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AUG - 8 2011

DEPARTMENT OF REAL ESTATE
By *R. Mat*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of

REALTY PROPERTY MANAGEMENT, INC., BRADLEY R. MCINTIRE, and DONALD PAUL LESCOULIE,

Respondents.

) DRE No. H-2505 FR

) OAH No. 2010080211

DECISION AFTER RECONSIDERATION

On April 29, 2011, a Decision was rendered herein by the Real Estate Commissioner which revoked the real estate corporate license and license rights of Respondent REALTY PROPERTY MANAGEMENT, INC. (RPMI), and granted RPMI the right to a restricted real estate corporate license under terms and conditions including a 30-day suspension of the restricted real estate corporate license. Said Decision was to become effective on May 25, 2011, and was stayed by separate Order to June 24, 2011.

On May 25, 2011, RPMI petitioned for reconsideration of said Decision. An Order Granting Reconsideration was filed on June 23, 2011, as to RPMI only.

I have reconsidered said Decision and it is hereby ordered that the disciplinary action therein imposed against the real estate corporate license of RPMI be amended by modifying the Order of said Decision to read as follows:

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ORDER

All licenses and licensing rights of RPMI under the Real Estate Law are revoked; provided, however, a restricted real estate corporate broker license shall be issued to RPMI pursuant to Section 10156.5 of the Business and Professions Code if RPMI makes application thereof and pays to the Department of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to RPMI shall be subject to all provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to RPMI may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of a conviction or plea of nolo contendere to a crime which is substantially related to RPMI's fitness or capacity as a real estate licensee by any of RPMI's officers, directors, and/or shareholders owning or controlling more than 10 percent of its shares.
2. The restricted licenses issued to RPMI may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that RPMI 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. RPMI shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.
4. RPMI shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by her Decision herein, or by separate written order issued while the restricted license is in effect, such information concerning RPMI's 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

1 limited to, periodic independent accountings of trust funds in the custody and control of
2 Respondent and periodic summaries of salient information concerning each real estate
3 transaction in which Respondent engaged during the period covered by the report.

4 5. Any restricted license issued to RPMI pursuant to this Decision shall be suspended for a

5 period of thirty (30) days from the issuance of the restricted license; provided, that thirty

6 (30) days of said suspension shall be stayed upon the condition that Respondent petition

7 pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section

8 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary

9 penalty of \$3,000.

10 a) Said payment shall be in the form of a cashier's check or certified check made payable to

11 the Recovery Account of the Real Estate Fund. Said check must be delivered to the

12 Department prior to the effective date of the Order in this matter.

13 b) No further cause for disciplinary action against the real estate licenses of Respondent

14 occurs within two (2) years from the effective date of the decision in this matter.

15 c) If Respondent fails to pay the monetary penalty as provided above prior to the effective

16 date of this Order, the stay of the suspension shall be vacated and the order of suspension

17 shall be immediately executed, under this Order, in which event Respondent shall not be

18 entitled to any repayment nor credit, prorated or otherwise, for the money paid to the

19 Department under the terms of this Order.

20 d) If Respondent pays the monetary penalty due under condition 5 of this Order and if no

21 further cause for disciplinary action against the real estate license of said Respondent

22 occurs within two (2) years from the effective date of this Order, then the entire stay

23 hereby granted shall become permanent.

24 6. RPMI shall, prior to and as a condition of the issuance of said restricted license, replace

25 Bradley R. McIntire as its designated officer with a new unrestricted designated officer.

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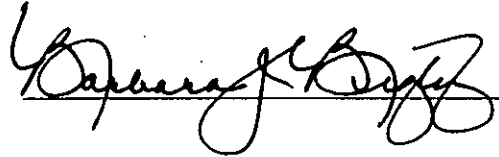
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As hereby modified and amended, the Decision of April 29, 2011, shall become
effective at 12 o'clock noon on AUG 29 2011.

IT IS SO ORDERED, 8/5/11.

BARBARA J. BIGBY
Acting Real Estate Commissioner



FILED
JUN 23 2011

DEPARTMENT OF REAL ESTATE
By R. Mar

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

REALTY PROPERTY MANAGEMENT, INC.,
BRADLEY R. MCINTIRE and
DONALD PAUL LESCOULIE,

Respondents.

NO. H-2505 FR

OAH NO. 2010080211

ORDER GRANTING RECONSIDERATION

On April 29, 2011, a Decision was rendered in the above-entitled matter to become effective May 25, 2011 (herein "the Decision").

On May 25, 2011, Respondent REALTY PROPERTY MANAGEMENT, INC. requested a stay for the purpose of filing a petition for reconsideration of the Decision, and on May 25, 2011 the Real Estate Commissioner filed an "Order Staying Effective Date" which stayed the effective date of the Decision until 12:00 noon on June 24, 2011, as to Respondent REALTY PROPERTY MANAGEMENT, INC. only.

