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BUREAU OF REAL ESTATE

By B. Nicholas

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	CalBRE No. H-2993 FR
MATTHEW DRESCHER STOLL,)	
)	OAH No. 2016040484
Respondent.)	
_____)	

ORDER DENYING RECONSIDERATION

On, October 08, 2016, a Decision was rendered in the above-entitled matter. The Decision was to become effective on November 04, 2016, and was stayed by separate Order to December 02, 2016.

On November 03, 2016, Respondent petitioned for reconsideration of the Decision of October 08, 2016.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of October 08, 2016, and reconsideration is hereby denied.

IT IS SO ORDERED 12/2/2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER



1 **II. STATEMENT OF RELEVANT FACTS**

2 Respondent is an F-18 fighter pilot with the U.S. Navy who has been deployed overseas
3 seven times in the last eleven years. (Proposed Decision (“PD”) p. 4, ¶ 21). His honorable service
4 to the citizens of this country had not gone unnoticed.

5 Respondent is also a business entrepreneur having business interests in four companies
6 including Stratus Property Management (established 2007), Stratus Construction (established 2009
7 or 2010), Lennox Landscaping (established 2014) and Stratus Consulting & Investment (established
8 2004). (PD p. 4, ¶ 20).

9 In 2007, Respondent started Stratus Property Management with his then future wife, Tami
10 Stoll. (PD p. 4, ¶ 22). From 2008 to 2013, Stratus Property Management was listed as a dba under
11 Ms. Stoll’s broker license. (PD p. 3, ¶ 14). On January 21, 2014, Ms. Stoll filed for legal
12 separation from Respondent. (PD p. 4, ¶ 23). Also in January 2014, Ms. Stoll ceased managing
13 Stratus Property Management and removed the dba from her license. As a result, in January 2014,
14 Respondent took over the duties and responsibilities of Stratus Property Management. Also in
15 January 2014, Respondent was deployed to the Middle East for 17 months. (PD p. 4, ¶ 21.)

16 From November 10 through 13, 2014, and auditor for the Bureau of Real Estate (“Bureau”),
17 Bosco Li, conducted an audit of the records, for the period of January 1 and October 1, 2015,
18 related to Respondent’s property management activities. (PD pp. 1-2, ¶ 3). During the audit period,
19 Respondent was responsible for collecting rents, paying expenses, and screening tenants for
20 approximately 300 properties for 92 beneficiaries. (PD p. 2, ¶ 5.)

21 The Bureau’s audit revealed numerous trust fund violations including: (1) a trust account
22 shortages of \$48,781.46 in Trust Account No. 1 (PD p. 2, ¶ 9); (2) a trust account shortage of
23 \$8,014.13 in Trust Account No. 2 (PD p. 3, ¶ 11); (3) the failure to perform monthly reconciliations
24 during the entire audit period (PD p. 3, ¶ 13); (4) the failure add Stratus Property Management as a
25 dba to Respondent’s broker license (PD p. 3, ¶ 15); (5) the failure to designate Trust Account No.1

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1 and Trust Account No. 2 in Respondent's name or in the name of a dba registered to him. (PD p. 3,
2 ¶ 17); and (6) allowing an unlicensed individual (Respondent's step-daughter) to serve as a
3 signatory on Trust Account Nos. 1 and 2 without fidelity bond coverage (PD p. 4, ¶ 18).

4 Respondent did not dispute any of the audit findings at the administrative hearing in this
5 matter. Instead, he cast blame for most of the violations on others and took no responsibility for
6 any of the problems. As to the shortage in Trust Account No. 1, Respondent blamed it on
7 misinformation entered by an accountant hired by Respondent in March 2014 to perform the trust
8 account reconciliations. (PD p. 5, ¶ 28.) Regarding the shortage in Trust Account No. 2,
9 Respondent asserted it was the result of a clerical error by a bank employee. (PD p. 5, ¶ 29). He
10 also blamed the accountant he hired in March 2014 for the lack of monthly reconciliations. (PD p.
11 6, ¶ 35.) Respondent blamed the bank for adding "LLC" to the names of Trust Account Nos. 1 and
12 2. (PD p. 5-6, ¶ 30). And he described the use of an unlicensed dba as an "oversight at worst."
13 (PD p. 6, ¶ 35). Perhaps most concerning, Respondent admitted to knowingly permitting his step-
14 daughter to serve an authorized signor on both trust account while she was neither licensed nor
15 covered by a fidelity bond. (PD p. 5, ¶ 27).

