

FILED

FEB 12 2021

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By X. Krupp

In the Matter of the Accusation of:)
)
 REALTY PROPERTY MANAGEMENT INC.,)
 and KATHLEEN REBECCA SCOTT)
)
 Respondents.)

DRE No. H-3278 FR

OAH No. 2020060004

DECISION

The Proposed Decision dated December 14, 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.

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

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 MAR 05 2021

IT IS SO ORDERED 2-2-21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

In the Matter of the Accusation Against:

**REALTY PROPERTY MANAGEMENT, INC., and KATHLEEN
REBECCA SCOTT, Respondents**

Agency Case No. H-3278 FR

OAH No. 2020060004

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 27, 2020.

Richard K. Uno, Counsel III, represented complainant Brenda Smith, a Supervising Special Investigator with the Department of Real Estate (Department), State of California.

Respondent Kathleen Rebecca Scott represented herself and respondent Realty Property Management, Inc.

Evidence was received and the record was left open to allow each party to submit additional evidence and object to the other party's evidence. Complainant's additional evidence is marked as Exhibit 15, and respondents' additional evidence is marked as Exhibits B and C. Complainant's objections to Exhibits B and C are marked

as Exhibit 16, and respondents' reply to the objections is marked as Exhibit E.¹ Exhibit 15 is admitted for all purposes, without objection. Complainant's objections to Exhibits B and C address the weight of the evidence, rather than its admissibility, and are overruled. Exhibits B and C are admitted for all purposes.

The record was closed and the matter submitted for written decision on November 20, 2020.

SUMMARY

Complainant seeks to discipline Realty Property Management, Inc.'s, and Ms. Scott's licenses to practice real estate based on violations of the Real Estate Law (Bus. & Prof. Code, § 10000 et seq.) and related regulations arising out of the mishandling of client trust funds. Cause exists to discipline both licenses. Realty Property Management, Inc., no longer exists as an ongoing business. Ms. Scott did not produce sufficient evidence of her continued fitness to perform the duties of a real estate licensee. Therefore, respondents' licenses to practice real estate should be revoked.

¹ Exhibit D is respondents' proof of service for the additional evidence.

FACTUAL FINDINGS

Jurisdictional Matters

REALTY PROPERTY MANAGEMENT, INC.'S, LICENSE

1. On May 31, 2000, the Department issued Corporate Real Estate Broker License Number C/01279922 to Realty Property Management, Inc. On December 15, 2015, Ms. Scott was added to the corporate license as the designated officer. The corporate license expired August 28, 2019, and has not been renewed.²
2. Effective December 26, 2007, Realty Property Management, Inc.'s, corporate real estate broker license was suspended for 30 days based on its mishandling of client trust funds. The suspension was stayed provided that certain terms and conditions were met.
3. Effective August 29, 2011, all of Realty Property Management, Inc.'s, licenses and licensing rights were revoked, but it was granted the right to a restricted real estate broker license if it applied for one, based on the mishandling of client trust funds. Any restricted license issued would be suspended for 30 days, but the suspension would be stayed if Realty Property Management, Inc., paid a \$3,000 monetary penalty. Realty Property Management, Inc., would be precluded from applying for an unrestricted license for three years. Realty Property Management, Inc.,

² The expiration or suspension of a license does not deprive the Department of jurisdiction to discipline the license. (Bus. & Prof. Code, § 10103.)

applied for, and was issued, a restricted license.³ It never subsequently applied for an unrestricted license.

Ms. SCOTT'S LICENSE

4. On August 6, 2013, the Department issued Real Estate Salesperson License Number S/01935375 to Ms. Scott. The salesperson license was terminated December 2, 2015, when the Department issued Real Estate Broker License Number B/01935375. The real estate broker license expires April 1, 2024, unless renewed or revoked. There is no history of prior discipline of Ms. Scott's real estate license, either while a salesperson or real estate broker.

ACCUSATION

5. On November 18, 2019, complainant filed an Accusation seeking to discipline Realty Property Management, Inc.'s, and Ms. Scott's licenses and licensing rights. The Accusation alleges that Realty Property Management, Inc., violated the Real Estate Law and related regulations while collecting and disbursing client trust funds. The Accusation further alleges that Ms. Scott failed to exercise reasonable supervision and control over Realty Property Management, Inc.'s, handling of client trust funds.