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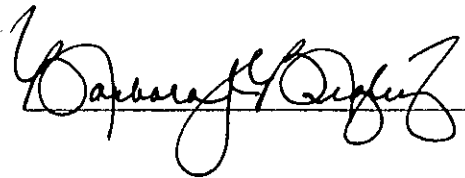
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I have given due consideration to the petition for reconsideration and I find good cause to reconsider the Decision of April 29, 2011. Reconsideration is hereby granted.

IT IS HEREBY ORDERED 6/21/11

BARBARA J. BIGBY
Acting Real Estate Commissioner



FILED

MAY 25 2011

DEPARTMENT OF REAL ESTATE

By *Auree J...*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of
REALTY PROPERTY MANAGEMENT, INC.,
BRADLEY R. MCINTIRE and
DONALD PAUL LESCOULIE,
Respondents.

No. H-2505 FRESNO
OAH No. 2010080211

ORDER STAYING EFFECTIVE DATE

On April 29, 2011, a Decision was rendered in the above-entitled matter to become effective May 25, 2011.

IT IS HEREBY ORDERED that the effective date of the Decision of the Real Estate Commissioner of April 29, 2011, as to Respondent REALTY PROPERTY MANAGEMENT, INC. only is stayed for a period of thirty (30) days.

The Decision of the Real Estate Commissioner of April 29, 2011, as to Respondent REALTY PROPERTY MANAGEMENT, INC. only shall become effective at 12 o'clock noon on June 24, 2011.

DATED: May 25, 2011

BARBARA J. BIGBY
Acting Real Estate Commissioner

Barbara J. Bigby

FLAG

FILED

MAY - 4 2011

DEPARTMENT OF REAL ESTATE

By *R. Mar*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

| | | |
|------------------------------------|---|--------------------|
| In the Matter of the Accusation of |) | |
| |) | NO. H-2505 FR |
| REALTY PROPERTY MANAGEMENT, INC., |) | |
| BRADLEY R. MCINTIRE and |) | OAH NO. 2010080211 |
| DONALD PAUL LESCOULIE, |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |

DECISION

The Proposed Decision dated March 22, 2011, 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 MAY 25 2011

IT IS SO ORDERED *4-29-2011*

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

APR 21 2011

DEPARTMENT OF REAL ESTATE
By R. M. K.

In the Matter of the Accusation Against:

REALTY PROPERTY MANAGEMENT,
INC., BRADLEY R. MCINTIRE, and
DONALD PAUL LESCOULIE,

Case No. H-2505 FR

OAH No. 2010080211

Respondents.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, on February 22, 2011, in Sacramento, California.

Tricia D. Sommers, a Deputy Real Estate Commissioner, State of California (Complainant) was represented by Richard K. Uno, Counsel, Department of Real Estate (Department).

John Scott, Sole Owner, Real Property Management, Inc. (RPMI), represented RPMI (respondent RPMI). Donald Paul Lescoulie (respondent Lescoulie) was present and represented himself. Bradley R. McIntire (respondent McIntire) was present and represented himself.

The case was submitted for decision on February 22, 2011.

SUMMARY

In April 2010, the Department concluded an audit of respondents' records to determine whether trust funds were handled and maintained in accordance with the Real Estate Law. The audit, which covered the period from February 2007 to February 2010, revealed a shortfall in Trust Fund Number One (Trust #1) in the amount of \$122,265.94. An investigation revealed that respondents had not performed monthly trust fund reconciliations as required by law. The Department alleged in the accusation that respondents' violations constituted cause for disciplinary action. Respondents' violations warrant discipline of their licenses and licensing rights.

FACTUAL FINDINGS

1. Complainant made and filed this accusation in her official capacity. Consecutively, respondents Lescoulie and McIntire were the designated broker-officers of RPMI. As such, they were responsible for the supervision of the activities of officers, agents, real estate licensees, and employees of RPMI, a corporate real estate broker, for which a real estate license was required to ensure compliance with the Real Estate Law. (Bus. & Prof. Code, § 10159.2.)

2. The Department issued corporate real estate broker license number C/01279922 to respondent RPMI on May 31, 2000. The license was active at all times relevant to this matter and will expire of May 30, 2012, unless renewed or revoked. The primary business of respondent RPMI is property management. The main office address is 2750 North Clovis Avenue, Suite 127, Fresno. Annually, the company manages approximately 216 units consisting of 152 properties for 170 property owners. Approximately \$3.9 million in trust funds are collected yearly and deposited into Trust #1. Respondent RPMI is wholly owned by John Scott, a licensed real estate salesperson.

3. The Department issued respondent Lescoulie his real estate broker license number B/00833970 on April 27, 1982. From April 6, 2005 to June 26, 2008, respondent Lescoulie served as the designated broker-officer of respondent RPMI. Effective December 26, 2007, the Department disciplined respondent Lescoulie's license in Accusation Case Number H-2112 for conduct set forth below in Factual Findings 18-21. His license expired on December 7, 2008.¹

4. The Department issued respondent McIntire his real estate broker license number B/01140690 on January 13, 2006. His license was active at all times relevant to this matter and will expire on January 12, 2014, unless renewed or revoked. Respondent McIntire is registered as the licensed broker-officer of respondent RPMI for the period from June 27, 2008 to May 30, 2012.²

Trust Fund Number 1 Shortage

5. In April 2010, the Department concluded an audit (FR-09-0028) of respondents' property management books and records for the three-year period of February 1, 2007 to February 1, 2010 (2010 Audit). Respondent RPMI maintained

¹ The lapsing of a license does not deprive the Department jurisdiction to proceed with any investigation of or action or disciplinary proceeding against the licensee, or render a decision suspending or revoking such license.

² The Department filed Accusation Number H-2415 on August 11, 2009, naming respondent McIntire. A Decision in the matter is pending.

six trust accounts, into which trust funds were placed. The audit covered only Trust #1. The funds in this account were maintained at Wells Fargo Bank, N.A., 8420 Friant Road, Fresno (No. 1354423475) under the name Real Property Management Inc. Master Trust Account.

6. Trust #1 was the operating account for multiple properties managed by respondents. Respondents had no ownership interests in any of these properties. Deposits in the account consisted of rents and security deposits received from tenants, while disbursements included payments for expenses incurred on properties, remittances to the property owners, as well as management fees to the broker. Respondent McIntire and Mr. Scott were the only signatories on the account at the time of the audit.

7. Diana Brewster is a General Auditor III for the Department. She holds a Bachelor of Arts degree in Accounting from Fresno State. She has worked as a Department auditor for over ten years and conducts approximately three audits a month. During the course of the 2010 Audit, Ms. Brewster interviewed respondents and Katie Bryant (the current bookkeeper), obtained and examined respondents' records (including bank statements, check registers, bank reconciliations, and receipts), prepared a bank reconciliation and accountability, and prepared a report of her findings. Ms. Brewster testified to her findings at hearing.

8. The Department audit established a shortage in Trust #1 of \$122,265.94 as of June 30, 2007, the selected cutoff date. The adjusted balance of Trust #1 as of June 30, 2007, was \$112,459.28. The trust fund accountability as of June 30, 2007, was \$234,725.22. Therefore, as of June 30, 2007, Trust #1 had a trust fund shortage of \$122,265.94. This discrepancy consisted of an unidentified shortage of \$4,139.42, with the remainder due to an identified theft from Trust #1 as described below.

9. Ms. Brewster reconciled Trust #1 as of January 31, 2010. The adjusted balance of Trust #1 as of January 31, 2010, was \$315,465.30. The trust fund accountability in Trust #1 as of January 31, 2010, was \$315,465.30. Hence, as of January 31, 2010, Trust #1 was in balance.

10. The trust fund shortage of \$122,265.94 as of June 30, 2007, was largely due to criminal activity on the part of Angela Smith. Ms. Smith was the former bookkeeper for respondent RPMI. From October 2006 to February 2007, Ms. Smith embezzled \$118,125.52 from Trust #1. After Mr. Scott discovered her activity, he contacted law enforcement and cooperated in her successful prosecution. However, he and respondent Lescoulie did not notify the fund's principal owners and beneficiaries about the shortage in Trust #1.

11. On July 23, 2007, Mr. Scott made two separate deposits of \$118,126.52 and \$9,625.80 into Trust #1. The deposits were made on advice of his certified public accountant in order to cure the embezzlement and additional unidentified shortages. When Mr. Scott made these deposits into Trust #1, he did not notify the fund's principal owners about his effort to cure a shortfall. The Department alleged that respondents' failure to notify the fund's principal owners and beneficiaries about the disbursements amounted to a violation of the Real Estate Law.

12. It was established that Ms. Smith, an employee of respondent RPMI, made unauthorized transfers out of Trust #1 for personal gain. Ms. Smith did so without the consent or knowledge of respondents. However, she also did so without the consent of the owners of the funds in Trust #1 and her disbursements caused the trust account balance to be reduced below the aggregate trust fund liability of the broker to all of the owners of the funds.

