidence satisfactory to the

1 Commissioner of having taken and successfully completed the continuing education
2 requirements. Proof of completion of the continuing education courses must be delivered to the
3 Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.

4
5 4-22-2020
6 DATED


7
8 JULIE TO, Counsel
9 DEPARTMENT OF REAL ESTATE

10 * * *

11 EXECUTION OF THE STIPULATION

12 We have read the Stipulation and Agreement and Decision after Rejection, and
13 its terms are understood by us and are agreeable and acceptable to us. We willingly,
14 intelligently and voluntarily agree to enter into this Stipulation and Agreement and Decision
15 after Rejection.

16 MAILING & ELECTRONIC MAIL

17 Respondents can signify acceptance and approval of the terms and conditions of
18 this Stipulation and Agreement by sending a hard copy of the original signed signature page of
19 the Stipulation herein to Julie L. To, Legal Section, Department of Real Estate, 320 W. Fourth
20 St., Suite 350, Los Angeles, California 90013-1105. In the event of time constraints,
21 Respondents can signify acceptance and approval of the terms and conditions of this Stipulation
22 and Agreement by e-mailing a scanned copy of the signature page, as actually signed by
23 Respondents, to the Department counsel assigned to this case. Respondents agree, acknowledge,
24 and understand that by electronically sending to the Department a scan of Respondents' actual
signatures as they appear on the Stipulation and Agreement, that receipt of the scan by the

1 Department shall be binding on Respondents as if the Department had received the original
2 signed Stipulation and Agreement.

3 4/21/20
4 DATED

Bradley Paul Dickey
RANCHO PLAZA REALTY INCORPORATED,
Respondent
By: BRADLEY PAUL DICKEY,
Former Designated Officer

6 4/21/20
7 DATED

Bradley Paul Dickey
BRADLEY PAUL DICKEY, Respondent
Respondent

9 04-21-2020
10 DATED

Isabella Louisa Stamper
ISABELLA LOUISA STAMPER, Respondent
Respondent

12 ***

13 The foregoing Stipulation and Agreement and Decision After Rejection is hereby
14 adopted as my Decision in this matter and shall become effective at 12 o'clock noon on

15 ~~JUN - 8 2020~~

16 IT IS SO ORDERED 5/4/20

18 SANDRA KNAU
19 ACTING REAL ESTATE COMMISSIONER
20 *[Signature]*

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FILED

MAR 16 2020

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	DRE No. H-41381 LA
)	
RANCHO PLAZA REALTY INCORPORATED,)	OAH No. 2019070901
BRADLEY PAUL DICKEY and)	
ISABELLA LOUISA STAMPER,)	
)	
Respondents.)	

NOTICE

TO: RANCHO PLAZA REALTY INCORPORATED, BRADLEY PAUL DICKEY and ISABELLA LOUISA STAMPER, Respondents, and, their Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated February 11, 2020, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated February 11, 2020, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Wednesday, January 29, 2020, and any written argument hereafter submitted on behalf of respondent and complainant.

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Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Wednesday, January 29, 2020, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of complainant to be considered by me must be submitted within 15 days after receipt of the argument of respondent at the Los Angeles Office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: 3/12/20

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation Against:

RANCHO PLAZA REALTY INCORPORATED;

BRADLEY PAUL DICKEY;

and

ISABELLA LOUISA STAMPER,

Respondents

Case No. H-41381 LA

OAH No. 2019070901

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Diego, California, on January 29, 2020.

Julie L. To, Real Estate Counsel, represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate, Department of Consumer Affairs, State of California.

Isabella Louise Stamper, respondent, appeared and represented herself and respondent Rancho Plaza Realty Incorporated.¹

Bradley Paul Dickey, respondent, appeared and represented himself.

The matter was submitted on January 29, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. Following an audit, complainant signed the accusation in her official capacity, which was filed on June 12, 2019. The causes for discipline in the accusation pled against Rancho Plaza Realty Incorporated (Rancho Plaza) centered on the numerous violations discovered during the audit. The cause for discipline pled against Ms. Stamper alleged that she performed activities which required licensure when she was not licensed under any employing broker. The cause for discipline pled against Mr.

¹ A corporation that has been suspended pursuant to the Revenue and Taxation Code lacks the legal capacity to prosecute or defend itself. (*ABA Recovery Services, Inc. v. Konold* (1988) 198 Cal. App. 3d 720, 724.) The evidence suggested that Rancho Plaza no longer operates, but no clear evidence of its corporate status was presented and complainant did not object to Ms. Stamper representing Rancho Plaza.

Dickey alleged that he performed activities which required licensure while his employing broker had no designated officer of record. Complainant also sought investigation, prosecution and audit costs.

The accusation and other required jurisdictional documents were served on respondents, who timely filed notices of defense.

Licensing History

2. The department originally issued broker's license (corporation), ID 01121659, to Rancho Plaza on November 27, 1991. Jerry Paul Stamper, Ms. Stamper's late husband, was the designated officer. The main address was in Menifee. Mr. Stamper died and, as of March 12, 2018, the main office address was discontinued. The new designated officer was Mr. Dickey as of July 16, 2018. On December 10, 2018, the mailing address changed to a different location in Menifee. On December 31, 2018, the designated officer Mr. Dickey was cancelled and the main office address was discontinued. The real estate broker license was set to expire on November 26, 2019.²

² The license certification was prepared in July 2019; no updated certificate was provided at this hearing. Given the testimony regarding the cessation of Rancho Plaza's business, presumably the license expired and was not renewed. Business and Professions Code section 10103 states:

The lapsing or suspension of a license by operation of law or by order or decision of the department or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the department of jurisdiction to proceed with any investigation of or action or disciplinary proceeding

3. Ms. Stamper was originally licensed as a salesperson, license number ID 01301046, on December 16, 2000.³ She had no responsible broker affiliation until August 21, 2018, when she was affiliated with responsible broker Rancho Plaza. Her affiliation with Rancho Plaza was discontinued as of December 31, 2018, "due to the current non-working status of the corporation," per the certificate of licensure received as evidence. On March 5, 2019, her license was affiliated with responsible broker Mr. Dickey at his office location in Temecula. Ms. Stamper's license will expire on December 15, 2020, unless renewed. There is no history of discipline against Ms. Stamper's license.

4. Mr. Dickey was originally licensed as a salesperson, license number ID 01436100, on July 21, 2004. He was licensed as a broker on May 23, 2012. On December 10, 2018, he filed a notice indicating his affiliation as a broker associate with responsible broker Rancho Plaza. Mr. Dickey was also licensed as "Officer of" Rancho Plaza from July 16, 2018, to December 30, 2018. On March 5, 2019, Mr. Dickey advised the department that his main office and mailing address changed to a location in Temecula. Mr. Dickey's broker license will expire on May 22, 2020, unless renewed. There is no history of discipline against Mr. Dickey's license.

The Department's Audit

5. On October 31, 2018, Zaky Wanis, a department General Auditor III, prepared a report following his audit of Rancho Plaza records. Mr. Wanis only audited

against such licensee, or to render a decision suspending or revoking such license.

³ She was formally licensed as Isabella Louise Enthaler.

the records pertaining to Rancho Plaza's property management business. The audit period Mr. Wanis reviewed was from July 1, 2017, until June 30, 2018. Mr. Wanis found 10 violations which he detailed in his report⁴ and testified about at this hearing. Mr. Wanis found the following violations:

- Incomplete control records (receipts and disbursement reports) were maintained for the bank account which was used for handling the receipts and disbursements of trust funds for Rancho Plaza's property management activity. The control record was missing the date trust funds were deposited and the daily balance. Mr. Wanis opined that this violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.
- The separate records maintained for the bank account that was used for handling the receipts and disbursements of trust funds for Rancho Plaza's property management activity was incomplete. The separate records were missing the date trust funds were deposited and the daily balance. Rancho Plaza also failed to maintain a separate record for the "unidentified unaccounted for funds" held in the bank account totaling \$289.85, as of June 30, 2018. Mr. Wanis opined that these two findings violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.1

⁴The three volumes of records supporting Mr. Wanis's audit report were not introduced at hearing and are not part of the record, although those documents were reviewed by the witnesses and testimony about them was received at this hearing.

- Rancho Plaza did not maintain a monthly reconciliation of all the separate records to the control record of all trust funds received and disbursed for the bank account. Rancho Plaza failed to reconcile the "unidentified unaccounted for funds" held in the bank account totaling \$289.85, as of June 30, 2018. Mr. Wanis opined that these two findings violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.2
- The bank signature card did not designate the bank account as a trust account. Mr. Wanis opined that this violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.
- Rancho Plaza allowed Ms. Stamper, its CEO/CFO/Secretary, who was not registered under or licensed to Rancho Plaza, to be a signer on the bank account.⁵ Ms. Stamper was not registered under or licensed to Rancho Plaza until August 21, 2018. Mr. Wanis opined that this violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2834.
- Rancho Plaza did not notify the department of Ms. Stamper's employment during the audit period. She was not registered under or licensed to Rancho Plaza until August 21, 2018. Rancho Plaza did not notify the department of the employment of Mr. Dickey who was

⁵ Ms. Stamper was removed as a signor on July 24, 2018, and Mr. Dickey was added as a signor.

employed as a broker-associate starting January 1, 2018. Mr. Wanis opined that these two findings violated Business and Professions Code section 10161.8 and California Code of Regulations, title 10, section 2752.

- Rancho Plaza performed acts requiring a real estate license without a designated officer from March 13, 2018, the day after Mr. Stamper died, until the audit cut-off date of June 30, 2018. Mr. Dickey became the new designated officer on July 16, 2018. Mr. Wanis opined that this violated Business and Professions Code section 2740.

Mr. Wanis's audit report recorded his discussions with Mr. Dickey and Ms. Stamper. Rancho Plaza managed 246 properties for 171 owners and collected approximately \$4.9 million in trust funds annually. Rancho Plaza charged a management fee of eight to ten percent of monthly rents collected or a \$100 to \$150 flat fee. Rancho Plaza maintained one bank account for handling receipts and disbursements of trust funds in connection with its property management activities. The property management division was sold to another licensed broker effective August 1, 2018. That broker formed a new corporation and submitted all the necessary paperwork to the department to license that new business. Mr. Dickey told Mr. Wanis that there were two real estate transactions currently pending and, once these were completed, Rancho Plaza "might cease all operations."

