

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

DEC - 6 2007

DEPARTMENT OF REAL ESTATE

By K. Contreras

* * *

In the Matter of the Accusation of)
REALTY PROPERTY MANAGEMENT, INC.,)
A Corporation, and,)
DONALD PAUL LESCOULIE,)
Respondents.)

NO. H-2112 FR
OAH NO. N-2007070454

DECISION

The Proposed Decision dated November 2, 2007, 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.

This Decision shall become effective at 12 o'clock noon
on December 26, 2007

IT IS SO ORDERED 12/5/07

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

REALTY PROPERTY MANAGEMENT,
INC., and DONALD PAUL LESCOULIE,

Respondents.

Case No. H-2112 FR

OAH No. N2007070454

PROPOSED DECISION

Administrative Law Judge Gary A. Geren, Office of Administrative Hearings, State of California, heard this matter on October 3, 2007, in Fresno, California.

Department of Real Estate Counsel Mary F. Clarke represented complainant John W. Sweeney, Deputy Real Estate Commissioner, State of California (Department).

Donald Paul Lescoulie, Attorney at Law, represented Real Property Management, Inc. (RPMI) and himself (collectively, respondents).

The matter was submitted for decision on October 3, 2007.

FACTUAL FINDINGS

Background

1. Respondents are licensed under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).
2. RPMI provides property management and mortgage loan activities. At the time of the audit, RPMI managed approximately 213 units consisting of 169 properties, for about 159 owners. Approximately \$3,096,000 in Trust funds is collected yearly by RPMI. RPMI maintains eight Trust accounts. RPMI now has approximately 200 clients.

3. Donald Paul Lescoulie is the designated broker officer for RPMI, and was responsible for the supervision of the activities of RPMI officers, agents, real estate licensees and employees. (Bus. and Prof. Code, § 10159.2).

4. Diana Brewster, a Department auditor, conducted an audit of RPMI to determine whether RPMI accounted for trust funds in accordance with the Real Estate Law and the Department's regulations. Ms. Brewster's examination was performed between January 23 and April 24, 2006; it covered a review of RPMI's records from April 5, 2005 to March 1, 2006. The cost of the audit was \$6,140.

5. To conduct its business and manage its accounting, RPMI uses a property management software program known as YARDI. YARDI is widely used by property managers. Over half of the property management companies that Ms. Brewster has audited use YARDI. YARDI tracks deposits and disbursements; the check numbers of checks issued; identifies entities making deposits and receiving disbursements; and records the balances maintained in trust accounts. If a person is sufficiently knowledgeable about how to operate YARDI, various reports and print-outs can be generated for individual accounts, properties, owners, disbursement recipients, account balances, and the like. YARDI is intended to provide property managers with the retention of such data in formats required by the Department's laws and regulations.

6. John Scott, a real estate salesperson and the President of RPMI. He testified that YARDI is a comprehensive program, but it is difficult to operate. For example, YARDI's User's Manual is a four-inch thick, three ring binder. The training that accompanied RPMI's purchase of YARDI was minimal.

7. Ms. Brewster testified that in over half of the audits of management companies that she has conducted, the companies have used YARDI. Despite her experiences with YARDI, she stated that she "is no expert" and she generally agreed with Mr. Scott that YARDI is a complicated program.

8. After the audit, Mr. Scott hired two experts to address the concerns raised by Ms. Brewster's audit, to determine how to better use YARDI.

The audit and allegations

9. Based on Ms. Brewster's audit, the Department concluded that respondents violated the Real Estate Law and the Department's regulations, in that:

- (a) RPMI failed to keep a columnar record in chronological sequence of all trust funds received and disbursed from Trust 1, Trust 2, Trust 4, Trust 6, Trust 7, and Trust 8 so that it contained all information required by California Code of Regulations, title 10, section 2831.

(b) RPMI failed to keep a separate record for each beneficiary or transaction for Trust 1, Trust 2, Trust 4, Trust 6, Trust 7, and Trust 8, that contained all the information required by California Code of Regulations, title 10, section 2831.1.

(c) RPMI failed to reconcile, at least once per month, the balance of all separate beneficiary or transaction records with the records of the trust funds that were received and disbursed from Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, and Trust 8, as required by California Code of Regulations, title 10, section 2831.2.

(d) RPMI failed to maintain the appropriate trust fund balance for Trust 1, such that on January 31, 2006, the account was \$6,375.72 below, and on February 28, 2006, it was \$5,761.64 below, what was needed to satisfy RPMI's obligations to its trustees. Both arrearages constituted violations of California Code of Regulations, title 10, section 2832.1.

(e) RPMI failed to retain, for a period of three years, copies of canceled checks issued on each Trust Account as required by Business and Professions Code section 10148, subdivision (a).

(f) Mr. Lescoulie failed to exercise reasonable supervision over RPMI, allowing violations (a) through (e) to occur in violation of Business and Profession Codes sections 10159.2 and 10177, subdivisions (g) and (h).

Specific findings

Allegation (a)—columnar record

10. RPMI provided Ms. Brewster with numerous reports that were generated by YARDI. Based on Ms. Brewster's review of the reports, she concluded that RPMI did not maintain columnar records, kept in chronological order. Based on the reports that she was provided, her conclusion was accurate. However, the testimony of Mr. Scott established that, based on what he had subsequently learned about YARDI, a chronological, columnar record could have been created if he had known how to make the appropriate query for such a record from YARDI.

Allegation (b)—separate records

11. Similarly, after the audit, Mr. Scott learned that YARDI is capable of generating separate records for each transaction relating to each trust account. But such reports were not provided to Ms. Brewster, again because Mr. Scott was not aware of YARDI's capabilities at the time she requested the information from RPMI.

Allegation (c)—reconciliation

12. Mr. Scott and RPMI's office manager reconciled RPMI's transaction records with the Trust Funds records by comparing the information contained in RPMI's clients' monthly statements to the bank statements for each of the trust accounts.

During the time of the audit, RPMI's office manager left the company (for reasons unrelated to the audit), and a new manager replaced her. Because the new manager had to learn a new job which included performing monthly reconciliations, a handful of reconciliations were not completed in a timely manner. By the time of the hearing, the reconciliations were up to date. After the audit, Mr. Scott learned that YARDI can automatically prepare monthly reconciliation reports.

Allegation (d)—trust fund balances

13. Initially, neither Ms. Brewster nor RPMI, could explain why the Trust Accounts were inaccurate, though Mr. Scott knew from the clients' individual monthly statements that no single client had suffered any accounting irregularity, and there were adequate funds to cover all disbursements.

The Department contended that RPMI essentially "robbed Peter to pay Paul," using funds of one trustee to cover the obligations of another. The Department further contended that the express permission of the trustee whose funds were used was not obtained. However, that was not the case.

Mr. Scott, with the help of his experts, determined that the January 31, 2006, irregularity was caused by monies being drawn from the wrong ledger category within YARDI. Evidently, the return of tenants' security deposits had been disbursed from the "clearing deposit account," when they should have been disbursed from the "tenant deposit account." Of the \$6,375.72 discrepancy, Mr. Scott was able to account for all but \$300, which remains an unidentified accounting error. Upon learning of the error, Mr. Scott immediately deposited \$300 of his own funds into the appropriate trust account.

The February 28, 2006 discrepancy was caused by a single overpayment to a client, an error that was timely resolved.

While there were imbalances in Trust 1, they were caused by honest mistakes, not malfeasance.

Allegation (e)—canceled checks

14. RPMI contended that it "retained" canceled checks, because its bank maintained electronic copies of the checks for seven years. On those occasions where

hard copies of the canceled checks were needed, RPMI employees would simply order them from the Wells Fargo branch office located near RPMI's office. For example, when Ms. Brewster requested copies of canceled checks, Mr. Scott went to the bank, ordered the checks, returned to his office, and provided the hard copies to Ms. Brewster, all within an hour.

The Department contends that its regulations require companies such as RPMI to maintain hard copies of all checks at their offices. The Department's contention was in error. The regulations do not specify where, or in what manner canceled checks are to be "retained." For example, if a broker "retained" cancelled checks in a safe deposit box located in a bank, such conduct would seemingly satisfy the "retention" requirement. The fact that RPMI "retained" copies of cancelled checks at a bank in electronic form seems to be a difference without a distinction. Nonetheless, RPMI now maintains hard copies of all cancelled checks at its office.

Allegation (f)—Mr. Lescoulie's supervision

15. Mr. Lescoulie was unable to cooperate with the Department during much of the time that the audit was conducted (April 5, 2005 to March 1, 2006), having suffered a traumatic brain injury in a motorcycle accident that occurred on September 5, 2005. He was hospitalized at various hospitals for several months after the accident. After his release from the hospital, he underwent outpatient therapy for an additional couple of months.

After being in a coma for several months and suffering through periods of hallucinations, he testified that he felt "placed back on earth," sometime in late spring 2006.

Mr. Lescoulie had a general understanding of his supervisorial obligations over RPMI's accounting; however, even before his accident, he was not involved in the day-to-day operations; and he did not understand the details of how YARDI worked. He simply knew that one of the reasons RPMI purchased YARDI was in order to comply with the Department's laws and regulations. However, at the time of the audit, RPMI was not able to generate the reports from YARDI in formats necessary to establish its compliance.

Had Mr. Lescoulie not been incapacitated at the time, a fair inference may be drawn that based on his intelligence, education and business acumen (he is an attorney with significant experience in business litigation), more accurate reports would likely have been provided to Ms. Brewster on RPMI's behalf. However, the fact remains that such reports were not provided. This was unfortunate since the data RPMI entered into YARDI was accurate; however, the reports drawn from it were insufficient to establish RPMI's compliance.

RPMI employees were insufficiently familiar with YARDI to provide the Department with necessary information, this was caused, in part, by Mr. Lescoulies' negligent supervision that predated his accident.

Credibility

16. Ms. Brewster presented as a qualified auditor who performed a detailed and thorough audit. She was candid when testifying, answering all questions put to her in a professional and forthright fashion, admitting that YARDI is capable of generating reports, such as a columnar report, when correct queries are made.

17. Mr. Scott testified with a manner, demeanor and attitude that established his credibility as a conscientious property manager. Mr. Scott respects the fiduciary relationship he owes his clients, and the accurate record-keeping obligations RPMI owes the Department. Mr. Scott fully cooperated to the best of his ability with the Department's audit, much of the time without the assistance of Mr. Lescoulie. Mr. Scott admitted that he is "not a bookkeeper" and after the audit he realized that he needed to have a better understanding of the intricacies of operating YARDI.

Mr. Scott made a conscientious effort to address and remedy each of the Department's concerns regarding RPMI's accounting practices. The experts he hired reviewed three consecutive years of RPMI's records, which included the period of the audit. During those three years, RPMI would have collected approximately \$9,000,000 from its clients. RPMI's audit, as well as Ms. Brewster's, showed that RPMI had not misappropriated any of its client's funds. Not one of RPMI's clients suffered any harm. This fact is a testament to Mr. Scott's honesty. That he undertook to remedy each deficiency noted in Ms. Brewster's audit further establishes his good character and his dedication to run a professional property management company.

18. Mr. Lescoulie was candid and forthright in his testimony and, like Mr. Scott, conveyed a sense of honesty and respectfulness towards his fiduciary duties and professional obligations.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10145 sets forth the requirements for handling trust funds. It states in pertinent part:

(a)(1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust 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) Notwithstanding the provisions of paragraph (1), 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:

[¶...¶]

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

[¶...¶]

(3) A real estate broker who deposits funds held in trust in an out-of-state depository institution in accordance with paragraph (2) 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.

(c) A real estate sales person 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:

[¶...¶]

(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.

[¶...¶]

(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.

[¶...¶]

2. California Code of Regulations, title 10, section 2831, provides:

(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

(1) Date trust funds received.

(2) From whom trust funds received.

(3) Amount received.

(4) With respect to funds deposited in an account, date of said deposit.

(5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.

(6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.

(7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

(d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.

(e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed \$1,000. Upon request of the Department or the maker of such checks, a broker shall account for the receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.

3. California Code of Regulations, title 10, section 2831.1 provides:

(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.

(2) Amount of deposit.

- (3) Date of each related disbursement.
- (4) Check number of each related disbursement.
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account.
- (7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

4. California Code of Regulations, title 10, section 2831.2 provides:

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

5. California Code of Regulations, title 10, section 2832.1 provides:

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

6. Business and Professions Code section 10159.2 provides:

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

(b) A corporate broker licensee that has procured additional licenses in accordance with Section 10158 through officers other than the officer designated pursuant to Section 10211 may, by appropriate resolution of its board of directors, assign supervisory responsibility over salespersons licensed to the corporation to its broker-officers.

(c) A certified copy of any resolution of the board of directors assigning supervisory responsibility over real estate salespersons licensed to the corporation shall be filed with the Real Estate Commissioner within five days after the adoption or modification thereof.

7. Business and Professions Code section 10148, subdivision (a), provides:

(a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.

(b) The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.

The commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

8. Business and Professions Code section 10177 sets forth when discipline may be imposed and provides in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[¶...¶]

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

[¶...¶]

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

[¶...¶]

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

9. The Department bears the burden to establish by the production of clear and convincing evidence that respondent committed the violations set out in the Accusation.

10. As set forth in Factual Findings 1-14 and Legal Conclusion 8, the Department did not meet its burden to establish that any of the violations alleged were willfully committed or that the Real Estate Law or regulations were willfully disregarded; therefore cause does not exist to discipline respondents pursuant to Business and Professions Code section 10177, subdivision (d).

11. As set forth in Factual Findings 1-13 and 15 and Legal Conclusions 1-6 and 8, RPMI violated the Real Estate Law and regulations by failing to maintain a columnar record, failing to maintain separate records, failing to reconcile accounts at least once per month and failing to maintain adequate trust account balances. Cause exists to discipline RPMI pursuant to Business and Professions Code section 10177, subdivision (g).

12. As set forth in Factual Findings 1-13 and 15 and Legal Conclusions 1-6 and 8, Donald Paul Lescoulie, failed to exercise reasonable supervision over RPMI. Cause exists to discipline Mr. Lescoulie pursuant to Business and Professions Code section 10177, subdivisions (g) and (h).

13. As set forth in Factual Finding 14 and Legal Conclusions 1-2, the Department did not meet its burden to establish respondents failed to retain canceled checks.

Appropriate discipline

14. As set forth in Factual Findings 1-18, Legal Conclusions 1-8, none of the violations committed by respondents were intentional. Each of the violations were of a technical nature and perhaps could have been avoided altogether had someone at RPMI possessed greater knowledge regarding YARDI. RPMI acted professionally and responsibly by immediately rectifying all violations. Mr. Lescoulie's incapacitation and RPMI's loss of its office manager, lessens their culpability in committing the violations. Most importantly, because of respondent's honesty and professionalism no clients suffered any harm.

15. As set forth in Factual Finding 4, the cost of the audit was \$6,140. Some of Ms. Brewster's work actually established RPMI's compliance, while other portions, did not show the commission of any violation that was the subject matter of this Accusation. A review of the audit materials contained in the record indicates that a reasonable apportionment, pursuant to Legal Conclusion 7, is for RPMI to pay 25% of the cost of the audit, for a sum of \$1535.

16. None of the violations committed by respondents were caused by malfeasance. Respondent cooperated fully with the audit. Respondents have remedied their business practices. None of respondent's clients suffered any harm. The violations were of a technical nature and resulted from honest mistakes. However, in order to ensure the safety of the public, and better prepare RPMI to comply with any future audits, a measure of discipline directed towards respondents' education on how to better handle trust funds is appropriate.

ORDER


All licenses and licensing rights of respondents are suspended for 30 days from the effective date of this Decision; provided, however, that the suspension shall be stayed upon the following terms and conditions:

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 for a period of two years.

2. Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Department's reasonable cost for the audit in the sum of \$1535. Respondent shall pay the sum within 60 days of receiving an invoice from the Department. The Department may, in its discretion, vacate and set aside the stay Order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondents and the Department.

3. Respondent Donald Paul Lescoulie and a representative of his choosing from RPMI shall, as a condition of the stay of suspension, submit proof satisfactory to the Department of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that Mr. Lescoulie and representative of RPMI have successfully completed the trust fund account and handling continuing education course within 120 days following the effective date of the Decision in this matter. The Department may, in its discretion, vacate and set aside the stay Order, if Donald Paul Lescoulie and an RPMI representative fail to complete the course as specified in this Order, or as provided for in a subsequent agreement between respondents and the Department.

DATED: November 2, 2007


GARY A. GEREN
Administrative Law Judge
Office of Administrative Hearings

1 MARY F. CLARKE, Counsel (SBN 186744)
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FILED
MAY 10 2007

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 REALTY PROPERTY MANAGEMENT, INC.,)
13 A Corporation, and,)
14 DONALD PAUL LESCOULIE,)
15 Respondents.)

NO. H-2112 FR

ACCUSATION

16 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against REALTY PROPERTY MANAGEMENT, INC., a Corporation (herein
19 "RPMI"), and DONALD PAUL LESCOULIE (herein "LESCOULIE"), is
20 informed and alleges as follows:

21 I

22 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation
24 in his official capacity.

25 II

26 At all times herein mentioned, Respondents RPMI and
27 LESCOULIE (herein "Respondents") were and now are licensed and/or

1 have license rights under the Real Estate Law (Part 1 of
2 Division 4 of the Business and Professions Code) (herein "the
3 Code").

4 III

5 At all times herein mentioned RPMI was and now is
6 licensed by the Department of Real Estate of the State of
7 California (herein "the Department") as a corporate real estate
8 broker by and through LESCOULIE as designated officer-broker of
9 RPMI to qualify said corporation and to act for said corporation
10 as a real estate broker.

11 IV

12 At all times herein mentioned, LESCOULIE was and now is
13 licensed by the Department as a real estate broker, individually
14 and as designated officer-broker of RPMI. As said designated
15 officer-broker, LESCOULIE was at all times mentioned herein
16 responsible pursuant to Section 10159.2 of the Code for the
17 supervision of the activities of the officers, agents, real estate
18 licensees and employees of RPMI for which a license is required.

19 V

20 Whenever reference is made in an allegation in this
21 Accusation to an act or omission of RPMI, such allegation shall
22 be deemed to mean that the officers, directors, employees, agents
23 and/or real estate licensees employed by or associated with RPMI
24 committed such act or omission while engaged in the furtherance
25 of the business or operations of such corporate Respondent and
26 while acting within the course and scope of their authority and
27 employment.

1 VI

2 At all times herein mentioned Respondents engaged in
3 the business of, acted in the capacity of, advertised, or assumed
4 to act as real estate brokers within the State of California
5 within the meaning of Sections 10131(b) and 10131(d) of the Code,
6 including:

7 (a) the operation and conduct of a property management
8 business with the public wherein, on behalf of
9 others, for compensation or in expectation of
10 compensation, Respondents leased or rented and
11 offered to lease or rent, and placed for rent,
12 and solicited listings of places for rent, and
13 solicited for prospective tenants of real property
14 or improvements thereon, and collected rents from
15 real property or improvements thereon; and

16 (b) the operation and conduct of a mortgage loan
17 brokerage with the public wherein, on behalf of
18 others, for compensation or in expectation of
19 compensation, Respondents solicited lenders and
20 borrowers for loans secured directly or
21 collaterally by liens on real property, and
22 wherein Respondents arranged, negotiated,
23 processed, and consummated such loans.

24 VII

25 In so acting as a real estate broker, as described in
26 Paragraph VI above, Respondents accepted or received funds in
27 trust (herein "trust funds") from or on behalf of buyers, owners,

1 tenants, borrowers, lenders and others in connection with the
2 leasing, renting, and collection of rents on real property or
3 improvements thereon, and in connection with the negotiating and
4 arranging of mortgage loans, as alleged herein, and thereafter
5 from time to time made disbursements of said funds.

6 VIII

7 The aforesaid trust funds accepted or received by
8 Respondent were deposited or caused to be deposited by
9 Respondents into one or more bank accounts (herein "trust fund
10 accounts") maintained by Respondent RPMI for the handling of
11 trust funds at Portland, Oregon, branch of Wells Fargo Bank,
12 N.A., including but not necessarily limited to:

- 13 (a) "Realty Property Management Inc. Master Trust
14 Account", account number 1354423475 (herein
15 "Trust Account #1");
- 16 (b) "Realty Property Management Inc. Trust Account
17 For Ken and Charlotte Andrews", account number
18 1008160242 (herein "Trust Account #2");
- 19 (c) "Realty Property Management Inc. Trust Account
20 For Beatrice R. Assad", account number 6030849753
21 (herein "Trust Account #3");
- 22 (d) "Realty Property Management Inc. Trust Account
23 For Ernest Dalidio", account number 1354422691
24 (herein "Trust Account #4");
- 25 (e) "Realty Property Management Inc. Trust Account
26 For John Everett Family Ltd. Partnership", account
27 number 1354423640 (herein "Trust Account #5");

- 1 (f) "Realty Property Management Inc. Trust Account
2 For Robin R. Mathias", account number 6030873811
3 (herein "Trust Account #6");
- 4 (g) "Realty Property Management Inc. Trust Account
5 For Pollasky Apartments", account number
6 2755947146 (herein "Trust Account #7"); and
- 7 (h) "Realty Property Management Inc. Trust Account
8 For Sawhab Investments", account number 6030633264
9 (herein "Trust Account #8").

10 IX

11 On or about between April 5, 2005 and on or about
12 March 1, 2006, in connection with the collection and disbursement
13 of said trust funds, Respondents:

- 14 (a) failed to keep a columnar record in chronological
15 sequence of all trust funds received and disbursed
16 from Trust #1, Trust #2, Trust #4, Trust #6, Trust
17 #7, and Trust #8 containing all the information
18 required by Section 2831 of Chapter 6, Title 10,
19 California Code of Regulations (herein "the
20 Regulations");
- 21 (b) failed to keep a separate record for each
22 beneficiary or transaction for Trust #1, Trust #2,
23 Trust #4, Trust #6, Trust #7, and Trust #8
24 containing all the information required by
25 Section 2831.1 of the Regulations;
- 26 (c) failed, with respect to Trust #1, Trust #2, Trust
27 #3, Trust #4, Trust #5, Trust #6, Trust #7, and

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Trust #8, to reconcile, at least once a month, the balance of all separate beneficiary or transaction records with the record of trust funds received and disbursed from such accounts;

(d) caused, suffered or permitted the balance of funds in Trust #1 to be reduced to amounts, as tabulated below, less than the liability of Respondent RPMI to all owners of such funds without first obtaining the written consent of each and every owner of such funds:

<u>ITEM</u>	<u>DATE</u>	<u>AMOUNT</u>
(1)	2/28/06	\$5,761.64;
(2)	3/1/06	\$6,375.72; and

(e) failed to retain for three years copies of cancelled checks issued on Trust #1, Trust #2, Trust #3, Trust #4, Trust #5, Trust #6, Trust #7, and Trust #8, in connection with transactions for which a real estate license is required.

X

Respondent LESCOULIE failed to exercise reasonable supervision over the acts of RPMI in such a manner as to allow the acts and omissions on the part of RPMI described above, to occur.

XI

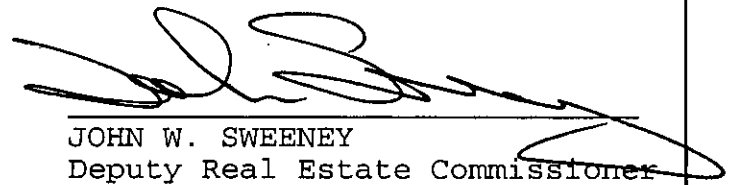
The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents RPMI and LESCOULIE under the following provisions of the Code and/or the Regulations:

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- (a) as to Paragraph IX(a) under Section 10145 of the Code and Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph IX(b) of under Section 10145 of the Code and Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) as to Paragraph IX(c) of under Section 10145 of the Code and Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) as to Paragraph IX(d) of under Section 10145 of the Code and Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code; and
- (e) as to Paragraph IX(e) under Section 10148(a) of the Code in conjunction with Section 10177(d) of the Code.
- (f) as to Paragraph X and Respondent LESCOULIE under Section 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof a decision be rendered imposing disciplinary action
4 against all licenses and license rights of Respondents under the
5 Real Estate Law (Part 1 of Division 4 of the Business and
6 Professions Code) and for such other and further relief as may be
7 proper under other applicable provisions of law.

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10 
11 JOHN W. SWEENEY
12 Deputy Real Estate Commissioner

11 Dated at Fresno, California
12 this 27th day of March, 2007.