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DEPT. OF REAL ESTATE

By Zoni-Ja

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:	)	DRE No. H-03256 FR
	)	
MARY JANE FLORES,	)	OAH No. 2019070904
	)	
Respondent.	)	

DECISION

The Proposed Decision dated February 3, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

Factual Findings, Page 2, Paragraph 2, Line 2, "license number 01363487" is amended to read "license number 01362487".

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted 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.

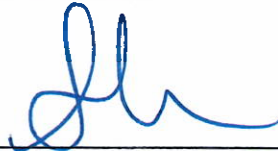
The right to reinstatement of a revoked real estate license or to the reduction of a

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 MAR 23 2020.

IT IS SO ORDERED 3/2/20

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to be 'SK' or similar, written over a horizontal line.

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

In the Matter of the Accusation of Against:

MARY JANE FLORES, dba WASCO REALTY, Respondent

Agency Case No. H-03256 FR

OAH No. 2019070904

PROPOSED DECISION

Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 7, 2020, in Los Angeles, California.

Julie L. To, Real Estate Counsel, represented Brenda Smith, a Supervising Special Investigator of the State of California (Complainant). Mary Jane Flores (Respondent) appeared and represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 7, 2020.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant Brenda Smith filed the Accusation in her official capacity.
2. The Department initially issued Respondent real estate salesperson license number 01363487 on January 8, 2003. The Department issued Respondent broker license number 01363487 on December 7, 2006. The broker license is due to expire on January 16, 2023, unless renewed. Respondent is licensed to conduct business under the fictitious business name of "Wasco Realty."

Audit Examination

3. Amanda Patterson, who testified at hearing, is an Auditor III with the Department, and she has been conducting audits for the Department since 2016. Ms. Patterson was assigned to conduct an audit examination (audit) of Respondent's books and records for the period September 1, 2015 to October 31, 2017 (audit period). The Department initiated the audit for the purpose of determining whether Respondent handled and accounted for trust funds in accordance with the Real Estate Law and the Commissioner's Regulations, specifically in relation to her property management activities. Ms. Patterson performed the audit intermittently from December 4, 2017 to April 12, 2018, and prepared a May 20, 2018 written report of her audit findings and conclusions. As discussed below, the audit revealed numerous violations of the Business and Professions Code and the California Code of Regulations, title 10.

4. Ms. Patterson reviewed the following of Respondent's records: (1) bank statements; (2) record of all trust funds received and disbursed (control record); (3) separate records for each beneficiary (beneficiary records); (4) summary of balances; (5) bank signature card; (6) deposit items; (7) invoices; (8) canceled checks; (9) property management agreements and lease agreements; and (10) real estate licenses.

5. During the audit period, Respondent managed approximately 36 one-to-four-bedroom family residences, constituting 61 units and 16 owners. Respondent collected approximately \$552,000 in trust funds on an annual basis and deposited them into Union Bank in Wasco, California, Account Number xxxxx991. The bank account was used for deposits and disbursements related to the management of properties. Disbursements from the account were payments for expenses related to the properties managed, remittances to owners, and payment of management fees to Respondent. Respondent charged a management fee of seven-percent of collected rents for the properties she managed. Property management activities included collecting rents, paying expenses, and screening tenants.

Violations of Real Estate Laws and Regulations

6. Ms. Patterson prepared a bank reconciliation as of September 29, 2017, and compared the adjusted bank account balance to the total balance of the respective beneficiary records. Ms. Patterson found a shortage of \$28,091.55 in the bank account. Of the total shortage, \$2,272.45 was caused by negative balances in four property accounts, \$10,931.35 was caused by a bank deficit, and \$14,887.75 was unidentified. Respondent provided no evidence that the owners of the trust funds had given their written consent to allow the reduction of balances in the trust account to an amount less than the existing aggregate trust fund liabilities.

7. Ms. Patterson found that although Respondent used the bank account to hold trust funds, the bank account was not designated as a trust account, and neither Respondent nor Wasco Realty was listed as trustee. Rather, the bank account was designated as a business account. When Ms. Patterson raised this issue with Respondent, Respondent contacted the bank and requested the account's designation to be changed to a trust account, which the bank completed on December 4, 2017.

8. Ms. Patterson found that during the audit period, Respondent failed to perform and maintain a monthly reconciliation comparing the balance of all separate beneficiary or transaction records (separate records) to the balance of the records of all trust funds received and disbursed (control records) for the bank account. When Ms. Patterson asked Respondent about the lack of reconciliation, Respondent explained that she was under the belief that her bookkeeper, Barbara Lucas, was reconciling each month, and was unaware Ms. Lucas had stopped reconciling the bank account months prior.

9. Ms. Patterson found that Respondent failed to maintain accurate separate records for each beneficiary. On December 4, 2017, Ms. Patterson performed a reconciliation on the bank account and used September 29, 2017 as a cut-off date. During the reconciliation, Ms. Patterson determined the accountability was \$29,090.49; however, after examining the separate records Respondent provided, Ms. Patterson noted that there were multiple transactions missing from the separate records. Respondent explained to Ms. Patterson that she was under the impression that Ms. Lucas had been posting invoices to each beneficiary record and maintaining accurate records; however, Respondent subsequently found invoices dating from December 2016 to October 2017 that had been paid from the bank account, but never posted to the respective separate records. Ms. Patterson determined the September 29, 2017

final accountability to be \$17,160.20, which resulted in the shortage described in Factual Finding 6.

10. Ms. Patterson found that Ms. Lucas signed multiple checks from the bank account, including management fee checks made payable to Respondent, even though she was unlicensed and had no fidelity bond coverage.

Respondent's Testimony / Mitigation

11. Respondent testified at trial and did not dispute the charges set forth in the Accusation.

12. Respondent explained that although she was responsible for supervising Ms. Lucas, she acknowledged that she did not supervise her as closely as she should. At the time of the audit, Ms. Lucas was 84 years old and had worked for Respondent for five years. Respondent explained that although she had considered Ms. Lucas as "very sharp" for most of the five years she had worked for Respondent, Respondent noticed personality changes in Ms. Lucas, such as irritability and moodiness, towards the end of those five years. At the time of the audit, Respondent discovered that Ms. Lucas had hidden a great number of invoices in her desk, and shared the same with Ms. Patterson. Respondent did not know that Ms. Lucas had not been reconciling the books, because Ms. Lucas often presented Respondent with spreadsheets that indicated that "everything was in order." Respondent also did not know that Ms. Lucas had been signing checks. After the audit, Respondent terminated Ms. Lucas. Ms. Lucas was subsequently placed in a nursing home.

13. Respondent testified that her husband, who has a bachelor's degree in business, now oversees the books and "keeps everything in order," including accounts

receivable and data entry. Respondent reviews the bookkeeping every day.

Respondent's husband is not a broker and he does not sign any checks.

14. Respondent makes deposits within three days of receiving proceeds and does not accept cash. Respondent checks the bank's balances often to make sure the bank has not made any mistakes.

15. Respondent has been attempting to reconcile the books that Ms. Lucas did not complete properly, but believes the shortage has been cured. Respondent did not proffer any independent evidence demonstrating the shortage has been cured.

16. Respondent cooperated fully with the audit.

Cost Recovery

17. The Department incurred investigation and enforcement costs in the total amount of \$9,811.01. This is comprised of investigative costs of \$1,986, audit costs of \$7,397.81, and enforcement costs of \$427.20. These amounts are reasonable.

LEGAL CONCLUSIONS

1. Under Business and Professions Code (Code) section 10145, a real estate broker is required to deposit, into a trust account, funds belonging to another that are received while performing acts requiring a real estate license. All funds deposited 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." (Code, § 10145, subd. (a)(1).)

2. Under California Code of Regulations, title 10 (Regulations), section 2832.1, the written consent of all owners of trust funds must be obtained before any disbursement is made that will reduce the balance of the account to an amount less than the aggregate trust fund liability.

3. Under Regulations, section 2831, the broker must keep a record of all trust funds received. The record must include the date the trust funds were received, from whom the trust funds were received, the amount received, the date of deposit in an account, the check number and date of disbursement from the account, the date forwarded and identity of depository for funds not deposited in an account, and the daily balance of the trust account.

4. Under Regulations, section 2831.1, the broker must keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust account. The record must include, among other things, the date and amount of deposit, the date and amount of each related disbursement, and the balance after posting transactions on any date.

5. Under Regulations, section 2831.2, at least once per month the broker must reconcile the separate beneficiary records maintained under Regulations section 2831.1 with the records of trust funds received and disbursed that are required to be maintained under Regulations section 2831.

6. Under Regulations, section 2832, subdivision (a), compliance with section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial

institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

7. Under Regulations, section 2832.1, the broker must obtain written consent of every principal who is an owner of the funds in the account prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

8. Under Regulations, section 2834, subdivision (a), withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

(1) a salesperson licensed to the broker.

(2) a person licensed as a broker who has entered into a written agreement pursuant to section 2726 with the broker.

(3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

9. Cause exists to discipline Respondent's real estate broker license, pursuant to Code section 10145 and Regulations sections 2831.1, 2831.2, 2832, 2832.1, and 2834, in that Respondent, without the prior written consent of owners of the trust funds of the bank account, caused, permitted, and/or allowed the withdrawal or disbursement of trust funds from the bank account, such that the aggregate of funds

remaining in the account was less than the existing aggregate trust fund liability of every principal who owned the funds; failed to maintain the trust funds in a bank account designated as a trust account; failed to maintain adequate separate records for each beneficiary or transaction; failed to perform and maintain monthly reconciliations of the total balance of all separate beneficiary or transaction records; permitted checks to be signed by Ms. Lucas, an unlicensed individual, without fidelity bond coverage; and failed to record all trust funds received or disbursed for the bank account, as set forth in Factual Findings 3 through 10.

10. Administrative proceedings to revoke, suspend or impose discipline on a professional license are noncriminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.) In particular, the statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.)

11. Respondent demonstrated transparency during the course of the audit, in that she cooperated fully with the audit, and shared with Ms. Patterson the discovery of the hidden invoices. According to Respondent's credible testimony, she has accounted for the shortage, and she continues to reconcile the books Ms. Lucas failed to do. Additionally, Respondent terminated Ms. Lucas' services, and now permits her husband to handle her books, with daily oversight by Respondent. Respondent also makes deposits within three days of her receipt of proceeds, followed by frequent inquiries with the bank regarding the status of trust account, in order to guard against mistakes. These factors demonstrate that outright revocation is not appropriate to

ensure protection of the public. Rather, a period of restricted licensure with specific conditions will be sufficient.

12. Pursuant to Code section 10106, cause exists to require Respondent to pay the Department \$9,811.01 for the reasonable costs of audit, investigation, and enforcement in this matter. (Factual Finding 17.)

ORDER

All licenses and licensing rights of Respondent Mary Jane Flores 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 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 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 three 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. Pursuant to section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondent has corrected the trust fund violation(s) found in Factual Findings 6 through 10, above. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the

restricted license issued to 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.

DATE: February 3, 2020

DocuSigned by:
Carla L. Garrett
CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings