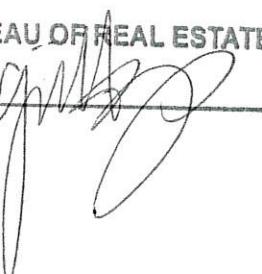


FILED

JAN 12 2017

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) CalBRE No. H-04753 SD
JEFFREY BRIAN NELSON,) OAH No. 2016010239
Respondent.)

DECISION

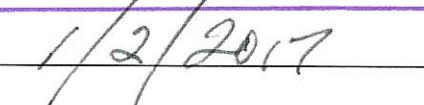
The Proposed Decision dated November 29, 2016, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau'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 FEB - 1 2017.

IT IS SO ORDERED


WAYNE S. BEDL
REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation Against:

LINDA LOUISE BELL and JEFFREY
BRIAN NELSON,

Respondents.

Case No. H-04753 SD

OAH No. 2016010239

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on November 1, 2016.

Lissette Garcia, Real Estate Counsel, represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Bureau of Real Estate, Department of Consumer Affairs, State of California.

Linda Louise Bell, respondent did not appear. Complainant advised that Ms. Bell did not file a Notice of Defense and the bureau had issued a default decision against her revoking her broker's license. The Default Order was entered on December 9, 2015. The bureau's license certification history documented that Ms. Bell's broker's license was revoked effective February 4, 2016.

Jeffrey Brian Nelson, respondent, represented himself.

The matter was submitted on November 1, 2016.

PROTECTIVE ORDER

Complainant's Exhibits 16 and 17 were admitted into evidence and contain financial and personally-identifying information. It is impractical to redact the information from these exhibits. To protect privacy and the confidential personal information from inappropriate disclosure, Complainant's Exhibits 16 and 17 are ordered sealed. This sealing order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code

section 11517, may review the documents subject to this order, provided that such documents are protected from release to the public. No court reporter or transcription service shall transcribe the information contained in the records.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 22, 2015, complainant signed the accusation in her official capacity. The accusation alleged that Mr. Nelson were engaged in unlicensed activity, failed to supervise Ms. Bell, and that an audit revealed numerous violations committed by Ms. Bell when Mr. Nelson was her employing broker. Complainant asserted these violations constituted cause to discipline Mr. Nelson's license.

The accusation and other required jurisdictional documents were served on Mr. Nelson, who timely filed a notice of defense.

Background Facts

2. Arthur Bell was a licensed real estate broker who died on July 27, 2009. His widow, respondent Linda Bell, was a licensed salesperson and Arthur Bell was her employing broker. Their dba was Panda Realty, licensed by the bureau, with a Poway office address. On September 3, 2009, the San Diego County recorder filed a fictitious business name statement for Panda Realty, located in Poway, California. Ms. Bell was identified as the registered owner of the business.

Mr. Nelson testified that, in 2012, through his wife, Ms. Bell contacted him, asking him to be her employing broker, which Mr. Nelson agreed to do. Mr. Nelson was under the mistaken impression that Mr. Bell had recently passed away, he did not realize until later that Mr. Bell actually died in 2009. Mr. Nelson believed that he would be Ms. Bell's employing broker for a limited time, just until she obtained her broker's license, which he thought she would receive shortly. Mr. Nelson testified that he met with Ms. Bell at a coffee shop and then visited her office that he described as a "flashback to the 80s." Ms. Bell told Mr. Nelson she had very little business and needed to associate with a broker until she got her broker's license. Mr. Nelson agreed to this short-term arrangement, explaining that it was the first time he had ever done something like this. Mr. Nelson testified that he later believed that Ms. Bell had failed the broker's exam and he allowed their relationship to continue and offered ways to assist her with taking the exam. Later, Mr. Nelson was diagnosed with cancer, underwent treatment, and testified this was why he did not supervise Ms. Bell for part of the time he was her employing broker.

Ms. Bell's license certification documented that her license was "renewed in the employ of" Mr. Nelson on May 5, 2014. Mr. Nelson was never licensed to engage in real

estate activities at the Poway address or as Panda Realty. Mr. Nelson had no knowledge about Ms. Bell's property management business.

It must be pointed out that given Mr. Nelson's presentation at the hearing and the documents reviewed, Mr. Nelson did not appear as a licensee who intentionally violated the law or who tried to get around the law. Instead, he appeared rather hapless, as one who tried to help a fellow licensee but got in over his head and let things drift along rather than terminate the business relationship. Given that this was the first time he had ever supervised another salesperson in this manner, his actions and inactions, although not a defense to the causes for discipline alleged, were understandable.

Mr. Nelson's License History

3. On June 23, 1999, the bureau issued a salesperson license to Mr. Nelson. On April 6, 2009, the bureau issued a broker license to Mr. Nelson. His broker's license is current and expires on April 5, 2017. Mr. Nelson's main office and mailing address identified on his license certification was his residence where he has a home office. Mr. Nelson's address of record was separate and distinct from the address of record the bureau had for Ms. Bell. There were no dbas or branch offices associated with Mr. Nelson's license.

There is no history of discipline against Mr. Nelson's license.

Initiating Complaint

4. Freddie Wilson complained to the bureau that he had been served with an unlawful detainer action alleging failure to pay his rent. However, he alleged that he paid his rent to Ms. Bell, the property manager, but later learned that she had not forwarded it to the owner. This led to him being wrongfully sued, and it negatively affected his credit.

While investigating that complaint, the bureau learned that Ms. Bell continued to use Panda Realty, a dba previously registered to Mr. Bell, whose license had expired on May 24, 2012. A records search then revealed that Mr. Bell died in 2009, but that Ms. Bell's license continued to be associated with Mr. Bell's license until 2012. The bureau also learned that Ms. Bell associated her license with Mr. Nelson on September 19, 2012.¹ Based upon this information, the bureau conducted an investigation of Mr. Nelson and Ms. Bell.

Bureau's Special Investigator's Interviews

5. Kathryn Stanbra, the bureau's special investigator, visited the Panda Realty Poway office on March 17, 2015. Ms. Bell was not present but Veronica Sharp, the only

¹ No testimony was offered explaining why this date was different from that 2014 date referenced on Mr. Nelson's license certification, but since the 2014 date indicated it was a "renewal," it appears Ms. Bell's license was first "associated" with Mr. Nelson's license in 2012.

person in the office, introduced herself as Ms. Bell's assistant. Ms. Sharp advised Special Investigator Stanbra of the following: Ms. Bell did all of the property management; Ms. Sharp used to be licensed, was no longer licensed, and performed no activity for Ms. Bell that required licensure; Ms. Bell continued the property management business after Mr. Bell died; the bank account at all times was with Wells Fargo; only Ms. Bell's name was on the bank account; each property was separate; and only Ms. Bell signed the checks. Ms. Sharp provided a list of the various properties Ms. Bell managed. The list did not contain any starting dates and Ms. Sharp said that Ms. Bell had that information. Ms. Sharp said that Mr. Nelson had been Ms. Bell's employing broker for "a couple of years." Ms. Sharp denied filing any licensing documents with the bureau.

On March 18, 2015, Special Investigator Stanbra returned to Panda Realty and met with Ms. Bell. Ms. Bell provided copies of various documents requested. When Special Investigator Stanbra asked Ms. Bell for copies of Mr. Nelson's file, Ms. Bell appeared uncomfortable but produced the file. Special Investigator Stanbra reviewed the file and noted that there were many copies of Panda Realty checks bearing the Poway office address in the amounts of \$2,250 and \$2,500 made payable to "Jeffrey Nelson Real Estate." Ms. Bell admitted that she ran the business after her husband died and did not notify the bureau of his death. Special Investigator Stanbra asked Ms. Bell about the audit that showed a trust fund shortage of the property management accounts (Factual Findings Nos 7 and 8, below) and Ms. Bell advised that she replaced the shortage by obtaining a loan from a family member.

Ms. Bell then left for a business meeting and Special Investigator Stanbra remained with Ms. Sharp who continued making copies of the requested documents. Special Investigator Stanbra spoke more with Ms. Sharp who told her: she did not know anything about Ms. Bell's and Mr. Nelson's relationship or the business between them; she did not know why Ms. Bell was writing checks to Mr. Nelson; Mr. Nelson did not come to the Poway office; and Ms. Bell paid for repairs to the properties she managed when owners did not have the funds to do so which may explain why there was a shortage of funds. Ms. Sharp described Ms. Bell as a good person.

On September 18, 2015,² Special Investigator Stanbra telephoned Ms. Bell's office and was greeted by a message that thanked the caller for contacting Panda Realty and Priority One Real Estate Consultants, provided the business hours and gave the caller options of buttons to press depending on the nature of the call. There was not an option to speak with Ms. Bell, so Special Investigator Stanbra drove to the Poway office. The office was no longer there, so she called telephone number again and pressed the option to speak with Ms. Sharp. Ms. Sharp said that Ms. Bell had sold the business to Mark Cohen, the office had relocated to Scripps Ranch, and Ms. Bell no longer worked for Panda Realty. Special Investigator Stanbra drove to the Scripps Ranch office and discovered that Priority One Real Estate and Consultant/Panda Realty were listed on the office directory as being located in Suite 204. Special Investigator Stanbra photographed that directory listing.

² Although her report indicated that she placed call on "09/18/15," this was confusing because her report was written March 25, 2015.

Special Investigator Stanbra next performed an Internet search of Panda Realty and discovered Yelp reviews of Ms. Bell and Panda Realty for dates of services/encounters that took place between 2011 in 2014, many of which were unfavorable reviews.

Property Management Documents

6. Copies of the documents Special Investigator Stanbra obtained from Ms. Bell were introduced. These included the independent contractor agreement dated September 19, 2012, between Mr. Nelson and Ms. Bell identifying him as her broker. The agreement stated the "prohibited activities" were loan brokerage, that Ms. Bell would like to work from a Poway office which was once the dba of Panda Realty, and that Mr. Nelson would add the Poway address as a branch office to his license. Numerous checks made out to Mr. Nelson by Panda Realty with the Poway office address, were signed by Ms. Bell. The checks covered a span of several years. There were also property management documents for numerous properties including leases, payment information, addenda and regulations. Tax documents indicated that in 2013 Mr. Nelson provided Ms. Bell with a 1099 form indicating Ms. Bell earned \$17,400 in commissions from Mr. Nelson. The 1099 form contained Ms. Bell's Poway address.

Email exchanges between Mr. Nelson and Ms. Bell included an email advising of the discount Mr. Nelson was giving her until her broker's license "was up and running." Many of the emails from Mr. Nelson reminded Ms. Bell of the money she owed him. A December 17, 2012, email from Mr. Nelson advised Ms. Bell that her real estate license needed to be on file with him to comport with bureau guidelines, that he could only be the broker of a fictitious name if he was part owner of the fictitious business, and suggested he purchase an interest in Panda Realty. Other emails referenced his health issues as explanations for his delays following up with her. Many emails from Mr. Nelson repeatedly requested that Ms. Bell provide him with her license information and other financial information. The emails clearly demonstrated that Mr. Nelson was aware of bureau laws and that he was in violation of them.

While the emails make it clear that Mr. Nelson was requesting information from Ms. Bell, it was equally clear from the checks made out to him that he continued to receive monthly payments from Ms. Bell and deposit those checks even though he knew he and Ms. Bell had not taken steps to comply with the applicable real estate laws. Merely requesting the information did not absolve him of his responsibility; rather the evidence, taken together, demonstrated his complicity in these continuing violations.

Later emails and a letter from Ms. Bell documented that Mr. Nelson was unaware of Ms. Bell's property management business. Again, given that their business relationship lasted several years, Mr. Nelson's failure to know about the property management business demonstrated his continuous failure to supervise Ms. Bell despite that business relationship and the checks from her he was depositing. The property management documents indicated that Ms. Bell was managing hundreds of properties. Upon learning of this business after the bureau began its investigation, Mr. Nelson redrafted the independent contractor agreement he

had with Ms. Nelson, prohibiting property management, and indemnifying him for Ms. Bell's property management services.

Finding: The first independent contractor agreement provided that Ms. Bell became an agent associate licensee of Mr. Nelson, her employing broker. Ms. Bell wished to work from a Poway office and Mr. Nelson would add that office as a branch office once he was licensed to do business as "Panda Realty." Ms. Bell paid Mr. Nelson monthly fees via checks from a bank account with the name Panda Realty printed on the checks. Mr. Nelson believed that Ms. Bell was attempting to obtain her broker's license and agreed to this arrangement until such time as she received it, offering ways to help her with the exam. Their relationship continued, but he sent communications to her attempting to have her comply with applicable real estate laws, including his offer to buy an interest in Panda Realty. Ms. Bell wished the relationship to remain unchanged, and Mr. Nelson allowed the relationship to continue.

Mr. Nelson was not aware of the property management business; he had a limited understanding of Ms. Bell's real estate activities. Mr. Nelson was never licensed as Panda Realty. The Poway office was never licensed by him, nor was the Scripps Ranch office where Ms. Bell later relocated. Ms. Bell's property management activities required a real estate broker license which she did not possess. Ms. Bell performed property management activities while Mr. Nelson was her employing broker, but Mr. Nelson never supervised those activities, and neither he nor Ms. Bell complied with the applicable real estate laws. Mr. Nelson's communications to Ms. Bell demonstrated that he was aware of applicable real estate laws but failed to follow them. Insufficient excuses were offered for Mr. Nelson's failure to follow those laws. Mr. Nelson's explanations concerning why he violated applicable real estate laws do not excuse his conduct. Mr. Nelson described his health issues and provided documentation in support of his testimony, but his health issues did not occur until months after his business relationship with Ms. Bell began and did not absolve him from the duties he owed as the employing broker.

Mr. Nelson, as Ms. Bell's employing broker, subjected his license to discipline pursuant to Business and Professions Code sections 10130, 10131, subdivision (b), 10159.5, 10163, 10165, and California Code of Regulations, title 10, sections 2710, subdivision (c), 2715, and 2731.

Mr. Nelson also subjected his license to discipline pursuant to Business and Professions Code sections 10177, subdivisions (d), (g), (h), and California Code of Regulations, title 10, section 2725.

Bureau Audit

7. Bureau Auditor Godswill Keraoru conducted an audit covering the period from January 1, 2012, through December 31, 2014. He prepared a report on June 30, 2015, and attached supporting documentation to his report that cross-referenced his findings. The audit revealed that Ms. Bell was performing property management activities, that Mr. Nelson

was not supervising those activities as he was unaware of them, that funds were co-mingled, separate trust fund accounts were not maintained, and there was a minimum shortage of \$182,480.98 that Ms. Bell cured as of May 30, 2015.

Mr. Keraoru identified several issues involving Mr. Nelson, Ms. Bell and Panda Realty. For purposes of this decision, only the violations pertaining to Mr. Nelson as determined by the audit will be addressed.

TRUST FUND HANDLING FOR MULTIPLE BENEFICIARIES

8. The audit revealed a minimum shortage of \$182,480.98 as of December 31, 2014. The shortage was caused by minimum negative property balances, unreimbursed bank fees, minimum unauthorized disbursements, minimum unearned fees/excess management fees charged, and other unidentified causes. Mr. Nelson failed to provide any evidence that the owners of the trust funds had given their written consent to allow the balance of the funds to be reduced to an amount less than the existing aggregate trust fund liabilities. Ms. Bell cured that shortage on May 30, 2015.