Witness Testimony

6. Mr. Wanis testified consistent with his audit report. He described the work he performed, and his discussions with respondents and the conclusions he reached. He acknowledged that the bank account statements identified the bank

account as a "trust account," but testified that it is a department "policy and procedure" that the bank signature card must identify the account as a trust account, an interpretation of the department's legal department. He acknowledged that this requirement is not found in the code sections or regulations.

Mr. Wanis presented as a very skilled, knowledgeable auditor.

7. Mr. Dickey described his licensing history, becoming an associated broker at Rancho Plaza, which he previously confirmed with the department. In January 2018, Mr. Stamper became suddenly ill, suffering a stroke and being in a coma, from which he never recovered. Accordingly, Mr. Dickey could not discuss transition of the business with him. Upon Mr. Stamper's death in March 2018, Mr. Dickey went to the local board of realtors,⁶ notified them of his death, and asked if he needed to notify the department. The local board advised him that they had documented the transition in their summary and that he did not need to do anything further. Approximately one month later, Mr. Dickey again inquired of the local board of realtors if he needed to notify the department and was again advised that he was identified in the records as being the broker at Rancho Plaza. He asked again if he needed to notify the department, and this time the individual at the local board advised that she was not sure so he contacted the department and learned that he was in violation because Rancho Plaza did not have a designated officer. Mr. Dickey then promptly took steps to be in compliance, becoming the designated officer at Rancho Plaza "the end of June 2018." He explained that he had never before run his own business, and did not know

⁶ The evidence was unclear, but it did not appear this board was formally affiliated with the department; it appeared to be a local advisory/business organization for licensees.

about the designated officer requirements. He described the assistance the department provided him during the process of becoming the designated officer, advising him of the documentation and information he was required to provide. He took full responsibility for his mistake and apologized for not knowing about these laws. He explained that he did not do anything willfully or intentionally, he simply was unaware of these laws, and given the circumstances surrounding the transition of the business from Mr. Stamper to Mr. Dickey, he thought he was complying with all requirements when he notified his local realty board. He was under the mistaken impression that the local realty board would notify the department; as soon as he realized his mistake, he promptly started the process to become the designated officer "right away."

Mr. Dickey described the audit process, explaining the documents he and Ms. Stamper provided to Mr. Wanis. He explained the process at Rancho Plaza that monies were not held, they were immediately disbursed to owners or vendors for work at the properties, and the accounts zeroed out. Prior to this audit, Mr. Dickey was not aware of all the record-keeping requirements for the trust accounts. It was not established that before Mr. Stamper's death that Mr. Dickey handled these accounts, as Mr. Wanis testified about Ms. Stamper's signature being on the bank records.

Mr. Dickey currently has his own brokerage in a different city and is no longer affiliated with Rancho Plaza. In fact, the property management portion of the company was sold to another licensed broker.

He presented as a credible witness who took this matter very seriously. He expressed his willingness to comply with the real estate laws, but explained that he had simply been unaware of some of the reporting requirements given that he was not the designated officer when most of these transgressions occurred. He reasonably

attempted to comply with the requirements when Mr. Stamper died, but was honestly unaware of all these laws because this was his first time being employed in this capacity. He credibly explained how he thought he had properly complied with all real estate requirements.

8. Ms. Stamper described the trying time between her husband's unexpected stroke, and eventual passing. He had never been ill prior to his stroke, so this was a very shocking and confusing time for her. Given her husband's sudden illness, she took over the business, trying to "make sure all in the office was running smoothly." During the same time, the licensed accountant who performed the accounting duties for Rancho Plaza, gave a 10-day notice and quit. Ms. Stamper then "stepped in to continue the accounting" duties so the owners would get their payments for their properties and she interviewed and hired a new accountant. Mr. Stamper testified: "All I can say is that for me it was an extremely difficult time, my husband was not even sick, this was a shock to me to be faced with this and I stepped in to assist for short term in the accounting field until we hired a new [accountant]."

On July 31, 2018, Ms. Stamper sold the business. She discussed with Mr. Wanis the possible penalties she faced, and testified that it would be difficult for her to pay the costs being sought. She is by herself now, having recently lost her father, and is currently caring for her ill mother full-time. It would be a hardship for her to pay the department's costs.

Ms. Stamper acknowledged that she has been a signor on the bank account signature card since the opening date of that account. She wrote and signed numerous checks from that account on behalf of Rancho Plaza. When her late husband bought Rancho Plaza in 2001, she was not working at the time. The bank account was opened several years later, in 2010, and the authorized signors on the account were

she and her late husband. During the audit, she learned that she was not listed as an employee with the department under her husband's broker license, but in the past she had been. Before 2014 she was affiliated with her late husband's license and "was always listed as an agent" under Rancho Plaza.

Ms. Stamper presented as a sincere, credible witness, who was trying to do the right thing under the circumstances and who was not aware of the many reporting and licensing requirements. Her explanations made her credibly appear to have let her husband handle the business, which was not unreasonable under these circumstances. She seemed to have a role where she simply signed checks to pay owners and vendors and did not appreciate the laws regulating her acts. In fact, she testified that during the audit, she was simply putting together copies of documents Mr. Wanis requested and she did not seem to realize she was an actor in these events.

Complainant's Costs

9. A certification of investigative costs, audit costs, and a declaration prepared by complainant's attorney were introduced that established that investigative costs totaled \$653.30, audit costs totaled \$4,708.65, and attorney costs totaled \$743.15. The documents accompanying the cost declarations set forth the time spent on each task, the rate billed, the task performed, which were reasonable, and the documents complied with California Code of Regulations, title 1, section 1042, subdivision (b)(2). Total reasonable costs of investigation, audit, and enforcement were \$6,105.10.

Rancho Plaza is no longer in operation. Ms. Stamper testified she would suffer a hardship if required to pay costs as she no longer works and is the full time caregiver for her sick, elderly mother. Mr. Dickey testified he could pay costs.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. The object of an administrative proceeding aimed at revoking a real estate license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

2. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Burden and Standard of Proof

3. In an action seeking to impose discipline against the holder of a real estate license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

Applicable Statutes

4. Business and Professions Code section 10106 authorizes the commissioner to seek its investigation and enforcement costs.

5. Business and Professions Code section 10137 prohibits a broker from employing or compensating any person for performing acts within the scope of the real estate laws who is not a licensed broker or salesperson or from employing or compensating any licensee for engaging in activity for which a mortgage loan originator license endorsement is required.

6. Business and Professions Code section 10145 regulates the handling of trust funds and provides:

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

(2) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of that broker, or in the case of a corporate broker, only upon the signature of an officer through whom the corporation is licensed pursuant to Section 10158 or 10211, or one, or more, of the following persons if specifically authorized in writing by the individual broker or officer:

(A) A real estate salesperson licensed to the broker.

(B) Another broker acting pursuant to a written agreement with the individual broker that conforms to the requirements of this part and any regulations promulgated pursuant to this part.

(C) An unlicensed employee of the individual broker, if the broker has fidelity bond or insurance coverage equal to at least the maximum amount of the trust funds to which the unlicensed employee has access at any time. For purposes of this section, bonds or insurance providing coverage shall protect the broker from intentional wrongful acts committed by an employee of that business, including theft, dishonest acts, or forgery. Bonds and insurance providing coverage may be written with a deductible of up to 5 percent of the coverage amount. For bonds and insurance with a deductible, the employing broker shall have evidence of financial responsibility that is sufficient to protect members of the public against a loss subject to the deductible amount.

Evidence of financial responsibility shall include one or more of the following:

- (i) Separate bond or insurance coverage adequate to cover the amount of the deductible.
- (ii) A cash deposit held in a separate account, apart from other funds of the broker, the broker's employees, or the broker's principals, in a bank or recognized depository in this state adequate to cover the amount of the fidelity bond deductible and held exclusively and solely for the purpose of paying the fidelity bond deductible amount.

(iii) Any other evidence of financial responsibility approved by the commissioner.

(3) An arrangement under which a person enumerated in subparagraph (A), (B), or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

(4) Notwithstanding the provisions of paragraphs (1), (2), and (3), a real estate broker collecting payments or performing services for investors or note owners in connection with loans secured by a first lien on real property may deposit funds received in trust in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation, if the investor or note owner is any one of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the United States Department of Veterans Affairs.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings

and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, or insurance company doing business under the authority of, and in accordance with, the laws of this state, another state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser specified in subparagraphs (A) to (G), inclusive.

(5) A real estate broker who deposits funds held in trust in an out-of-state depository institution in accordance with paragraph (3) shall make available, in this state, the books, records, and files pertaining to the trust accounts to the commissioner or the commissioner's representatives or pay the reasonable expenses for travel and lodging incurred by the commissioner or the commissioner's representatives in order to conduct an examination at an out-of-state location.

(b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate salesperson who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker

or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

(d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.

(2) All of the funds in the account are covered by insurance provided by an agency of the United States.

(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.

(4) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account,

the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) Interest earned on funds in the account shall not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.

(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

(f) Subdivision (d) does not preclude the commissioner from prescribing, by regulation, circumstances in which, and conditions under which, a real estate broker is authorized to

deposit funds received in trust into an interest-bearing trust fund account.

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

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in paragraph (1) or (3) of subdivision (a) of Section 17006 of that code.

7. Business and Professions Code section 10148, subdivision (b), authorizes the commissioner to charge a broker for the cost of any audit if it is determined the broker violated Business and Professions Code section 10145.

8. Business and Professions Code section 10211 stated that if the licensee is a corporation, there must be a designated officer in order for the corporation to engage in the business of real estate brokerage.

9. Business and Professions Code section 10158 provides that when a real estate license is issued to a corporation, if it desires any of its officers, other than the designated officer, to act under its license as a broker, it shall procure an additional license so as to employ each such additional officer.

10. Business and Professions Code section 10161.8, which became operative January 1, 2018, states that when a real estate salesperson or broker acting as a salesperson enters into the employ of a broker, the responsible broker shall immediately notify the commissioner in writing. Termination of that arrangement also requires immediate notification to the commissioner in writing.

