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FILED

SEP 29 2017

BUREAU OF REAL ESTATE

By 

**BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation of

STACEY ANN HAVENER,

Respondent(s).

) CalBRE NO. H-03010 FR

) OAH NO. 2016051017

ORDER STAYING EFFECTIVE DATE

On September 12, 2017, a Decision was rendered in the above-entitled matter to become effective October 09, 2017.

IT IS HEREBY ORDERED that the effective date of the Decision of September 12, 2017, is stayed for a period of 30 days to allow Respondent STACEY ANN HAVENER to file a petition for reconsideration.

The Decision of September 12, 2017, shall become effective at 12 o' clock noon on November 08, 2017.

DATED: 9/29/17.

WAYNE S. BELL
REAL ESTATE COMMISSIONER

By: 
DANIEL J. SANDRI
Chief Deputy Commissioner

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FILED

SEP 19 2017

BUREAU OF REAL ESTATE

By *Al Delois*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

Case No. H-03010 FR

STACEY ANN HAVENER,)

OAH No. 2016051017

Respondent.)

DECISION AFTER REJECTION

This matter was heard by John E. DeCure, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, State of California, on November 17 and 18, 2016, and February 17, 2017, in Los Angeles, California.

Diane Lee, Counsel for the Bureau of Real Estate, represented Complainant Brenda Smith ("complainant"), a Supervising Special Investigator for the Bureau of Real Estate ("Bureau"). Respondent Stacey Ann Havener ("respondent") appeared personally and was represented by Edward Lear, Attorney at Law.

Oral and documentary evidence was received, and argument was heard. The record was held open for respondent to submit further evidence in the form of four signed character-reference letters, unsigned copies of which had been previously marked at hearing as Exhibits I, J, K and AA, but were not yet received in evidence. Respondent timely submitted the four signed letters on February 27, 2017. Complainant made no objection to

1 the letters being received into evidence. The signed letters were marked and received into
2 evidence as Exhibits I, J, K and AA, replacing the unsigned letters. The matter was submitted
3 for decision on March 6, 2017.

4 On April 5, 2017, the ALJ issued a Proposed Decision which I declined to
5 adopt as my Decision herein.

6 Pursuant to California Government Code section 11517(c), respondent was
7 served with notice of my determination not to adopt the Proposed Decision of the ALJ along
8 with a copy of said Proposed Decision. Respondent was notified that I would decide the case
9 upon the record, the transcript of proceedings held on November 17 and 18, 2016, and
10 February 17, 2017, and upon any written argument offered by respondent and complainant.
11 Complainant and respondent each submitted argument.

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

20 I have given careful consideration to the record in this case, including the
21 transcript of proceedings of November 17 and 18, 2016, and February 17, 2017. I have also
22 considered the argument submitted by complainant and respondent. The following shall
23 constitute the Decision of the Real Estate Commissioner ("Commissioner") in this
24 proceeding:

25 FACTUAL FINDINGS

26 The Findings of Fact in the Proposed Decision of the ALJ, dated April 5,
27 2017, are hereby adopted as a part of this Decision with the exception of FACTUAL

1 FINDING, Nos. 28-31, which shall now read as follows:

2 *Culpability*

3 28. Respondent stipulated to most of the allegations of the First Amended
4 Accusation, including the violations contained in the audit report. Respondent also conceded
5 that she permitted Hudson, her unlicensed husband, to operate the property management
6 business after she became the responsible broker. She said she did so because her expertise is in
7 property sales rather than property management, and because she trusted her husband.
8 Respondent delegated her broker responsibility to Hudson with the knowledge that Hudson had
9 lost his broker license due to his own trust fund mishandling.

10 29. Respondent cannot deny responsibility for Hudson's mismanagement of the
11 property management business. By virtue of respondent's decision to entrust him to operate All
12 Seasons, including handling trust funds with little or no supervision, respondent is responsible
13 for Hudson's actions. "If a licensee elects to operate his business through employees he must be
14 responsible to the licensing authority for their conduct in the exercise of his license and he is
15 responsible for the acts of his agents or employees done in the course of his business in the
16 operation of the license." *Arenstein v. California State Bd. of Pharmacy*, 265 Cal.App.2d 179,
17 192 (1968). A licensee's liability for its employees in a regulatory enforcement proceeding is
18 referred to as a "nondelegable duty," the purpose of which is "the prevention of future harm to
19 the public by giving the licensees strong incentives to ensure that their employees' conduct
20 conforms to the law." *California Assn. of Health Facilities v. Department of Health Services*,
21 16 Cal. 4th 284, 296 (1997). "By virtue of the ownership of a . . . license such owner has a
22 responsibility to see to it that the license is not used in violation of the law." *Ford Dealers*
23 *Assn. v. Dept. of Motor Vehicles*, 32 Cal.3d 347, 360 (1982).

24 30. Despite respondent's assurances that she will adhere to the Bureau's laws,
25 rules and regulations pertaining to the operation of her property management business, neither
26 respondent nor Ms. Sheldon testified that R has implemented the policies and procedures
27 contained in Ms. Sheldon's ASPM plan (Exhibit W). For example, as of the time of the hearing

1 respondent still had not opened a trust account, much less the multiple trust accounts—one for
2 each property—suggested by Ms. Sheldon. Further, while respondent testified in general terms
3 that she had repaid all clients monies owed to them, she failed to address the issue of the
4 \$24,812.58 trust fund shortage found by the auditor as of the close of the audit period.
5 Respondent testified that by her “estimate” she had paid out “approximately” \$20,000 of her
6 own money to satisfy client obligations, yet she offered neither specific testimony tending to
7 show that these payments cured the trust fund shortage nor documentary evidence to
8 corroborate her testimony.

9 LEGAL CONCLUSIONS

10 The Legal Conclusions in the Proposed Decision of the ALJ, dated April 5,
11 2017, are hereby adopted as a part of this Decision with the exception of LEGAL
12 CONCLUSIONS, No. 29, which shall now read as follows:

13 29. While Respondent repeatedly expressed remorse for the harm caused by
14 her misconduct, the genuineness of those expressions must be weighed against Respondent’s
15 conscious decision to delegate her broker responsibilities to an unlicensed individual who
16 surrendered his real estate license when large trust fund shortages were found the Bureau.
17 “[E]xpressing remorse for one’s misconduct is an elementary moral precept which, standing
18 alone, deserves no special consideration in determining the appropriate discipline.” *Hipolito*
19 *v. State Bar*, 48 Cal.3d 621, 626-627 (1989). A mitigating factor is Respondent’s retention of
20 the services of a qualified professional to develop a future plan for the accounting, financial
21 and record-keeping aspects of Respondent’s property management business. Never-the-less,
22 given Respondent’s apparent preference for sales activity over that of property management
23 as well as her demonstrated lack of experience in the record-keeping responsibilities inherent
24 in property management, there is little or no assurance that Respondent will implement the
25 professional’s proposed plan. Based on the foregoing, it cannot be determined that the public
26 will be protected if Respondent is permitted to continue to handle trust funds as a broker.

