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APR 19 2013

DEPARTMENT OF REAL ESTATE

By *L. Trust*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	NO. H-4318 SD
SCOTT JENKINS SHIELDS,)	
)	OAH NO. 2012070882
Respondent.)	
_____)	

DECISION

The Proposed Decision dated March 18, 2013, 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.

This Decision shall become effective at 12 o'clock noon on MAY 09 2013

IT IS SO ORDERED 4/11/2013

REAL ESTATE COMMISSIONER

[Signature]

WAYNE S. BELL

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SCOTT JENKINS SHIELDS,

Respondent.

Case No. H-4318 SD

OAH No. 2012070882

PROPOSED DECISION

Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 1, 2013, in San Diego, California.

Annette E. Ferrante, Real Estate Counsel, Department of Real Estate (Department) State of California, represented Complainant, Veronica Kilpatrick, Deputy Real Estate Commissioner.

Scott Jenkins Shields represented himself and was present throughout the hearing.

The case remained open for the Department to submit additional documents by March 6, 2013, with any objections to be submitted by March 8, 2013. The matter was submitted on March 8, 2013.

Both parties stipulated that only the third cause for discipline remained in the accusation. All other causes of discipline and all other named respondents were stricken from the accusation. In addition, page 11, lines 15 to 17 of subsection (d), was also stricken.

FACTUAL FINDINGS

Licensing History

1. On March 7, 1997, a real estate salesperson license was issued to respondent. On May 5, 1978, a real estate broker license was issued to respondent. At all relevant times, the licenses were in full force and effect. Respondent broker's license expires on May 4, 2014, unless renewed.

There is no history of any previous discipline having been imposed against respondent's license.

Respondent's Testimony

2. In 1966 respondent received his Bachelors of Science Degree in Engineering from the U.S. Naval Academy in Annapolis, Maryland. He was a U.S. Navy fighter pilot for 11 years and was based in Miramar, California. Respondent served in the war and in 1975, was honorably discharged from the Navy. In 1975, respondent received his real estate sales license. In 1978, he received his real estate brokers license. Respondent has worked in the real estate field for over 37 years. He currently performs property management services for his client's rental properties and for homeowner's associations. His duties include collecting rent, overseeing repairs and paying bills. He charges a monthly fee for his services that are withdrawn from his client's trust accounts.

Respondent stipulated to the following facts:

- (a) Respondent permitted his earned income (for services rendered as a property manager) to remain in his clients trust accounts longer than 30 days.
- (b) Respondent failed to retain the front and back of all canceled checks issued on his client trust account for a period of three (3) years.
- (c) Respondent issued a check for \$224.38 to a client but the client failed to cash the check. Therefore, respondent has retained this amount in the client's trust fund.

Respondent disputed the following allegations alleged in the accusation:

- (d) Respondent disputed that he failed to maintain or keep an accurate record in chronological sequence of all trust funds received and disbursed (a control record) for his trust account.
- (e) Respondent disputed that he failed to perform and maintain accurate records of a reconciliation of the sum of the separate beneficiary records of all trust funds received and disbursed (a control record) on at least a monthly basis for his trust account.
- (f) Respondent disputed that he collected and retained unearned management fees in the amount of \$75 in September 2008 from his client.
- (g) Respondent disputed that he collected and retained unearned fees in the amount of \$40 in September 2009 and failed to disclose the collection of this compensation to the homeowner.

Earned Income Remained in Client Trust Account

3. Respondent testified that the reason he permitted his earned income to remain in his clients trust account longer than 30 days was to make sure his clients trust accounts did not fall below zero. He delayed withdrawal of his own fees and waited until he collected rent on his client's property so that his clients would have the benefit of not falling below zero in their trust account. Respondent checked with his certified public accountant (CPA) to determine when his management funds in clients' trust accounts became his earned income and understood that his funds only became his when he withdrew them and paid himself. He subsequently learned from the real estate auditor that this advice was incorrect. The reason respondent allowed his funds to remain in his client's trust account, was to enable his clients to cover expenses. Respondent maintained his actions were for the benefit of his clients, not for his benefit. He has since instituted a new policy based on the auditor's recommendation. He now withdraws his earned income timely and if the client's account is less than zero, he characterizes the money as a client loan. Respondent testified, "I always acted in good faith and my actions were never at the detriment of my clients...I fully cooperated with the real estate auditor. I never had a client complain in 37 plus years of practice...and I have never harmed my clients."

Cancelled Check Retention

4. Respondent testified that the reason he did not retain the front and back of all canceled checks issued from his client trust account for a period of three (3) years, was because his bank does not return the canceled checks to him. Respondent conducted his banking online and was able to retrieve checks from his computer at any time. He did not physically have copies of the checks when the auditor conducted the audit, but testified that he could obtain them through his bank's website.

Remittance of \$224.38 to Client

5. Respondent issued a check for \$224.38 to client JC who failed to cash the check. JC failed to cash the check because she claimed she was owed money from respondent's mother, the company owner and broker of Shield's Realty. Shield's Realty is not a party in this accusation and is owned by respondent's mother. According to a September 2, 2009, letter from JC to the Shield's Realty, JC claimed that respondent's mother owed them \$3,480.42 and that all rent deposits were deposited into the Shield Realty brokerage trust account. The JC letter further stated, "From 2002 to 2008, we encountered few or no problems with this arrangement and Mr. Scott Shield (respondent) handled our account and money without problems."

In March 2009, JC contacted respondent to determine why the gardener had not been paid \$150 a month from January 2008 to July 2008. JC wrote, "In August 2008, we were made aware that payment problems existed due to Shields Realty (respondent's mother's company) moved locations [sic] so we arranged for the tenants to pay the gardener directly and deduct the amount from their rent instead of sending the money to Mr. Shields. He

(respondent) assured us he had paid the gardener...but the check had not been cashed...He (respondent) was having some difficulty accessing the money due to a dispute with the owner(s), who coincidentally was his family...He (respondent) attempted to speak and or write to Shields Realty owner/broker (his mother) and to their lawyer, but to no avail."

Respondent testified that JC's money was in Shields Realty trust account and he was not associated with his mother's account and could not access JC's money. Respondent wrote a check to JC for \$224.38 that respondent owed her for overpayment for the property management services, but JC refused to cash it awaiting the \$3,480.42 JC respondent's mother owned her. Respondent testified, "I don't manage my mothers account and am separate from Shield's Realty." The \$224.38 remained in JC's trust account at the time of the audit because JC refused to cash the check.

Trust Fund Checks Held in Chronological Sequence and Control Documents

6. Respondent testified that he wrote checks in chronological sequence. He submitted his checkbook as verification. Respondent wrote the date on each check he issued, however, he admitted that he did not have a separate column form that included the date of receipt of monies into the trust and the date of deposit. He did not have a "control record" also known as a "column record" in his trust accounts for all clients. Respondent kept his reconciliations on a taped adding machine. Since the audit, respondent has kept a separate columnar document and each individual account is reconciled on a separate document.

Retained Unearned Income (\$75 and \$40)

7. Respondent testified that as to the \$75 dispute, he was the property manager for the JC property and charged \$75 dollars a month for his management fees. When he was discharged from his duties, he no longer collected his monthly management fees. His \$75 management fees were collected from August 2008 to March 31, 2009, and all monies he received were retained as earned income. August through March totaled \$600 in management fees, however, the auditor believed respondent was only owed \$525 and not \$600.

Respondent testified that as to the \$40 dispute, he hired a handyman for one of his client's properties. The client did not submit any complaints against respondent, however, during the real estate audit, the auditor found a handyman invoice for \$140, but the amount paid was \$180. The unaccounted \$40 was the subject of the auditor's claim for retained unearned income. Respondent testified that this clerical error was an "oversight" and admitted that there was no support for the \$40 dollar difference. Respondent denied that he took the \$40 dollars and testified that there was no supporting documentation that indicated he took the \$40. Despite his contention, respondent issued a check to the client for \$40.