13. The designated broker-officer is responsible to supervise employees of the corporation and ensure that trust accounts are properly accounted for to satisfy liability to principal owners of the trust funds. (Bus. & Prof. Code, §§ 2834, 10145, & 10159.2.) Respondent Lescoulie was the designated broker-officer of respondent RPMI from April 6, 2005 to June 26, 2008. He was the responsible real estate broker-officer at all times during Ms. Smith's period of embezzlement from October 2006 to February 2007. He failed to ensure that accepted accounting practices including trust account reconciliations were performed and he did not cause the corporation to notice the principal owners of the shortage in the trust account balance.

Trust Fund Reconciliation

14. The Real Estate Law requires that trust accounts be reconciled by the corporation at least once a month and a record of the reconciliation be maintained. (Bus. & Prof. Code, § 2831.2.) This is done by comparing the accountability balance (record of all separate beneficiary or transaction records) to the control record balance (disbursements and receipts of the trust account), for the same day. The 2010 Audit found that respondent RPMI did not conduct monthly trust fund reconciliations during the audit period of February 2007 to February 2010 and did not maintain a record of monthly trust fund reconciliations.

15. Respondent McIntire submitted a handwritten declaration dated and signed February 24, 2010, that stated, "Trust Account Reconciliation has not been done but will start next month 3/1/10." He testified that he had taken several classes, and reviewed the Department website and applicable law. He stated that he made a point of "reviewing every check, the amounts, the bookkeeping numbers." He was under the misconception that "we were doing our bank reconciliation correctly." He stated, "I truly believed we were following the guidelines until Ms. Brewster pointed it out... I just didn't understand what the final step was." He was candid and credible in his assertion that he did not know that monthly trust fund reconciliation was

required. He signed a non-compliance summary at the exit conference on March 3, 2010.

16. Respondent Lescoulie, as the designated broker-officer from April 2005 through June 2008, was responsible for the failure of respondent RPMI to conduct monthly trust account reconciliations through June 2008. Respondent McIntire, as the designated broker-officer since June 2008, was responsible for the failure of respondent RPMI to conduct monthly trust account reconciliations from that time forward.

17. In Ms. Brewster's opinion, if respondents had performed the monthly reconciliations, the theft would have been identified sooner because the discrepancy would have been discovered. She noted that if Mr. Scott had not been able to cure the shortage from personal funds; the principal owners of Trust #1 would have had to file civil claims to get their money.

Prior Discipline of Respondents Lescoulie and RPMI

18. On May 10, 2007, the Commissioner filed Accusation H-2112 FR against Realty Property Management, Inc. and Donald Paul Lescoulie, respondents. The accusation alleged that respondents were real estate brokers engaged in the business of property management and mortgage loan brokerage services. In the course of business, respondents accepted and received funds in trust on behalf of buyers, owners, tenants, borrowers, lenders, and others. Respondents maintained eight trust accounts at Wells Fargo Bank, N.A.

19. In connection with the collection and disbursement of trust funds, it was alleged that respondents 1) failed to keep a columnar record in chronological sequence of receipts and disbursements, 2) failed to keep a separate record for each beneficiary or transaction for specific trusts accounts, 3) failed to reconcile specific trust accounts at least once a month, 4) caused, suffered, or permitted the balances of funds in Trust #1 to be reduced to amounts less than the liability to all owners without first obtaining written consent of each owner, and 5) failed to retain for three years, copies of cancelled checks issued on specific trust accounts. It was separately alleged that respondent Lescoulie failed to exercise reasonable supervision over the acts of respondent RPMI such as to allow the breaches also alleged.

20. Accusation H-2112 was based on improprieties discovered during a previous audit (FR-05-0032 and FR-05-0036) which was performed between January 23 and April 24, 2006 (2006 Audit). The 2006 Audit covered an audit period from April 5, 2005 to March 1, 2006. An administrative hearing on the allegations took place on October 3, 2007. The imbalances in Trust #1 were found to be "caused by honest mistakes, not malfeasance." Respondents' failure to conduct trusts fund reconciliations was attributed to ignorance related to use of their computer accounting program YARDI. Regarding respondent Lescoulie's broker responsibilities, it was

found that though he had a "general understanding of his supervisory obligations over RPMI's accounting," his lack of understanding of the YARDI program and a recent motorcycle accident were substantial mitigating factors.

21. The Decision and Order after hearing became effective on December 26, 2007. Respondents RPMI and Lescoulie were suspended for 30 days, however, the suspension was stayed for two years on condition that respondents obey the Real Estate Law, pay audit costs, and successfully complete a continuing education course on trust fund accounting and handling pursuant to Business and Professions Code section 10170.5, subdivision (a).

Investigation of Winston Horn, Deputy Commissioner

22. Winston Horn has been a Deputy Commissioner for the Department for two years. He is involved with 10 to 15 compliance investigations per month. He interviewed Mr. McIntire and Mr. Scott about the 2010 Audit findings. Mr. Horn attempted to interview respondent Lescoulie, but respondent Lescoulie did not respond to questions. Mr. Scott informed Mr. Horn that after the 2006 Audit, he discovered a theft of trust funds and immediately reported this to police. The former bookkeeper, Angela Smith, completed and cashed checks that had been "pre-signed" by Mr. Scott. It was Mr. Scott's practice to pre-sign checks at the beginning of the month that could be used by office staff for legitimate purposes.

23. Mr. Horn testified that he found the practice of pre-signing checks to be "unusual" and that it could lead to embezzlement or theft of trust funds. Further, in his opinion, had respondents performed monthly reconciliations to trust accounts, the loss would have been stemmed earlier in the four month period of embezzlement.

24. Withdrawals from trust accounts are strictly regulated. Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more persons specifically authorized in writing by the broker, including "an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time." (Cal. Code Regs., tit. 10, § 2834.) By using pre-signed checks, Ms. Smith, an unlicensed employee, could affect her theft without resort to the additional act of forging Mr. Scott's name, which might have been detected by the bank.

25. Respondent Lescoulie testified that his license expired on December 7, 2008. He stated that when he was active with respondent RPMI, he paid close attention to Mr. Scott because Mr. Scott was the owner and had authority under the corporate name and license. He learned from Mr. Scott that an employee had stolen "a ton of money." He believes that Mr. Scott corrected the problem "in a good way." Regarding his knowledge of Mr. Scott's practice of pre-signing checks, he stated, "I had heard that from an employee." In his opinion, the checks should have been

reviewed by Mr. Scott before going to the bank. He stated that as soon as he learned about the practice, "it stopped." It is unclear when he "heard" about the practice, however, respondent Lescoulie should have known about the practice and intervened, well before four months of embezzlement took place. He violated his supervisory and fiduciary duties to the corporation and the owners/beneficiaries of the trust funds. (Bus. & Prof. Code, § 10159.2.)

Testimony of John Scott, Owner of RPMI

26. Mr. Scott testified that the issues identified in the 2006 Audit stemmed from problems with respondents' computer accounting program, YARDI. Prior to 2006, respondents were not fully familiar with the YARDI reporting capabilities. The Decision in Accusation H-2112 took this into account. After the 2006 Audit was completed on April 24, 2006, Mr. Scott hired a new employee, Angela Smith to help "clear up" issues identified in the audit.

27. Unbeknownst to respondents, Ms. Smith began stealing money from the corporation, perhaps motivated by medical bills. After starting her job, Ms. Smith told respondents she had been diagnosed with brain cancer. Staff raised approximately \$3,800 for Ms. Smith's medical expenses. Mr. Scott allowed her to work one day a week though he paid her for a full week of service. Still, between October 11, 2006 and February 20, 2007, Ms. Smith embezzled \$118,000. Ms. Smith accomplished her crime by entering false vendor information and false invoices, and creating false checks. She deleted the record after depositing the checks into her personal account. The bank never called to verify the drafts.

28. Mr. Scott confirmed that at the hearing on October 3, 2007, related to Accusation H-2112, he did not share information about the completed embezzlement. He did not offer testimony that just two months prior, on July 23, 2007, he cured a Trust Fund shortage by depositing \$127,752.32 in personal funds. (Factual Finding 11). Mr. Scott stated that he did tell the judge that the accounts "were balanced." This was a true statement. Further, there is no evidence that Mr. Scott was asked to elaborate on trust account activity not covered in the 2006 Audit.

29. Regarding Mr. Scott's habit of pre-signing business checks, he stated that he pre-signed checks because he was "out of town often" and wanted vendors to be paid timely. To replace the stolen funds, Mr. Scott stated that he sold all of his retirement funds "to ensure all owners were taken care of and no one suffered any financial loss."

30. It is noted that the embezzlement commenced in October 2006, six months after the conclusion of the 2006 Audit, and continued unabated for four months. It was the responsibility of the designated broker-officer to ensure compliance with accounting practices outlined in the Real Estate Law. Compliance ensures that principal owners will not suffer financial loss. Respondents RPMI,

Lescoulie, and McIntire violated the Real Estate Law by failing to perform monthly account reconciliations to Trust #1.

LEGAL CONCLUSIONS

Applicable Laws

1. Business and Professions Code section 10145, subdivision (a)(1) provides that “[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. Business and Professions Code section 10177 authorizes the Commissioner to suspend or revoke the license of a real estate licensee or corporation if an officer, director, or person owning or controlling ten percent or more of the corporation's stock has done any of the following:

(d) Willfully disregarded or violated the Real Estate Law

[¶]...[¶]

(g) Demonstrated negligence or incompetence in performing an 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.

[¶]...[¶]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

3. California Code of Regulations, title 10, section 2831.2 states that “[t]he 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.”

4. California Code of Regulations, title 10, section 2832.1 states that “[t]he 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.”

Cause for Discipline

5. Clear and convincing evidence to a reasonable certainty established cause for disciplinary action against respondent Lescoulie under Business and Professions Code sections 10177, subdivisions (d), (g), and (h), and 10145, subdivision (a)(1); and California Code of Regulations, title 10, sections 2831.2 and 2832.1, by reason of the matters set forth in Factual Findings 1-30.³

Respondent Lescoulie, as the designated broker-officer from January 1, 2006 to June 27, 2008, was aware of his duty to supervise and oversee the activities of Ms. Smith, Mr. Scott, and trust fund accounts. He failed to recognize and stop risky check signing/writing practices, reconcile trust fund accounts, and inform owners of a substantial trust account balance shortfall. Although he could not have notified trust beneficiaries in advance of disbursements by Ms. Smith, he had a duty to notify them of the facts upon learning of them.

Additionally, the 2010 Audit found that respondent RPMI did not conduct monthly trust fund reconciliations during the audit period of February 2007 to February 2010 and did not maintain a record of monthly trust fund reconciliations. (Factual Findings 14-17.) Respondent Lescoulie failed to ensure that monthly trust account reconciliations were performed even after being disciplined in December 2007. His conduct demonstrates a willful disregard for the law, negligence, incompetence, and a failure to exercise reasonable supervision within the meaning of the Real Estate Law.

³ There was not clear and convincing evidence to discipline respondent Lescoulie’s license pursuant to Business and Professions Code section 10177, subdivision (j) (fraud or dishonest dealing).

6. Clear and convincing evidence to a reasonable certainty established cause for disciplinary action against respondent McIntire under Business and Professions Code sections 10177, subdivisions (g), and (h), and 10145, subdivision (a)(1); and California Code of Regulations, title 10, section 2831.2, by reason of the matters set forth in Factual Findings 1-30.⁴

Respondent McIntire, as the designated broker-officer from June 27, 2008 to May 30, 2012, was not associated with respondent RPMI during the period of Ms. Smith's embezzlement, which was complete as of February 2007 and cured as of July 23, 2007, one year before respondent McIntire arrived and assumed his duties to the corporation.

However, the 2010 Audit found that respondent RPMI did not conduct monthly trust fund reconciliations during the audit period of February 2007 to February 2010 and did not maintain a record of monthly trust fund reconciliations. (Factual Findings 14-17.) As such, respondent McIntire demonstrated negligence and a failure to exercise reasonable supervision over employees and activities of the corporation from June 2008 forward.

7. Clear and convincing evidence to a reasonable certainty established cause for disciplinary action against respondent RPMI under Business and Professions Code sections 10177, subdivisions (d), (g), and (h), and 10145, subdivision (a)(1); and California Code of Regulations, title 10, sections 2831.2 and 2832.1, by reason of the matters set forth in Factual Findings 1-30.⁵

Respondent RPMI, as a licensed real estate corporation, failed through its owner and designated broker-officers to comply with the Real Estate Law as set forth in Legal Conclusions 5 and 6. Mr. Scott, as a person owning 100 percent of the corporation's stock demonstrated negligence by pre-signing checks following the 2006 Audit in which law violations were identified, and in failing to inform beneficiaries of Trust #1 upon learning of the unauthorized disbursements.

⁴ There was not clear and convincing evidence to discipline respondent McIntire's license pursuant to Business and Professions Code section 10177, subdivisions (g) (willful disregard for the law), (j) (fraud or dishonest dealing), or California Code of Regulations, title 10, section 2832.1 (obtain consent for trust account disbursements).

⁵ There was not clear and convincing evidence to discipline respondent RPMI's license pursuant to Business and Professions Code section 10177, subdivision (j) (fraud or dishonest dealing).

Mitigation

8. Respondent McIntire was cooperative and forthright with Ms. Brewster and Mr. Horn. He admitted his failure to perform monthly reconciliations and provided a signed declaration to that effect. He signed his non-compliance summary at the exit conference. His testimony was credible in that he made sure the corporation performed monthly bank reconciliations. In spite of his review of the law and taking classes, he did not understand his duty to perform trust fund account reconciliations until after working with Ms. Brewster. He understood and accepted his duty to ensure records are correct going forward. He should be allowed to maintain his broker licensed, with restrictions.