1 Real estate licensees occupy a unique position of trust and responsibility
2 toward the consuming public. The objective of license disciplinary proceedings is to protect
3 the public, the licensed profession, maintain integrity, high standards and preserve public
4 confidence in licensees. *Camacho v. Youde*, 95 Cal.App.3d 161, 165 (1975); *Clerici v.*
5 *Department of Motor Vehicles*, 224 Cal.App.3d 1016, 1030-1031 (1990). The propriety of a
6 disciplinary penalty is a matter within the discretion of the administrative agency imposing a
7 penalty, and, therefore, the penalty will not be overturned by a reviewing court absent a
8 manifest abuse of discretion. *Martin v. Alcoholic Bev. Etc. Appeals Bd.*, 52 Cal.2d 287, 291
9 (1959); *Cadilla v. Board of Medical Examiners*, 26 Cal.App.3d 961, 966 (1972).

10 ORDER

11 WHEREFORE, THE FOLLOWING ORDER is hereby made:

12 I. All licenses and licensing rights of respondent STACEY ANN HAVENER
13 under the Real Estate Law are revoked; provided, however, a restricted real estate
14 salesperson license shall be issued to respondent pursuant to Business and Professions Code
15 ("Code") section 10156.5 if respondent makes application therefor and pays to the Bureau
16 the appropriate fee for the restricted license within 90 days from the effective date of this
17 Decision and Order. The restricted license issued to the respondent shall be subject to all of
18 the provisions of Section 10156.7 of the Code and to the following limitations, conditions
19 and restrictions imposed under authority of Section 10156.6 of said Code:

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

24 2. The restricted license issued to respondent may be suspended prior to hearing
25 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
26 respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
27

1 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
2 license.

3 3. Respondent shall not be eligible to apply for the issuance of an unrestricted
4 real estate license nor for removal of any of the conditions, limitations or restrictions of a
5 restricted license until four (4) years have elapsed from the effective date of this Decision and
6 Order.

7 4. Respondent shall submit with any application for license under an employing
8 broker, or any application for transfer to a new employing broker, a statement signed by the
9 prospective employing real estate broker on a form approved by the Bureau which shall certify:

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

12 (b) That the employing broker will exercise close supervision over the
13 performance by the restricted licensee relating to activities for which a
14 real estate license is required.

15 II. Respondent shall, within nine (9) months from the effective date of this
16 Decision and Order, present evidence satisfactory to the Commissioner that respondent has,
17 since the most recent issuance of an original or renewal real estate license, taken and
18 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of
19 the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this
20 condition, respondent's real estate license shall automatically be suspended until respondent
21 presents evidence satisfactory to the Commissioner of having taken and successfully
22 completed the continuing education requirements. Proof of completion of the continuing
23 education courses must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box
24 137013, Sacramento, CA 95813-7013.

25 III. Pursuant to Section 10148 of the Code, respondent shall pay the sum of
26 \$10,370.00 for the Commissioner's cost of the audits which led to this disciplinary action.
27 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefor from the

1 Commissioner. Payment of audit costs should not be made until respondent receives the
2 invoice. If respondent fails to satisfy this condition in a timely manner as provided for herein,
3 respondent's real estate license shall automatically be suspended until payment is made in full,
4 or until a decision providing otherwise is adopted following a hearing held pursuant to this
5 condition.

6 Pursuant to Section 10148 of the Code, Respondent shall pay the
7 Commissioner's reasonable cost, not to exceed \$12,962.50, for an audit to determine if
8 respondent has corrected the violation(s) found in the original audit. In calculating the amount
9 of the Commissioner's reasonable cost, the Commissioner may use the estimated average
10 hourly salary for all persons performing audits of real estate brokers, and shall include an
11 allocation for travel time to and from the auditor's place of work. Respondents shall pay such
12 cost within sixty (60) days of receiving an invoice therefor from the Commissioner. Payment of
13 the audit costs shall not be made until respondent receives the invoice. If respondent fails to
14 satisfy this condition in a timely manner as provided for herein, respondent's real estate license
15 shall automatically be suspended until payment is made in full, or until a decision providing
16 otherwise is adopted following a hearing held pursuant to this condition.

17 IV. All licenses and licensing rights of respondent are indefinitely suspended
18 unless or until respondent pays the sum of \$6,222.45 for the Commissioner's reasonable cost
19 of the investigation and enforcement which led to this disciplinary action. Said payment shall
20 be in the form of a cashier's check made payable to the Bureau of Real Estate. The
21 investigative and enforcements costs must be delivered to the Bureau of Real Estate, Flag
22 Section at P.O. Box 137013, Sacramento, California 95813-7013, prior to the effective date
23 of this Decision and Order.

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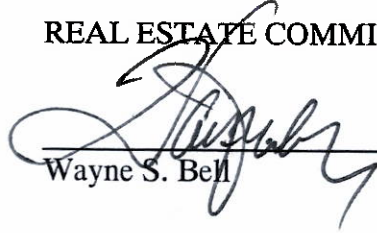
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This Decision shall become effective at 12 o'clock noon on OCT - 9 2017

2017.

IT IS SO ORDERED Sept. 12, 2017.

REAL ESTATE COMMISSIONER



Wayne S. Bell

Auto

FILED

MAY - 9 2017

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	CalBRE No. H-3010 FR
	)	
STACEY ANN HAVENER,	)	
	)	OAH No. 2016051017
Respondent.	)	

NOTICE

TO: STACEY ANN HAVENER, Respondent, and EDWARD O. LEAR , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 5, 2017, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 5, 2017, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Friday, February 17, 2017, and any written argument hereafter submitted on behalf of respondent and complainant.

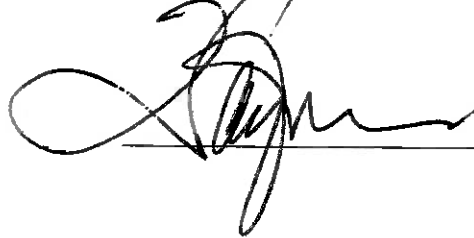
Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Friday, February 17, 2017, at the Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for good

1 cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Los Angeles Office of the Bureau of Real
4 Estate unless an extension of the time is granted for good cause shown.

5 DATED: 5/3/2017.

6 WAYNE S. BELL
7 REAL ESTATE COMMISSIONER

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

In the Matter of the First Amended
Accusation of:

STACEY ANN HAVENER,

Respondent.