11. Business and Professions Code section 10177, subdivision (d), authorizes the Commissioner to discipline a licensee who willfully disregards the real estate laws. Subdivision (g), authorizes the commissioner to discipline a licensee who demonstrates negligence or incompetence in performing an act for which he or she is required to hold the license. This code section concludes:⁷

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock,

⁷ This code section was amended effective January 1, 2020, but the language of Subdivision (c) did not change. The language of Subdivision (g) was amended and the words "he or she" were replaced with the words "the officer, director, or person." The conclusion replaced the words "his, hers, or its" with the words "the licensee's." These changes did not materially affect the pleadings or findings reached herein.

the commissioner may not deny the issuance or delay the renewal of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation. A decision by the commissioner to delay the renewal of a real estate license shall toll the expiration of that license until the results of any pending disciplinary actions against that licensee are final, or until the licensee voluntarily surrenders the licensee's license, whichever is earlier.

Applicable Regulations

13. California Code of Regulations, title 10, section 2710, subdivision (c), requires licensees to notify the bureau of changes in license information within five days.

14. California Code of Regulations, title 10, section 2740, provides that no acts for which a real estate license is required may be performed for, in the name of, the corporation when there is no licensed officer of the corporation.

15. California Code of Regulations, title 10, section 2752, states that when a real estate salesperson enters the employ of a broker, the broker shall notify the commissioner of that fact within five days on the bureau⁸ form.

16. California Code of Regulations, title 10, section 2831, requires every broker to keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. The record shall set forth in chronological sequence the following information: date trust funds received, from whom trust funds received, amount received, date of deposit, check number and date of related disbursements, identity of any other depository, the date funds were forwarded, and the daily balance of the account. Each bank account that contains trust funds shall maintain a record of all trust funds received and disbursed.

17. California Code of Regulations, title 10, section 2831.1, requires a broker to keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited in the broker's trust bank account and interest, if any, earned on the funds on deposit. The record shall include information sufficient to identify the transaction and the parties to the transaction and shall set forth in chronological sequence the following information: date deposit, amount of deposit, date of each related disbursements, check number of each related disbursement, amount of each related disbursement, if applicable dates and amounts of interest earned and credited to the account, and balance after posting transactions on any date.

⁸ The regulation still refers to the department as a bureau.

18. California Code of Regulations, title 10, section 2831.2, requires that the separate records maintained in compliance with Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month. The record of reconciliation must be maintained and identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker for each of the principals, beneficiaries or transactions.

19. California Code of Regulations, title 10, section 2832, requires the broker to place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository, or into a trust fund account in the name of the broker or any fictitious name the broker is holding a license bearing a fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds.

20. California Code of Regulations, title 10, section 2834, provides that withdrawals from a trust fund account shall only be made by a salesperson licensed to the broker, a person licensed as a broker who has entered into a written agreement with the broker, or an unlicensed employee of the broker with fidelity bond coverage. Withdrawals from the trust fund account of a corporate broker may be made by one of the three individuals referenced above or by an officer through whom the corporation is licensed.

Underground Regulations

21. One purpose of Government Code section 11340, et seq., (Administrative Regulations and Rulemaking) is to prevent the adoption of what amounts to a regulation that implements a law without giving a voice to the people affected. This

unauthorized adoption is commonly referred to as an underground regulation. The department's "policy and procedure" of interpreting Business and Professions Code section 10145 to require the signature card to contain a trust account designation raises the issue that this interpretation is an impermissible underground regulation.

22. California Code of regulations, title 1, section 250 states in part:

The following definitions shall apply to the regulations contained in this chapter:

(a) "Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

23. Government Code section 11342.60 states:

"Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

24. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 558 – 559, provides an excellent review of the law concerning underground regulations.⁹

There the California Supreme Court held:

The APA establishes the procedures by which state agencies may adopt regulations. The agency must give the public notice of its proposed regulatory action (Gov. Code, §§ 11346.4, 11346.5); issue a complete text of the proposed regulation with a statement of the reasons for it (Gov. Code, § 11346.2, subds. (a), (b)); give interested parties an opportunity to comment on the proposed regulation (Gov. Code, § 11346.8); respond in writing to public comments (Gov. Code, §§ 11346.8, subd. (a), 11346.9); and forward a file of all materials on which the agency relied in the regulatory process to the Office of Administrative Law (Gov. Code, § 11347.3, subd. (b)), which reviews the regulation for consistency with the law, clarity, and necessity (Gov. Code, §§ 11349.1, 11349.3).

⁹ The court in *Tidewater Marine Western* refers to the Administrative Procedure Act (APA) as beginning at Government Code section 11340, et seq., however, the APA actually begins at Government Code section 11370, et seq., and the Administrative Regulations and Rulemaking or ARR begins at Government Code section 11340, et seq. Accordingly, when the court in *Tidewater Marine Western* references the APA it is understood to mean the ARR.

One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation (*Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204-205), as well as notice of the law's requirements so that they can conform their conduct accordingly (*Ligon v. State Personnel Bd.* (1981) 123 Cal.App.3d 583, 588). The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation.

The *Tidewater* court emphasized the broad scope of the rule against underground regulations. At page 570 in its decision, the court said:

The APA provides that "[n]o *state agency* shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation . . . unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter." (Gov. Code, § 11340.5, subd. (a), italics added.) The APA applies "to the exercise of *any quasi-legislative power* conferred by *any statute* heretofore or hereafter enacted," and the APA's provisions "shall not be superseded or modified by any subsequent legislation

except to the extent that the legislation shall do so expressly." (Gov. Code, § 11346, italics added.)

The *Tidewater* court emphasized the breadth of the ARR definition of "regulation." At page 570, the court said:

The APA, however, defines "regulation" very broadly to include "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the state agency." (Gov. Code, § 11342, subd. (g).) A regulation subject to the APA thus has two principal identifying characteristics. (See *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, describing the two-part test of the Office of Administrative Law.) First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. (*Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 622, 630.) Second, the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure." (Gov. Code, § 11342, subd. (g).)

25. The department's "policy and procedure" of interpreting Business and Professions Code section 10145 to require the bank signature card to identify the account as a trust account constituted an underground regulation.

Case Law Interpreting Section 10177

26. The court in *Milner v. Fox* (1980) 102 Cal. App. 3d 567, 589, fn 9, examined the question of whether a licensee had acted "willfully" within the meaning of section 10177, subdivision (d), and concluded:

"Willfully" as used in section 10177, subdivision (d), does not require an intent to violate the law, only an intent to engage in the act or conduct prohibited by the statute is required. (Citation.) [The licensee] acted voluntarily with an awareness of the nature of his conduct and therefore "willfully." Advice of counsel or other evidence of good faith does not render his act any less "willful." (Citation.)

27. *Amvest Mortgage Corp. v. Antt* (1997) 58 Cal. App. 4th 1239, 1244-45, examined the last paragraph of Section 10177 and concluded:

As we have noted, the final sentence of section 10177 reads: "The commissioner may not deny or suspend the license of a corporate real estate broker if the offending officer, director, or stock holder has been completely disassociated from any affiliation or ownership in the corporation." Amvest argues this provision precluded any suspension in this case because, at the time it was imposed, [the broker] no longer had any connection with Amvest. In

spite of the straightforward language of the quoted sentence, the Department contends it really does not mean what it says. While the Department's interpretation is entitled to great weight unless clearly erroneous, we must decide the issue as a pure question of law. (Citations.) "To determine the intent of legislation, we first consult the words themselves, giving them their usual and ordinary meaning. When statutory language is clear ... and unambiguous there is no need for construction, and courts should not indulge in it. The plain meaning of words in a statute may be disregarded only when that meaning is repugnant to the general purview of the act, or for some other compelling reason." (Citation.)

The *Amvest* court further held at 1245-46:

The sentence in question could not be more clear. The argument that the meaning ascribed to it by Amvest is somehow repugnant to the purposes of the regulatory scheme is not convincing. We must presume the Legislature was fully aware that, by this sentence, it was permitting a corporation to avoid suspension of its corporate license for the unlawful acts of an officer if that person divested himself or herself of any connection with the corporation. This undoubtedly was a trade-off by which a corporation and its employees would be allowed to continue to operate under the license of another broker/officer which was in

good standing. It is the type of compromise routinely made by the Legislature, and we have been presented with no compelling reason to subvert the Legislature's straightforward intent.

In addition to the absence of any supporting legislative history for its interpretation, the Department's position is also not supported by logic. The basic policy which supports the imposition of a suspension upon a corporate licensee for improper conduct of its officers is the doctrine of respondeat superior. (Citation.) Thus, there must be a connection between improper conduct by an officer, director or shareholder and the corporate entity sought to be disciplined in order for responsibility to attach. If the last sentence of section 10177 is interpreted to apply only to the scenario the commissioner posits, it would render that language superfluous since, even without the exception, there could be no corporate responsibility under principles of respondeat superior. (Citations.) We must presume the Legislature intended to accomplish something by adding the last sentence to section 10177. The interpretation which the Department suggests would essentially render it meaningless since vicarious responsibility could never attach under the circumstances the Department contends it was intended to reach, i.e., violations unrelated to the corporate entity.

The Department has staked out an interpretation which is unsupported by legislative history or logic. We reject it and read the plain and unambiguous provisions of the final sentence of section 10177, added in 1988, as declaring the Department may not suspend a corporation's real estate broker's license if the offending officer has completely disassociated himself or herself from the corporation at the time the suspension is imposed. That is this case.

Although Mr. Dickey has disassociated himself from Rancho Plaza, his actions were on behalf of the corporation, he did not act individually. Moreover, no new officer has been designated. Even though Rancho Plaza apparently no longer operates, the corporation is still licensed and the department may discipline a licensee even if the license is expired.

Evaluation of the Causes of Discipline Alleged in the Accusation

CAUSES FOR DISCIPLINE ALLEGED AGAINST RANCHO PLAZA

28. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831, to impose discipline against Rancho Plaza's real estate broker's license. Rancho Plaza's control record (receipts and disbursements reports) was incomplete because it was missing the dates that trust funds were deposited and the daily balances.

29. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.1, to impose discipline against Rancho Plaza's real estate broker's license. Rancho Plaza's separate records were

incomplete as they were missing the dates that trust funds were deposited and the balances after posting transactions on any date.

30. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.2, to impose discipline against Rancho Plaza's real estate broker's license. Rancho Plaza did not maintain the monthly reconciliation of all the separate records to the control record of all trust funds received and disbursed in connection with the property management activity during the audit period.

31. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.2, to impose discipline against Rancho Plaza's real estate broker's license. Rancho Plaza failed to reconcile the "unidentified/unaccounted for funds" in the bank account totaling \$289.85 as of June 30, 2018.

32. Cause does not exist under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832, to impose discipline against Rancho Plaza's real estate broker's license. Nothing in the code sections or regulations required the bank signature card to be designated as a trust account. Mr. Wanis's testimony that the department's "policy and procedure" regarding this code section, as "interpreted by the legal department" was to require the signature card to contain a trust account designation constituted an impermissible underground regulation. Here, the bank statements designated the account as an "operating trust account" which satisfied the requirements of the code section and regulations. Moreover, neither the department nor licensees have any authority over banks and how they designate their signature cards.

33. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2834, to impose discipline against Rancho Plaza's real estate broker's license. Rancho Plaza allowed Ms. Stamper, who was not registered under, or licensed under Rancho Plaza's real estate broker license during the audit period, to be a signor on the bank account.

34. Cause exists under Business and Professions Code section 10161.8 and California Code of Regulations, title 10, section 2752, to impose discipline against Rancho Plaza's real estate broker's license. Rancho Plaza did not notify the department of Ms. Stamper's employment, who was employed during the audit period. Ms. Stamper was not registered or licensed under Rancho Plaza's real estate broker license during the audit period.

35. Cause exists under California Code of Regulations, title 10, section 2752, to impose discipline against Rancho Plaza's real estate broker's license. Rancho Plaza did not notify the department of the employment of Mr. Dickey who was employed as a broker-associate starting January 1, 2018.

36. Cause exists under California Code of Regulations, title 10, section 2740, to impose discipline against Rancho Plaza's real estate broker's license. Rancho Plaza performed acts (property management) that required a real estate license without a designated officer of record from March 13, 2018, to June 30, 2018, the audit cut-off date. On July 16, 2018, Mr. Dickey became the designated officer for Rancho Plaza.

CAUSE FOR DISCIPLINE ALLEGED AGAINST Ms. STAMPER

37. Cause exists under Business and Professions Code section 10137 to impose discipline against Ms. Stamper. Between March 13, 2018, and August 20, 2018,

Ms. Stamper performed acts which require real estate license when she was not licensed under any employing broker.

CAUSE FOR DISCIPLINE ALLEGED AGAINST MR. DICKEY

38. Cause exists under Business and Professions Code section 10137 to impose discipline against Mr. Dickey because between March 13, 2018, and July 15, 2018, he performed activities which require a real estate license while his employing broker, Rancho Plaza, had no designated officer of record.

CAUSES FOR DISCIPLINE ALLEGED AGAINST MS. STAMPER AND MR. DICKEY

39. Cause does not exist under Business and Professions Code section 10177, subdivisions (d) and (g), to discipline Ms. Stamper or Mr. Dickey. The evidence demonstrated that Ms. Stamper attempted to keep her late husband's real estate business in operation after he died unexpectedly, and that Mr. Dickey took steps that he reasonably thought complied with the real estate laws. Mr. Dickey was not a designated officer until after Mr. Stamper's unexpected death, had never before run his own brokerage, and reasonably assumed that his communications with the local realty board satisfied his reporting requirements. Ms. Stamper's presentation at this hearing demonstrated that she was a loving wife who assisted in her late husband's business, had been licensed without incident since 2000, had no knowledge that she was not allowed to be a signor, and was unaware of the record-keeping requirements for handling property management transactions. Further, Business and Professions Code section 10161.8 became operative during the time Mr. Stamper suffered his stroke so it was understandable that respondents were unaware of this new law. At most, the evidence showed that respondents were unaware of many of the technical accounting requirements, but they were handling a \$4.9 million business, involving 246

properties, for 171 owners, without complaint. While all trust funds should be accounted for, only \$289.95, a minimal amount, was not. Moreover, no evidence indicated that respondents had misappropriated any funds; their errors were simply record keeping ones.

Appropriate Measure of Discipline

40. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

As of this hearing, Mr. Dickey is no longer associated with Rancho Plaza and Rancho Plaza is no longer operating. The property management division of Rancho Plaza was sold to another licensed broker and is operating under a new licensed name. Mr. Dickey now works at his own department-licensed brokerage and Ms. Stamper is caring for her ill mother, and no evidence established she was currently handling any real estate transactions.

The evidence did not establish that the acts of Mr. Dickey or Ms. Stamper were willful and given the sudden health issues involving Mr. Stamper that occurred at the same time Business and Professions Code section 10161.8 became operative, it was understandable that they were unaware of this new law. Additionally, Mr. Dickey had never before owned or operated a brokerage, and he reasonably believed that notifying the local realty board about the change in management following Mr. Stamper's death was sufficient. Mr. Dickey now understands his duty to notify the department and he took full responsibility at this hearing for his mistake. He presented as a concerned, interested individual who took this matter very much to heart. Ms.

Stamper's presentation indicated that she was unaware of the many record-keeping requirements involved in property management. She credibly believed that having bank statements and separate records was enough, she did not know that control sheets were also required. She, too, took this matter very seriously and apologized for her mistakes.

The audit period was from July 1, 2017, until June 30, 2018. Between July 1, 2017, and March 12, 2018, Mr. Stamper was the designated officer and the responsible licensee. Any violations during that time frame would have been his responsibility. As he is now deceased, no discipline was sought against his license. For the time frame of March 13, 2018, until June 30, 2018, Rancho Plaza operated without a designated officer and committed the numerous violations alleged herein. Even though it has now ceased operations, and presumably its license expired in July 2019, the Commissioner may still revoke the license pursuant to Business and Professions Code sections 10103 and 10175. On the facts presented here, the numerous violations committed by Rancho Plaza warrant its license being revoked and that costs be issued against it.

The evidence did not establish that Mr. Dickey or Ms. Stamper acted negligently or willfully, as noted. The evidence established that Mr. Dickey took immediate steps to comply upon Mr. Stamper's death, reasonably thought he acted properly, had never before been a designated officer or owned his own brokerage, and acted so as to keep Rancho Plaza operating after Mr. Stamper's unexpected death until it was sold. He now is a licensed broker with his own brokerage office located in a different city and he does not perform property management work. He has since familiarized himself with the applicable laws regarding notifications to the board. Based upon the evidence presented, imposing discipline or costs against him in these circumstances would

constitute impermissible punishment. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

The evidence established that Ms. Stamper has been a signor on Rancho Plaza's trust account for a long time and was unaware of the laws governing her work in her husband's realty. Public protection requires that if she wishes to retain her license, it should be disciplined and she be required to attend continuing education courses regarding proper record keeping and property management. Given her testimony about her finances and caring for her sick mother, imposing costs against her would also be unduly harsh.

Costs of Investigation, Enforcement and Audit Costs

41. Complainant is seeking recovery of the reasonable costs of investigation, prosecution and the audit costs. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 10106, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." (*Ibid.*)

The Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a "subjective" good faith belief in the merits of his or her position; whether the licensee raised a "colorable challenge" to the proposed

discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* applies to Business and Professions Code section 10106 since the language in the cost recovery regulation at issue in *Zuckerman* and section 10106 are substantially the same.

42. Cause exists under Business and Professions Code section 10106 to award the department its costs of investigation and enforcement. Total reasonable costs of investigation, enforcement, and the audit are determined to be \$6,105.10. On the facts presented here, those costs shall be ordered only against Rancho Plaza and shall be owed as a condition precedent to Rancho Plaza seeking to be relicensed. The evidence did not establish cause to order costs be issued against Mr. Dickey. While cause did exist to order costs against Ms. Stamper, given her current circumstances, it would be unduly harsh to order her to pay costs.

ORDERS

Order As to Rancho Plaza Realty

All licenses and licensing rights of respondent Rancho Plaza Realty Incorporated under the Real Estate Law are revoked.

Respondent Rancho Plaza Realty Incorporated shall pay \$6,105.10 in investigation, enforcement, and audit costs to the department which shall be payable as a condition precedent to Rancho Plaza Realty Incorporated being relicensed.

Order As to Bradley Paul Dickey

The accusation filed against respondent Bradley Paul Dickey is dismissed.

Order As to Isabella Louise Stamper (Enthaler)

All licenses and licensing rights of respondent Isabella Louise Stamper (nee Enthaler) under the Real Estate Law are revoked, provided, however, a restricted real estate salesperson license shall be issued to her pursuant to Business and Professions Code section 10156.5.¹⁰ However, that revocation is stayed and Ms. Stamper is placed on probation for three (3) years upon the following terms and conditions. Each condition set forth hereafter is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to

¹⁰ Business and Professions Code section 10156.5 states:

The commissioner may issue a restricted license to a person:

(a) Who is or has been licensed under this chapter and who has been found by the commissioner after a hearing to have violated provisions of Division 4 of this code where such violation would justify the suspension or revocation of the license.

(b) Who is applying for a license under this chapter, who has met the examination and experience requirements, but who has been found by the commissioner after a hearing to have failed to have made a satisfactory showing that he meets all of the other requirements for the license applied for, where such failure would justify the denial of the license applied for.

any extent, the remainder of this Order, and all other conditions and applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law. The restricted license issued to Ms. Stamper 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. The restricted license may be suspended prior to hearing by Order of the commissioner in the event of Ms. Stamper's conviction or plea of nolo contendere to a crime which is substantially related to her fitness or capacity as a real estate licensee.

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

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

4. Ms. Stamper shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the commissioner that she 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 she fails to satisfy this condition, the commissioner may order the suspension of the restricted

license until she presents such evidence. The commissioner shall afford her the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Professional Responsibility Condition: Ms. Stamper shall, within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the department including the payment of the appropriate examination fee. If she fails to satisfy this condition, the commissioner may order suspension of her license until she passes the examination.

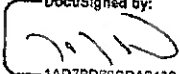
6. Reporting Condition: Ms. Stamper shall report in writing to the department as the commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning her activities for which a real estate license is required as the commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Ms. Stamper and periodic summaries of salient information concerning each real estate transaction in which she engaged during, the period covered by the report.

7. Trust Fund Violation Course Requirement: Ms. Stamper shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in Business and Professions Code section 10170.5, subdivision (a). Proof of satisfaction of this requirement includes evidence that she has successfully completed the trust fund account and handling

continuing education course within 120 days prior to the effective date of the Decision in this matter.

DATE: February 11, 2020

DocuSigned by:


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MARY AGNES MATYSZEWSKI

Administrative Law Judge

Office of Administrative Hearings