³ The Accusation erroneously alleges that Realty Property Management, Inc., holds a restricted real estate salesperson license. A corporation cannot hold a real estate salesperson license, restricted or otherwise, as a matter of law. (See Bus. & Prof. Code, § 10132 [defining "real estate salesperson" as "a natural person"].)

Audit of Realty Property Management, Inc.'s, Real Estate Activities

6. Diana Brewster is an Auditor employed by the Department. She audited Realty Property Management, Inc.'s, real estate activities during the period of January 1 through October 1, 2018 (audit period). The audit was conducted on and off between April 15, 2018, and August 30, 2019, and was in response to a consumer complaint about Realty Property Management, Inc. Ms. Brewster reviewed Realty Property Management, Inc.'s, bank records, trust fund records of receipts and disbursements and separate records for each owner, and records of its property management activities.

OWNERSHIP OF REALTY PROPERTY MANAGEMENT, INC.

7. At all times relevant to the Accusation, John Scott, Ms. Scott's father, was the sole owner of Realty Property Management, Inc. Mr. Scott is a licensed real estate salesperson. He sold Realty Property Management, Inc.'s, property management portfolio to Tylar Property Management on October 31, 2018. He shut down Realty Property Management, Inc., six months later.

REALTY PROPERTY MANAGEMENT, INC.'S, ACTIVITIES

8. Realty Property Management, Inc., managed approximately 176 properties on behalf of 139 owners. It collected approximately \$2,616,000 in rent each month. It also: 1) advertised vacant properties, 2) solicited and screened prospective tenants, 3) collected security deposits and late fees, 4) made insurance and property tax payments, and 5) requested, supervised, and paid for repairs. The owners of the properties paid monthly property management fees of \$100 to \$120 per unit plus 8 to 10 percent of monthly rental receipts.

HANDLING OF TRUST FUNDS

9. All monthly rental payments, security deposits, and late fees collected from tenants were deposited into a checking account at Pacific Western Bank (trust account) and held in trust on behalf of the property owners. The trust account was in the name "Realty Property Management Inc. Property Management Trust Account." Mr. Scott and Ms. Scott were the sole signatories on the account.

10. Realty Property Management, Inc., accounted for trust funds collected and disbursed on behalf of property owners by maintaining a general ledger with columns for the following information: 1) property address, 2) date, 3) payee/payor, 4) amount of deposit or disbursement, 5) account balance, and 6) description. The general ledger did not include a check number for every disbursement. The account balance was not updated after every deposit or disbursement. Based on a random sampling of entries, entries identified as deposits resulted in a lower account balance and entries identified as disbursements resulted in a higher balance.

11. Realty Property Management, Inc., also maintained a separate general ledger of trust funds collected and disbursed for each property address containing the same information. Several transactions identified as disbursements did not include a check number. Based on a random sampling of entries, entries identified as deposits resulted in a lower account balance and entries identified as disbursements resulted in a higher balance.

12. During the audit period, Realty Property Management, Inc., never reconciled the written record of all trust funds held with the separate record of funds held for each property address.

RECONCILIATION OF TRUST ACCOUNT

13. On August 31, 2018, the adjusted bank account statement balance for the trust account was \$335,522.31.⁴ The accountability was \$409,441.96. There was a shortage of \$73,919.65. During her audit, Ms. Brewster traced \$20,730.43 of the shortage to a: 1) negative account balance created when funds belonging to one owner were used to pay the debts of another who had a negative balance (\$10,216.62), 2) check that was written against Realty Property Management, Inc.'s, general business account but was paid from the trust account (\$4,685.67), and 3) check identified on the general ledger as having been voided but was paid (\$5,828.14). She was unable to account for \$53,189.22 of the shortage.

14. On September 30, 2018, the adjusted bank account statement balance for the trust account was \$354,584.95. The accountability was \$413,706.92. There was a shortage of \$59,121.97. During her audit, Ms. Brewster traced \$6,951.01 of the shortage to a: 1) negative account balance created when funds belonging to one owner were used to pay the debts of another who had a negative balance (\$2,265.34), and 2) check that was written against Realty Property Management, Inc.'s, general business account but was paid from the trust account (\$4,685.67). She was unable to account for \$52,170.96 of the shortage.

15. Realty Property Management, Inc., subsequently cured the trust fund shortages Ms. Brewster was able to trace. Neither of the unidentified shortages was

⁴ The "adjusted bank account statement balance" was calculated by adjusting the available balance listed on the bank statement to account for deposits (an upward adjustment) and debits (a downward adjustment) that did not post to the account during the statement period.

cured. At no time did an owner of trust funds in the trust account authorize Realty Property Management, Inc., to maintain a shortage in the trust account.