9. Respondent RPMI is wholly owned by Mr. Scott. The corporation had a duty to ensure that designated broker-officers are competent to perform their duties under the Real Estate Law. Mr. Scott was aware of problems with trust account reconciliations and records since the time of the 2006 Audit. Respondent RPMI failed in its duty to trust account beneficiaries. In mitigation, Mr. Scott took full responsibility for the shortfall in Trust #1 by depositing personal funds to cover the losses. He has stopped risky check signing practices. At hearing, he expressed genuine remorse for the acts and omissions of his employees and designated broker-officers. There was no fraudulent intent to his actions. He demonstrated that he cares about the people and clients her serves. Respondent RPMI should be allowed to continue its corporate activities, with restrictions.

Conclusion

10. Respondent McIntire was licensed in 1992 as a salesperson, and in 2006 as a broker. He has not been previously disciplined. Respondent RPMI was originally licensed in 2000. Consideration must also be given to intent of the parties and actual harm that was mitigated by Mr. Scott. Respondent McIntire has acknowledged wrongdoing and he has expressed regret for his actions. His omission was not for lack of effort to comply with accounting principles. It is unlikely that similar conduct will recur under his supervision. The funds taken from Trust #1 beneficiaries were timely restored.

11. Respondent Lescoulie was originally licensed in 1982 as a broker. He was previously disciplined in December 2007 for identical conduct, failure to reconcile trust fund accounts and maintain proper records. He failed to exercise diligence in the performance of his duties to the corporation. He was uncooperative during the investigation. Though he is no longer affiliated with respondent RPMI, there is insufficient evidence that he would exercise greater judgment in the performance of his duties as a designated broker-officer.

12. Having considered these several factors it would be contrary to the public interest to allow respondent Lescoulie to retain his broker license at this time.

13. It would not be contrary to the public interest to issue respondents McIntire and RPMI restricted licenses, the terms of which include actual license suspension for a period of thirty (30) days. The matters set forth in the Factual Findings and Legal Conclusions as a whole were considered in making the following order.

ORDER

All licenses and licensing rights of respondent Lescoulie under the Real Estate Law are REVOKED.


All licenses and licensing rights of respondents McIntire and RPMI under the Real Estate Law are revoked; provided, however, a RESTRICTED real estate broker license shall be issued to respondents McIntire and RPMI pursuant to Section 10156.5 of the Business and Professions Code if respondents McIntire and RPMI make application thereof and pay to the Department of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to respondents McIntire and RPMI shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to respondents McIntire and RPMI may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent McIntire's conviction or plea of nolo contendere to a crime which is substantially related to respondents' fitness or capacity as a real estate licensee.
2. The restricted licenses issued to respondents McIntire and RPMI may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondents have 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. Respondents shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.
4. Respondent McIntire shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he 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 McIntire fails to satisfy this condition, the Commissioner may order the suspension of the restricted licenses until respondent McIntire presents such evidence. The Commissioner shall afford respondent McIntire the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Pursuant to Business and Professions Code section 10170.5, subdivision (a)(3), respondent McIntire and John Scott shall enroll in and successfully complete a three-hour course in trust fund accounting and handling.
6. Respondents shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondents' 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 respondents and periodic summaries of salient information concerning each real estate transaction in which respondents engaged during the period covered by the report.
7. Any restricted real estate license issued to respondents pursuant to this Decision shall be suspended for thirty (30) days from the date of issuance of said restricted license.

DATED: March 22, 2011



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

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FILED

JUL 22 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

7
8
9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of

13 REALTY PROPERTY MANAGEMENT,
14 INC., BRADLEY R. MCINTIRE and
15 DONALD PAUL LESCOULIE,

16 Respondents.

No. H-2505 FR

ACCUSATION

17 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
18 of the State of California for cause of Accusation against REALTY PROPERTY
19 MANAGMENT, INC. (RPM), BRADLEY R. MCINTIRE (MCINTIRE) and DONALD PAUL
20 LESCOULIE (LESCOULIE), (collectively, Respondents), is informed and alleges as follows:

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22 The Complainant makes this Accusation in her official capacity.

23 2

24 At all times mentioned, RPM was and is licensed by the Department as a
25 corporate real estate broker.

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At all times mentioned herein, MCINTIRE was licensed by the Department as a real estate broker.

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All times mentioned herein, LESCOULIE was licensed by the Department as a real estate broker.

5

At all times mentioned until June 27, 2008, LESCOULIE was the designated broker-officer of RPM. From June 27, 2008 to the present, MCINTIRE was the designated broker-officer of RPM. As the designated brokers-officers, LESCOULIE and MCINTIRE were responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of officers, agents, real estate licensees and employees of RPM for which a real estate license is required to ensure the compliance of the corporation with the Real Estate law and the Regulations.

6

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business wherein Respondent leased, rented, or offered to lease or rent, solicited listings for lease or rent, collected rents from tenants or lessees, or performed other services for real property owners and tenants or lessees, all for or in expectation of compensation.

FIRST CAUSE OF ACTION

7

Beginning on or about February 2, 2010 and intermittently through April 30, 2010, the Department conducted an audit of RPM's property management business for the period of February 1, 2007 to February 2, 2010 as set forth in Audit No. FR-09-0028, dated

///

1 April 30, 2010. During the course of the property management activities described in Paragraph
2 6, Respondent received and disbursed funds held in trust on behalf of others.

3 8

4 The following facts were ascertained by the audit for the period referred to above:

5 a. RPM maintained a bank account at Wells Fargo Bank, N. A., 8420 Friant
6 Road, Fresno, California 93720. Trust #1 was designated as the "Real Property Management
7 Trust Account", Account No. 1354423475;

8 b. Trust #1 was used for property management activities. Deposits consisted of
9 rents and security deposits collected from tenants. Disbursements consisted of payments for
10 expenses related to the properties managed, remittances to owners and to RPM for management
11 fees;

12 c. Bank reconciliations for Trust #1 were prepared on two different dates. As of
13 June 30, 2007 there was a shortage of \$122,265.94 and as of January 31, 2010 there was no
14 shortage. The shortage was a violation of Section 2832.1 of the Regulations and Section 10145
15 of the Code;

16 d. RPM failed to perform the required monthly reconciliations comparing the
17 balance of the control records to the total balance of the beneficiary records for Trust #1, in
18 violation of Section 2831.2 of the Regulations. Had RPM conducted monthly reconciliations,
19 the trust fund shortage would have been detected much sooner and would have been limited to
20 approximately \$9,500.00 in October 2006 and;

21 e. RPM failed to obtain the written consent of every owner of trust funds to allow
22 the balance of the trust account to fall to an amount less than the existing aggregate trust fund
23 liability of the broker to all owners of the funds in violation of Section 2832.1 of the Regulations.
24 After discovery, RPM failed to notify owners of the trust funds of the trust account shortages.

25 9

26 The acts and omissions of Respondent RPM described in Paragraph 8(c), above,
27 constitute violations of Section 10145 (Trust Fund Handling) of the Code and constitute grounds

1 for disciplinary action under Section 10177(d) (Willful Disregard/Violation of Real Estate Law)
2 and 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

3 10

4 The acts and omissions of Respondent RPM described in Paragraph 8(d), above,
5 constitute violations of Sections 2831.2 (Trust Fund Reconciliations) of the Regulations and
6 constitute grounds for disciplinary action under Sections 10177(d) (Willful Disregard/Violation
7 of Real Estate Law) and 10177(g) (Negligence/Incompetence Real Estate Licensee) of the Code.

8 11

9 The acts and omissions of Respondent RPM described in Paragraph 8(e), above,
10 constitute violations of Sections 2832.1 (Trust Fund Handling) of the Regulations and constitute
11 grounds for disciplinary action under Sections 10177(d) (Willful Disregard/Violation of Real
12 Estate Law), 10177(g) (Negligence/Incompetence Real Estate Licensee) and 10177(j)
13 (Conduct/Fraud or Dishonest Dealing) of the Code.

14 SECOND CAUSE OF ACTION

15 12

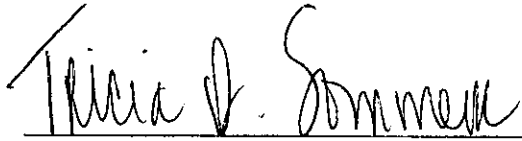
16 Complainant refers to Paragraphs 1 through 11, above, and incorporates them
17 herein by reference.

18 13

19 At all times herein above mentioned, MCINTIRE and LESCOULIE, were
20 responsible as the supervising designated broker/officer for RPM, for the supervision and control
21 of the activities conducted on behalf of RPM'S business by its employees to ensure its
22 compliance with the Real Estate Law and Regulations. MCINTIRE and LESCOULIE failed to
23 exercise reasonable supervision and control over the property management activities of RPM.
24 In particular, MCINTIRE and LESCOULIE permitted, ratified and/or caused the conduct
25 described above, to occur, and failed to take reasonable steps, including but not limited to the
26 handling of trust funds, supervision of employees, and the implementation of policies, rules, and
27 systems to ensure the compliance of the business with the Real Estate Law and the Regulations.

The above acts and/or omissions of MCINTIRE and LECOULIE violate Section 10159.2 (Responsibility/Designated Officer) of the Code and Section 2725 (Broker Supervision) of the Regulations and constituted grounds for disciplinary action under the provisions of Sections 10177(d) (Willful Disregard/Violation of Real Estate Law) and 10177(h) (Broker Supervision) of the Code.

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



TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 21st day of July, 2010.