Case No. H-03010 FR

OAH Case No. 2016051017

PROPOSED DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter, in Los Angeles on November 17 and 18, 2016, and February 17, 2017. Evidence was received and argument was heard. The record was held open for respondent to submit further evidence in the form of four signed character-reference letters, unsigned copies of which had been previously marked at hearing as Exhibits I, J, K and AA, but were not yet received in evidence. Respondent timely submitted the four signed letters on February 27, 2017. Complainant was given until March 6, 2017 to lodge any objections, but did not object. The signed letters were marked as Exhibits I, J, K and AA, replacing the unsigned letters in the record. Exhibits I, J, K and AA were received in evidence. The record was closed and the matter was submitted for decision on March 6, 2017.

Diane Lee, Bureau of Real Estate Counsel, represented Brenda Smith (complainant).

Edward Lear, Attorney at Law, represented Stacey A. Havener (respondent), who was present throughout the hearing.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the First Amended Accusation in her official capacity as Supervising Special Investigator of the Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.

2. Respondent timely submitted a Notice of Defense, which contained a request for a hearing.

3. On January 30, 2001, the Bureau issued real estate salesperson license number 01303680 to respondent. On February 9, 2005, the Bureau issued a real estate broker license to respondent under the same license number. Respondent's broker license expired on March 7, 2017.¹ From August 5, 2014 until the present, respondent has had the DBA of "All Seasons Real Estate" (All Seasons).

Overview of Allegations

4. This matter involves a First Amended Accusation brought against respondent, a licensed real estate broker. Most of the allegations initially involve the acts or omissions of respondent's husband, Milton L. Hudson (Hudson), a licensed real estate broker who surrendered his license on November 25, 2013, because of a Bureau audit investigation of his property management activities. The allegations against Hudson when he surrendered involved his alleged misconduct in the operation of his property management business, and included causing trust accounting shortages, making misrepresentations, and commingling trust funds. Following his surrender, Hudson continued doing property management in connection with respondent's company, All Seasons. The evidence established that respondent had little, if any, involvement in Hudson's activities and failed to supervise his actions. Respondent's focus as a real estate broker has always been on real estate purchases and sales. She has no interest in property management and is associated with such work only through Hudson's past activities. Respondent did not dispute most of the factual allegations contained in the First Amended Accusation, and much of the hearing was devoted to the issue of whether factors both in aggravation and in mitigation existed.

Partial Stipulation to Allegations

5. At the administrative hearing, the parties stipulated to the truth of the following allegations in the First Amended Accusation:²

4. From December 18, 2013 through the present, Milton Lance Hudson ("Hudson"), HAVENER's husband, was not, and

¹ Business and Professions Code section 10103 provides, "The lapsing or suspension of a license by operation of law or by order or decision of the department or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the [Bureau] of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render a decision suspending or revoking such license."

² The numbering of the paragraphs is unchanged from the way it appears in the First Amended Accusation. The parties did not stipulate to the truth of paragraphs 4 and 5, which are set forth here only to provide context.

still is not, licensed by the Bureau in any capacity. From August 1991 to December 18, 2013, Hudson was a real estate broker (license no. 01116933). On November 25, 2013, the Real Estate Commissioner issued an Order Accepting Voluntary Surrender of Real Estate License, in case no. H-02790 FR, that became effective December 18, 2013, and was made in connection with an audit investigation of Hudson's property management activities. As more fully set forth in the Second Amended Accusation in that case, Hudson allegedly had multiple violations of Real Estate Law and Regulations in his property management business, including, but not limited to, causing a trust fund shortage of \$19,180.16 without the owners' written consent, making misrepresentations, commingling trust funds, and using the unlicensed DBA of All Seasons Property Management. From August 23, 1991 to May 15, 2008, Hudson had the licensed DBA of American Financial of California. From May 16, 2008 to December 18, 2013, Hudson had the licensed DBA of All Season's Realty.

5. At all times mentioned, in the County of Kern and County of Ventura, HAVENER and Hudson engaged in the business of a real estate broker conducting licensed activities within the meaning of Code section 10131(b). HAVENER and Hudson engaged in operating a real property management company by leasing, renting, and/or offering to rent, placing for rent, soliciting for prospective tenants, and/or collecting rents from real property.

6. On or about June 11, 2015, the Bureau of Real Estate completed a property management audit examination of the books and records of HAVENER limited to determine whether HAVENER handled and accounted for trust funds and conducted her real estate activities in accordance with the Real Estate Law and Regulations. The audit examination covered a period of time beginning on January 1, 2014 and ended on March 1, 2015. The audit examination revealed violations of the Code³ and the Regulations⁴ set forth in the following

³ The references to "Code" in the First Amended Accusation are to the Business and Professions Code. All further references to "Code" herein shall be to the Business and Professions Code.

paragraphs, and more fully discussed in Audit Report FR130024 and the exhibits and work papers attached to said audit report.

Bank Account and Trust Accounts

7. At all times mentioned, in connection with the activities described in Paragraph 4, above, HAVENER accepted or received funds including funds in trust ("trust funds") from or on behalf of actual or prospective parties, such as owners of real property, involved in property management services, and thereafter made deposits and/or disbursements of such funds. From time to time herein mentioned, during the audit period, said trust funds were deposited and/or maintained by HAVENER in the bank account as follows:

"Base Camp LLC DBA All Seasons Property Management
DBA All Seasons Realty"

*****2561

Union Bank

P.O. Box 512380

Los Angeles, CA 90051

(B/A #1)

On or about May 9, 2013, HAVENER opened this bank account as the sole signatory.

8. In the course of activities described in Paragraphs 5 and 7, above, and during the audit examination period in Paragraph 6, above, Respondent HAVENER acted in violation of the Code and the Regulations as set forth below:

(a) Permitted, allowed, and/or caused the disbursement of trust funds from B/A #1 where the disbursement of funds reduced the total amount of aggregate funds to the amount of \$20,941.47 on December 31, 2014, \$19,317.92 on January 31, 2015, and \$24,812.58 on February 28, 2015 less than the existing aggregate trust fund liability of Respondent to every principal who was the owner of said funds without first obtaining prior written consent of the owners of said funds, in violation of Code section 10145 and Regulations sections 2831, 2831.1, and 2832.1.

⁴ The references to "Regulations" in the First Amended Accusation are to the California Code of Regulations, title 10, Chapter 6. All further references to "Regulations" herein shall be to the California Code of Regulations, title 10, Chapter 6.

(b) Deposited trust funds in B/A #1, which was not designated as a trust account, in violation of Code section 10145(a) and Regulations section 2832.

(c) Failed to maintain a control record in the form of a columnar record in chronological order of all trust funds received, deposited, and disbursed, in violation of Code section 10145 and Regulations section 2831.

(d) Failed to maintain an accurate and complete separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited, and disbursed from B/A #1, in violation of Code section 10145 and Regulations section 2831.1.

(e) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulations section 2831.1 with the record of all trust funds received and disbursed by B/A #1, in violation of Code section 10145 and Regulations section 2831.2.

(f) Commingled trust funds with other monies in B/A #1, in violation of Code section 10176(e).

(g) Approximately ninety (90) checks bounced due to insufficient funds during the audit examination period of January 1, 2014 to March 1, 2015, in violation of Code section 10145 and Regulations section 2832.1.

9. The conduct of Respondent HAVENER described in Paragraph 8, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
8(a)	Code section 10145 and Regulations sections 2831, 2831.1, and 2832.1
8(b)	Code section 10145(a) and Regulations section 2832
8(c)	Code section 10145 and Regulations section 2831
8(d)	Code section 10145 and Regulations section 2831.1
8(e)	Code section 10145 and Regulations section 2831.2
8(f)	Code section 10176(e)
8(g)	Code section 10145 and Regulations section 2832.1

The foregoing violations constitute cause for discipline of the real estate license and license rights of Respondent HAVENER under the provisions of Code sections 10176(e), 10177(d), 10177(g), 10177(h), and/or 10177(j).

20. On or about April 20, 2004, Jennings Real Estate entered into a Property Management Agreement with Mountainside

Disposal, the owner of 612 Pomona Trail, Frazier Park, CA 93225 ("Pomona Trail Property"), through Ray S.⁵ for said property. Pursuant to this Property Management Agreement, security deposits were to be placed in a trust account.

21. In 2008, Hudson DBA All Season's Realty bought out Jennings Real Estate, including the Property Management Agreement pertaining to the Pomona Trail Property.

22. When or soon after Hudson no longer had a real estate license and licensing rights on December 18, 2013, the property management contract for the Pomona Trail Property was transferred to HAVENER.

23. HAVENER DBA All Seasons Property Management, which was and is an unlicensed DBA, issued several checks to Mountainside Disposal for its draw from B/A #1, which was not a trust account, and these checks bounced due to insufficient funds. These checks include, but are not limited to, check #1405 issued on or about January 15, 2014 and check #1527 issued on or about April 2, 2014.

27. On or about October 9, 2013, Hudson DBA All Seasons Realty entered into a rental agreement with David and Jackie I. for 1013 Lion Court, Frazier Park, CA 93225 ("Lion Property"). Pursuant to this rental agreement, David and Jackie I. paid \$1,500 and were to pay \$375 more for a total of \$1,875 for the security deposit, which was to be held in a trust account.

28. When or soon after Hudson no longer had a real estate license and licensing rights on December 18, 2013, HAVENER took over Hudson's rental agreement for the Lion Property.

29. On or about July 15, 2014, HAVENER DBA All Seasons Property Management, which was and is not a licensed DBA, issued check #1602 in the amount of \$1,875 to David and Jackie I. to refund their security deposit. The check was from B/A #1, which was not a trust account. Soon after, this check bounced due to insufficient funds.

35. On or about September 4, 2014, HAVENER changed her main office address on record with the Bureau of Real Estate

⁵ The full names of property management clients set forth in the First Amended Accusation were withheld to protect the clients' privacy.

from 16225 Askin Drive, Pine Mountain Club,⁶ CA 93222 to 16311 Askin Drive, Pine Mountain Club, CA 93222. To date, HAVENER's main office address on record with the Bureau of Real Estate remains 16311 Askin Drive, Pine Mountain Club, CA 93222.

36. On or about April 27, 2015, HAVENER DBA All Seasons Property Management entered into a Holding Deposit Agreement and Receipt with Romuls G. and Terre A. for 17478 Lockwood Valley Road, Frazier Park, CA 93225 ("Lockwood Valley Property"), and Romuls G. and Terre A. paid \$800.00 to HAVENER DBA All Seasons Property Management, an unlicensed DBA.

37. On or about April 27, 2015, Romuls G. and Terre A. paid \$800.00 in cash to HAVENER. HAVENER gave them a receipt from "All Seasons Realty" with the address, "620 Monterey Trail, Frazier Park, CA 93225," which is an address that HAVENER has never had on record with the Bureau of Real Estate as a main office address, branch address, or mailing address.

38. On or about April 27, 2015, HAVENER DBA All Seasons Property Management provided Romuls G. and Terre A. with a business card stating her name was "Stacey Havener-Hudson."

39. On or about April 30, 2015, HAVENER and Hudson facilitated the rental agreement between Henrick T., the owner of the Lockwood Valley Property, and Romuls G. and Terre A. for said property. Pursuant to this rental agreement, the rent was and is \$800 per month from May 1, 2015 to April 30, 2016, and the security deposit was \$800.00.

42. On or about September 3, 2013, HAVENER became the sponsoring broker of salesperson Katy Marie Cruse ("Cruse"), license no. 01819661. Cruse's previous sponsoring broker was Hudson. However, HAVENER and Cruse did not have a Broker-Salesperson Relationship Agreement until on or about May 1, 2014, in violation of Code sections 10177(g) (negligence or incompetence) and 10177(h) (failure to exercise reasonable

⁶ Pine Mountain Club is a small, unincorporated community close to Frazier Park.

supervision) and Regulations section 2726 (broker-salesperson agreement).

43. On or about January 29, 2014, HAVENER became the sponsoring broker of salesperson Carole Anne Swanston ("Swanston"), license no. 01241300. Swanston's previous sponsoring broker was Hudson. However, HAVENER and Swanston did not have a Broker-Salesperson Relationship agreement until on or about May 1, 2014, in violation of Code sections 10177(d) (willful disregard or violation of Real Estate Law), 10177(g) (negligence or incompetence) and 10177(h) (failure to exercise reasonable supervision) and Regulations section 2726 (broker-salesperson agreement).

Other Allegations

6. Diana Brewster, a Bureau General Auditor for 16 years, testified that she performed the audit on respondent's business that led to the allegations in this matter. Ms. Brewster reiterated the allegations to which the parties stipulated and as set forth above in Finding 5.⁷ Respondent cooperated with the audit and admitted she did not have a designated trust account. Respondent did not directly engage in property management, so she referred Ms. Brewster to Hudson when Ms. Brewster asked for documents regarding properties he managed. Ms. Brewster stated that respondent, as a licensed realtor, must be aware of all real estate laws, rules, and regulations regarding having a designated trust account, making monthly reconciliations of the trust account, controlling records, and so on. Hudson, as an unlicensed person, should not have had direct access to funds the way he did.

7. Karrie D. and her husband, Eugene D., entered into a property management agreement with Hudson on August 5, 2013, to rent their home in Lebec to prospective tenants. Karrie D. testified that the renters Hudson located to sign a one-year lease agreement to rent their home were a "complete and total nightmare," fighting with their neighbors, causing damage to the property, and ultimately overstaying the term of the lease. Hudson was supposed to deduct a small portion of the monthly rent the renters paid each month to pay for utilities, but several checks of unspecified amounts that Hudson submitted for utilities bounced, and the D.'s later found they owed \$300 in utilities due to Hudson's failure to pay. Karrie D. further alleged that Hudson failed to return the tenant's security deposit when the tenants eventually moved out.

8. Karrie D. was bitter toward respondent, contending that she had committed "a crime;" yet Karrie D. admitted all her dealings were with Hudson, and she conceded it was not Hudson's fault the renters turned out to be "bad people." Karrie D. was critical of respondent because when she visited her once and described Hudson's poor service and

⁷ In particular, Ms. Brewster discussed the stipulated facts in sub-paragraphs 6 through 9 of Finding 5.

mishandling of funds, respondent apologized for Hudson's actions, but she did not "act surprised or appalled." Karrie D. claimed respondent failed to resolve the mishandling of funds, but she admitted that respondent endeavored to repay the money she owed Karrie D. in order to settle their account, did so, and so now their account is resolved.

9. Ray S., an employee of Mountain Disposal, testified that he dealt with Hudson regarding a property for rent that his employer owned, and for which Hudson provided property management services. In May 2014, Ray S. went to respondent's realty office and spoke with Hudson on the owner's behalf regarding the issue of how great a portion of a renter's security deposit Mountain Disposal should return to the renter, via Hudson, at the end of a lease. According to Ray S., respondent was listening to the conversation he had with Hudson, but she did not participate. Ray S. had no direct dealings with respondent regarding this rental property; instead, he dealt with Hudson several times.

10. Terre A. testified that Hudson handled the negotiation with her on a property she rented in 2015 and 2016, and that Hudson would come by to pick up the rent each month. Hudson also provided Terre A. with receipts when she paid the rent. The few times she spoke with respondent, respondent informed her that Hudson was managing her rental property and asked Terre A. to consult with Hudson directly. After Terry A.'s husband died, she could only pay partial rent. Hudson accepted the partial rent and attempted to inform the property owner and arrange for a reduction in the rent. Terry A. later learned the property owner was upset about not receiving the full rent. Terre A. continued to struggle financially and later faced eviction due to her failure to pay rent. The evidence failed to establish that respondent's firm was paid for the property management services Terre A. described Hudson providing, aside from a one-time tenant location fee of \$1,000 she paid to the firm at the inception of her rental agreement.

11. On or about September 4, 2014, respondent changed her main office address on record with the Bureau from 16225 Askin Drive, Pine Mountain Club, California 93222 to 16311 Askin Drive, Pine Mountain Club, CA 93222. To date, respondent's main office address on record with the Bureau remains 16311 Askin Drive, Pine Mountain Club, California 93222. On or about April 27, 2015, respondent provided two customers with a receipt from "All Seasons Realty" with the address, "620 Monterey Trail, Frazier Park, CA 93225," which is an address that respondent has never had on record with the Bureau as a main office address, branch address, or mailing address.

12. On or about September 3, 2013, respondent became the sponsoring broker of salesperson Katy Marie Cruse, license no. 01819661. However, respondent and Ms. Cruse did not have a Broker-Salesperson Relationship Agreement until on or about May 1, 2014. On or about January 29, 2014, respondent became the sponsoring broker of salesperson Carole Anne Swanston, license no. 01241300. However, respondent and Ms. Swanston did not have a Broker-Salesperson Relationship agreement until on or about May 1, 2014.

Respondent's Evidence

13. Linda Sheldon has worked in accounting and real estate for over 40 years and is a well-known citizen of Frazier Park, the small community where respondent also lives. She has extensive experience handling payroll, business ledgers, receipts, disbursements, issuance of checks, company bank accounts, financial reporting, preparing and maintaining budgets, and preparing financial documents and records. She also has experience in preparing policies and procedures for businesses that need to improve their accounting, record-keeping, business and financial transactions. Her real estate practice focuses on helping clients buy and sell homes. Ms. Sheldon has known respondent for approximately four years and testified that respondent has a good professional reputation and is known for going "above and beyond" for her clients. Ms. Sheldon was hired by respondent in 2016 to provide a comprehensive analysis of respondent's real estate business, examine the allegations contained in the First Amended Accusation, and devise a set of policies and procedures to ensure that respondent's business would thereafter operate completely within the guidelines and regulations of the real estate profession.

14. Ms. Sheldon developed an All Seasons Property Management (ASPM) Policies and Procedures plan (ASPM plan) containing 14 specific business approaches to be implemented. The ASPM plan set forth policies and procedures detailing the following: setting up and maintaining company operating accounts and master trust accounts; setting up a trust account for each property being managed; directing the bank to document cancelled checks and deposits with each bank statement; maintaining set policies regarding acceptable methods of rent payment, in coordination with landlords; establishing methods of payment with tenants; establishing methods of recording monies received; provision of payment receipts to payers; promptly making deposits into company accounts; handling delinquent payment or bounced checks; recording accounting histories via Quickbooks;⁸ how to determine monthly fees earned by the firm and transfer them from the trust account to the operational account with all necessary documentation; monthly distribution of monies to property owners with all necessary documentation; preparation of year-end reports to owners with supporting documentation; proper handling of security deposits; and further general trust accounting procedures.

15. When Ms. Sheldon first reviewed respondent's company practices, she saw little evidence of sufficient bookkeeping having taken place to date. She also noted that there was no company bank account identified as its trust account. Respondent testified that as a real estate salesperson and later, as a broker, she had no experience working with client trust accounts and did not handle multiple financial transactions, as the simpler work she performed in the purchase and sale of real estate did not involve regular accounting practices. The evidence established that when Hudson surrendered his license, respondent lacked the experience and capability to take over the accounting of All Seasons.

⁸ QuickBooks is software developed by Intuit, Inc., designed to manage payroll, inventory, sales and other needs of small businesses.

16. Craig Lareau, J.D., Ph.D., testified regarding his forensic psychological evaluation of respondent. Dr. Lareau earned a psychology degree at Yale University, a juris doctor degree at Villanova University, and a doctorate degree in clinical psychology at Drexel University Graduate School. He completed both a pre-doctoral internship and a post-doctoral fellowship at Patton State Hospital in San Bernardino, and has been in private practice since 2001. In 2003, the American Board of Professional Psychology certified him as a J.D./Ph.D. board certified forensic psychologist.

17. Dr. Lareau evaluated respondent on November 4, 2016. Having read and considered the Bureau's allegations pending against respondent in this matter, Dr. Lareau interviewed her, obtained her history, and evaluated her to assess the degree to which she may, or may not, pose a risk to the public if she were to continue practicing real estate under an unrestricted broker's license. Dr. Lareau administered the Minnesota Multiphasic Personality Inventory-2 Restructured Form (MMPI-2 RF) examination, consisting of 338 true/false questions designed to provide information about major symptoms of psychopathology, personality characteristics, and behavioral tendencies. Respondent's scores reflected she was answering questions validly, without over-reporting or under-reporting. There were no indications of somatic, cognitive, emotional, thought, behavioral, or interpersonal dysfunction, nor did her scores suggest any specific diagnoses or treatments. In sum, respondent had a "completely normal" assessment with "no suggestion of psychological or personality problems whatsoever." Respondent candidly admitted she failed to oversee Hudson's property management work and mistakenly delegated her authority to him; this created an unacceptable risk of compromising her services as a real estate broker, which was a breach of her professional ethics. She faulted herself for misplacing her trust in her husband. The Bureau previously audited Hudson and exposed his many accounting mistakes, including commingling funds and failing to keep adequate records. Respondent wrongly believed Hudson had learned from his mistakes and would never put respondent's license at risk by repeating them. She regards Hudson as a "people pleaser" whose mistakes were attributable to his attempts to make everyone happy. Respondent maintains that she will never allow Hudson the opportunity to compromise her real estate license again. She is committed to personally managing all aspects of her real estate practice in the future.

18. Dr. Lareau concluded that respondent is a psychologically healthy person who has learned from her experiences and is committed to keeping tight control over all of her professional responsibilities and minimizing risk by avoiding delegating her duties to others. He believes she would not pose a risk of harm to the public if she were to continue practicing real estate.

19. Respondent became a licensed real estate salesperson in 2001, and she became licensed as a real estate broker in 2005. In 1997, she moved from Los Angeles to Frazier Park, a small, unincorporated town in the Tejon Pass area of the Los Padres National Forest, approximately 75 miles north of Los Angeles. Respondent worked with a local realty, Mountain Properties, from 1998 until 2004. In 2005, she went into business for herself, buying and selling real estate for clients. She also "flipped" houses by purchasing homes,

remodeling and improving them, and selling them for a profit. In 2007, she met Hudson, a mortgage and real estate broker who bought a real estate business named All Seasons in 2008. Respondent and Hudson married in 2008. When the recession hit that year, they stopped flipping houses. Respondent concentrated only on buying and selling real estate for clients. Hudson had experience in property management and handled that business exclusively, without any involvement by respondent.

20. When Hudson surrendered his license in 2013, respondent had to oversee property management of about 50 existing client files. She attempted to open a trust account with Union Bank, but she did not succeed, as the bank opened four different accounts, none of which was designated as a trust account. Respondent set out directions for Hudson to follow. She expected him to acquire rental properties, answer her questions regarding the status of the rentals, schedule repairs, and deal with any landlord/tenant disputes. Respondent was also running a café named Base Camp in addition to working on the sales and purchases of real estate for her clients.

21. Respondent admitted to her poor oversight of Hudson's activities, and said she will never again allow him to do any property management work for her. She recognizes that she failed to prioritize her duties of oversight when Hudson was acting on her behalf. She admitted she was unaware of most of what he was doing, and she was not experienced in the kind of accounting practices required to handle property management. Respondent expressed sincere remorse over the deep dissatisfaction her property management clients experienced. She has repaid all clients the monies owed to them, and to her knowledge, all such disputes have been resolved. In every possible instance, she has attempted to pay clients not just monies owed, but additional bank fees for returned checks, and sometimes even additional fees that clients felt they had coming but could not specifically justify. Respondent estimated she has paid out approximately \$20,000 of her own money to satisfy all client obligations. Although she has no interest in providing property management services again, respondent intends to maintain the few remaining client files she still has to ensure that any problems or issues are properly resolved.

Additional Mitigation and Rehabilitation

22. Vicky Kraft, who testified on respondent's behalf, lives in respondent's community and has known her for several years as a friend, a patron of respondent's café, and a real estate client. Ms. Kraft, who was aware of the allegations in the First Amended Accusation, believes respondent is honest, has substantial personal integrity, and possesses fine personal character. Respondent has contributed to the community by helping with events, running a home-schooling group, and co-chairing a local chapter of the Sierra Club. Respondent represented Ms. Kraft when she purchased a home, and has helped Ms. Kraft rent out a vacation home that she owns. Ms. Kraft would recommend respondent to others and will continue to rely on respondent for real-estate services in the future.

23. Barbara Ladin, who testified on respondent's behalf, works managing the Base Camp café and has known respondent for approximately 13 years. Respondent has done

volunteer work with Ms. Ladin in connection with the Center of the World Festival, the Mountain Theater Alliance, and the Speakeasy Theater. Ms. Ladin, who was aware of the allegations in the First Amended Accusation, stated that respondent is of high personal character, having "kept every promise she has ever made."

24. Lucinda Shankle, who testified on respondent's behalf, is a retired local resident who met respondent five years ago when she bought a home. Ms. Shankle was aware of the allegations in the First Amended Accusation from a news article, and she knew the charges involved problems with bookkeeping, trust account monies, and monies owed to clients. Ms. Shankle believes respondent is an excellent realtor who treated her very honestly, fairly, and professionally in their dealings. She would "absolutely" recommend respondent to others.

25. Respondent was president of the Frazier Park Chamber of Commerce from 2008 until 2012, contributing approximately 100 hours of volunteer services per year in that position. She has held a seat on the Kern County Board of Trade from 2009 until the present, attempting to promote tourism and to attract other business opportunities to the Pine Mountain area. She has spent approximately 40 hours per year, including bimonthly board of trade meetings and hosting two events per year. Respondent is also on the board of the Mountain Theater alliance, spending up to 300 hours per year helping to plan, promote, and present local theater productions and a yearly Shakespeare Festival.

26. Respondent submitted 21 character reference letters from community members, clients, friends, and professionals, some of whom had worked with her in her capacity as a real estate broker, and many of whom knew respondent through her charitable community activities. Every letter-writer indicated their awareness of the allegations pending against respondent, and each writer attested to respondent's high degree of honesty, integrity, and good character.

27. Respondent has no prior record of discipline against either her salesperson's or her broker's license.

Culpability

28. Respondent essentially did not contest her culpability regarding many of the allegations. All Seasons operated a property management service under her corporate real estate broker license, with an unlicensed person, Hudson, involving himself in its property management dealings.

29. Complainant alleged respondent committed multiple technical violations regarding bank accounts, trust accounting, record keeping and maintenance, and failing to refund unearned fees. Respondent, as the licensed broker, bore responsibility for the violations established by the evidence.

30. The doctrine of *respondeat superior* has long held employers responsible for the acts of their employees. If a licensee elects to operate his business through employees, the licensee must be responsible to the licensing authority for the employees' conduct in the exercise of the license. (*Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 144.) By virtue of ownership of a license, the owner has a responsibility to see to it that the license is not used in violation of the law. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360.) In this case, respondent is responsible for Hudson's misconduct.

31. Respondent's oversight of Hudson's shoddy business practices was plainly inadequate. However, the evidence did not establish that Hudson, or respondent, acted to defraud or intentionally mislead any clients, or to enrich themselves personally. The overall picture several witnesses painted of Hudson was that he was bumbling and ineffective, not scheming and larcenous. There was no evidence to suggest respondent condoned Hudson's actions. Her failing was a lack of supervision, or even having sufficient knowledge of property management to oversee his activities. Karrie D.'s attempt to paint respondent as an uncaring criminal was unpersuasive and not supported by any evidence. Respondent expressed deep remorse over having caused the dissatisfaction expressed by clients like Karrie D. Respondent also has reimbursed every client that suffered financial injury due to Hudson's mismanagement. She continues to maintain the realty's property management files, which once totaled 50 but are now only nine, in order to properly handle any further issues that may arise.

Costs

32. The Board submitted written evidence of its costs of investigating and prosecuting this matter, in the total of \$24,757.64. These costs are itemized for the eight individuals who billed time on the case. The largest portion of billable time was \$5,118.10, attributed to Special Investigator Winston Horn, who billed 82.55 hours of investigation time at a rate of \$62 per hour. Another Special Investigator, Brian Fergus, billed 42.57 hours of investigation time at a rate of \$62 per hour, totaling \$2,639. Neither testified at the hearing, nor did complainant submit any investigation reports they authored. Considering the scope of the allegations and issues involved in this case, the two investigators' costs, reflecting approximately 125 hours of investigation, do not appear reasonable. The primary cause for discipline alleged in this matter arises from an audit that did not involve these investigators. Two other allegations are technical in nature and involve respondent's failure to have a sponsoring broker-salesperson agreement in place when she sponsored two licensed salespersons, and respondent's failure to update branch-office address information with the Bureau. The remaining four causes for discipline in the First Amended Accusation detail four relatively minor transactional histories surrounding the property management services respondent's realty, through Hudson, provided to layperson clients regarding four residential properties. Also notably, respondent cooperated with the investigation and did not dispute most of the allegations. Due to these factors, the four alleged property-managements matters would not require the commitment of 125 hours of investigation. A more reasonable individual total for investigation is 25 hours per investigator, totaling 50 hours, which, at \$62

per hour, totals \$3,100. Other non-legal Bureau employees billed time on the case totaling \$496.95, which was reasonable.

33. Complainant's counsel submitted a certified statement of costs detailing her costs for enforcement of the case. In an attached activity log, counsel provides comments on the types of activities she performed in support of her billings. Her original total includes 44.75 hours of time spent working on preparation for hearing, which, at a rate of \$89 per hour, totaled \$3,982.75. Considering that complainant's counsel initially scheduled the entire hearing to take place over two days, which translates to approximately 6.5 hours per day, totaling 13 hours, it is not reasonable for her to bill for more than three times as long as the hearing's estimated time to merely prepare for the hearing. In addition, the allegations and issues presented were relatively simple, and during the Bureau's investigation and audit, respondent cooperated and apparently did not contest most of the evidence the Bureau uncovered. In the same cooperative vein, at the hearing respondent further stipulated to the facts of most of the Bureau's allegations. A more reasonable approximation of counsel's time for hearing preparation is 13 hours, at a rate of \$89 per hour, totaling \$1,157. Complainant's counsel incurred 16.5 hours of other costs for preparing pleadings, discovery, and case communication. Those other costs, totaling \$1,468.50, are reasonable.

34. Complainant submitted a certified statement of audit costs, totaling \$10,146, reflecting the 57 hours Ms. Brewster spent performing the audit on respondent's business at a rate of \$57 per hour. The scope of the audit covered 14 months, from January 1, 2014, to March 1, 2015. Those costs are reasonable. Two auditing supervisors incurred minimal costs in their oversight of Ms. Brewster's audit. Those costs, totaling \$224, are reasonable.

35. Based on the above analysis, complainant's total recoverable costs are \$16,592.45.

LEGAL CONCLUSIONS

1. The standard of proof to be used in these proceedings is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856, 185 Cal.Rptr. 601.) This means the burden rests with complainant to offer proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Failure to Supervise

2. Code section 10159.2, subdivision (a), provides:

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.

3. Code section 10177, subdivision (h), provides that the commissioner of the Bureau may discipline a licensee who fails to exercise reasonable supervision, as a designated officer, over the activities of the corporation for which the licensee's real estate license was required.

4. Cause exists to discipline respondent's broker license and licensing rights under Code sections 10592, subdivision (a), and 10177, subdivision (h), in that respondent failed to supervise Hudson in Hudson's property management activities on behalf of respondent's realty, All Seasons, as set forth in Factual Findings 5-10.

5. Cause exists to discipline Respondent's broker license and licensing rights under Code section 10177, subdivision (g), in that, Respondent demonstrated negligence in her failure to supervise Hudson's property management activities, as set forth in Factual Findings 5-10.

Violations re Hudson's Activities

6. Cause does not exist to discipline Respondent's broker license and licensing rights under Code section 10176, subdivision (a), or Code section 10177, subdivision (j). The evidence did not establish that respondent made any substantial misrepresentations to property management clients, property owners or tenants, nor did she engage in any fraud or dishonest dealings, as set forth in Factual Findings 5-10, and 31. None of the clients who testified had more than minimal, perfunctory contact with respondent, and there was no additional evidence to show that respondent made misrepresentations to, or defrauded any, clients or members of the public. However, the doctrine of *respondeat superior* is an exception to the general rule that liability follows fault. An employer is vicariously liable for the torts of its employees committed within the scope of the employment. (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296-297) Thus, respondent would be vicariously liable for Hudson's misrepresentations if they were made in reference to the company's business or services. Such misrepresentations in the realty's property management affairs would be within the scope of Hudson's employment.⁹ (See, also, *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 208) Yet the evidence did not establish that Hudson made substantial misrepresentations, or engaged in fraud or dishonest dealings with clients, tenants, property owners, or other members of the public.

⁹ Respondent is also vicariously liable for any further violations committed by Hudson with regard to bank accounts, record-keeping, handling of funds, refunding unearned fees, and use of a contract not approved by the Bureau.

Willful Disregard or Violation of Real Estate Law

7. Cause exists to discipline respondent's broker license and licensing rights under Code section 10177, subdivision (d), as the evidence established by clear and convincing evidence that respondent willfully disregarded or violated the Real Estate Law, as set forth in Factual Findings 5-10, and 21. Willful or wanton misconduct is defined as "intentional wrongful conduct, done either with a knowledge that serious injury to another will probably result, or with a wanton and reckless disregard of the possible results." (*New v. Consolidated Rock Products Co.* (1985) 171 Cal.App.3d 689, internal citations omitted.) Here, respondent was unaware of potential public harm Hudson caused only because she did not know what Hudson was doing. Respondent's lack of interest in the property management business does not excuse her inattention, as Hudson could only have engaged in his activities amid the support structure of respondent's realty. While respondent's subsequent attempts to rectify Hudson's shoddy practices were appropriate, she neglected to supervise a man who recently surrendered his license due to strikingly similar allegations of misconduct to those alleged in this case. This conscious indifference indicates respondent had a reckless disregard of the possible results of Hudson's dealings.

Accounting and Record-Keeping

8. Code section 10145, subdivision (a)(1), provides:

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.

9. Regulations section 2832 states that compliance with Code section 10145 requires that funds held on behalf of another are placed in a neutral escrow depository or trust account.

10. Regulations section 2831, subdivision (a), states:

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.

11. Cause exists to discipline respondent's broker license and licensing rights under Code section 10145, subdivision (a), and Regulations section 2832, in that respondent permitted or allowed disbursement of trust funds where the disbursement reduced the total amount of aggregate funds to \$20,941.47 (December 31, 2014), \$19,317.92 (January 31, 2015, and \$24,812.58 (February 28, 2015), which is less than the existing aggregate trust fund liability of respondent to every principal owner of said funds, without first obtaining prior written consent of the owners of said funds, as set forth in Factual Findings 5-10.

12. Code section 10176, subdivision (e), prohibits a broker from commingling with his or her own money the money or other property of others that the broker has received and held in trust.

13. Cause exists to discipline respondent's broker license and licensing rights under Code sections 10145, subdivision (a), and 10176, subdivision (e), and Regulations section 2832, in that respondent, or an employee, commingled funds by not depositing advance fees into a trust account maintained by respondent, but instead depositing those fees into a general account, as set forth in Factual Findings 5-10.

14. Cause exists to discipline Respondent's broker license and licensing rights under Code section 10145, subdivision (a), and Regulations section 2831, in that respondent failed to maintain a columnar record with the data required under that regulation, by virtue of the failure to maintain a trust account as set forth in Factual Findings 5-10.

15. Regulations section 2831.1 requires that a broker keep a separate record for each beneficiary or transaction, accounting for all funds 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.

16. Cause exists to discipline respondent's broker license and licensing rights under Code section 10145, subdivision (a), and Regulations section 2831.1, in that respondent failed to maintain a separate record for trust account funds as required under that regulation, by virtue of the failure to maintain a trust account as set forth in Factual Findings 5-10.

Maintaining Business and Branch Office Addresses with Bureau

17. Code section 10162 requires licensed real estate brokers to maintain a definite place of business and to inform the Commissioner of any change of his or her office location and contact information.

18. Cause exists to discipline respondent's broker license and licensing rights under Code section 10162, in that Respondent failed to update her address of record with the Bureau in September 2014, as set forth in Factual Finding 11.

19. Code section 10163 requires that a broker apply for and procure a license for an additional branch office her or she maintains.

20. Cause exists to discipline respondent's broker license and licensing rights under Code section 10162, in that respondent failed to procure an additional license with the Bureau in April 2015, for an additional branch office of her realty located at 620 Monterey Trail, in Frazier Park, California 93225, as set forth in Factual Finding 11.

Broker-Salesperson Relationship Agreement

21. Regulations section 2726 provides:

Every real estate broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties, including supervision of licensed activities, duties and compensation.

22. Cause exists to discipline respondent's broker license and licensing rights under Regulations section 2726, in that respondent failed to have a written broker-salesperson agreement with Katy Cruse from September 3, 2013, to May 1, 2014, and failed to have a written broker-salesperson agreement with Carole Swanston from January 29, 2014, to May 1, 2014, as set forth in Factual Finding 12.

Unlicensed Person Performing Acts Requiring a Real Estate License

23. Code section 10137 states that it is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker. Code section 10131(b) identifies the activities of a licensed real estate broker as including working with leases or rents, or offers to lease or rent, or places for rent, or soliciting listings of places for rent, or soliciting for prospective tenants, or negotiating the exchange of a lease on real property, or collecting rents from real property.

24. Cause exists to discipline respondent's broker license and licensing rights under Code section 10137, in that respondent allowed Hudson, an unlicensed person, to collect rent and negotiate lease terms regarding Terre A., as set forth in Factual Finding 10.

Other Allegations

25. The First Amended Accusation contained multiple other alleged violations set forth in conclusory fashion, based only upon the "conduct" described in each cause for discipline. Any such alleged violations not discussed above were not established by clear and convincing evidence and do not provide a basis for discipline.

Cost Award

26. A licensee found to have violated a licensing act may be ordered to pay reasonable costs of investigation and prosecution. (Bus. & Prof. Code § 125.3.) Section 10106 of the Code is similar to section 125.3, in that it provides, in pertinent part, that the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, instructs that the following factors should be considered when determining the reasonableness of costs sought pursuant to regulations such as section 125.3 regarding the recovery of prehearing investigation and enforcement costs:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation . . . does not deter . . . [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a . . . [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the . . . [licensee's] "subjective good faith belief in the merits of his or her position" [Citation.] and whether the . . . [licensee] has raised a "colorable challenge" to the proposed discipline. [Citation.] Furthermore, as in the cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [Citation], the Board must determine that the . . . [licensee] will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a . . . [licensee] engaged in relatively innocuous misconduct.

27. As set forth in Factual Findings 32-35, complainant reasonably incurred investigation and prosecution costs in amounts totaling \$16,592.45, in connection with the investigation and prosecution of this matter. Complainant prevailed on all of the alleged causes for discipline, despite failing to prove some of the legal violations generally alleged with each cause. Thus, consideration of an apportionment of costs is unnecessary.

28. Under *Zuckerman*, supra, a determination must be made regarding respondent's financial ability to make future cost award payments. Respondent submitted no evidence that she lacks the financial ability to pay costs. Under these circumstances, respondent shall pay complainant's costs of investigation and prosecution in an amount totaling \$16,592.45.

Analysis

29. By her words and actions, respondent showed that she grasped the nature, extent, and gravity of her misconduct. Her failure to supervise Hudson was the overriding factor in this case, yet the reoccurrence of such misconduct appears unlikely. Respondent has shown substantial rehabilitation from her misconduct by engaging a qualified professional to revamp her realty business in terms of its accounting, financial, and record-keeping practices. In mitigation, she repaid clients any monies owed to them due to her lack of supervision and Hudson's misconduct. Respondent also showed significant evidence of her good character based on her substantial community service and the letters, and testimony, of more than 20 people who know her personally, philanthropically, or professionally. Nonetheless, her lack of oversight of Hudson, a man who had recently surrendered his license due to allegations of misconduct involving similar property management activities, was inexplicable and a source of confusion and grief to several clients. The following order is thereby necessary for public protection.

ORDER

All licenses and licensing rights of Respondent Stacey Ann Havener under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of 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 Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

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

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

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall, within six (6) months 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 the suspension of Respondent's real estate broker license until Respondent passes the examination.

6. Pursuant to sections 10106 and 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable costs for investigation of the case and audit which led to the disciplinary action in the sum of \$16,592.45. Respondent shall pay such costs in 12 payments, one for each of the first twelve quarters of her probation. The Commissioner has the discretion to extend the time for repayment.

7. The Commissioner may suspend the license of Respondent pending a hearing held in accordance with section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

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8. Respondent shall not employ Milton L. Hudson in any capacity, paid or unpaid, within her real estate practice.

Date: April 5, 2017

DocuSigned by:

John DeCure

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JOHN E. DeCURE
Administrative Law Judge
Office of Administrative Hearings