Ms. Scott's Testimony

16. Ms. Scott did not dispute that there were shortages in the trust account on August 31 and September 30, 2018. Nor did she dispute that no owner of trust funds in the trust account authorized the shortage on either date. She speculated that the shortages were caused by new accounting software and staff's misrepresentations about their familiarity with the software.

17. Ms. Scott recognized that, as the designated officer on Realty Property Management, Inc.'s, license, she was responsible for supervising all real estate activities performed on the corporation's behalf. However, she explained she was in a difficult position because she was not an owner of the business and relied on her father to manage the business with her guidance. She had no authority to terminate employees, and she had a poor working relationship with the last bookkeeper. Ms. Scott's father was aware of the bookkeeper's shortcomings, but did not want to terminate her because several bookkeepers had quit unexpectedly.

18. After Ms. Brewster shared the results of her audit with Ms. Scott, Ms. Scott's father hired an office manager and an additional bookkeeper. Additionally, Ms. Scott and her father took more care to review all real estate transactions. Ms. Scott's father hired a certified public accountant to trace the trust fund shortage, and Ms. Scott's father told her that the shortage was cured. However, the November and December 2018 general ledgers Ms. Scott produced (Exhibits B and C) were insufficient to establish that the shortage was cured because no source documents were provided for comparison. Ms. Scott also explained that Tylar Property

Management would not have purchased Realty Property Management, Inc.'s, property management portfolio with an existing shortage of trust funds.

Analysis

REALTY PROPERTY MANAGEMENT, INC., ACTED AS A REAL ESTATE BROKER

19. During the audit period, Realty Property Management, Inc., acted as a real estate broker by managing approximately 176 properties on behalf of 139 owners in exchange for a fee. It collected rents, security deposits, and late fees. Those funds constituted trust funds and were held in the trust account for the property owners.

MISHANDLED TRUST FUNDS

20. Realty Property Management, Inc., failed to maintain adequate and accurate written records of trust funds held. The general ledger of all trust funds did not include the check number for every disbursement. The daily balance of funds was not adjusted after every deposit or disbursement. Disbursements were misidentified as deposits, and deposits were misidentified as disbursements.

21. Realty Property Management, Inc., also failed to maintain adequate and accurate separate records of trust funds for each property owner. The general ledger for each property address did not include the check number for every disbursement. Disbursements were misidentified as deposits, and deposits were misidentified as disbursements.

22. Realty Property Management, Inc., never reconciled the written record of trust funds with the separate record during the audit period.

23. The Accusation did not allege, and there was no evidence that, Ms. Scott accepted or received trust funds in connection with Realty Property Management, Inc.'s, property management activities.

SHORTAGE OF TRUST FUNDS WITHOUT WRITTEN CONSENT

24. On August 31, 2018, there was a shortage of \$73,919.65 in the trust account. In other words, Realty Property Management, Inc., would not have been able to pay all owners of trust funds what they were rightfully owed on that date. The following month, the shortage was \$59,121.97. Although a portion of the shortage was subsequently cured, the persuasive evidence established that a shortage of \$52,170.96 remains. Ms. Scott's purported evidence that the entire shortage was cured was not persuasive, and her speculation that Tylar Property Management would not have purchased Realty Property Management, Inc.'s, property management portfolio with an existing shortage of trust funds was inadmissible evidence. Realty Property Management, Inc., never obtained the written consent of every owner of the trust funds to a shortage.

Request for Costs of Audit

25. At hearing, complainant requested that Realty Property Management, Inc., and Ms. Scott be ordered to pay \$8,053.64 for the cost of Ms. Brewster's audit. Evidence of the cost of the audit was admitted, without objection. For the reasons explained in Legal Conclusion 21, only Realty Property Management, Inc., is required to pay for Ms. Brewster's audit.

Request for Costs of Investigation and Enforcement

26. Complainant requested costs pursuant to Business and Professions Code section 10106 in the total amount of \$5,500.90. That amount consists of investigation costs in the amount of \$3,062.30 and enforcement costs in the amount of \$2,438.60. At hearing, complainant introduced a Certified Statement of Investigation Costs certifying under penalty of perjury that the Department incurred costs in the amount of \$3,062.30 for the time staff spent investigating this matter. Attached to the Certified Statement of Investigation Costs is a spreadsheet itemizing the time spent by staff member, date, task, time, hourly rate, and total amount. Complainant also introduced a Certified Statement of Costs certifying under penalty of perjury that the Department incurred costs in the amount of \$2,438.60 for the time Mr. Uno spent on this matter prior to hearing. Attached to the Certified Statement of Costs is a spreadsheet itemizing his time by date, task, time, hourly rate, and total amount.

The entire amount of the costs of investigation and enforcement complainant requested is reasonable in light of the issues involved in this matter as discussed in Legal Conclusion 24.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant has the burden of proving each ground for discipline alleged in the Accusation, and must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 552, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency

making the allegation”]; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212 [the standard of proof applicable to proceedings for the discipline of a real estate license is clear and convincing evidence to a reasonable certainty].) “The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations].” (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

Applicable Law

2. A “real estate broker” is one who, on behalf of others, “leases or rents or offers to lease or rent, or places for rent, . . . or solicits for prospective tenants, . . . or collects rents from real property, or improvements thereon, . . . ” in exchange for payment or the expectation of payment. (Bus. & Prof. Code, § 10131, subd. (b).)

3. “A real estate salesperson . . . is a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in [section] 10131” (Bus. & Prof. Code, § 10132.) A real estate broker “shall exercise reasonable supervision over the activities” of real estate salespersons in its employ. (Cal. Code Regs., tit. 10, § 2725.)

4. A real estate broker who receives money belonging to a client holds the money in trust on behalf of the client, and must, within three days of receipt: 1) deliver the money to the client; 2) deposit it with a neutral escrow depository; or 3) deposit it into a trust account with a bank or other financial institution. (Bus. & Prof. Code, § 10145, subd. (a); Cal. Code Regs., tit. 10, § 2832, subd. (a).)

5. A real estate broker who deposits funds into a trust account with a bank or other financial institution must keep a written record of all trust funds deposited, including: 1) the date of receipt; 2) from whom they were received; 3) the amount received; 4) the date of deposit; 5) the check number and date of any disbursement; and 6) the daily balance in the trust account. (Cal. Code Regs., tit. 10, § 2831, subd. (a).)

6. In addition to maintaining a written record of all trust funds deposited into a trust account, the real estate broker must also maintain a separate record of all trust funds deposited on behalf of each client. (Bus. & Prof. Code, § 10145, subd. (g); Cal. Code Regs., tit. 10, § 2831.1, subd. (a).) The separate record must include the: 1) date of deposit; 2) amount of deposit; 3) date of disbursement; 4) check number for disbursement; 5) amount of disbursement; and 6) balance after each posted transaction. (Cal. Code Regs., tit. 10, § 2831.1, subd. (a).)

The broker must reconcile its written record of all trust funds deposited with its separate records every month in which trust funds are received or disbursed, and it must keep a written record of the reconciliation. (Cal. Code Regs., tit. 10, § 2831.2.)

7. A real estate broker may not make a disbursement from its trust account "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" without the prior written permission of each owner. (Cal. Code Regs., tit. 10, § 2832.1.)

8. A real estate broker license issued to a corporation authorizes one of the corporation's officers to act as a real estate broker on the corporation's behalf without having to obtain a separate license. (Bus. & Prof. Code, § 10211; see Bus. & Prof. Code, § 10159 [the designated officer on a corporate real estate broker license "need not be

a licensed real estate broker”].) The officer designated to act on the corporation’s behalf “shall be responsible for the supervision and control of the activities conducted on behalf of the corporation” (Bus. & Prof. Code, § 10159.2, subd. (a).)

Cause for Discipline

REALTY PROPERTY MANAGEMENT, INC.’S, LICENSE

9. A real estate license may be disciplined if the licensee “willfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the commissioner” adopted pursuant to it. (Bus. & Prof. Code, § 10177, subd. (d).) Realty Property Management, Inc., did not maintain adequate and accurate written records of all trust funds collected and disbursed on behalf of property owners because its general ledger did not include: 1) a check number for every disbursement; 2) the account balance after every transaction; or 3) the amount of received, as required by California Code of Regulations, title 10, section 2831, subdivision (a). Realty Property Management, Inc.’s, violations of that regulation were willful, and cause exists to discipline its real estate license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to California Code of Regulations, title 10, section 2831, subdivision (a).

10. Realty Property Management, Inc., did not maintain adequate and accurate separate records of all trust funds collected and disbursed for each property owner because its general ledger did not include: 1) a check number for every disbursement; 2) the amount disbursed; or 3) the amount received, as required by Business and Professions Code section 10145, subdivision (g), and California Code of Regulations, title 10, section 2831.1, subdivision (a). Realty Property Management, Inc.’s, violations of the statute and regulation were willful, and cause exists to discipline

its real estate license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code section 10145, subdivision (g), and California Code of Regulations, title 10, section 2831.1, subdivision (a).

11. Realty Property Management, Inc., never reconciled its written records of trust funds collected and disbursed on behalf of property owners with its separate records, as required by California Code of Regulations, title 10, section 2831.2. Realty Property Management, Inc.'s, violations of that regulation were willful. Cause exists to discipline its real estate license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to California Code of Regulations, title 10, section 2831.2.

12. Realty Property Management, Inc., maintained a shortage in its trust account on August 31 and September 30, 2018, without first obtaining the written consent of every owner of the trust funds as required by California Code of Regulations, title 10, section 2832.1. Its violations of that regulation were willful. Cause exists to discipline its real estate license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to California Code of Regulations, title 10, section 2832.1.

13. A real estate license may be disciplined if the licensee has "demonstrated negligence or incompetence in performing an act for which the officer, director, or person is required to hold a license." (Bus. & Prof. Code, § 10177, subd. (g).)⁵ Realty Property Management, Inc.'s, mishandling of client trust funds discussed in Legal

⁵ "'Person' includes corporation, company and firm." (Bus. & Prof. Code, § 10006.)

Conclusions 9 through 12 demonstrated separate acts of negligence or incompetence in performing real estate activities. Each separate act constitutes cause to discipline its license pursuant to Business and Professions Code section 10177, subdivision (g).

Ms. SCOTT'S LICENSE

14. A real estate broker license may be disciplined if the licensee, "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." (Bus. & Prof. Code, § 10177, subd. (h).) Ms. Scott was the designated officer on Realty Property Management, Inc.'s, corporate real estate broker license during the audit period. She failed to exercise reasonable supervision and control of the corporation's property management activities as explained in Legal Conclusions 9 through 13. Therefore, cause exists to discipline Ms. Scott's license pursuant to Business and Professions Code section 10177, subdivision (h).

15. Ms. Scott's failure to exercise reasonable supervision and control of Realty Property Management, Inc.'s, property management activities discussed in Legal Conclusion 14 violated her responsibilities under Business and Professions Code section 10159.2, subdivision (a). Such violation was willful. Therefore, cause exists to discipline her license pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code section 10159.2, subdivision (a).

16. California Code of Regulations, title 10, section 2725, requires a real estate broker to "exercise reasonable supervision over the activities of . . . her salespersons." There was no evidence Ms. Scott employed any real estate salespersons under her license. No cause exists to discipline her license pursuant to Business and

Professions Code section 10177, subdivision (d), as that statute relates to California Code of Regulations, title 10, section 2725.

17. Although Ms. Scott's failure to exercise reasonable supervision and control over Realty Property Management, Inc.'s, property management activities demonstrated negligence or incompetence, such negligence or incompetence did not occur while "performing an act for which . . . she is required to hold a license." As the designated officer on Realty Property Management, Inc.'s, real estate broker license, she was not required to have a separate broker license. (Bus. & Prof. Code, §§ 10211 & 10159.) No cause exists to discipline Ms. Scott's license pursuant to Business and Professions Code section 10177, subdivision (g), based on her failure to properly supervise Realty Property Management, Inc.'s, real estate activities.

18. There was no evidence Ms. Scott received any trust funds on behalf of Realty Property Management, Inc.'s, clients. Therefore, she was not required to maintain adequate and accurate written or separate records of those funds, reconcile the written and separate records on a monthly basis, or obtain permission from the owners of the funds prior to incurring a shortage. (Bus. & Prof. Code, § 10145, subd. (a); Cal. Code Regs., tit. 10, §§ 2831, 2831.1, 2831.2, & 2832.1.) No cause exists to discipline her license pursuant to Business and Professions Code section 10177, subdivisions (d) or (g), for failing to maintain adequate and accurate written or separate records of trust funds, reconcile the written and separate records, or obtain permission prior to incurring a shortage.

Conclusion

19. Cause exists to discipline Realty Property Management, Inc.'s, corporate real estate broker license for the reasons explained in Legal Conclusions 9 through 13,

individually and collectively. The license was previously suspended and it was restricted during the audit period based on the prior mishandling of client trust funds. Additionally, Mr. Scott sold Realty Property Management, Inc.'s, property management portfolio, and the business no longer exists. Realty Property Management, Inc.'s, real estate broker license should be revoked.

20. Cause also exists to discipline Ms. Scott's real estate broker license for the reasons explained in Legal Conclusions 14 and 15, individually and collectively. As the designated officer on Realty Property Management, Inc.'s, license, Ms. Scott was responsible for supervising all real estate activities conducted on its behalf. Those activities resulted in, among other things, Realty Property Management, Inc., not having enough trust funds to pay all owners what they were owed on September 30, 2018.

At hearing, Ms. Scott acknowledged her responsibility for supervising the corporation's real estate activities, but explained she deferred to her father, a licensed real estate salesperson, on the daily operations of the business because he was the owner. She did not produce sufficient evidence that she would not be susceptible to similar pressure by an employing broker if allowed to continue performing real estate activities as a real estate salesperson. Therefore, Ms. Scott did not introduce enough evidence of her continued fitness to perform the duties of a real estate licensee. Her real estate broker license should be revoked.

Award of Costs of Audit

21. A real estate broker shall reimburse the Department for the cost of an audit after the Department issues a final decision finding that the broker violated Business and Professions Code section 10145 or any regulation interpreting that

statute. (Bus. & Prof. Code, § 10148, subd. (b).) Realty Property Management, Inc., violated Business and Professions Code section 10145, subdivision (g), and California Code of Regulations, title 10, sections 2831, subdivision (a), 2831.1, subdivision (a), 2831.2, and 2832.1, as set forth in Legal Conclusions 9 through 12. There was insufficient evidence that Ms. Scott violated that statute or any of those regulations as set forth in Legal Conclusion 18. Therefore, only Realty Property Management, Inc., is required to reimburse the Department \$8,053.64 for the cost of Ms. Brewster's audit. (Bus. & Prof. Code, § 10148, subd. (b).)

Award of Costs

22. An order resolving a disciplinary proceeding in the Department's favor may require a real estate licensee to pay the Department's reasonable costs of investigating and enforcing the matter. (Bus. & Prof. Code, § 10106, subd. (a).) "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing." (Bus. & Prof. Code, § 10106, subd. (c).)

23. The Department may prove its reasonable costs of investigation and enforcement by submitting "Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." (Cal. Code Regs., tit. 1, § 1042, subd. (b).) When costs are sought for services provided by a Department employee, the declaration "may be executed by the [Department] or its designee and shall describe the general tasks performed, the time spent on each

task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached." (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1).)

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 10106. Those factors include: 1) the licensee's success in getting the charges dismissed or reduced; 2) the licensee's subjective good faith belief in the merits of his or her position; 3) whether the licensee raised a colorable challenge to the proposed discipline; 4) the licensee's financial ability to pay, and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

24. The evidence complainant introduced in support of her request for costs of investigation and enforcement constitutes prima facie evidence of the reasonableness of the costs incurred. (Bus. & Prof. Code, § 10106, subd. (c); Cal. Code Regs., tit. 10, § 1042, subd. (b)(1).) No evidence was introduced to rebut such evidence. Therefore, after considering the *Zuckerman* factors, the entire amount of costs of investigation and enforcement complainant requested is reasonable. Consequently, Realty Property Management, Inc., and Ms. Scott are jointly and severally liable for paying complainant's costs in the total sum of \$5,500.90 as set forth in the Order below.

ORDER

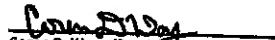
1. All licenses and licensing rights of respondent Realty Property Management, Inc., are REVOKED.

2. All licenses and licensing rights of respondent Kathleen Rebecca Scott are REVOKED.

3. Respondent Realty Property Management, Inc., shall reimburse the Department of Real Estate the sum of \$8,053.64 for the cost of Diana Brewster's audit within 60 days of the Department's mailing a notice of billing.

4. Respondents Realty Property Management, Inc., and Kathleen Rebecca Scott shall, individually and collectively, reimburse the Department of Real Estate the sum of \$5,500.90 for costs incurred while investigating and enforcing this matter. These costs may be paid pursuant to a payment plan approved by the Department or its designee.

DATE: December 14, 2020


Coren D. Wong (Dec 16, 2020 13:30 PST)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings