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NOV 19 2019

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of: D BEST REALTY, INC., Respondent.))))	DRE No. H-03228 FR OAH No. 2019030866
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DECISION

The Proposed Decision dated October 9, 2019, 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.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted corporate real estate broker license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department'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.

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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 December 9, 2019.

IT IS SO ORDERED November 12, 2019

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

NOV 19 2019

DEPT. OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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A handwritten signature in cursive script, reading "Daniel J. Sandri", is written over a horizontal line.

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

In the Matter of the Accusation against:

D BEST REALTY, INC; AND RICHARD MICHAEL GONZALES

Individually and as Designated Officer of D Best Realty, Inc.

Respondents

Agency Case No. H-03228 FR

OAH No. 2019030866

PROPOSED DECISION

Thomas Y. Lucero, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter in Los Angeles on September 10, 2019.

Lissete Garcia, Staff Counsel, Department of Real Estate (DRE), State of California, represented Brenda Smith, complainant. The ALJ took official notice that Ms. Smith brought the accusation in her official capacity as a Supervising Special Investigator of the State of California. D Best Realty, Inc. (DBRI), respondent, was represented by its president, Dror Ben Amy. Richard Michael Gonzales, respondent, had notice of the hearing but did not appear and the matter proceeded against him as a default prove-up under Government Code section 11520.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 10, 2019.

SUMMARY

In managing rental properties, respondents for years failed to keep client funds in a trust account. They commingled broker's with clients' funds. Respondent Gonzales does not supervise salespersons, rather he rents out his license, as stated in his contract with respondent DBRI. Revocation of respondent Gonzales's license is warranted. A revocation stayed and suspension is warranted for respondent DBRI. Respondents are liable for costs.

FACTUAL FINDINGS

1. Respondents timely requested a hearing in response to the December 10, 2018 accusation.

2. As set out in Exhibit 2, on October 22, 2009, DRE issued respondent DBRI a corporation license, number C/01871763.

A. Respondent has consistently reported to DRE that its main office and mailing address is 405 South Chester Avenue, Bakersfield, California.

B. On November 18, 2014, respondent Gonzales succeeded others as DBRI's Designated Officer.

C. Both DBRI's corporation license and respondent Gonzales's status as Designated Officer are set to expire on October 21, 2021.

3. As set out in Exhibit 3, on December 4, 2013, DRE issued respondent Gonzales broker license number B/01917705.

A. Upon licensure, respondent Gonzales advised DRE that his main office was in Bakersfield.

B. On August 19, 2015, respondent Gonzales advised DRE his main office was in San Diego.

C. On December 14, 2015, respondent Gonzales advised DRE that his main office was on Bernard Street in Bakersfield, and branch office licenses were issued him for two other locations in Bakersfield and one in San Diego. One of the branch offices had the same address as respondent DBR's, at 405 South Chester Avenue, Bakersfield.

D. On June 26, 2017, DRE canceled respondent Gonzales's San Diego branch office license.

E. On November 30, 2017, respondent Gonzales advised DRE that his main office was at 405 South Chester Avenue, Bakersfield (also respondent DBR's address) and DRE canceled respondent Gonzales's branch office license for that address.

F. Respondent Gonzales's broker license is set to expire on December 3, 2021.

Discipline Following 2010 Proceedings

4. On December 16, 2010, the Deputy Real Estate Commissioner filed an accusation against respondent DBRI and others (2010 Accusation) entitled *In the*

Matter of the Accusation Against Deerot Realty, Inc.; D Best Realty, Inc. James Wayne Robinson; and Rickey Neal Bradford, Respondents, agency case number H-2573 FR, OAH number 2011030045. (Ex. 4.)

5. Also on December 16, 2010, the Real Estate Commissioner filed in case number H-2574 FR an Order to Desist and Refrain, ordering that Mr. Ben Amy and Marisol, who was otherwise unidentified, immediately desist and refrain from activity requiring a license as a real estate broker or salesperson, and that respondent DBR desist and refrain from employing Mr. Ben Amy and Marisol in such activities. (Ex. 7.)