16 In his Request for Reconsideration, Respondent again blames the accountant he hired in
17 March 2014 for the violations found in the audit. As he did at the hearing, Respondent describes his
18 situation in 2014 as exceptional and assures the Commissioner that none of the violations occurred
19 as the result of malicious intent.

20 **III. ARGUMENT**

21 **A. Respondent offers no new evidence or arguments in his Petition for** 22 **Reconsideration.**

23 In evaluating a Petition for Reconsideration, the Bureau may consider the record and
24 "additional evidence and argument" presented by the respondent. (Gov. Code § 11521(b).) With
25 respect to evidence that was presented before the hearing officer, there is a presumption that such
26 evidence was duly considered. (*Moyer v. State Board of Equalization* (1956) 140 Cal.App.2d 651.)

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1 Here, Respondent has simply restated the same arguments he made at the hearing before the
2 ALJ and fails to support those arguments with any new evidence. Considering it is presumed that
3 the evidence presented at the hearing was duly considered, Respondent's renewed plea for leniency,
4 without more, should be dismissed.

5 **C. Respondent continues to deflect blame and fails to take responsibility for the**
6 **violations.**

7 In his Request for Reconsideration, Respondent continues to blame the accountant he hired
8 who, in his words, "completely screwed [him] at [a] great cost." (See Respondent's Request for
9 Reconsideration p. 1, ¶ 2.) In reiterating this position, Respondent continued to avoid his failures as
10 the broker of a sizable property management company, and instead attempt to cast blame on the
11 accountant. As the California Supreme Court stated in *Viner v. Sweet* (2003) 30 Cal.4th 1232, 1241:

12 "It is far too easy to make the legal advisor a scapegoat for a variety
13 of business misjudgments unless the courts pay close attention to the
14 cause in fact element, and deny recovery where the unfavorable
15 outcome was likely to occur anyway, the client already knew the
16 problems with the deal, or where the client's own misconduct or
17 misjudgment cause the problems."

18 Here, the accountant hired by Respondent had nothing to do with several of the violations
19 found in the Bureau's audit. For instance, Respondent was already months behind on preparing
20 trust account reconciliations when he hired the accountant in March 2014. It was also Respondent
21 who improperly completed and submitted forms to the Bureau requesting to have an LLC serve as a
22 dba. And the accountant had nothing to do with Respondent allowing his unlicensed stepdaughter
23 to serve as a signatory on the trust accounts without fidelity bond coverage. But most importantly,
24 Respondent should be held responsible for continuing to serve as the broker of record for twelve
25 consecutive months for a company that managed over 300 properties, knowing there were multiple

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1 problems along the way, and knowing he could not return to the United State to address them
2 personally. Respondent's attempt to evade his responsibilities favors the denial of his Petition for
3 Reconsideration.

4 **D. The level of discipline was appropriate under the circumstances.**

5 Although Respondent does not dispute any of the Bureau's audit findings, he asks that no
6 discipline be imposed in this case because he did not intend to break any rules and he did not act with
7 malicious intent. However, real estate law is designed to protect the public not only from conniving
8 real estate licensees "but also from the uninformed, negligent, or unknowledgeable" licensees.
9 (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518.) When the facts clearly
10 show a violation of the real estate law has occurred, the question for the court to consider is whether
11 the discipline imposed was reasonable. (*Ibid.*)

12 Here, considering Respondent was directly responsible for numerous trust fund violations
13 yet he continues to deflect blame onto others, the suspension ordered by the Commissioner is
14 appropriate. The discipline imposed by the Bureau allows Respondent to continue to serve as a
15 broker yet demands appropriate safeguards are completed by Respondent to ensure that he becomes
16 educated about trust fund handling and accounting so that the public is protected against future
17 negligent misconduct.

18 **IV. CONCLUSION**

19 For the foregoing reasons, Respondent's Petition for Reconsideration should be denied.

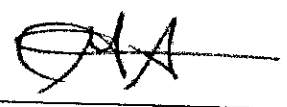
20 Dated: November 18, 2016

Respectfully submitted,

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23 *Jason D. Lazark / B dew*
24 Jason D. Lazark, Esq.,
25 Counsel for Complainant
26
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November 3, 2016

BUREAU OF REAL ESTATE

By 

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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE NO. H-2993 FR
MATTHEW DRESCHER STOLL,)	OAH NO. 2016040484
Respondent.)	

ORDER STAYING EFFECTIVE DATE

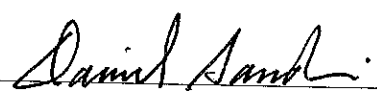
On October 8, 2016, a Decision was rendered in the above-entitled matter to become effective November 4, 2016.

IT IS HEREBY ORDERED that the effective date of the Decision of October 8, 2016, is stayed for a period of 30 days to allow Respondent MATTHEW DRESCHER STOLL to file a petition for reconsideration or to consider Respondent's petition for reconsideration.

The Decision of October 8, 2016, shall become effective at 12 o' clock noon on December 5, 2016.

DATED: 11/3/16

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL SANDRI
Assistant Commissioner

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
 MATTHEW DRESCHER STOLL,)
)
 Respondent.)

CalBRE No. H-2993 FR
OAH No. 2016040484

FILED

OCT 14 2016

BUREAU OF REAL ESTATE

By B. Nicholas

DECISION

The Proposed Decision dated September 2, 2016, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

Page 1, Factual Findings, paragraph 2, first sentence, is corrected to read: "On August 20, 2008, the Bureau issued real estate broker's license number B/01839496 to respondent."

Page 1, Factual Findings, paragraph 3, first sentence, is corrected to read: "From November 1, 2013 through October 31, 2014, the Bureau conducted an audit of respondent's property management activities to determine whether he was in compliance with the Real Estate Law and the Commissioner's Regulations."

Page 11, Order, paragraph 4, last sentence, is corrected to read: "...Decision by the Bureau shall constitute an independent violation of the terms of the license and shall be grounds for the suspension or revocation of that license."

The Decision suspends or revokes one or more real estate licenses.

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

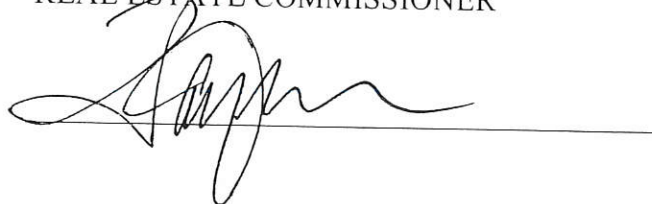
This Decision shall become effective at 12 o'clock noon on _____

NOV 04 2016

IT IS SO ORDERED

10/8/2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER



BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation against:

MATTHEW DRESCHER STOLL,

Respondent.

Case No. H-2993 FR

OAH No. 2016040484

PROPOSED DECISION

This matter was heard before Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 18, 2016, in Sacramento, California.

Jason D. Lazark, Legal Counsel, represented Brenda Smith (complainant) in her official capacity as a Supervising Special Investigator with the Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.

Matthew Drescher Stoll (respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on August 18, 2016.

FACTUAL FINDINGS

1. On February 5, 2016, complainant, acting solely in her official capacity, filed the Accusation seeking to discipline respondent's real estate broker's license based on various violations of the Real Estate Law and rules and regulations adopted pursuant to it. Respondent timely filed a notice of defense and request for hearing.

2. On August 20, 2008, the Bureau issued real estate broker's license number B/01939496 to respondent. The license expired on August 19, 2016. At all times relevant herein, respondent was a part owner of Stratus Property Management and owner of Stratus Consulting & Investing LLC.

Bureau Audit

3. From November 10 through 13, 2014, the Bureau conducted an audit of respondent's property management activities to determine whether he was in compliance

with the Real Estate Law and the commissioner's regulations. Bosco Li, an auditor with the Bureau since 2010, was assigned to conduct a review of relevant records related to respondent's property management activities between January 1 and October 31, 2014 ("audit period"). Mr. Li interviewed respondent on November 10, 2014. He also obtained and examined records relating to respondent's property management activities during the audit period on a sample basis. Mr. Li prepared an audit report dated May 26, 2015.

4. It is undisputed that respondent cooperated with the audit process. He provided documents and answered questions as requested. When respondent was unavailable due to a military deployment, he gave Mr. Li permission to discuss any issues with respondent's wife, Tami Stoll.

5. During the audit period, respondent managed approximately 300 properties for 92 beneficiaries. His management activities included collecting rents, paying expenses, and screening tenants. Respondent collected annual trust funds of approximately \$3.6 million. For his services, he respondent charged management fees ranging from six to ten percent of all rents collected per month.

Respondent's Trust Accounts

6. Throughout the audit period, respondent maintained two trust accounts for handling trust funds from his property management activities. Both trust accounts were held at the RaboBank branch located at 218 North Douty Street in Hanford, California.

7. Trust Account No. 1 was named "Stratus Consulting and Investing LLC Securities Trust Account." Respondent used this account to deposit security deposits and issue security deposit refunds to tenants.

8. Trust Account No. 2 was named "Stratus Consulting and Investing LLC Rents Trust Account." Respondent used this account to handle rents received from tenants and other expenses related to his property management activities.

Account Balances

9. Mr. Li prepared a trust account reconciliation for Trust Account No. 1 as of September 30, 2014. The account contained a shortage in the amount of \$48,781.46, caused by a negative balance of \$2,500 under one owner account and a negative balance of \$46,281.46 under an owner account titled "Stratus LLC - Z Douty Office Spm's" (Z Douty Account).

10. Mr. Li discussed the Z Douty Account with respondent during their initial interview. Mr. Li noted several adjustments recorded to the account which he could not verify as actually being made. Respondent requested more time to provide supporting information. Subsequently, Ms. Stoll told Mr. Li that respondent had made erroneous journal entries to the Z Douty Account, and provided Mr. Li with an updated summary of

accountability. However, she did not provide any supporting documentation and Mr. Li was still unable to verify the asserted adjustments.

11. Mr. Li also prepared a trust account reconciliation for Trust Account No. 2 as of September 30, 2014. The account contained a shortage in the amount of \$8,014.13. Mr. Li was unable to identify the cause of this shortage.

12. Respondent failed to obtain the written consent of the trust fund owners to allow him to reduce the balance of the funds in the trust accounts to an amount less than the existing aggregate trust fund liabilities, as required by law. (Cal. Code Regs., tit. 10, § 2832.1.)

Trust Account Reconciliation

13. During the audit period, respondent failed to reconcile on a monthly basis the sum of all separate beneficiary or transactions records (separate records) with the corresponding balance records of all trust funds received and disbursed (control record) for Trust Account No. 1 and Trust Account No. 2. Although respondent admitted to the auditor that he was "four to five months" behind on reconciliations, Mr. Li found that no monthly reconciliations had been performed for either account during the entire audit period. (Cal. Code Regs., tit. 10, § 2831.2.)

Use of Unlicensed DBA

14. From 2008 to 2013, the DBA "Stratus Property Management" was licensed by the Bureau under Tami Stoll's broker license. In January 2014, due to her legal separation from respondent, Tami Stoll removed the DBA from her license as she was no longer managing the business.

15. From January 2014 through October 2014, respondent conducted property management activities under the DBA "Stratus Property Management." Said DBA was not licensed by the Bureau under respondent's broker's license. (Bus. & Prof. Code, § 10145; Cal. Code Regs., tit. 10, § 2731.)

16. In April 2014, respondent applied with the Bureau to add the DBA "Stratus Property Management" to his broker's license. The Bureau never received the application, nor did respondent follow up on it. Still, he continued to use the DBA to conduct property management activities. In November 2014, following the audit, respondent again applied to add the DBA to his broker's license. In December 2014, the Bureau rejected the application due to several deficiencies.

Trust Account Designation

17. During the audit period, respondent did not designate Trust Account No. 1 or Trust Account No. 2 in his own name or a DBA registered to him. Rather the trust accounts were designated as "Stratus Consulting & Investing LLC Securities Trust Account" and

“Stratus Consulting & Investing LLC Rents Trust Account,” respectively. Neither DBA was licensed, nor could be licensed, under respondent’s broker’s license. (Bus. & Prof. Code, § 10145; Cal. Code Regs., tit. 10, § 2832.)¹

Unlicensed Signatory

18. During the audit period, respondent, Tami Stoll, and Kasey Faccinto were the authorized signors for Trust Account No. 1 and Trust Account No. 2. Ms. Faccinto is not licensed in any respect by the Bureau nor did respondent maintain fidelity bond coverage for her during this period. (Cal. Code Regs., § 2834.)

Mitigation/Rehabilitation

19. Respondent is 39 years old. He is married and has one minor son with his Ms. Stoll. Respondent is also stepfather to Kasey Faccinto, Tami Stoll’s daughter from a previous relationship.

20. Respondent is currently a part owner of Stratus Property Management. Respondent’s other business interests include Stratus Construction (established 2009 or 2010), Lennox Landscaping (established 2014), and Stratus Consulting & Investing (established 2004).

21. Respondent is an active member of the U.S. Navy, presently assigned to the VFA-122 in Lemoore, California as an F-18 instructor pilot. Prior to becoming a flight instructor, respondent served as the Safety Officer of Strike Fighter Wing Pacific Fleet. In that capacity, he has been deployed overseas seven times in the last eleven years. Most recently, he was deployed to the Middle East for 17 months, leaving in January 2015 and returning in July 2016.

22. In 2007, respondent started Stratus Property Management with his then future wife, Tami Stoll. At the time, Tami Stoll was a licensed real estate broker with the Bureau (License No. B/01400476). In March 2007, Ms. Stoll added the DBA’s “Stratus Property Management” and “Stratus Commercial” to her broker’s license. Respondent obtained his broker’s license in 2008, but continued to work full-time for the U.S. Navy.

23. In 2013, Ms. Stoll underwent two back surgeries which proved unsuccessful. At the same time, respondent was negotiating his upcoming tour to the Middle East. These events placed significant stress and strain on their relationship, especially as they continued to operate their property management business. On January 21, 2014, Ms. Stoll filed for legal separation and moved out of the family home with their son.

24. After his wife and son moved out, respondent assumed full-time management of the Stratus Property Management while continuing to serve as a full-time Naval flight

¹ At hearing, Mr. Li testified that an LLC is not a recognized entity under Real Estate Law and therefore cannot operate as a licensee for the Bureau.

instructor. On January 28, 2014, Tami Stoll canceled the DBA's on her license, including the DBA "Stratus Property Management." At her request, respondent removed Ms. Stoll's access to the business accounts and trust accounts. Thereafter, as set forth in Finding 16, respondent's attempts to register the DBA under his broker's license were unsuccessful. At hearing, respondent described the lack of DBA registration as an "oversight" as "Stratus Property Management" was properly registered previously under his wife's license.

25. In March 2014, respondent joined the Tulare County Association of Realtors, as well as the California and national realtor associations. Around the same time, he hired Kari Bunch, an accountant based in Texas, to assist with trust account reconciliations and the daily maintenance of the company's trust accounts using Bodium online accounting software. Respondent believed Ms. Bunch was familiar with California accounting practices generally because she had other California clients. Over a nine-month period, from March to December 2014, respondent paid Ms. Bunch roughly \$6,000 for accounting services rendered.

26. When respondent received notice of the upcoming Bureau audit, Ms. Bunch assured him that the accounting records and reconciliations were in order and there were no trust account or banking issues. Respondent believes the deficiencies found in the Z Douty Account were the results of data entry errors by Ms. Bunch, though he produced no documents to establish said errors.

27. Respondent confirmed that his stepdaughter, Ms. Faccinto, worked for the property management business throughout the audit period. Though she was unlicensed, Ms. Faccinto was in the process of obtaining a real estate license and was scheduled to take her exam in July 2014. Respondent admitted that Ms. Faccinto was an authorized signor on both trust accounts, that she was not licensed, that she was not covered by a fidelity bond, and that he was aware of all these facts at the time.

28. Respondent explained the Z Douty Account (Trust Account No. 1) was fictitious and created by Ms. Bunch to use as a clearing account to complete reconciliations immediately prior to the audit. Respondent believes Ms. Bunch mistakenly entered redundant transactions into properties already entered, resulting in the \$46,281.46 negative balance. Respondent asserted he did not authorize the redundant transactions nor was he aware of them at the time.

29. Regarding the \$8,014.13 shortage in Trust Account No. 2, respondent asserted it was the result of a clerical error by RaboBank when the bank mistakenly deposited funds intended for Stratus Property Management into the account for Stratus Consulting & Investing. The error was not discovered until banking reconciliations were performed at the time of the audit. Upon discovery, the bank immediately corrected the error. The trust accounts are no longer held at RaboBank.

30. Respondent also blames RaboBank for adding "LLC" to the name of Trust Account No. 1 and Trust Account No. 2. The checks for each account state "Stratus Property Management" without the "LLC." This matches the business's name as it is registered with

the Internal Revenue Service. When respondent questioned the addition of "LLC" on the account names, the bank manager assured him that it was proper.

31. Respondent and Ms. Stoll reconciled in the fall of 2014. Ms. Stoll underwent another back surgery which was successful. The DBA "Stratus Property Management" was added to Ms. Stoll's broker license on April 27, 2015. Currently, she runs the daily operations of Stratus Property Management.

32. In August 2016, respondent completed a correspondence/home study course and passed the final exam. The course included and tested on the following subjects: Landlords, Tenants, & Property Management; Agency; Fair Housing; Trust Funds; Ethics; Risk Management; and, Office Management and Supervision.

Discussion

33. Complainant does not allege nor was there any evidence that respondent's violations were intentional or malicious. It is undisputed he cooperated with Mr. Li and took appropriate steps to remedy the violations revealed by the Bureau's audit. Additionally, respondent was under considerable stress in his military and personal life during the audit period and it is reasonable to assume these stressors contributed to his failure to be more diligent in his business practices.

34. None of respondent's client property owners suffered any financial loss resulting from his actions in this matter. Respondent has had no prior Bureau discipline or consumer complaints. Presently, Stratus Property Management is properly licensed under Tami Stoll's license and respondent's violations have since been remedied. Respondent no longer manages Stratus Property Management as Tami Stoll has assumed its daily operation. No additional disciplinary action has been taken against respondent, Tami Stoll, or the business. Additionally, he has completed continuing education courses to better his understanding of the laws and regulations governing his broker's license.

35. Notwithstanding the above, respondent's violations of his duties as a broker are serious. At times, he did not seem to comprehend the gravity of some violations. He described his use of an unlicensed DBA as an "oversight at worst." He offered no excuse for knowingly listing an unlicensed person as a signor on the trust accounts yet failing to obtain fidelity bond coverage for her. Respondent directed partial or entire blame to Ms. Bunch, the bank, or "human error" for the account shortages, lack of monthly reconciliations, and addition of "LLC" to the names of the trust accounts.

36. Respondent's violations were not intentional or malicious, and they have since been remedied. Thus, outright revocation of his broker's license is unnecessary to protect the public. However, public protection does require that respondent serve a period of suspension to ensure he understands and better familiarizes himself with his duties as a licensed broker as well as the laws and regulations which govern his license.

Costs Recovery

37. Pursuant to Business and Professions Code sections 10148, subdivision (b), and 10106, the Bureau is authorized to seek reimbursement of the reasonable costs of the audit, investigation, and enforcement at hearing from a licensee found to have committed a violation of the Real Estate Law. The Bureau submitted a signed declaration and activity/cost detail for enforcement and prosecution of this case.

38. Bureau auditors spent 85 hours on this case at a cost of \$5,425.96, including travel expenses. Bureau investigators and staff spent 21.10 hours investigating the case at a cost of \$1,335.45. Legal counsel spent 12.10 hours from January to August 17, 2016, preparing this case for hearing at a cost of \$1,076.90. All of these costs were supported by declarations and cost details. The scope of work and amounts charged by complainant are reasonable in light of the allegations and legal issues in this matter. Thus, the total of complainant's reasonable costs for audit, investigation and enforcement are \$7,838.31.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving, by clear and convincing evidence, that the charges in the accusation are true. (Evid. Code § 115; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Applicable Law

2. "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." (Bus. & Prof. Code, § 10145, subd. (a)(1).)

3. 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 "willfully disregarded or violated the Real Estate Law," or "demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license." (Bus. & Prof. Code, § 10177, subs. (d) and (g).):

4. 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.

(Cal. Code Regs., tit. 10, § 2831.1, subd. (a).)

5. "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." (Cal. Code Regs., tit. 10, § 2831.1, subd. (b).)

6. "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." (Cal. Code Regs., tit. 10, § 2831.2.)

7. A broker must "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 in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson." (Cal. Code Regs., tit. 10, § 2832.)

8. 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.” (Cal. Code Regs., tit. 10, § 2832.1.)

9. “Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker: ... (3) 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., § 2834, subd. (a).)

10. “Every person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified copy of his fictitious business name statement filed with the county clerk...” (Bus. & Prof. Code, § 10159.5.) “A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.” (Cal. Code Regs., tit. 10, § 2731, subd. (a).)

Causes for Discipline

11. As set forth in Factual Findings 6 through 12, respondent’s Trust Account No. 1 and Trust Account No. 2 had had a shortage of trust funds in the amounts of \$48,781.46 and \$8,014.13, respectively, as of September 30, 2014. Respondent did not have the written permission of the owners of the trust funds for the negative balance. Therefore, cause exists to discipline respondent’s real estate broker license pursuant to Business and Professions Code sections 10145 and 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, section 2832.1.

12. As set forth in Factual Findings 6 through 8 and 13, respondent failed to reconcile on a monthly basis the balance of all separate records with the balance of the control records for Trust Account No. 1 and Trust Account No. 2, respectively. Thus, cause exists to discipline respondent’s real estate broker license pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, section 2831.2.

13. As set forth in Factual Findings 6 through 8 and 14 through 16, respondent conducted property management activities under the name “Stratus Property Management,” a DBA which was not licensed with the Bureau during the audit period. Thus, cause exists to discipline respondent’s real estate broker license pursuant to Business and Professions Code sections 10159.5 and 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, section 2731.

14. As set forth in Factual Findings 6 through 8 and 17, respondent failed to designate Trust Account No. 1 and Trust Account No. 2 as a trust account in respondent’s name or a licensed fictitious business name. Thus, cause exists to discipline respondent’s real estate broker license pursuant to Business and Professions Code sections 10145 and 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, section 2832.

15. As set forth in Factual Findings 6 through 8 and 18, respondent knowingly listed an unlicensed person as a signor for Trust Account No. 1 and Trust Account No. 2 without providing fidelity bond coverage. Thus, cause exists to discipline respondent's real estate broker license pursuant to Business and Professions Code sections 10145 and 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, section 2834.

Costs Recovery Analysis

16. The Commissioner has discretion to recoup audit costs after a disciplinary hearing if the broker has been found to have violated Business and Professions Code section 10145 or any related regulation. (Bus. & Prof. Code, § 10148, subd. (b).) Additionally, the Commissioner may request the administrative law judge (ALJ) to direct a licensee found to have committed a violation of the Real Estate Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106, subd. (a).)

17. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include 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, and the extent of the licensee's financial ability to make later payments. Further, full costs may not be assessed when a "disproportionately large investigation" was conducted given the circumstances of the case. Finally, the ALJ should consider the public interest in regulating the targeted conduct.

18. By reason of the matters set forth in Factual Findings 38 and 39, in conjunction with an analysis pursuant to the factors set forth in *Zuckerman*, it is determined that a cost assessment of \$7,838.31 represents a reasonable amount to impose on respondent. Respondent shall reimburse the Bureau in this amount.

ORDER

All licenses and licensing rights of respondent Matthew Drescher Stoll under the Real Estate Law are suspended for a period of one hundred twenty (120) days from the effective date of this Decision; provided, however, that sixty (60) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

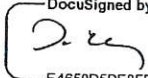
1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and

reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

3. Respondent shall, within sixty (60) days from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until he passes the examination.
4. Respondent shall pay the Bureau's costs associated with its audit, investigation and enforcement pursuant to Business and Professions Code sections 10106, subdivision (a) and 10148, subdivision (b), in the amount of \$7,838.31.

Respondent shall be permitted to pay these costs in a payment plan approved by the Bureau. Respondent's failure to make payments in accordance with any formal agreement entered into with the Bureau or pursuant to any Decision by the Bureau shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: September 2, 2016

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TIFFANY L. KING
Administrative Law Judge
Office of Administrative Hearings