On February 17, 2013, respondent wrote a letter to the Department and stated in part, "I have never had a complaint filed against me in the 37 plus years...I honestly believe that DRE misread the JC (complaint) letter and audited me looking for the Shields Realty trust

account (his mothers account). The auditor, Jennifer Borromeo, asked me where the Shields Realty trust account was. I told her that it was (my) mother's trust account not the Scott Shields Realtor account. After auditing me and easily seeing that I had none of the trust account funds from Shields Realty, Mrs. Borromeo audited (my) mother...I have never done anything detrimental...the infractions were beneficial to my customers and in no way detrimental to them. As Mrs. Borromeo correctly concluded, all customer funds were accounted for. I have never taken a penny from anyone in my life, I hold our profession in the highest regard and no way would I have intentionally violated DRE regulations...I have always conducted myself in a professional manner and represented our industry in the finest fashion. I am very proud of my actions in my 37 plus years."

Evaluation of Respondent's Testimony

8. Respondent was articulate, poised, credible and direct in his testimony. He was a fighter pilot for the US Navy and honorably served his country. He has been in real estate for the past 37 years with no prior disciplinary actions. He valued his profession. It was unlikely respondent would risk his 37 year real estate career over \$40 or \$75 discrepancies listed in the audit.

Respondent took full responsibility for the clerical errors he made in maintaining his trust account. Respondent took full responsibility for failing to have a control document as required. He willingly made the changes recommended by the auditor to better manage his business and comply with the rules and regulations. Respondent was not associated with Shield's Realty (his mother's company) during all time relevant to the accusation. He presented as a gentle, kind, considerate man who was embroiled in a dispute that initiated because of a complaint filed by client JC against respondent's mother.

Respondent's letters of recommendation were impressive. Many of the letters of recommendation were authored by clients who have known respondent for over 30 years and who described respondent as professional, honest, competent and efficient.

Jennifer Borromeo's Testimony

9. Jennifer Borromeo received her Bachelor's of Science degree in Business Administration from San Diego State University in 1991. She has been employed with the Department for 21 years, has conducted over 700 audits and has testified in administrative hearings 30-40 times.

On June 17, 2010, Ms. Borromeo prepared an audit report. The audit period was from March 1, 2007, to February 28, 2010. Ms. Borromeo examined respondent's accounting records related to respondent's real estate activities to determine whether respondent conducted his real estate activities in accordance with real estate law and the commissioner's regulations. Ms. Borromeo's reviewed bank statements, check stubs, deposit records, owner statements, invoices, tenant agreements, correspondence letters and copies of cancelled checks.

Ms. Borromeo concluded the following:

(a) As of February 28, 2010, there was an overage of \$3,319.69 in respondent's trust account. This was money belonging to respondent for services rendered but not yet removed from the trust account. The money belonged to respondent for services he rendered, but had not been disbursed.

(b) Respondent's former client, JC, had a balance of \$224.38 remaining in respondent's account.

(c) Client JC was charged \$75 a month for services rendered by respondent. Respondent collected \$600 in management fees, instead of \$525 for a seven-month period from September 2008 to March 2009. There was a dispute as to whether services were rendered in August 2008.

(d) Respondent failed to maintain a columnar record of trust funds received and disbursed. There were no columnar records with the date funds were received, date of deposit, amount received, date of disbursement, check number and amount disbursed in chronological sequence with a daily balance.

(e) Respondent failed to provide evidence of reconciled monthly separate records for each client with a control record.

(f) Respondent maintained more than \$200 of his funds in his trust account. He failed to disburse his management fees within 30 days.

(g) Respondent's records showed he was owed \$4,070.65 held in the trust fund however, a separate record and related disbursements indicated that a balance owed of \$3,546.72.

(h) There was a difference between \$25,273.33 total management fees earned per separate record and the \$25,715.33 total fees earned per respondent records for a difference of \$442.

(i) A handyman bill was overpaid by \$40 dollars.

(j) Respondent did not maintain all invoices related to his trust account disbursements. Respondent has not maintained canceled checks or copies of canceled checks since March 2009. It was insufficient that respondent could access these documents through the bank website.

Ms. Borromeo testified that respondent was cooperative throughout the audit and investigation and that he was amenable to the changes she suggested.

Cost of Investigation and Enforcement

10. The Department incurred costs of investigation and enforcement of this matter in the amount of \$9,694.40 for the services rendered. Four special investigators billed over 23 hours, the real estate attorney billed 18.5 hours and the auditor's billed 111 hours for their time in uncovering less than \$1,000 in disputed amounts. The amount of time billed to uncover the disputed amounts is unreasonable.

LEGAL CONCLUSIONS

Purpose of an Administrative Disciplinary Action

1. The object of an administrative proceeding aimed at disciplining a license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. In an administrative disciplinary proceeding, the burden of proof is on the party asserting the affirmative. (*Small v. Smith, supra*, 16 Cal.App.3d at 457.)

3. In an action seeking to impose discipline against the holder of a professional license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

Applicable Statutes

4. Business and Professions Code section 10145, subdivision (a)(1), provides in part that a real estate broker who accepts funds belonging to others in connection with a transaction shall deposit funds that are not immediately placed into a neutral escrow depository or in the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

In this matter, respondent accepted funds belonging to others in the form of rents and placed them into a trust account. All funds deposited by the respondent were held in the trust fund account until he disbursed them in accordance to his property management functions requested by his clients.

5. Business and Professions Code section 10148 provides in part a licensed real estate broker shall retain for three years copies of all listing, deposit receipts, canceled checks, trust records, and other documents executed by him in connection with any transactions for which a real estate broker

license is required. The commissioner may maintain an action for the recovery for the cost. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

In this matter, respondent did not retain copies of all deposit receipts, canceled checks because he had access to them, if needed, through the bank's website. The bank did not return canceled checks to respondent for him to retain. A cost bill was submitted in this matter for time billed by one auditor, four special investigators and an attorney totaling over 152 hours of work.

6. Business and Professions Code section 10176, subdivisions (e), and (g), provide in part that the commissioner shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee with this state, and may temporarily suspend or revoke a real estate license at any time when the licensee has been guilty of; (e) commingling with his or her own money or property the money of other property of others which is received and held by him, or (g) claiming or taking by a licensee of any undisclosed amount of compensation or profit.

7. Business and Professions Code section 10177, subdivisions (d), and (g), provide in part that the commissioner may suspend or revoke the license of a real estate licensee who has done any of the following; (d) willfully disregarded or violated the Real Estate Law or regulations or, (g) demonstrated negligence or incompetence in performing an act which he is required to hold a license.

In this matter, respondent sought and followed his CPA's advice to determine whether he was allowed to keep his earned income in his clients trust account for the benefit of his clients who may not have enough funds to cover their expenses. After speaking with his CPA, respondent believed that he could leave his earned income in his client's trust account. After the audit, respondent understood that this practice was unacceptable. There was no credible evidence to suggest respondent acted with willful disregard.

8. Business and Professions Code sections 10156.5 and 10156.6 provide that the Commissioner may issue a restricted license to a person who has been licensed and found by the commissioner after a hearing to have violated provisions of Real Estate Laws where such violations would justify suspension or revocation of the license. The restricted license may be restricted by term and conditions to be observed in the exercise of the privileges granted.

9. Business and Professions Code section 10106 provides in part that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request the Administrative Law Judge to direct a licensee found to have committed a violation to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

In this matter, the auditor revealed some clerical errors in amounts totaling less than \$1,000. In addition, the auditor concluded that the proper management of the trust account did not conform to the California Real Estate Laws. However, the request for costs recovery of \$9,694.40 was unreasonable in this matter as will be described in detail below.

Applicable Regulations

10. California Code of Regulations, title 10, section 2835, provides in part that commingling, as used in Business and Professions Code section 10176, subdivision (e), is prohibited, except the following shall not constitute comingling:

(a) The deposit into a trust account of reasonably sufficient funds, not to exceed \$200, to pay service charges or fees levied or assessed against the account by the bank or financial institution where the account is maintained.

(b) The deposit into a trust account maintained in compliance with subdivision (d) of funds belonging in part to the broker's principal and in part to the broker when it is not reasonably practicable to separate such funds, provided the part of the funds belonging to the broker is disbursed not later than twenty-five days after their deposit and there is no dispute between the broker and the broker's principal as to the broker's portion of the funds. When the right of a broker to receive a portion of trust funds is disputed by the broker's principal, the disputed portion shall not be withdrawn until the dispute is finally settled.

(c) The deposit into a trust account of broker owned funds in connection with activities pursuant to either subdivision (d) or (e) of Section 10131 of the Code or when making, collecting payments or servicing a loan which is subject to the provisions of Section 10240 of the Code provided:

(1) The broker meets the criteria of Section 10232 of the Code.

(2) All funds in the account which are owned by the broker are identified at all times in a separate record which is distinct from any separate record maintained for a beneficiary.

(3) All broker owned funds deposited into the account are disbursed from the account not later than 25 days after their deposit.

(4) The funds are deposited and maintained in compliance with subdivision (d)

(5) For the purpose of this section, a broker shall be deemed to be subject to the provisions of Section 10240 of the Code if the broker delivers the statement to the borrower required by Section 10240.

(d) The trust fund account into which the funds are deposited is maintained in accordance with the provisions of Section 10145 and the regulations of this article.

In this matter, respondent contacted his CPA to determine if he could keep his earned income in the trust account in order to benefit his clients who may have had insufficient funds to cover their expenses. Respondent believed that the monies in his clients' trust accounts were his only when he withdrew them from the account. Since the real estate audit and at the suggestion of the auditor, respondent has changed his practice to conform to the real estate laws. In cases where his clients have insufficient funds to cover expenses, respondent now lists amounts withdrawn as loans to his clients. In addition, respondent disburses the money within the required time period.

11. California Code of Regulations, title 10, section 2831, provides in part:

(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

- (1) Date trust funds received.
- (2) From whom trust funds received.
- (3) Amount received.
- (4) With respect to funds deposited in an account, date of said deposit.
- (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
- (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
- (7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

(d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.

(e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed \$1,000. Upon request of the Department or the maker of such checks, a broker shall account for the receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.

12. California Code of Regulations, title 10, section 2831.2 provides:

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

Mitigation and Rehabilitation

13. Respondent readily admitted that he did not maintain a control record and reconciled his trust account with a printed added machine strip. He has since changed his practice and has complied with all of the recommendations from the auditor in order to comply with the statutes and regulations in managing his trust account. There have been no prior disciplines in the 37 years respondent has been licensed. Respondent took responsibility for his own actions and did not shift blame. Sufficient time has elapsed since the incident that would indicate that a recurrence is unlikely. Respondent has admitted to his mistakes and is remorseful. The auditor testified that respondent was cooperative and desired to correct his trust account errors.

Costs of Investigation and Enforcement

14. The Department may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that the respondent engaged in relatively innocuous misconduct. *Zuckerman v State Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32 at 45. In *Zuckerman*, the court held that if the agency failed to properly exercise its discretion to limit cost assessments, its decisions may be vulnerable to constitutional attack on the ground that it would unconstitutionally chill the right of respondent's to seek a hearing. Spending over 152 hours of time (111 hours billed by the auditor, 18 hours billed by counsel and 23 hours billed by four separate investigators) to uncover a less than \$1,000 in disputed amounts, is excessive and disproportionate to prove respondent engaged in misconduct. In this matter, a reasonable cost recovery is \$1,500.

Evaluation

15. Cause exists, by clear and convincing evidence, to impose discipline against respondent's real estate licenses based on the evidence that respondent failed to maintain adequate and accurate trust records under Business and Professions Code sections 10145, and 10176, subdivision (e), and California Code of Regulations section 2835. Respondent commingled his own money, in the form of management fees, with those of his clients and failed to disburse his earned income from the client trust account within the time period required by Business and Professions Code section 10145 and California Code of Regulations section 2835. Respondent admitted to errors in his trust fund documentation and has since corrected his practice.

16. Cause exists, by clear and convincing evidence, to impose discipline against respondent's real estate licenses based on the evidence that respondent failed to retain the front and back copies of all cancelled checks for three years as required by Business and Professions Code section 10148. Respondent instead maintained online copies of bank checks.

17. Cause exists, by clear and convincing evidence, to impose discipline against respondent's real estate licenses based on the evidence that respondent failed to maintain a control record as required by Business and Professions Code section 10148 and California Code of Regulations sections 2831.1 and 2831.2.

18. Cause does not exist, by clear and convincing evidence, to impose discipline against respondent's real estate licenses for failing to collect and retained unearned management fees in the amounts of \$75 and violating Business and Professions Code section 10145, subdivision (a)(1), and section 10176, subdivision (g). There was no credible evidence submitted that respondent charged an additional \$75 to client JC. Respondent billed JC for 8 months of management services from August 2008 to March 31, 2009 that totaled \$600. As for the \$40, respondent admitted a clerical error in billing for services rendered by a handyman and returned the amount to his client.

19. Cause does not exist, by clear and convincing evidence, to impose discipline against respondent's real estate licenses for failing to remit trust funds to his client totaling \$224.38. There was no credible evidence submitted that respondent failed to pay this money. Respondent issued a check for \$224.38 to his client JC and the client failed to cash the check. JC had a dispute with respondent's mother, not a party to this accusation, and elected to not cash respondent's check until respondent's mother paid her what she believed was owed to her. Respondent is not in control of his mother's business and is not in control of JC's inaction for failing to cash his check.

20. The only remaining issue is what would be the appropriate discipline. Public protection is paramount. The proper handling of a client trust account is an important function of real estate professionals. Respondent must ensure that his property management business is operating in compliance with real estate laws. The evidence suggested that

respondent would benefit from further education in the proper management of trust accounts. In this matter, imposing revocation or suspension would not promote uniformity, certainty, fairness and deterrence to further public protection.

It is appropriate, in this matter, to issue a public reproof for the violations of the Real Estate Law. Respondent willingly adopted the recommendations by the auditor. There have been no prior disciplines in the 37 years respondent has been licensed. Respondent took responsibility for his own actions and did not shift blame. Respondent's actions were not willful. He did not financially benefit when he kept his earned income in his client's trust accounts for his clients' benefit. Furthermore, respondent sought the advice of a professional (CPA) to determine if he could keep his income in the accounts so that his clients did not bounce checks and was mistakenly advised that he could do so. His actions of seeking the advice of professionals demonstrated that he wanted to ensure that he complied with the law. Sufficient time has elapsed since the incident, and he has adopted the recommendations by the auditor that would indicate that a recurrence is highly unlikely. Respondent fully cooperated with recommendations made by the auditor, admitted to making some clerical errors in his management of the trust account and is remorseful. The evidence supports a public reproof. The reasonable costs of the prosecution for this public reproof is \$1,500.

ORDERS

This decision shall constitute the Department's formal public reproof issued to Respondent, Scott Jenkins Shields.

1. Respondent shall, within thirty (30) days from the effective date of this Decision, complete a course in the proper set up and management of real estate trust accounts with an emphasis in property management trust accounts. The course shall be not less than 8 hours. Respondent shall obtain prior approval from the Department before enrolling in the course. Respondent shall, within sixty (60) days from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has successfully completed the course.

2. Respondent shall, within thirty (30) days of the effective day of this Decision, pay the Department costs associated with its investigation and enforcement in the amount of \$1,500.

DATED: March 18, 2013



CARLA NASOFF
Administrative Law Judge
Office of Administrative Hearings