6. On February 17, 2012, ALJ Coren D. Wong issued a Proposed Decision in agency case number H-2573 FR, ordering revocation for the licenses and licensing rights of Deerot Realty, Inc. (Deerot) and its Designated Officer, James Wayne Robinson, but finding no cause to discipline the licenses of respondent DBRI or its Designated Officer, Rickey Neal Bradford. ALJ Wong's Proposed Decision was adopted on March 16, 2012, by DRE's Decision and Order effective April 13, 2012. (Ex. 6.)

7. On March 5, 2012, after ALJ Wong's Proposed Decision but before the effective date of DRE's Decision and Order in case number H-2573 FR, the acting Real Estate Commissioner issued an order effective March 26, 2012 (2012 Order). The 2012 Order adopted a stipulation and agreement in settlement, by which respondent DBRI admitted the allegations of the 2010 Accusation, including that:

A. Deerot, which DRE licensed in 2009 as a corporate real estate broker, allowed Mr. Ben Amy, respondent DBRI's principal, to be a signatory on a trust account (Trust 1) Deerot maintained. DRE has never licensed Mr. Ben Amy. By means of Trust 1, Deerot "accepted or received funds in trust (trust funds) from or on behalf of lenders, investors, borrowers, and others in connection with mortgage loan brokerage

activities." (Ex. 4, p. 4.) As of March 31, 2009, Trust 1 had a shortage of \$125,135.31, in violation of Business and Professions Code section 10145. Deerot's handling of Trust 1 otherwise violated sections of the Real Estate Law (Business and Professions Code sections 1000 through 10580) and provisions of title 10 of the California Code of Regulations (Regulations), sections 2705 through 3780, implementing the Real Estate Law.

B. In the three years before the 2010 Accusation was filed, Deerot employed and compensated Mr. Ben Amy for activities requiring a real estate license, including: (i) the operation and conduct of a property management business for compensation; (ii) leased or rented, or offered to lease or rent, places for rent, or solicited listings for places for rent, or solicited for prospective tenants; or (iii) negotiated the sale, purchase, or exchange of leases on real property, or on a business opportunity, or collected rents from tenants. (Ex. 4, pp. 2 & 3.)

C. A licensed broker, James Wayne Robinson (who is among the respondents named in the 2010 Accusation) employed and compensated Mr. Ben Amy from June 23 through October 22, 2009, for activities requiring a real estate license, including the activities that Mr. Ben Amy did for Deerot, as described in the immediately preceding subparagraph, Finding 7B. Mr. Ben Amy carried out the activities for three properties in Bakersfield. (Ex. 4, p. 6.)

D. Respondent DBRI employed and compensated Mr. Ben Amy and Marisol from October 22, 2009 until the filing of the 2010 Accusation, for activities requiring a real estate license, including the activities that Mr. Ben Amy did for Deerot, as described in Finding 7B. Mr. Ben Amy carried out the activities for the same three Bakersfield properties described in Finding 7C. (Ex. 4, p. 7.)

E. Respondent DBRI's Designated Officer when the 2010 Accusation was filed was Rickey Neal Bradford, also named as a respondent in the 2010 Accusation. Mr. Bradford failed to ensure that respondent DBRI was in compliance with the Real Estate Law and implementing Regulations. Mr. Bradford failed to take reasonable steps for how respondent DBRI handled trust funds, the supervision of employees, and the implementation of policies rules, procedures, and systems to ensure compliance with laws and regulations. (Ex. 4, pp. 8 & 9.)

F. Deerot used trust funds to pay expenses benefitting real property owned by Mr. Ben Amy: \$3,568.67 relating to 405 Chester Avenue, Bakersfield, and (ii) \$10,000 relating to another Bakersfield property. (Ex. 4, p. 9.)

8. Under the 2012 Order, respondent DBRI's corporation license was suspended for 60 days from the effective date of the order, provided however that if respondent DBRI petitioned, 30 days of the suspension would be stayed and DBRI would pay a penalty of \$1,500. The remaining 30 days of suspension were stayed providing there was no cause for discipline against respondent DBRI within a year after the 2012 Order became effective, otherwise DRE could act to lift the stay. (Ex. 5, pp. 3 & 4.)

Supervision of Respondent DBRI's Personnel

9. Respondents DBRI and Gonzales executed an October 29, 2014 Broker-Officer Agreement. Paragraph 3 of the agreement states: "(DBRI) will pay (RG) [respondent Gonzales] a fee of \$300.00 per month as a rental fee of the use of his license. This fee will be due at the 1st of each month plus ½ % of each sale commission of a completed sale." (Ex. 15, p. 2.) Mr. Ben Amy testified that respondent Gonzales was not renting out his license to respondent DBRI, that the language in the

agreement was only a bad choice of words. In Mr. Ben Amy's view, respondent Gonzales's compensation from respondent DBRI was based on his responsibility for and regular supervision of all licensed activity at respondent DBRI. Mr. Ben Amy acknowledged that respondent Gonzales was constantly "in and out" of respondent DBRI's office, with frequent appointments outside the office.

10. Respondent DBRI has employed Valeria Puente since June 2017 as a licensed real estate salesperson.

A. Ms. Puente is on the payroll, working full time at the DBRI office. Like all salespersons DBRI has employed, Ms. Puente works primarily on property management. She estimated that respondent DBRI manages approximately 90 properties. Respondent DBRI has had no sales transactions in 2019. Ms. Puente believed that in 2018 respondent DBRI had approximately eight or nine sales transactions.

B. Until the beginning of 2019, the other licensed salesperson at DBRI was Kerit Flores. Currently respondent DBRI employs two other licensed salespersons: Esther Castro and Gerardo Escalante. Respondent Gonzales supervises their work. The agents' duties include advertising properties for rent, processing applications from prospective tenants, receiving security deposits, taking telephone calls regarding property maintenance, taking rent payments from tenants who visit the office for that purpose, and preparing three-day notices to quit, in preparation for eviction proceedings. The agents share the work. Properties are not assigned to any particular agent. It was not established who negotiates leases at DBRI. Ms. Puente did not understand what is involved in the negotiation of a lease.

C. Ms. Puente found it difficult to answer questions on how many hours per week respondent Gonzales spends in his office at DBRI. She believes he is in the office daily, but whether he is in the office one or more hours per day she was unable to say. She also testified that respondent Gonzales was mostly in the office at the beginning and end of the month, when respondent DBRI was busy sending out checks.

D. Ms. Puente has access to a rubber stamp bearing the signature of respondent Gonzales. It is kept in a locked cabinet in his office, used because sometimes respondent Gonzales is away for appointments and not available in the office. The stamp is mostly used for trust account checks. Respondent Gonzales reviews the checks stamped with his signature. Mr. Flores had access to the stamp, but currently Ms. Puente is the only salesperson with access. Generally, Ms. Puente does not use the stamp for property management documentation. She understood that respondent Gonzales must supervise all such documentation. At times he signs such documents, but the agents may also sign them as licensees.

11. DRE has licensed Kerit Flores as a salesperson for approximately five years. He worked for respondent DBRI since he was first licensed until the beginning of 2019.

A. Mr. Flores estimated that when he left respondent DBRI's employment, it managed somewhat more than 100 properties.

B. Mr. Flores stated that in 2018, respondent DBRI had at most five or six sales transactions.

C. Part of Mr. Flores's work at respondent DBRI was to negotiate leases.

D. Mr. Flores testified, as Ms. Puente did, that respondent Gonzales was often "in and out" of the DBRI office. Mr. Flores estimated that respondent Gonzales was at the DBRI office 10 to 12 hours per week. If Mr. Flores had a question, he would generally reach respondent Gonzales by telephone, since respondent Gonzales generally did not communicate by email or other electronic means. Mr. Flores found respondent Gonzales generally available, including for occasional meetings in the office arranged at Mr. Flores's request.

2018 Accusation, Case No. H-03177 FR

12. On May 2, 2018, DRE Supervising Special Investigator Brenda Smith filed an accusation (2018 Accusation) entitled *In the Matter of the Accusation of Richard Michael Gonzales, individually and doing business as Bakersfield Property Services, Respondent*, agency case number H-03177 FR. (Ex. 8.)

A. On November 28, 2018, the acting Real Estate Commissioner adopted, effective December 26, 2018, a Stipulation and Agreement by which respondent Gonzales admitted to conduct in violation of Business and Professions Code sections 10145 and 10177, subdivision (d) and (g), and Regulation 2725. Under Business and Professions Code sections 10177, subdivision (d) and (g), the conduct was in violation of the Real Estate Law and implementing Regulations and warranted discipline of respondent's license and licensing rights. (Ex. 9, p. 3.)

B. DRE learned of the conduct, described in the 2018 Accusation, by means of an audit that DRE (then called the Bureau of Real Estate) completed on October 20, 2017, covering the period May 1, 2016 through April 30, 2017.

C. Respondent Gonzales's wrongful activities included: (a) failure to maintain a separate record and perform a monthly reconciliation of the separate

record to the control record of trust funds, which violated Business and Professions Code section 10145 and Regulations 2831.1 and 2831.2; (b) failure to place funds collected for the benefit of another into a trust fund in the name of the broker, which violated Business and Professions Code section 10145 and Regulation 2832; and (c) use of a fictitious business name, Bakersfield Property Services, before applying to DRE for its registration, which violated Business and Professions Code section 10159.5 and Regulation 2731.

D. Bakersfield Property Services, though eventually registered to respondent Gonzales, was a business actually owned by an unlicensed person, Christine Karamian.

E. Respondent Gonzales entrusted to Ms. Karamian all real estate activities of Bakersfield Property Services, including: (a) negotiation of lease agreements, (b) collection of rents, and (c) handling trust funds. Respondent Gonzales allowed Ms. Karamian to collect compensation for the activities and to hold a rubber stamp bearing his signature, which allowed her to conduct the activities.

F. Respondent Gonzales failed to exercise reasonable supervision over the activities of Bakersfield Property Services to ensure compliance with the Real Estate Law and implementing Regulations, specifically Business and Professions Code section 10177, subdivision (h) and (g), and Regulation 2725.

Audit #FR17-0091

13. DRE has employed Amanda Patterson for approximately three years. She has a degree in business administration, including accounting coursework. Before DRE, she worked as a bookkeeper for car dealerships. Her duties include going to brokers' offices to audit documentation relating to licensed activities, examining bank

reconciliations, invoices, cancelled checks, and related documents. Ms. Patterson's audit of respondents' business, Audit #FR17-0091, covered the period January 1, 2016 through February 28, 2018.

14. The audit by Ms. Patterson found two violations of the Real Estate Law.

A. In a Chase Bank account, account number ending in 2761 (Bank Account #1), respondents held funds in trust for others, but Bank Account #1 was not designated a trust account, in violation of Business and Professions Code section 10145, subdivision (a), and Regulation 2832.

B. As of January 31, 2018, respondent Gonzales held in Bank Account #1 \$427.22 in excess of \$200 in brokers funds. This commingling of respondent Gonzales's money with the money of others held by him in trust was a violation of Business and Professions Code section 10146, subdivision (e). (Ex. 18 & 19.)

15. Mr. Ben Amy explained that respondents had requested that Bank Account #1 be set up as a trust account, but the bank had mistakenly failed to designate it as such. With a September 13, 2018 email, respondent Gonzales sent Irene Reyes, DRE Special Investigator, Enforcement Section, a copy of a bank signature card for Bank Account #1, showing that the account had been re-designated as a client trust account. (Exs. 25 & C.)

16. Ms. Patterson noted that the excess broker funds in Bank Account #1 were removed on March 28, 2018. Mr. Ben Amy attributed the commingling of client funds and the broker's funds as a mistake by Chase Bank. The bank received large amounts of cash from respondent DBRI because many tenants of properties DBRI managed paid their rent in cash. Chase Bank would charge respondent DBRI fees because of the large amounts of cash, but then provide respondent DBRI refunds. The

bank mistakenly placed refunds into Bank Account #1 instead of respondent DBRI's regular account.

Broker Office Survey

17. DRE has employed Ms. Reyes since 2006. As Special Investigator, she prepared a Broker Office Survey, Exhibit 13, which she and respondent Gonzales signed on March 28, 2018. Ms. Reyes found respondents were violating two regulations. Respondents were not providing purchasers with pest control documentation. Consequently, they were violating Regulation 2905, which requires the real estate broker acting as agent for the seller in a transaction to effect delivery of pest control documentation, including the inspection report, certification, and notice of work completed, to the transferee. In addition, respondents had no manual or system of policies and procedures. Consequently, they were violating Regulation 2725, which requires the broker's establishment of policies, rules, procedures and systems to review, oversee, inspect and manage salespersons, as part of the broker's reasonable supervision over their activities.

18. Exhibit 14 has copies of a brochure and business cards which respondent DBRI publishes, advertising that it conducts: "Property Management In House, Maintenance Services, Landlord Services, Eviction Services, [and] Real Estate Services."

19. During Ms. Reyes's interview of respondent Gonzales at DBRI, she asked him a number of questions about his practice. Instead of answering, he would look to Mr. Ben Amy, who would then supply the answer. For instance, Ms. Reyes asked how many properties were under management. Respondent Gonzales did not answer, looking instead to Mr. Ben Amy. Mr. Ben Amy answered that they managed 129 doors, 88 single family homes, and two apartment complexes, for 67 owners. (Ex. 16.) Ms.

Reyes asked to see the documentation of three sales transactions. Respondent Gonzales said he thought he did not have three sales transactions, and then looked to Mr. Ben Amy. Mr. Ben Amy left the room and presently returned with documentation for three transactions. Respondent Gonzales asserted in response to Ms. Reyes's inquiry that he was familiar with anti-discrimination laws. Asked then what they were, there was no response as respondent Gonzales waited until Mr. Ben Amy and respondent DBRI's accountant listed characteristics, like gender, that may not legally be the basis for acting in a business setting adversely against a person. Respondent Gonzales was unable to answer Ms. Reyes's question about any detail of his training program for agents. He had no documentation regarding training.

20. As set out in Finding 17, Ms. Reyes informed respondents of their noncompliance with Regulations 2905 and 2725. To avoid continued noncompliance, respondents changed their practice as indicated in their April 2018 letter and September 4, 2018 email to Ms. Reyes, in which they stated that respondent DBRI had prepared and distributed to employees an 11-page document (manual) setting out the company's "policy and procedures" and "our company philosophy." (Ex. 21, DRE pp. 1, 2, & 4.) The manual addresses, in part, the following: respondent DBRI's expectations of salespersons, including that "[a]s an associate you are EXPECTED to close a MINIMUM OF 9 SALE CLOSING PER YEAR [sic]" (Ex. 21, p. DRE 5, *emph. in orig.*); how salespersons should handle transactions as associates in the company or as a principal in the transaction; and how commissions are handled. (Ex. 21, pp. DRE 7-9.) There is no provision in the manual regarding respondent Gonzales's signature stamp. There are no provisions that specifically discuss property management or the duties of salespersons in property management.

21. With the April 2018 letter and September 4, 2018 email referenced in the preceding Finding, respondent Gonzales sent Ms. Reyes a real estate transaction checklist that respondent DBRI had adopted, one section of which regards a "Listing," the other a "Sale." (Ex. 21, p. DRE 22.)

22. In an August 30, 2018 interview, respondent Gonzales told Ms. Reyes, contrary to Ms. Puente's more credible testimony, that the only person who used his signature stamp was Mr. Ben Amy. Mr. Ben Amy also testified credibly that the salespersons respondent DBRI employs have access to the stamp.

23. Respondent Gonzales advised Ms. Reyes in a September 5, 2018 email that respondents were completing the process of re-designating their bank account as a trust account. On September 13, 2018, respondent DBRI emailed Ms. Reyes a copy of a Business Depository Certificate showing that DBRI was named the holder of a client trust account at Chase Bank. (Ex. 25.)

24. Mr. Ben Amy asserted that, though respondent Gonzales is often absent from the DBRI office, he is there enough and otherwise reasonably available to the real estate salespersons, especially by telephone, to oversee respondent DBRI's licensed activities and otherwise manage them. Mr. Ben Amy candidly acknowledged that he is knowledgeable in real estate matters. But he insisted that he is careful not to overstep and stray into managing licensed activities, leaving that to respondent Gonzales. Whether Mr. Ben Amy is as careful as he said, he is mistaken about respondent Gonzales. Respondent Gonzales demonstrated to Ms. Reyes that he does not know enough about respondent DBRI's real estate business and the laws governing that business to supervise or otherwise manage the salespersons.

25. There is evidence to support Mr. Ben Amy's assertions about his leaving supervisory duties to respondent Gonzales. Mr. Ben Amy stays busy with other concerns. Some years ago his wife was killed by a drunk driver. To honor her and in her memory, he established certain entities, all housed in the same building as respondent DBRI. One such entity is Alma D Best, Inc., which provides shelter and services to the mentally challenged and those addicted to alcohol or other drugs. Mr. Ben Amy manages this business with his brother, Klaus. Mr. Ben Amy devotes time to a second entity, Alma the Lighthouse, Inc., a non-profit organization, as its CEO and administrator. The entity provides a spiritual and activity center for the homeless, as well as persons mentally challenged or addicted to drugs. A third entity Mr. Ben Amy manages is Naftaly Investments, Inc., a vehicle for his family's real estate investments.

Costs

26. In auditing, otherwise investigating, and prosecuting the accusation, DRE incurred reasonable costs totaling \$5,374.88.

A. DRE reasonably incurred a cost of \$898.63 in auditing respondents.

(Ex. 26.)

B. DRE's reasonable cost for investigation in this matter was \$2,629.50.

(Ex. 27.)

C. DRE incurred a reasonable cost of \$1,846.75 for enforcement. (Ex. 28.)

LEGAL CONCLUSIONS

1. Complainant bears, and in this case met, the burden of showing by "clear and convincing proof to a reasonable certainty" that license discipline is warranted. (*Ettinger v. Medical Board of Quality Assurance* (1982) 135 Cal.App.3d 853, 855.)

Applicable Statutes and Regulations

2. Business and Professions Code section 10130 provides that it is unlawful "to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson" without a real estate license.

3. Business and Professions Code section 10137 provides for license discipline against a broker for direct or indirect compensation to an unlicensed person for activity requiring a real estate license, or to a real estate salesperson not licensed under the broker.

4. Business and Professions Code section 10145, subdivision (a), provides that when a real estate broker accepts funds from a transaction which belong to others, the broker must deposit the funds that are not immediately placed in escrow or in the hands of the broker's client into a trust fund account at a bank or similar financial institution.

5. Regulation 2832, subdivision (a), likewise regulates trust fund accounts, with the more specific requirement that the broker's deposit of funds of another into a trust fund account take place within three days of receipt of the funds.

6. Business and Professions Code section 10159.2, subdivision (a), provides that the officer, such as respondent Gonzales, designated by a corporate broker

licensee, such as respondent DBRI, "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 Real Estate Law, "including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required."

7. Business and Professions Code section 10176, subdivision (e), provides for investigation and license discipline upon the Real Estate Commissioner's finding a broker's "[c]ommingling with his or her own money or property the money or other property of others which is received and held by him or her."

8. Business and Professions Code section 10177 provides for license discipline under:

Subdivision (d), when a licensee has willfully disregarded or violated the Real Estate Law;

Subdivision (g), when a licensee has "[d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license"; and

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

9. Regulation 2725 provides:

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision

includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.
- (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- (g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the

broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

First Cause for Discipline: Trust Funds Violations

10. Cause exists to discipline respondents' licenses under Business and Professions Code sections 10145, subdivision (a), 10176, subdivision (e), 10177, subdivision (d) and (g), and Regulation 2832. As the audit completed by Ms. Patterson revealed, respondents did not maintain a trust funds account as required from October 2014, when they signed the Broker-Officer Agreement (Finding 9), until September 2018 (Finding 23). In addition, respondents commingled funds, with more than \$200 belonging to respondents in an account with client funds. (Finding 14B.)

Second Cause for Discipline: Failure to Supervise

11. Cause exists to discipline respondent's licenses under Business and Professions Code sections 10159.2, 10177, subdivisions (d), (g), and (h), and Regulation 2725. Instead of reasonable supervision of the activities of licensed personnel at respondent DBRI, respondent Gonzales has been renting out his license, as stated in the Broker-Officer Agreement. (Finding 9.) At times respondent Gonzales's maintained an office too far away (Finding 3B) to effectively manage respondent DBRI's personnel. Mr. Ben Amy cannot lawfully supervise such activities, since he is unlicensed. When Ms. Reyes interviewed respondent Gonzales in March 2018, he had not established policies, rules, procedures, or systems to review, oversee, inspect, or manage licensed activity. Respondent himself was unfamiliar with federal and state laws prohibiting discrimination. As a result, he did not familiarize DBRI's salespersons with those laws, as Regulation 2725, subdivision (f), requires.

12. Mr. Ben Amy sincerely believes that respondent Gonzales was not renting out his license, but was actually concerned to supervise and did supervise DBRI personnel. The evidence does not support Mr. Ben Amy's belief. Mr. Ben Amy does not appreciate or understand that a licensee must exercise more care. As a licensee, respondent Gonzales knew or should have known that he was not acting reasonably to fulfill his duties as a supervisor of respondent DBRI's real estate salespersons.

Mitigation and Rehabilitation

13. There was limited evidence of rehabilitation. Respondents worked with their bank to change an account so that it was designated a trust fund account. Respondents now have a manual and a checklist, providing real estate salespersons information on how they should conduct licensed activity at respondent DBRI. These were basic steps respondents should have taken in 2014. It is an aggravating factor that respondents waited to implement such measures till they were prompted by DRE audit and Ms. Reyes's investigation and inquiries.

14. Mr. Ben Amy gave an unconvincing explanation for the excess broker funds found by the audit commingled in what was supposed to be the trust fund account. There was no evidence that respondents took action to communicate with Chase Bank to correct the problem before it was revealed by the audit. Mr. Ben Amy blamed the bank, but respondents must share blame, at the least. As a matter of business prudence, and just as importantly to comply with the Real Estate Law, respondents were required to reconcile their banking records regularly and advise the bank promptly when such commingling occurred. There was no evidence they did so until DRE personnel advised them they must. The commingling, like respondents' other misconduct, extended into 2018. "The passage of less than two years after the . . . act of the licensee that is a cause of action in the . . . [DRE] Accusation against the

licensee is inadequate to demonstrate rehabilitation." (Cal. Code Regs., tit 10, § 2912, subd. (a)(1).)

15. Because he did not attend the hearing, respondent Gonzales gave no evidence to show that he will in future avoid the misconduct in which he has engaged. The only evidence of change concerned the basic, but long delayed, steps respondent Gonzales took as noted in Conclusion 13. There were assertions by Mr. Ben Amy that respondent Gonzales supervises salespersons, but they were not convincing. The salespersons testified credibly that respondent Gonzales was available to them and reviewed transactions. But there was no evidence that he trained them, or did more than answer questions. The stamp with the signature of respondent Gonzales indicates that he allows real estate activity to be performed without his participation. The evidence does not indicate that respondent Gonzales will make an effort to know the real estate activity being conducted by the real estate salespersons at respondent DBRI, or that he will be available to discuss matters with them based on his own knowledge and understanding.

16. As Mr. Ben Amy conducts a great deal of other business in the same building that houses respondent DBRI, and because he is knowledgeable in real estate matters and the business of DBRI, as he demonstrated to Ms. Reyes, there is constant temptation for him to manage respondent DBRI's real estate activity, despite knowing that such management would be unlawful because he is unlicensed. There is continuing danger that Mr. Ben Amy and respondent DBRI will yield to such temptation.

17. The conduct of respondents, especially respondent Gonzales, poses significant danger to the public. Commingling funds may result in loss of property to members of the public who do business with respondents. Commingled funds can be

confused with other funds not held in trust. Trust funds commingled with others may otherwise lose the protection afforded by the laws protecting funds in trust.

Respondents may have withdrawn funds to halt commingling funds belonging to the broker with clients' funds, but given that Mr. Ben Amy's explanation for this misconduct was unconvincing, and that there was no evidence in this regard from respondent Gonzales, the danger of commingling remains.

18. In addition to the evidence directly pertinent to the hearing in this matter, past proceedings and resulting license discipline against respondent Gonzales (Finding 12) and against respondent DBRI (Finding 8) support present discipline.

19. The misconduct in this case is heavily attributable to respondent Gonzales. In these circumstances, outright revocation of respondent Gonzales's license is warranted. Revocation stayed and probation is appropriate for respondent DBRI's license.

Cost Recovery

20. Under Business and Professions Code section 10106, DRE is entitled to reimbursement of reasonable costs incurred for investigation and enforcement.

21. Business and Professions Code section 10148 provides that the Real Estate Commissioner "shall charge a real estate broker for the cost of any audit," if in a final decision following a disciplinary hearing, there is a finding the broker has violated Business and Professions Code section 10145 or a regulation or rule interpreting it.

ORDER

Respondent Richard Michael Gonzales

1. All licenses and licensing rights of respondent Richard Michael Gonzales are revoked.

2. In the event that respondent Richard Michael Gonzales applies to the Department of Real Estate for a license in the future, he shall pay to the Department of Real Estate, as a condition to being relicensed, \$2,687.44, which is one half of the costs incurred by the Department of Real Estate in this matter.

Respondent D Best Realty, Inc.

3. All licenses and licensing rights of respondent D Best Realty, Inc. under the Real Estate Law are revoked; provided, however, a restricted corporate real estate broker license shall be issued to respondent D Best Realty, Inc. pursuant to Section 10156.5 of the Business and Professions Code if respondent D Best Realty, Inc. makes application therefor and pays to the Department 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 D Best Realty, Inc. 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:

A. The restricted license issued to respondent D Best Realty, Inc. may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent D Best Realty, Inc.'s conviction or plea of nolo contendere to a crime which

is substantially related to respondent D Best Realty, Inc.'s fitness or capacity as a real estate licensee.

B. The restricted license issued to respondent D Best Realty, Inc. may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent D Best Realty, Inc. 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.

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

D. Pursuant to section 10148 of the Business and Professions Code, respondent D Best Realty, Inc. shall pay one half of the Commissioner's reasonable cost for the audit which led to this disciplinary action. In reimbursement of the cost of the audit, respondent D Best Realty, Inc. shall pay \$449.31 within 60 days of the effective date of this Decision.

E. Pursuant to section 10106 of the Business and Professions Code, respondent D Best Realty, Inc. shall pay the Commissioner's one half of the reasonable cost for investigation in this matter. In reimbursement of the cost of investigation, respondent D Best Realty, Inc. shall pay \$1,314.75 within 60 days of the effective date of this Decision.

F. Pursuant to section 10106 of the Business and Professions Code, respondent D Best Realty, Inc. shall pay one half of the Commissioner's reasonable cost for enforcement in this matter. In reimbursement of the cost of enforcement,

respondent D Best Realty, Inc. shall pay \$923.37 within 60 days of the effective date of this Decision.

G. The Commissioner may suspend the restricted license issued to
respondent D Best Realty, Inc. pending a hearing held in accordance with section 11500 of the Government Code, if any payment as ordered in subparagraphs D, E, and F is not timely made as provided for herein, or as provided for in a subsequent agreement between respondent D Best Realty, Inc. and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent D Best Realty, Inc. 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.

4. Any restricted real estate license issued to respondent D Best Realty, Inc.
pursuant to this Decision shall be suspended until such time as respondent D Best Realty, Inc. shall have designated, pursuant to Business and Professions Code sections 10158 and 10211, an officer other than respondent Richard Michael Gonzalez.

5. Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner that its officer designated as set out in the preceding paragraph, pursuant to Business and Professions Code sections 10158 and 10211, has taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code.

DATE: October 9, 2019

DocuSigned by:
Thomas Lucero
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THOMAS Y. LUCERO

Administrative Law Judge
Office of Administrative Hearings