

JUDITH B. VASAN, Counsel (SBN 278115)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105
Telephone: (213) 576-6982
Direct: (213) 576-6904
Fax: (213) 576-6917
Attorney for Complainant

FILED

MAR 11 2019

DEPT. OF REAL ESTATE
By *AL Selano*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation against)	No. H-05054 SD
)	
OFIER ZIGNER,)	<u>ACCUSATION</u>
)	
Respondent.)	
)	
)	

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, for cause of Accusation against OFIER ZIGNER ("Respondent") alleges as follows:

1.

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

2.

All references to the "Code" are to the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

///

ACCUSATION

LICENSE HISTORY

3.

a. Respondent OFIER ZIGNER is presently licensed and/or has license rights under the Code, as a real estate broker, Department of Real Estate¹ ("Department") license ID 01885638.

b. The Department originally issued Respondent's broker license on July 22, 2010. Respondent's license is scheduled to expire April 3, 2020, unless renewed.

c. According to the Department's records to date, Respondent's main office address is 1736 Cable Street, Unit 1, in San Diego, California.

d. According to the Department's records to date, Respondent employs one (1) salesperson, Shellie Elise Skahill ("Skahill") (Department license ID 02069045), under his real estate broker license. The Department originally issued Skahill a salesperson license on October 23, 2018.

e. Since March 23, 2018, Respondent has maintained the authorized fictitious business names "BAH Realty," "OZ Real Estate," "OZ Realty," and "SdsuRealty.com" From June 1, 2011 to August 13, 2014, Respondent maintained the authorized fictitious business name "OZ Real Estate."

4.

At all times relevant herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker, within the meaning of Section 10131(b) of the Code. Respondent's activities included the leasing or renting of real property and the collection of rents and security deposits for real property on behalf of others for compensation or in expectation of compensation ("property management").

///

///

¹ Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

(AUDIT)

5.

On or about October 31, 2018, the Department completed an audit examination of the books and records of Respondent pertaining to the real estate activities described in Paragraph 4 above. The audit examination covered the period of time from January 1, 2016, through December 31, 2017 ("audit period"). The primary purpose of the examination was to determine Respondent's compliance with the Real Estate Law and the Commissioner's Regulations. This audit was limited to Respondent's property management activity. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit No. SD170028 and the exhibits and work papers attached to said audit report.

6.

According to Respondent and the documents examined, Respondent managed thirty-nine (39) single-family homes and condominiums for approximately twenty-seven (27) property owners during the audit period. Respondent collected rents, paid expenses, and screened tenants for compensation. Respondent handled trust funds during his property management activities. Respondent charged a management fee of 5% to 11% of the rents collected.

7.

In addition, according to Respondent, he engaged in real estate sales activity during the audit period. Respondent sold two (2) properties in 2017 and one (1) property in 2016. According to Respondent, he did not handle trust funds related to residential resale activity. This audit, however, was limited to Respondent's property management activities from January 1, 2016, through December 31, 2017.

8.

The Department auditor held an entrance conference with Respondent on March 22, 2018, and another conference on September 14, 2018, at the Department office located on

1 Front Street in San Diego. Respondent provided information and records and hired an
2 independent accountant, Renee Burke ("Burke") from ASAP Bookkeeping, who is not licensed
3 by the Department. Burke provided accounting information and records to the Department
4 auditor via email and emailed attachments.

5 9.

6 At all times mentioned herein, and in connection with the property management
7 activities described in Paragraph 4 above, Respondent accepted or received funds, including
8 funds in trust ("trust funds") from or on behalf of the owners of the properties managed by
9 Respondent, and thereafter made deposits and/or disbursements of such funds. According to
10 Respondent, he maintained one (1) bank account for handling of the receipts and disbursements
11 of rents during the audit period in connection with his property management activity. The bank
12 account is as follows:

13 Bank Account ("BA")

14 Bank: Wells Fargo Bank
15 Account Name: OZ Real Estate
16 Account Number: xxxxxxxx8530
17 Signatories: Ofier Zigner
18 Signatures required: One
19 Purpose: Respondent maintained BA as a depository for rents and security
20 deposits collected from tenants. Disbursements from BA were payments for expenses related to
21 the properties Respondent managed, owner remittances, and management fees. Disbursements
22 also consisted of business expenses, personal expenses and salary to employee Skahill.

23 Violations

24 10.

25 The audit examination revealed violations of the Code and the Regulations, as
26 set forth in the following paragraphs, and more fully discussed in Audit No. SD170028 and the
27 exhibits and work papers attached to the audit report:

1 (a) Trust Account Balance and Accountability (Code section 10145(a) and
2 Regulations section 2832.1). As of December 31, 2017, BA had a trust fund shortage of
3 <\$19,989.87> caused by negative property balances of <\$19,603.67> and unidentified causes of
4 <\$386.20>. The Department auditor prepared a bank reconciliation as of December 31, 2017,
5 for BA. The auditor compared the adjusted bank balance to the total balance of the separate
6 beneficiary records. The separate beneficiary accounts containing negative balances were as
7 follows:

8	Net Balance for owner A.C. ² (2 properties)	<\$9.02>
9	Net Balance for owner M.N. (3 properties)	<\$1,257.23>
10	5040 54 th St.	<\$5,632.31>
11	5222 Country Drive	<\$12,254.61>
12	5255 Rincon St.	<\$450.00>
13	5492 Drover Dr.	<\$0.50>
14	Total:	<\$19,603.67>

15 There was no evidence that the owners of the trust funds gave their written consent to allow
16 Respondent to reduce the balance of the funds in BA to an amount less than the existing
17 aggregate trust fund liabilities in violation of Code section 10145(a) and Regulations section
18 2832.1.

19 (b) Separate Record for Each Beneficiary or Transaction - Recordkeeping
20 of Security Deposits for 5048 54th Street (Code section 10145 and Regulations section
21 2831.1). The separate record for the property located at 5048 54th Street indicated a beginning
22 balance of \$3,000.00 as of January 1, 2016, when Respondent starting using the Buildium
23 software. The records prior to January 1, 2016, did not indicate the source of the funds or the
24 amount received.

25
26
27 ² Initials are used in place of individual's full name to protect their privacy. Documents containing individual's full name will be provided during the discovery phase of this case to Respondent and/or his attorney, after service of a timely and proper request for discovery on Complainant's counsel.

1 According to the Lease Agreement dated July 5, 2016, for the property located at
2 5048 54th Street, the monthly rent was \$4,250.00 from July 28, 2016, through July 28, 2017,
3 and the security deposit was \$4,200.00. According to the BA records examined, the tenants paid
4 a monthly rent of \$4,200.00, not \$4,250.00 as indicated in the Lease Agreement. There was no
5 record of when the initial security deposit was received or from whom. According to Burke,
6 Respondent's independent accountant, the security deposit was \$4,200.00. Burke also
7 determined that there was no record of when Respondent received the initial security deposit or
8 from whom, however, \$2,800.00 was received prior to the lease dated July 5, 2016, and prior to
9 the usage of Buildium software beginning January 1, 2016.

10 Respondent received additional funds of \$700.00 and another \$700.00 for the
11 security deposit and posted the funds in 2016, totaling \$1,400.00. The previous \$2,800.00 and
12 \$1,400.00 totaled \$4,200.00.

13 Respondent did not provide or maintain a record of the \$2,800.00 security
14 deposit received prior to January 1, 2016, related to the one (1) year lease that commenced July
15 28, 2016, for the property located at 5048 54th Street in violation of Code section 10145 and
16 Regulations section 2831.1.

17 (c) **Handling of Trust Funds - Trust Fund Records to be Maintained (Code**
18 **section 10145 and Regulations section 2831).** Respondent failed to maintain a complete and
19 accurate record of trust funds received and disbursed ("control record") for BA. Respondent
20 utilized the software Buildium since approximately January 2016. The control record was
21 missing payee or payor names, check numbers, references, and duplicate check numbers were
22 listed. In addition, the running balance on the report was inaccurate. The following is an
23 example of missing payee names:

Page	Date	Payee	Property	Amount
101	6/7/17	No Payee Name	5002 54 th Street	\$3,172.00
101	6/7/17	No Payee Name	5048 54 th Street	\$3,715.00
101	6/7/17	No Payee Name	5086 55 th Place	\$4,335.00

1	132	8/30/17	No Payee Name	5216 College Gardens	\$3,349.00
2	140	9/22/17	No Payee Name	5074 Rockford Drive	\$120.00
3	The following is an example of missing payor names:				
4	<u>Page</u>	<u>Date</u>	<u>Payee</u>	<u>Property</u>	<u>Amount</u>
5	28	5/3/16	No Payor Name	3454 Castle Glen Unit #101	\$1,600.00
6	28	9/14/16	No Payor Name	6228 Stewart Street	\$3,500.00
7	86	4/23/17	No Payor Name	6851 Alvarado Rd. #16	\$750.00
8	121	8/3/17	No Payor Name	4504 60th Street #16	\$1,700.00
9	140	9/14/17	No Payor Name	6183 Montezuma	\$1,800.00

10 (d) **Separate Record for Each Beneficiary or Transaction (Code section**
11 **10145 and Regulations section 2831.1)**. Respondent failed to maintain complete and accurate
12 separate records for each beneficiary or transaction for BA in violation of Code section 10145
13 and Regulations section 2831.1. Most of the information in the control records were the same in
14 the separate records, however, the separate records require deposit and other information
15 sufficient to identify the transaction and the parties to the transaction, which Respondent's
16 separate records did not always provide. Furthermore, according to BA records examined,
17 Respondent did not record outgoing transfers and check disbursements accurately, and separate
18 records reflected inaccurate daily balances.

19 (e) **Handling of Trust Funds - Account Designation (Code section 10145 and**
20 **Regulations section 2832)**. Respondent did not designate BA, an account used to hold trust
21 funds, as a trust account in the name of Respondent as trustee in violation of Code section
22 10145 and Regulations section 2832. The title of BA during the audit period was the unlicensed
23 fictitious name of "OZ Real Estate."

24 (f) **Handling of Trust Funds - Timely Deposits (Code section 10145 and**
25 **Regulations section 2832)**. Respondent failed to deposit at least one (1) rent and security
26 deposit check of \$5,400.00 and at least one (1) pet deposit of \$350.00 into BA within three (3)
27 business days of receipt in violation of Code section 10145 and Regulations section 2832.

1 According to the lease agreement dated March 22, 2017, for the rental property
2 located at 4827 Benton Way, commencing April 1, 2017, the security deposit and first month's
3 rent totaling \$5,400.00, plus a pet deposit of \$350.00 was due prior to moving in. According to
4 the records examined, Respondent received the \$350.00 pet deposit on or about March 27,
5 2017, and the \$5,400.00 on or about March 28, 2017. Respondent deposited the total amount of
6 \$5,750.00 into BA on or about May 10, 2017, by ATM, and posted the deposit in the control
7 record on May 10, 2017, and in the separate record on May 11, 2017. A memo stated "paid 3/27
8 was in ofier's [sic]car."

9 (g) **Handling of Trust Funds - Withdrawals (Code section 10145 and**
10 **Regulations section 2834)**. According to Respondent, the bank account application dated July
11 6, 2011, and the bank letter dated October 5, 2018, provided by Respondent for the audit,
12 Respondent was the sole signatory of BA. Skahill, who was not licensed by the Department in
13 any capacity and not covered by a fidelity bond during the audit period, made withdrawals from
14 BA by signing checks in violation of Code section 10145 and Regulations section 2834. The
15 DRE issued a real estate salesperson license to Skahill effective October 23, 2018. The
16 following is a sample of checks signed by Skahill:

<u>Date of Check</u>	<u>Check Number</u>	<u>Amount</u>	<u>Payee</u>
3/21/17	2707	\$7,072.93	Shellie Skahill
6/30/17	2743	\$2,000.00	G.S.
7/30/17	2754	\$1,425.00	A.L.
8/3/17	2759	\$5,625.00	J.Z.
8/4/17	2758	\$75.00	J.Z.
8/4/17	2460	\$620.00	A.V.
8/8/17	2762	\$1,825.00	S.C.
8/14/17	2769	\$594.00	C.R.
8/17/17	2794	\$5,282.00	T.Z.
8/17/17	2816	\$2,142.58	C.H.

<u>Date of Check</u>	<u>Check Number</u>	<u>Amount</u>	<u>Payee</u>
11/28/17	2871	\$3,600.00	E.G.
12/4/17	2872	\$4,400.00	E.G.

(h) **Trust Fund Handling – Commingling (Code section 10145 and Regulations section 2835)**. As of December 31, 2017, Respondent kept his own funds totaling at least \$15,648.90 in BA for over twenty-five (25) days after their deposit in violation of Code section 10145 and Regulations section 2835. In addition, as of December 31, 2017, BA had at least \$34,401.74 of disbursements for management fees earned in outstanding checks; \$26,996.56 of these outstanding checks were dated between January 1, 2016, and June 30, 2016. Respondent explained that he intentionally kept management fees earned in BA to cover property owners' negative balances. There is no written documentation indicating the property owners authorized Respondent to do so.

(i) **Use of Unlicensed False or Fictitious Business Name (Code section 10159.5 and Regulations section 2731)**. During the audit period, Respondent used the unlicensed fictitious business names "OZ Real Estate," "OZ Realty," "OZ Real Estate Brokerage," and "OZ Property Management" without first obtaining a DRE license bearing such fictitious business names in violation of Code section 10159.5 and Regulations section 2731.

(j) **Disclosure of License Identification on Solicitation Materials – First Point of Contact with Consumers (Code section 10140.6 and Regulations section 2773)**. Prior to the audit examination commencing on March 22, 2018, Respondent failed to disclose his Department licensed identification number on his websites www.sdsurealty.com or www.sdsurealty.managebuilding.com in violation of Code section 10140.6 and Regulations section 2773.

///

///

///

11.

Each of the foregoing violations in Paragraphs 10(a)-(j) above constitute cause for the suspension or revocation of the real estate license and/or license rights of Respondent under the provisions of Sections 10176(e), 10177(d), and/or 10177(g).

COSTS

(AUDIT COSTS)

12.

Section 10148(b) of the Code, provides, in pertinent part, that the Real Estate Commissioner shall charge a real estate broker for the costs of any audit if the Commissioner has found in a final decision, following a disciplinary hearing, that the broker has violated Section 10145 of the Code or a regulation or rule of the Commissioner interpreting said Code section.

(INVESTIGATION AND ENFORCEMENT COSTS)

13.

Section 10106 of the Code, provides, in pertinent 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 of this part to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

///

///

///

///

///

///

///

///

///

1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
3 disciplinary action against all the licenses and/or license rights of Respondent OFIER ZIGNER
4 under the Real Estate Law, for the costs of investigation and enforcement as permitted by law,
5 for the cost of the audit, and for such other and further relief as may be proper under other
6 applicable provisions of law.

7
8 Dated at San Diego, California this 19 day of February, 2019.

9
10
11 V. Kilpatrick
12 Veronica Kilpatrick
13 Supervising Special Investigator
14
15
16
17
18
19
20
21
22
23
24

25 cc: OFIER ZIGNER
26 Veronica Kilpatrick
27 Sacto.
Audits – Jennifer Borromeo