Complainant alleged that this finding demonstrated that Mr. Nelson violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.1.

Mr. Nelson testified that he repeatedly tried to get Ms. Bell to comply with the law, was unaware of her property management business, and was surprised to learn about these accounts. Mr. Keraoru testified that Mr. Nelson told him he was unaware of Ms. Bell's property management activities.

Findings: Mr. Nelson's initial ignorance of Ms. Bell's property management activities is no excuse. Once he agreed to be her employing broker, he was responsible for all of her real estate activities. What Mr. Nelson failed to realize or appreciate was that his numerous emails to Ms. Bell seeking to have her comply with the law did not absolve him of liability; instead it demonstrated that he was aware for years that he was not performing his duties as her employing broker. Moreover, during this time, he continued to receive monthly checks from Ms. Bell; her income had to be coming from somewhere and his failure to investigate further is indefensible. Even if he were not collecting monthly fees, he would still be responsible as her employing broker. Most importantly, as the audit clearly demonstrated, his failure to supervise Ms. Bell led to a minimum shortage of \$182,480.98.

Mr. Nelson, as Ms. Bell's employing broker, violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.1.

MAINTAINING TRUST FUND RECORDS

9. The audit concluded that the records of all trust funds received and dispersed were incomplete and/or inaccurate. Some trust fund disbursements were inaccurate and

some control records did not reflect the date trust funds were received or did not provide an accurate running daily balance. The audit identified examples of properties for which records were incomplete or inaccurate.

Complainant alleged that this finding demonstrated that Mr. Nelson violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.

Again, Mr. Nelson asserted that he was unaware of the property management business and/or the extent of that business. Mr. Keraoru confirmed that Mr. Nelson made that representation to him. Mr. Nelson asserted that he repeatedly attempted to get Ms. Bell to comply with the real estate laws.

Findings: Mr. Nelson's ignorance of Ms. Bell's activities is no excuse for failing to ensure that he and Ms. Bell followed applicable laws. As her employing broker, especially one collecting monthly fees, he was responsible for all of her real estate activities. Even if he were not collecting monthly fees, he would still be responsible as her employing broker. Mr. Nelson's emails and his testimony demonstrated his ongoing concerns regarding his inability to properly supervise Ms. Bell.

Mr. Nelson, as Ms. Bell's employing broker, violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.

SEPARATE RECORDS FOR EACH BENEFICIARY OR TRANSACTION

10. The audit determined that Mr. Nelson failed to maintain complete and/or accurate and separate records for each beneficiary or transaction. The records did not contain accurate dates of deposit for trust funds, check number disbursements or running daily balances. Some separate records for each beneficiary had to be reconstructed and those properties were identified in the audit, some of which were listed in the accusation.

Complainant alleged that this finding demonstrated that Mr. Nelson violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.1.

Mr. Nelson again asserted that he had no knowledge of the property management business and/or the extent of it. He again pointed to his many communications with Ms. Bell seeking to have her comply with applicable real estate laws.

Findings: Mr. Nelson was Ms. Bell's employing broker. He collected monthly fees from her. Even if he were not collecting monthly fees, he would still be responsible as her employing broker. Mr. Nelson's communications with Ms. Bell demonstrated his awareness that he was not supervising her as required by the real estate law.

Mr. Nelson, as Ms. Bell's employing broker, violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.1.

BANK ACCOUNT RECONCILIATION

11. The audit concluded that Mr. Nelson failed to maintain an accurate monthly reconciliation comparing the balance of all separate beneficiary or transaction records to the balance of all trust funds received and dispersed.

Complainant alleged that this finding demonstrated that Mr. Nelson violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.2.

Mr. Nelson testified that he was unaware of Ms. Bell's property management business and/or the extent of it. He provided his communications demonstrating his many attempts to get her to comply with the real estate law.

Findings: Mr. Nelson's lack of knowledge regarding the nature or extent of Ms. Bell's property management business is no excuse. As her employing broker, especially one collecting a monthly fee, he was responsible for her real estate activities. Even if he were not collecting monthly fees, he would still be responsible as her employing broker.

Mr. Nelson, as Ms. Bell's employing broker, violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.2.

BANK ACCOUNT WITHDRAWALS

12. The bank account signature card revealed that Mr. Nelson was not a signer on the property management account. Instead, Ms. Bell was the sole signer as the owner of Panda Realty.

Complainant alleged that this finding demonstrated that Mr. Nelson violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2834.

Mr. Nelson testified that he was unaware of this account and the nature and/or extent of the property management business. He introduced documents demonstrating his numerous communications with Ms. Bell seeking to have her comply with the real estate law. Mr. Keraoru confirmed that Mr. Nelson made those representations to him.

Findings: Mr. Nelson's lack of knowledge regarding the nature or extent of Ms. Bell's property management business is no excuse. He was responsible for Ms. Bell's real estate activities. Mr. Nelson was not a signer on the bank account maintained by Ms. Bell or did not have a writing specifically authorizing her to be the signer.

Mr. Nelson, as Ms. Bell's employing broker, violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2834.

UNAUTHORIZED DISBURSEMENTS

13. The audit determined that a review of the bank statements, canceled checks, invoices and control records, indicated that there were unreimbursed bank charges of \$7,412.75, and unauthorized expenses/minimum access management fees of \$28,862.11 taken from the bank accounts.

Complainant alleged that this finding demonstrated that Mr. Nelson violated Business and Professions Code sections 10145, 10176, subdivision (i), and 10177, subdivision (j).

Mr. Nelson asserted that he was unaware of the existence of these accounts and Ms. Bell's property management business. He provided his communications with her seeking that she comply with the real estate laws.

Findings: Mr. Nelson's lack of knowledge of Ms. Bell's real estate activities did not excuse his failure to properly supervise her. His communications demonstrated he was aware that she was not complying with the applicable real estate laws, but he continued to be her broker of record. As such, he was responsible for her real estate activities. The unreimbursed bank charges and unauthorized fees charged constituted conduct involving fraud or dishonest dealing.

Mr. Nelson, as Ms. Bell's employing broker, violated Business and Professions Code sections 10145, 10176, subdivision (i), and 10177, subdivision (j).

FAILURE TO DESIGNATE ACCOUNT AS A TRUST FUND

14. The property management bank account was used to hold trust funds, although the account was not designated as a trust account in Mr. Nelson's name as trustee.

Complainant alleged that this finding demonstrated that Mr. Nelson violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.

Again, Mr. Nelson continued to assert that he was unaware of Ms. Bell's property management business or the existence of this account.

Findings: Mr. Nelson's lack of knowledge of this account or Ms. Bell's property management business is no excuse. Mr. Nelson was the employing broker and responsible for all of Ms. Bell's real estate activities. Moreover, his communications to her documented his concerns regarding her failure to follow applicable real estate laws. The bank account held trust funds but was not designated as a trust account in Mr. Nelson's name as trustee.

Mr. Nelson, as Ms. Bell's employing broker, violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.

UNLICENSED REAL ESTATE OFFICE

15. The audit determined that Ms. Bell performed acts from her Poway office which required a real estate broker license. That office was not licensed by Mr. Nelson.

Complainant alleged that Mr. Nelson violated Business and Professions Code section 10163 and California Code of Regulations, title 10, section 2715.

Mr. Nelson provided his communications to Ms. Bell documenting his numerous attempts to get her to comply with applicable real estate laws. He testified about those numerous attempts at this hearing. He also asserted that he was not aware of the nature and extent of Ms. Bell's property management business, although he was aware of her transacting real estate sales, as documented by his testimony and the 1099.

Finding: Although Mr. Nelson may not have been aware of the nature and extent of Ms. Bell's property management business, as her employing broker he was responsible for all of her real estate activities, including the property management business. His communications beg the question: If he was so concerned about Ms. Bell's failure to follow the law, why did he continue to supervise her and continue to cash the monthly fees she paid him? No explanation was offered as to why he simply did not terminate their relationship, something he did not do until after the bureau began conducting its investigation. In any event, he was aware that she was conducting some type of real estate business. He described going to her office and it being extremely outdated, and his communications demonstrated his attempts to get her to comply with the real estate laws. Mr. Nelson never licensed Ms. Bell's office in Poway, despite the fact he was her employing broker.

Mr. Nelson, as Ms. Bell's employing broker, violated Business and Professions Code section 10163 and California Code of Regulations, title 10, section 2715.

USE OF UNLICENSED FICTITIOUS BUSINESS NAME

16. The audit determined that Ms. Bell used the fictitious business name, Panda Realty, to perform real estate activities. That name was on numerous real estate documents. The checks Ms. Bell used to pay Mr. Nelson had the name "Panda Realty" printed on them. Panda Realty was on the marquee where Ms. Bell's office was located and on her voicemail recording. Mr. Nelson was not the holder of a license bearing the fictitious business name "Panda Realty."

Complainant alleged that this finding demonstrated that Mr. Nelson violated Business and Professions Code section 10159.5 and California Code of Regulations, title 10, section 2731.

Mr. Nelson asserted his lack of knowledge regarding the extent of Panda Realty's activities. He also provided the numerous communications he sent to Ms. Bell regarding his offers to purchase an interest in Panda Realty in order to comply with applicable real estate laws.

Finding: Mr. Nelson's emails to Ms. Bell demonstrated his awareness of his duties as her supervising broker. Mr. Nelson did not offer any acceptable defenses for his failure to comply with those duties. He did not offer any valid explanation for how he could have been unaware that Ms. Bell was using the fictitious business name to transact business when the monthly checks he cashed had Panda Realty printed on them. Moreover, he cannot claim ignorance given his emails attempting to purchase an interest in Panda Realty; he had to know Panda Realty was doing some type of real estate business. Panda Realty, a fictitious business name, was used to conduct real estate activities requiring licensure. That fictitious business name was not licensed to Mr. Nelson, Ms. Bell's employing broker.

Mr. Nelson, as Ms. Bell's employing broker, violated Business and Professions Code section 10159.5 and California Code of Regulations, title 10, section 2731.

BROKER SUPERVISION VIOLATIONS

17. The audit determined that during the time that Ms. Bell was licensed under Mr. Nelson's employment, Mr. Nelson failed to exercise reasonable supervision and control over Ms. Bell's real estate activities.

Complainant alleged that this finding demonstrated that Mr. Nelson violated Business and Professions Code section 10177, subdivision (h), and California Code of Regulations, title 10, section 2725.

Mr. Nelson acknowledged being unaware of many of Ms. Bell's real estate activities. He asserted that he repeatedly attempted to get her to comply with applicable real estate laws and provided the many communications he sent to her in that regard.

Finding: Mr. Nelson's communications to Ms. Bell did little more than demonstrate that he was aware of the duties he owed as her employing broker. He offered no acceptable defense for his failure to fulfill those duties. There was no reason why he did not terminate his relationship with Ms. Bell, other than the fact that he enjoyed receiving her monthly payments. Mr. Nelson's health issues were not a defense as the evidence established that Mr. Nelson was Ms. Bell's employing broker for many months before his health concerns. He violated his duties before his health issues arose and afterwards. Mr. Nelson failed to reasonably supervise Ms. Bell's real estate activities.

Mr. Nelson, as Ms. Bell's employing broker, violated Business and Professions Code section 10177, subdivision (h), and California Code of Regulations, title 10, section 2725.

HANDLING OF TRUST FUNDS

18. The audit established that Ms. Bell accepted trust funds in the form of rent receipts and security deposits from tenants but failed to deliver those trust funds to Mr. Nelson, her employing broker, or deposit those trust funds as required by law.

Complainant asserted that this finding demonstrated that Mr. Nelson violated Business and Professions Code section 10145, subdivision (c).

Mr. Nelson testified that he was unaware of Ms. Bell's property management business. He was unaware of the bank account and the funds being deposited to it.

Findings: Ms. Bell accepted trust funds in the form of rent receipts and security deposits but failed to deliver them to Mr. Nelson or deposit them as required by Business and Professions Code section 10145. Mr. Nelson's lack of knowledge of Ms. Bell's activities was no defense to the duties he owed as her employing broker. His conduct is all the more egregious because he continued to accept monthly payments from Ms. Bell despite his concerns and his admitted lack of knowledge of her real estate activities.

Mr. Nelson, as Ms. Bell's employing broker, violated Business and Professions Code section 10145, subdivision (c).

Witness Testimony

19. Mr. Keraoru testified in this hearing consistent with his audit report. He agreed with Mr. Nelson's claim that Mr. Nelson was unaware of what Ms. Bell was doing and unaware of her property management business. Contrary to what Mr. Nelson may have thought, that testimony only further supported the bureau's allegations that Mr. Nelson failed to reasonably supervise Ms. Bell.

20. Special Investigator Stanbra testified consistent with her investigation report. She explained that following her investigation, she concluded that Mr. Nelson failed to properly supervise Ms. Bell.

21. Mr. Nelson submitted numerous emails demonstrating his repeated attempts to get Ms. Bell to comply with applicable real estate laws. He was being treated for cancer during this time, so he admitted he was not as attentive as he should have been. His emails demonstrated he was aware that Ms. Bell might still be using the Panda Realty name and he was concerned that her actions violated his duties as her employing broker. Contrary to his assertions, Mr. Nelson's emails demonstrated he was aware of potential bureau violations but continued to cash the checks Ms. Bell paid him despite those concerns. Mr. Nelson failed to appreciate that he should have terminated their business relationship when he had concerns.

In mitigation, Mr. Nelson admitted that he has a home office business, that he has had no complaints against his license in all the years he has held it, and that he had never before

supervised a salesperson such as Ms. Bell. The extent of his supervision in the past was supervising his wife for a few transactions and a neighbor/friend for a short time period. His agreement with Ms. Bell was the first of its kind for him. He clearly was shocked to learn of the nature and extent of Ms. Bell's property management business. Mr. Keraoru corroborated Mr. Nelson's testimony that Mr. Nelson was unaware of that business. However, given that the monthly fees Mr. Nelson received from Ms. Bell were drawn on a Panda Realty account, Mr. Nelson's lack of knowledge was not reasonable. Those checks placed a reasonable person on notice of some type of business being performed by Panda Realty, and indicated that Mr. Nelson had constructive knowledge of Ms. Bell's activities. As the employing broker, Mr. Nelson was obligated to investigate that business or terminate his relationship with Ms. Bell. Instead, he chose to send emails and cash her checks.

Costs of Investigation and Enforcement

22. A certification of investigative costs, audit costs, and a declaration prepared by complainant's attorney were introduced that established that investigative costs totaled \$5,816.90, audit costs totaled \$10,430.69, and attorney costs totaled \$3,337.50. The documents accompanying the cost declarations set forth the time spent on each task, the rate billed and the task performed.

Total reasonable costs of investigation and enforcement were \$9,154.40. Total reasonable costs of the audit were \$10,430.69.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

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

2. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Burden and Standard of Proof

3. In an action seeking to impose discipline against the holder of a real estate 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.)

Complainant established the findings made herein by clear and convincing evidence.

Applicable Statutes

4. Business and Professions Code section 10106 authorizes the commissioner to seek its investigation and enforcement costs.

5. Business and Professions Code section 10130 requires individuals engaging in real estate broker activities to be licensed.

6. Business and Professions Code section 10131, subdivision (b), defines a broker as one who performs property management services and requires licensure by the bureau.

7. Business and Professions Code section 10145 regulates the handling of trust funds. Subdivision (c) requires a real estate salesperson who accepts trust funds to immediately deliver them to the broker or deposit them in the broker's trust fund account.

8. Business and Professions Code section 10148, subdivision (b), authorizes the commissioner to charge a broker for the cost of any audit if it is determined the broker violated Business and Professions Code section 10145.

9. Business and Professions Code section 10159.5 outlines the requirements for using a fictitious name to conduct real estate business.

10. Business and Professions Code section 10163 requires a broker to have a license at each branch office maintained by him or her.

11. Business and Professions Code section 10165 authorizes the commissioner to discipline a licensee for violating Section 10163.

12. Business and Professions Code section 10176, subdivision (i), authorizes the commissioner to discipline a licensee who engages in conduct that constitutes fraud or dishonest dealing.

13. Business and Professions Code section 10177, subdivision (d), authorizes the commissioner to discipline a licensee who willfully disregarded or violated the real estate laws, rules or regulations.

14. Business and Professions Code section 10177, subdivision (g), authorizes the commissioner to discipline a licensee who demonstrated negligence or incompetence in performing an act for which he or she was required to hold a license.

15. Business and Professions Code section 10177, subdivision (h), authorizes the commissioner to discipline a licensee who failed to exercise reasonable supervision over the activities of his salesperson(s).

16. Business and Professions Code section 10177, subdivision (i), authorizes the commissioner to discipline a licensee who used his employment by a governmental agency in a capacity giving access to records, other than public records, in a manner that violates the confidential nature of the records.

17. Business and Professions Code section 10177, subdivision (j), authorizes the commissioner to discipline a licensee who engaged in conduct that constituted fraud or dishonest dealings.

Applicable Regulations

18. California Code of Regulations, title 10, section 2710, subdivision (c), requires licensees to notify the bureau of changes in license information not later than five days.

19. California Code of Regulations, title 10, section 2715, requires a broker supervising a salesperson to maintain on file with the commissioner the address of the principal place of business and the address of each branch office.

20. California Code of Regulations, title 10, section 2725, outlines the reasonable supervision that a broker shall exercise over the activities of his or her salespersons, and defines reasonable supervision to include the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage: transactions, documents having a material effect on the rights and obligations of parties to the transactions, filing, storage and maintenance of those documents, handling of trust funds, advertising for services, familiarizing salespersons with federal and state law requirements relating to the prohibition of discrimination, and regular and consistent reports of the salespersons' licensed activities. Brokers are required to establish a system for monitoring compliance with the policies, rules, procedures and systems put in place, and the broker may not relinquish his or her overall responsibility for supervising the acts of the salespersons licensed to the broker.

21. California Code of Regulations, title 10, section 2731, prohibits a licensee from using a fictitious name unless the licensee is the holder of a license bearing the fictitious name.

22. California Code of Regulations, title 10, section 2831, provides that a broker shall keep a record of all trust funds received and outlines how those records are to be kept.

23. California Code of Regulations, title 10, section 2831.1, requires the broker to keep a separate record for each beneficiary or transaction, accounting for all funds deposited to the broker's trust bank account and interest, if any, earned on the funds deposited. The regulation outlines how those records are to be maintained.

24. California Code of Regulations, title 10, section 2831.2, requires the balance of all separate beneficiary or transaction records maintained pursuant to Section 2831.1 to be reconciled with the record of all trust funds received and dispersed.

25. California Code of Regulations, title 10, section 2832.1, requires the broker to obtain the written consent of every principal who is an owner of the funds in the account prior to disbursement of those funds if the disbursement will reduce the balance of the funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

26. California Code of Regulations, title 10, section 2834, provides that withdrawals from the trust fund account of an individual broker may be made only upon the signature of the broker or an individual specifically authorized in writing by the broker.

Cause Exists to Impose Discipline

27. Cause exists under Business and Professions Code section 10145, subdivision (c), to impose discipline against Mr. Nelson's real estate broker's license. Ms. Bell accepted trust funds in the form of rent receipts and security deposits from tenants but failed to deliver those trust funds to Mr. Nelson, her employing broker, or deposit those trust funds in Mr. Nelson's trust account, as required by law.

28. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831, to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson, as Ms. Bell's employing broker, failed to maintain accurate and adequate trust fund records.

29. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.1, to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson, as Ms. Bell's employing broker, failed to maintain separate records for each beneficiary or transaction.

30. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.2, to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson, as Ms. Bell's employing broker, failed to reconcile the balance of all separate beneficiary or transaction records.

31. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832, to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson was Ms. Bell's supervising broker. The bank account for the property management business held trust funds but was not designated as a trust account in Mr. Nelson's name as the trustee.

32. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.1, to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson, as Ms. Bell's employing broker, was responsible for her failure to provide any evidence that the owners of the trust funds had given their written consent to allow the balance of the funds to be reduced to an amount less than the existing aggregate trust fund liabilities.

33. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2834, to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson, as Ms. Bell's employing broker, was not a signer on the bank account maintained by Ms. Bell nor did he have a writing specifically authorizing her to be the signer.

34. Cause exists under Business and Professions Code sections 10145, 10176, subdivision (i), and 10177, subdivision (j), to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson was Ms. Bell's employing broker and the property management bank account had unreimbursed bank charges and unauthorized fees charged which was conduct constituting fraud or dishonest dealing.

35. Cause exists under Business and Professions Code section 10159.5 and California Code of Regulations, title 10, section 2731, to impose discipline against Mr. Nelson's real estate broker's license. Panda Realty was a fictitious business name and was used to conduct real estate activities requiring licensure. Panda Realty was not licensed to Mr. Nelson as required since he was Ms. Bell's employing broker.

36. Cause exists under Business and Professions Code section 10163 and California Code of Regulations, title 10, section 2715, to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson was Ms. Bell's employing broker, but Mr. Nelson never licensed Ms. Bell's Poway office with the bureau.

37. Cause exists under Business and Professions Code sections 10165 to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson violated Business and Professions Code section 10163.

38. Cause exists under Business and Professions Code section 10177, subdivision (d), to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson willfully disregarded or violated the real estate laws, rules or regulations.

39. Cause exists under Business and Professions Code section 10177, subdivision (g), to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson's repeated failure to supervise Ms. Bell demonstrated negligence or incompetence.

40. Cause exists under Business and Professions Code section 10177, subdivision (h), and California Code of Regulations, title 10, section 2725, to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson failed to exercise reasonable supervision and control over Ms. Bell's real estate activities.

41. Cause exists under Business and Professions Code section 10177, subdivision (j), to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson's failure to supervise Ms. Bell allowed her to engage in conduct that constituted fraud or dishonest dealings.

42. Cause exists under California Code of Regulations, title 10, section 2710, subdivision (c), to impose discipline against Mr. Nelson's real estate broker's license. Mr. Nelson failed to timely notify the bureau of changes in his license information.

43. Cause exists under California Code of Regulations, title 10, section 2731, to impose discipline against Mr. Nelson's real estate broker's license. Performing property management services requires a broker to be licensed by the bureau. Ms. Bell performed property management services but was not a licensed broker, and Mr. Nelson did not supervise Ms. Bell's property management activities.

Cause Does Not Exist to Discipline Respondent

44. Cause does not exist under Business and Professions Code section 10177, subdivision (i), as pled in the accusation at paragraph 17, page 9, line 15, to discipline Mr. Nelson's real estate broker's license. No evidence was offered to demonstrate that Mr. Nelson was employed by a governmental agency in a capacity giving access to records, other than public records, in a manner that violated the confidential nature of the records.

Evaluation

45. Mr. Nelson has been licensed by the bureau for 17 years, seven of which were as a broker. There is no history of discipline against his license. He had never before supervised a salesperson like he agreed to do for Ms. Bell. Mr. Nelson's emails established he was trying to get her to comply with the law. His testimony demonstrated that he was trying to be a "good guy" to a widow who would not cooperate. However, he did cash monthly checks from her and appeared to stick his head in the sand as to what Ms. Bell was doing. As the employing broker, he could not simply ignore the problem. While he may not have been aware of Ms. Bell's property management business, and while the trust fund violations were not because of his actions, but rather because of his inactions of being an employing broker who failed to supervise his salesperson, the evidence was enough to put a reasonable person on notice and required him to investigate Ms. Bell's actions or terminate their relationship. His choice to do neither led to the findings outlined above. However, given the totality of the evidence presented, a restricted license with terms and conditions outlined below is sufficient to protect the public.

Costs

46. Cause exists under Business and Professions Code section 10106 to award the bureau its costs of investigation and enforcement. Total reasonable costs of investigation and enforcement are determined to be \$9,154.40.

47. Cause exists under Business and Professions Code section 10148, subdivision (b), to charge Mr. Nelson for the bureau's audit costs. The total reasonable costs of the audit were \$10,430.69.

ORDER

All licenses and licensing rights of respondent Jeffrey Brian Nelson under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. Each condition set forth hereafter is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other conditions and applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

The restricted license issued to Respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the 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 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 two (2) years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the 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. Professional Responsibility Condition: Respondent shall, within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the bureau including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the commissioner may order suspension of respondent's license until respondent passes the examination.

6. Cost Recovery: Respondent shall, prior to the termination of his restricted license, submit proof satisfactory to the commissioner of payment of the costs of investigation and enforcement in the amount of \$9,154.40, as authorized by Business and Professions Code section 10106. Respondent may make payments via a payment plan approved by the commissioner.

7. Reporting Condition: Respondent shall report in writing to the bureau as the commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during, the period covered by the report.

8. Trust Fund Violations: Pursuant to Business and Professions Code section 10148, respondent shall pay the commissioner's reasonable costs for: a) the audit which led to this disciplinary action, determined to be \$10,430.69, and, b) a subsequent audit to determine if respondent has corrected the trust fund violations found in this decision.

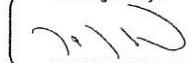
When calculating the amount of the commissioner's reasonable cost for the future audit, the commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 60 days of receiving an invoice from the commissioner detailing the activities preformed 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 Government Code section 11500, et seq., if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

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9. Trust Fund Violation Course Requirement: Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in Business and Professions Code section 10170.5, subdivision (a). Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

DATED: November 29, 2016

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MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings