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MAR 30 2021

DEPT. OF REAL ESTATE
By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of
PETER MARX,
Respondent.

) DRE No. H-05117 SD
)
) OAH No. 2020030084
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)

AMENDED DECISION AFTER REJECTION

This Amended Decision After Rejection amends the Decision After Rejection filed on March 10, 2021. The matter came on for hearing before Kimberly J. Belvedere, Administrative Law Judge of the Office of Administrative Hearings at San Diego, California, on September 2, 2020.

Diane Lee, Counsel for the Department of Real Estate ("Department"), represented the Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California ("Complainant").

Jason Murphy, Esq. represented the Respondent Peter Marx ("Respondent"), who was also present.

Oral and documentary evidence was received, the record was closed, and the matter was submitted on September 2, 2020.

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1 On October 1, 2020, the Administrative Law Judge submitted a Proposed
2 Decision which I declined to adopt as the Decision of the Real Estate Commissioner. Pursuant to
3 Section 11517(c) of the Government Code of the State of California, Respondent was served
4 with a copy of the Proposed Decision dated October 1, 2020, and with notice of my
5 determination not to adopt the Proposed Decision. Respondent was notified that the case would
6 be decided by me upon the record, the transcript of the proceedings held on September 2, 2020,
7 and upon any written argument offered by the parties.

8 On December 15, 2020, Respondent submitted a written argument for my
9 consideration in rendering this Decision. On December 30, 2020, Complainant submitted written
10 argument.

11 I have given careful consideration to the record in this case including the
12 transcript of the proceedings of September 2, 2020. I have also considered the argument
13 submitted on behalf of the Complainant and Respondent.

14 FACTUAL FINDINGS

15 The Factual Findings in the Proposed Decision dated October 1, 2020, are hereby
16 adopted as part of this Decision with the exception of the following:

17 FACTUAL FINDING No. 3, page 2, the first sentence shall now read as follows:

18 On December 26, 2019, complainant filed the accusation in this matter.
19 FACTUAL FINDING No. 18, page 9, Section "Nine Trust Not Designated as Trust Account"
20 shall now read as follows:

21 Nine Trust Not Designated as Trust Account. The Nine Trust was opened on
22 March 12, 2012, by Ms. Djeddah who listed herself as a signatory and as "secretary" for
23 "Genmar Real Estate." The account name was listed as "Genmar Real Estate dba Safe
24 Harbor Asset Management dba Tenant Finders." None of those dbas were registered to
25 Mr. Marx. On December 22, 2016, Mr. Marx registered three dbas, "Safe Harbor
26 Property Management," "Safe Harbor Asset Management," and "Safe Harbor
27

1 Management Services,” with the department. Mr. Marx opened a new trust account
2 bearing the title “Safe Harbor Asset Management.”

3 FACTUAL FINDING No. 19, shall now read as follows:

4 **Testimony of Mr. Marx and Letter of Explanation**

5 Mr. Marx submitted a letter of explanation to the department concerning the 2017
6 audit, dated November 27, 2017. Portions of that letter, and Mr. Marx’s relevant
7 testimony, are summarized as follows: Mr. Marx denied any wrongdoing in connection
8 with the \$43,754.65 deficit attributable to the time he operated the Nine Trust. When he
9 took over as Controller at Genmar, as discussed previously in the above findings of fact,
10 Mr. Marx notified Ms. Djeddah who admitted to taking money from the One Trust. The
11 deficit caused by Ms. Djeddah carried over to the Nine Trust after the closures of the One
12 Trust and Seven Trust (i.e. she never paid the money back).

13 Mr. Marx testified that after the first audit in 2010 of Genmar’s trust accounts that
14 revealed a deficit, he and Ms. Djeddah did not want to see the property management
15 business go bankrupt or the owners lose money. When Mr. Marx and Ms. Djeddah knew
16 Ms. Djeddah’s license would be revoked on April 2, 2012, Mr. Marx decided to
17 substitute his broker license for Ms. Djeddah’s, take over the trust account, and keep the
18 property management business going. Mr. Marx employed Ms. Djeddah as an
19 administrative assistant. Upon taking over the property management business, Mr. Marx
20 closed out the old Seven Trust and created the new Nine Trust to start fresh. Mr. Marx
21 understood that changing accounts does not solve a deficit problem. He acknowledged
22 that you can change accounts many times, yet the deficit will remain.

23 Mr. Marx denied responsibility as the licensee. Mr. Marx denied becoming the
24 broker of record of Genmar Real Estate and insisted that he was an employee and did not
25 use his real estate broker license to assume any liability of the company.

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1 Mr. Marx believes that the \$43,754.65 shortfall is attributable to old checks
2 written on the old Seven Trust before it was closed out that were never cashed (which
3 totals approximately \$49,000).

4 On August 21, 2020, several years after the uncashed checks were issued and only
5 after the department audit examination, Mr. Marx sent out letters to the individuals owed
6 money as a result of those uncashed checks. The deficit found by Mr. Keraoru in the Nine
7 Trust the time Mr. Marx operated the trust fund totaled \$43,754.65, but after reviewing
8 all old uncashed checks, that amount totaled \$49,724.27.

9 Since the 2017 audit, Mr. Marx has removed Ms. Djeddah as a signatory on the
10 Nine Trust, supervises all trust account activities, and ensures that Ms. Djeddah does not
11 perform any duties that require a real estate license. Respondent described the detailed
12 process he uses now to ensure proper accounting. Mr. Marx testified that he conducts
13 monthly reconciliations and has registered the dbas "Safe Harbor Property Management,"
14 "Safe Harbor Asset Management," and "Safe Harbor Management Services" with the
15 department.

16 LEGAL CONCLUSIONS

17 The Legal Conclusions in the Proposed Decision dated October 1, 2020, are
18 hereby adopted as part of this Decision with the exception of the following:

19 LEGAL CONCLUSION No. 23 shall now read as follows:

20 Since the audit examination, Mr. Marx has taken positive steps to reform the
21 deficiencies in the client trust account that he operates. Ms. Djeddah's name was taken
22 off the client trust account. Mr. Marx added the dbas "Safe Harbor Property
23 Management," "Safe Harbor Asset Management," and "Safe Harbor Management
24 Services" to his broker license. Mr. Marx has taken steps to locate those who should have
25 received checks they never cashed.

26 When Ms. Djeddah engaged in wrongdoing concerning Genmar's client trust
27 accounts in 2012, however, Mr. Marx could (and probably should) have walked away.

1 Instead, Mr. Marx stepped in as broker of record with full knowledge of the deficit in the
2 trust account. Mr. Marx closed out the old Seven Trust and opened the new Nine Trust to
3 start fresh and created journal entries to show the liability. Mr. Marx hired Ms. Djeddah,
4 whose license was revoked by the department in 2012 and who admitted to Mr. Marx that
5 she took money in the trust accounts causing the deficit in 2012. With knowledge that
6 Ms. Djeddah took money from the trust accounts in 2012, Mr. Marx allowed Ms.
7 Djeddah to be a signatory on the new Nine Trust, which allowed her access to the trust
8 funds in the new Nine Trust. Because Ms. Djeddah took such a large sum of money, the
9 surviving Nine Trust inherited and always maintained a deficit. Hence, the deficit of
10 \$208,752.46 was due to Ms. Djeddah's wrongdoing. The \$252,507.11 deficit at the end
11 of the 2017 audit period, less Ms. Djeddah's wrongdoing, totaled \$43,754.65. The
12 department auditor listed that total as "unidentified."

13 Maintaining a shortage in a trust account, failing to maintain accurate records,
14 failing to balance a client trust account, allowing an unbonded individual who had her
15 license revoked by the department to be a signatory on a trust account, in addition to the
16 other founded violations are serious violations. Mr. Marx's actions, however, were
17 negligent as opposed to willful.

18 For these reasons, it would not be contrary to the public interest to issue a 30-day
19 stayed suspension of Mr. Marx's license, require Mr. Marx to take and pass the
20 Professional Responsibility Exam, and complete the continuing education course in trust
21 fund accounting and handling. Respondent should reimburse the department for its
22 expense in conducting the audit which revealed respondent's misconduct and prompted
23 reformation of his deficient business practices; an expense the department would not have
24 incurred but for respondent's misconduct.

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1 costs within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment
2 of the audit costs should not be made until Respondent receives the invoice. If Respondent fails
3 to satisfy this condition in a timely manner as provided for herein, Respondent's real estate
4 license shall automatically be suspended until payment is made in full, or until a decision
5 providing otherwise is adopted following a hearing held pursuant to this condition.

6 5. All licenses and license rights of Respondent are indefinitely suspended unless
7 or until Respondents pay the reduced amount of \$1,254.58 for the Commissioner's reasonable
8 costs of the investigation and enforcement, which led to this disciplinary action. Said payment
9 shall be in the form of a cashier's check made payable to the Department of Real Estate. The
10 investigative and enforcement costs must be delivered to the Department of Real Estate, Flag
11 Section, at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
12 Decision and Order.

13 6. All licenses and licensing rights of Respondent are indefinitely suspended
14 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
15 successfully completed the continuing education course on trust fund accounting and handling
16 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions
17 Code. Proof of satisfaction of these requirements includes evidence that Respondent has
18 successfully completed the trust fund account and handling continuing education course, no
19 earlier than 120 days prior to the effective date of the Decision and Order in this matter. Proof of
20 completion of the trust fund accounting and handling course must be delivered to the Department
21 of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 prior to the
22 effective date of this Decision and Order.

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1 7. Respondent shall, within six (6) months from the effective date of this
2 Decision, take and pass the Professional Responsibility Examination administered by the
3 Department including the payment of the appropriate examination fee. If Respondent fails to
4 satisfy this condition, Respondent's real estate license shall automatically be suspended until
5 Respondent passes the examination.

6 This Decision shall become effective at 12 o'clock noon on
7 April 9, 2021.

8 IT IS SO ORDERED 3.25.21.

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10 DOUGLAS R. McCAULEY
11 REAL ESTATE COMMISSIONER

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13 DOUGLAS R. McCauley
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DECISION AFTER REJECTION

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4 be decided by me upon the record, the transcript of the proceedings held on September 2, 2020,
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6 On December 30, 2020, Complainant submitted written argument. Respondent
7 did not offer any written argument for my consideration in rendering this Decision.

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13 other founded violations are serious violations. Mr. Marx's actions, however, were
14 negligent as opposed to willful.

15 For these reasons, it would not be contrary to the public interest to issue a 30-day
16 stayed suspension of Mr. Marx's license, require Mr. Marx to take and pass the
17 Professional Responsibility Exam, and complete the continuing education course in trust
18 fund accounting and handling. Respondent should reimburse the department for its
19 expense in conducting the audit which revealed respondent's misconduct and prompted
20 reformation of his deficient business practices; an expense the department would not have
21 incurred but for respondent's misconduct.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent PETER MARX under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Decision; provided, however, that all thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

3. Pursuant to Code section 10148, Respondent shall pay the Commissioner's reasonable costs for the audit which led to this disciplinary action in the reduced amount of \$5,334.81. Respondent shall pay such costs within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should not be made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein, Respondent's real estate licenses shall automatically be suspended until payment is made in full, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

4. Pursuant to Code section 10148 of the Code, Respondent shall pay the Commissioner's reasonable costs, not to exceed \$13,337.03, for a subsequent audit to determine if Respondent has corrected the violations found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable costs, 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

1 costs within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment
2 of the audit costs should not be made until Respondent receives the invoice. If Respondent fails
3 to satisfy this condition in a timely manner as provided for herein, Respondent's real estate
4 license shall automatically be suspended until payment is made in full, or until a decision
5 providing otherwise is adopted following a hearing held pursuant to this condition.

6 5. All licenses and license rights of Respondent are indefinitely suspended unless
7 or until Respondents pay the reduced amount of \$1,254.58 for the Commissioner's reasonable
8 costs of the investigation and enforcement, which led to this disciplinary action. Said payment
9 shall be in the form of a cashier's check made payable to the Department of Real Estate. The
10 investigative and enforcement costs must be delivered to the Department of Real Estate, Flag
11 Section, at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
12 Decision and Order.

13 6. All licenses and licensing rights of Respondent are indefinitely suspended
14 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and
15 successfully completed the continuing education course on trust fund accounting and handling
16 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions
17 Code. Proof of satisfaction of these requirements includes evidence that Respondent has
18 successfully completed the trust fund account and handling continuing education course, no
19 earlier than 120 days prior to the effective date of the Decision and Order in this matter. Proof of
20 completion of the trust fund accounting and handling course must be delivered to the Department
21 of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 prior to the
22 effective date of this Decision and Order.

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1 7. Respondent shall, within six (6) months from the effective date of this
2 Decision, take and pass the Professional Responsibility Examination administered by the
3 Department including the payment of the appropriate examination fee. If Respondent fails to
4 satisfy this condition, Respondent's real estate license shall automatically be suspended until
5 Respondent passes the examination.

6 This Decision shall become effective at 12 o'clock noon on
7 April 9, 2021.

8 IT IS SO ORDERED 3.9.21.

10 DOUGLAS R. McCAULEY
11 REAL ESTATE COMMISSIONER

13 Douglas R. McCauley

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DEPARTMENT OF REAL ESTATE

By *pdw*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	DRE No. H-5117 SD
PETER MARX,	)	
	)	OAH No. 2020030084
Respondent.	)	

NOTICE

TO: PETER MARX, Respondent, and JASON M. MURPHY, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated October 01, 2020, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated October 01, 2020, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Thursday, September 03, 2020, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Thursday, September 03, 2020, at the Los

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1 Angeles office of the Department of Real Estate unless an extension of the time is granted for good
2 cause shown.

3 Written argument of complainant to be considered by me must be submitted within
4 15 days after receipt of the argument of respondent at the Los Angeles Office of the Department of
5 Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 11/6/2020.

7 DOUGLAS R. McCAULEY
8 REAL ESTATE COMMISSIONER

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12 Marcus McCarther
13 Chief Deputy Commissioner
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**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation against:

PETER MARX, Respondent

Case No. H-05117 SD

OAH No. 2020030084

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 2, 2020.¹

¹ In light of the President's declaration of a national emergency over the COVID-19 pandemic; the Governor's proclamation of a State of Emergency and Executive Orders N-25-20, N-33-20, and N-63-20 pertaining to the pandemic; the declarations of county and city public health emergencies throughout the State; the directives from state and local officials to ensure social distancing and sheltering-in place; and in order to protect the health and safety of all public and OAH personnel, this matter was heard telephonically.

Complainant Veronica Kilpatrick, Supervising Special Investigator, was represented by Diane Lee, Staff Counsel, Department of Real Estate (department), State of California.

Respondent Peter Marx was represented by Jason Murphy, Esq.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on September 2, 2020.

FACTUAL FINDINGS

License History and Accusation

1. On March 4, 1992, the department issued to Mr. Marx real estate broker license number 01131401. At all times relevant to these proceedings, Mr. Marx's broker license was in full force and effect and in good standing. There is no prior history of discipline against Mr. Marx's broker license.

2. At all times relevant to these proceedings, Mr. Marx acted as a real estate broker and conducted licensed activities within the meaning of Business and Professions Code section 10131, subdivision (b). Specifically, he operated a property management business for clients who owned properties in Southern California.

3. On December ²⁶~~10~~, 2019, complainant filed the accusation in this matter. The accusation alleges that Mr. Marx's broker license is subject to discipline concerning his handling of a client trust account following a department audit, because the audit revealed Mr. Marx:

- permitted, caused, or allowed disbursements from the trust account which reduced the total existing aggregate funds in the account to be less than the existing trust fund liability to each principal who was an owner of the funds without first obtaining the prior written consent of the owners of said funds, on January 31, 2015, and August 31, 2017 (paragraph 8(a)(1) of the accusation)
- failed to maintain accurate and complete control records in the form of a columnar record in chronological order of trust funds received, deposited, and disbursed from the client trust account (paragraph 8(b) of the accusation)
- failed to maintain an accurate and complete separate record for each beneficiary who had funds in the client trust account (paragraph 8(c) of the accusation)
- failed to accurately perform a monthly reconciliation for each client who had funds in the trust account (paragraph 8(d) of the accusation)
- permitted an unlicensed and unbonded person to make withdrawals from the client trust account (paragraph 8(e) of the accusation)
- placed funds in the client trust account that was owned by an unlicensed and unbonded person (paragraph 8(f)(1) of the accusation)

- failed to designate the client trust account as a client trust account (paragraph 8(f)(2))
- used fictitious business names to conduct licensed activities without the fictitious business names being attached to his broker license (paragraph 8(g))

4. Complainant alleged the above-referenced violations constitute cause to revoke Mr. Marx's real estate broker license pursuant to Business and Professions Code section 10177, subdivisions (d), (g), (h), and (j), and 10176, subdivision (i); and California Code of Regulations, title 10, section 2725.

5. Respondent timely filed a Notice of Defense along with an extensive explanation concerning the allegations. This hearing followed.

Background

6. Mr. Marx graduated from high school in 1969. He briefly attended New York University, but did not earn a degree. Mr. Marx relocated to San Diego, California, in 1971. He attended evening courses at a local college and accounting courses at San Diego State University. He obtained a Bachelor of Science degree in accounting in 1981.

7. Between 1992 and 1999, Mr. Marx worked as a financial analyst, financial reporting manager, and developer of senior and living facilities. Mr. Marx also attempted to make a living selling residential real estate.

8. In 1999, Mr. Marx went to work for Genmar Real Estate Corporation (Genmar) as a property manager. Ginney M. Djeddah, a former department licensee, was the president of Genmar.

9. In approximately 2007, Mr. Marx was promoted to controller of Genmar and gradually took over all the accounting functions for the client trust accounts and operating accounts held by Genmar. At the time Mr. Marx assumed accounting responsibilities, there were two client trust accounts in existence: the One Trust, which had been handled by a different accountant who was leaving Genmar, and the Seven Trust, which was handled by Mr. Marx. Mr. Marx recommended the One Trust and Seven Trust be combined into one trust account, with the One Trust to be closed out, and the Seven Trust remaining.

10. The One Trust was closed out in approximately 2009, and balances carried over to the Seven Trust. In the process of his accounting duties, Mr. Marx found serious discrepancies in the balance of the One Trust. The signatory on the One Trust at the time was Ms. Djeddah. Mr. Marx confronted Ms. Djeddah, who revealed that she was having financial difficulties. Ms. Djeddah told Mr. Marx that she had been removing money from the One Trust with the intention of paying it back. Ms. Djeddah attempted to take out a home equity line of credit on her home to pay the One Trust monies back. For months, Ms. Djeddah tried to make a variety of arrangements to pay back the money she improperly took from the One Trust, but she never did replace the funds.

11. Mr. Marx submitted his resignation to Genmar, which Ms. Djeddah did not accept. Instead, Ms. Djeddah asked that Mr. Marx remain as the controller of Genmar until a buyer for Genmar could be found. Mr. Marx agreed to stay.

THE 2010 AUDIT OF GENMAR'S TRUST ACCOUNTS AND AFTERMATH

12. In 2010, the department conducted an audit of Genmar's trust accounts. At the time of the department's audit (the 2010 audit), Genmar had combined trust

fund shortages in the amount of \$315,332.75. At no time prior to the 2010 audit was Mr. Marx a signatory on any of the trust accounts held by Genmar and Mr. Marx was not responsible for any of the trust account problems that were uncovered in the 2010 audit.

13. The department revoked Ms. Djeddah's license effective April 2, 2012 (in Case No. H-02416 SD). Genmar was transferred to Mr. Marx at that time for operation under his broker license. On April 10, 2012, Mr. Marx signed an Assistant Employment Agreement with Ms. Djeddah, agreeing to retain her employment with Genmar as an administrative assistant.

14. Mr. Marx has been the sole operator of Genmar since approximately May 21, 2012. Mr. Marx now operates under the fictitious business names Safe Harbor Property Management, Safe Harbor Asset Management, and Safe Harbor Management Services. Those "dbas" have all been associated with Mr. Marx's broker license since December 22, 2016. Prior to December 22, 2016, Mr. Marx operated Genmar under the dbas of Safe Harbor Property Management, Genmar Real Estate, and Tenant Finders, none of which had been associated with his real estate broker license prior to that date. At present, Mr. Marx is the sole operator of Genmar, and manages 152 residential units, 36 separate properties, and holds funds in trust for 25 different owners.

15. Following the revocation of Ms. Djeddah's license in 2012 and the merging of the One Trust funds into the surviving Seven Trust, Mr. Marx decided to open a new trust account (the Nine Trust) for new properties being managed and to close out the Seven Trust which had been operated during Ms. Djeddah's tenure. At the time Mr. Marx took over Genmar in 2012, the Nine Trust, which he maintained for multiple beneficiaries, was at Union Bank, account number 0110050526. The Nine Trust

was opened on March 15, 2012, by Ms. Djeddah, just before Mr. Marx took over control of Genmar. Ms. Djeddah and Mr. Marx were both signatories on the Nine Trust, even though Ms. Djeddah was no longer a department licensee. Even though she was a signatory on the Nine Trust, Ms. Djeddah never deposited or withdrew any funds from the account.

16. Approximately six months after opening the Nine Trust, there was a remaining balance in the Seven Trust of \$528.28. The Seven Trust was closed out, and that balance moved to the Nine Trust. A final reconciliation of the Seven Trust upon closure revealed that a number of checks were still outstanding over a year, totaling \$49,724.27. This amount carried over to the Nine Trust from the Seven Trust.

THE 2017 AUDIT OF THE NINE TRUST

17. Godswill Keraoru, an Auditor III with the department, conducted an audit of the Nine Trust for the time period of January 31, 2015, to August 31, 2017 (the 2017 audit). The below details concerning the 2017 audit were obtained from Mr. Keraoru's testimony and the report he completed memorializing what he found.

The 2017 audit determined that on January 31, 2015, at the beginning of the audit period, there was a deficit of \$208,752.46. However, complainant acknowledged that the deficit of \$208,752.46 was attributable to the funds improperly removed by Ms. Djeddah prior to the revocation of her license and prior to Mr. Marx taking over Genmar.² Put another way, the department concedes that Mr. Marx is not culpable for

² The \$208,752.46 deficit was split between the Seven Trust and the Nine Trust. As of December 1, 2014, the Seven Trust had a deficit of \$167,717.58. As of December 23, 2014, the Nine Trust had a deficit of \$41,034.88.

\$208,752.46 of the overall deficit because that was part of the original \$315,332.75 deficit caused in the One Trust by Ms. Djeddah before the trust accounts were merged and the new Nine Trust was created.

The 2017 audit also found that at the end of the audit period, on August 31, 2017, the Nine Trust had a deficit of \$252,507.11. When accounting for the \$208,752.46 that was not attributable to Mr. Marx, that still left a deficit of \$43,754.65 during the time when Mr. Marx operated the Nine Trust. The department audit did not contain any information explaining where or how that deficit occurred (i.e. whether it was the result of funds withdrawn that should not have been withdrawn, improper checks written, commingling, or other nefarious activities). Rather, the audit report simply stated that the \$43,754.65 deficit was attributable to "unexplained causes."

Mr. Keraoru did not audit the old Seven Trust or the One Trust.

18. The 2017 audit also contained the following additional findings:

Unauthorized Signer on the Nine Trust. Ms. Djeddah, during the audit period, was a signatory on the Nine Trust. Given that her broker license was revoked in 2012, she should not have been a signatory on the Nine Trust. Mr. Marx requested her name be removed from the account in December 2016, and thereafter, he remained the sole signatory on the Nine Trust. The audit did not find any evidence of Ms. Djeddah ever depositing a check, withdrawing money, or otherwise having anything to do with the Nine Trust during the time she was a signatory on the trust account.

Failure to Accurately Maintain Trust Account Records. During the audit period, the running daily balance was not accurate.

Separate Records for Each Beneficiary or Transaction. During the audit period, Mr. Marx failed to maintain accurate separate records for each beneficiary because the Nine Trust contained unidentified or unaccounted for funds in the amount of \$16,671.59. This made the separate records inaccurate and resulted in an improper daily balance for multiple beneficiaries.

Monthly Reconciliation. For the same reasons above, the inaccuracy of the account means that Mr. Marx did not perform a true and accurate monthly reconciliation.

Unauthorized Signatory. Ms. Djeddah opened the Nine Trust in 2012 and remained a signatory until Mr. Marx removed her on December 18, 2017.

Nine Trust Not Designated as Trust Account. The Nine Trust was opened on March 12, 2012, by Ms. Djeddah who listed herself as a signatory and as "secretary" for "Genmar Real Estate." The account name was listed as "Genmar Real Estate dba Safe Harbor Asset Management dba Tenant Finders." None of those dbas were registered to Mr. Marx. This problem was rectified on December 22, 2016, when Mr. Marx registered his three dbas, Safe Harbor Property Management, Safe Harbor Asset Management, and Safe Harbor Management Services, with the department.

Broker Supervision. Mr. Marx was aware that Ms. Djeddah was a signatory on the Nine Trust when she should not have been subsequent to April 2012, and failed to establish policies, procedures, rules, regulations, or any other controls with respect to the handling of client funds.

Testimony of Mr. Marx and Letter of Explanation

19. Mr. Marx submitted a letter of explanation to the department concerning the 2017 audit, dated November 27, 2017. Portions of that letter, and Mr. Marx's relevant testimony, are summarized as follows: Mr. Marx denied any wrongdoing in connection with the \$43,754.65 deficit attributable to the time he operated the Nine Trust. When he took over as Controller at Genmar, as discussed previously in the above findings of fact, Mr. Marx notified Ms. Djeddah who admitted to taking money from the One Trust. The deficit caused by Ms. Djeddah carried over to the Nine Trust after the closures of the One Trust and the Seven Trust (i.e. she never paid the money back).

Mr. Marx believes that the \$43,754.65 shortfall is attributable to old checks written on the Seven Trust before it was closed out that were never cashed (which totals approximately \$49,000). He explained:

New property trust funds were placed in the new trust (Nine Trust), while checks were stopped being written on the old trust account (Seven Trust). Money was transferred from the new trust account to the old trust account to cover the checks already written. After about six months, when no more checks were clearing on the old trust account, the balance in the old trust account was transferred to a new trust account (\$528.28) and the old trust account was closed at the bank. A final reconciliation of the old trust account revealed that a number of checks were still outstanding after over a year, totaling \$49,724.27.

Mr. Marx has gone to great lengths to contact all the individuals owed money as a result of those uncashed checks, in order to ensure proper payment. To date, no trust account beneficiary has complained about not being paid or otherwise not obtaining what they are entitled to, meaning no client has been harmed. It was not made clear why the deficit found by Mr. Keraoru in the Nine Trust the time Mr. Marx operated the trust fund totaled \$43,754.65, but after reviewing all old uncashed checks, that amount totaled \$49, 724.27.

At any rate, since the 2017 audit, Mr. Marx has removed Ms. Djeddah as a signatory on the Nine Trust, still supervises all trust account activities, and still ensures that Ms. Djeddah does not perform any duties that require a real estate license. Respondent described the detailed process he uses now to ensure proper accounting. Mr. Marx also conducts monthly reconciliations. All of his dbas are also properly registered with the department.

Costs of Investigation and Enforcement

20. Business and Professions Code section 10106 authorizes complainant to seek recovery of the reasonable costs of investigation and enforcement in disciplinary matters. Business and Professions Code section 10148, subdivision (b), provides that complainant may charge a real estate broker the cost of any audit conducted if discipline is imposed based on violations relating to client trust accounts set forth in Business and Professions Code section 10145 and regulations interpreting that section.

21. Complainant submitted a certification of costs for work performed by attorneys and department personnel. The costs of enforcement in this matter performed by complainant's attorney is \$1,512 for 15.75 hours spent at a rate of \$96 per hour. The hours were broken down appropriately to specify each task performed.

Investigation costs were also broken down by each individual who performed tasks and totaled \$901.15. Finally, audit costs were broken down by individual, type of work performed, and rate. Those costs totaled \$10,669.62 for 173.7 hours of work, 170.2 of which was attributable to the actual audit, while the rest was attributable to supervisor review and travel.

22. The certification of costs in all respects satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and the certification supports a finding that costs in the amount of \$13,178.77 are reasonable in both the nature and extent of the work performed.

LEGAL CONCLUSIONS

Applicable Law

1. The burden of proof in this licensing disciplinary action is on the complainant, and the standard of proof is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, at 855-856.)
2. Business and Professions Code section 10131, subdivision (b), sets forth what constitutes activities of a licensed real estate broker.
3. Business and Professions Code section 10145, provides:
 - (a)(1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained

by the broker in a bank or recognized depository in this state. 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.

(2) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of that broker, or in the case of a corporate broker, only upon the signature of an officer through whom the corporation is licensed pursuant to Section 10158 or 10211, or one, or more, of the following persons if specifically authorized in writing by the individual broker or officer:

(A) A real estate salesperson licensed to the broker.

(B) Another broker acting pursuant to a written agreement with the individual broker that conforms to the requirements of this part and any regulations promulgated pursuant to this part.

(C) An unlicensed employee of the individual broker, if the broker has fidelity bond or insurance coverage equal to at least the maximum amount of the trust funds to which the unlicensed employee has access at any time. For purposes of this section, bonds or insurance providing coverage shall protect the broker from intentional wrongful acts committed by an employee of that business, including theft,

dishonest acts, or forgery. Bonds and insurance providing coverage may be written with a deductible of up to 5 percent of the coverage amount. For bonds and insurance with a deductible, the employing broker shall have evidence of financial responsibility that is sufficient to protect members of the public against a loss subject to the deductible amount.

Evidence of financial responsibility shall include one or more of the following:

[1] . . . [1]

(b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate salesperson who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

[¶] . . . [¶]

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code. . . .

4. California Code of Regulations, title 10, section 2832.1, provides:

The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

5. California Code of Regulations, title 10, section 2831, provides that every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. It further provides that the record, including all records maintained under an automated data processing system, shall set forth in chronological sequence specified information. (*Ibid.*)

6. California Code of Regulations, title 10, section 2831.1, provides:

(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

- (1) Date of deposit.
- (2) Amount of deposit.
- (3) Date of each related disbursement.
- (4) Check number of each related disbursement.
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account.
- (7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, 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 will constitute compliance with

subdivision (a), provided that such ledgers, 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.

7. 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.

8. Business and Professions Code section 10159.5, subdivision (a)(1), provides:

Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the

county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.

9. California Code of Regulations, title 10, section 2731, provides:

(a) A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.

(b) The Bureau shall issue a license required under the Real Estate Law only in the legal name of the licensee or in the fictitious business name of a broker who presents evidence of having complied with the provisions of Sections 17910 and 17917 of the Code.

(c) The commissioner may refuse to issue a license bearing a fictitious name to a broker if the fictitious name:

(1) Is misleading or would constitute false advertising.

(2) Implies a partnership or corporation when a partnership or corporation does not exist in fact.

(3) Includes the name of a real estate salesperson.

(4) Constitutes a violation of the provisions of Sections 17910, 17910.5, 17913 or 17917 of the Code.

(5) Is the name formerly used by a licensee whose license has since been revoked.

(d) A license may not be issued or renewed with a fictitious business name containing the term "escrow", or any name which implies that escrow services are provided, unless the fictitious business name includes the term, "a non-independent broker escrow" following the name. Licensees who have been or are issued a license with a fictitious business name with the term "escrow", or any term which implies that escrow services are provided, must include the term "a non-independent broker escrow" in any advertising, signs, or electronic promotional material.

(e) Where a licensee is a natural person, the use of a nickname in place of his or her legal given name (first name) shall not constitute a fictitious name for purposes of this section, provided that where the nickname is used, the licensee also uses as a surname (last name) his or her surname as it appears on his or her real estate license, and includes his or her Bureau-issued license identification number as required by Section 10140.6 of the Code.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 10140.6, 10159.5 and 10177, Business and Professions Code.

10. Business and Professions Code section 10177, provides:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real

estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[1] . . . [1]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

[1] . . . [1]

(g) Demonstrated negligence or incompetence in performing an act for which the officer, director, or person is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of that licensee's salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

[¶] . . . [¶]

(j) Engaged in any other conduct, whether of the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing.

11. Business and Professions Code section 10176, subdivision (i), provides:

The commissioner may, upon his or her own motion, and 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 within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

[¶] . . . [¶]

(i) Any other conduct, whether of the same or of a different character than specified in this section, which constitutes fraud or dishonest dealing.

12. California Code of Regulations, title 10, section 2725, provides, that a broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage, among other things, the handling of client trust funds. (*Ibid.*)

13. Business and Professions Code Section 495, provides:

Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licentiate or certificate holder thereof, for any act that would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproof, public reproof and suspension, or public reproof and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or, in the case of a licensee or certificate holder under the jurisdiction of the State Department of Health Services, in accordance with Section 100171 of the Health and Safety Code.

A public reproof is not a free pass. It constitutes the board's formal criticism and censure of respondent. It reminds him that the same or similar misconduct will not be tolerated and likely will result in a far more serious sanction. While issuing a public reproof is not a measure of discipline that falls squarely within the disciplinary guidelines, it is the most appropriate sanction under the circumstances.

Evaluation

CAUSE FOR DISCIPLINE

14. Cause does not exist to suspend or revoke Mr. Marx's broker license pursuant to Business and Professions Code section 10177, subdivision (d), for any reason. While his actions in this matter were negligent concerning the handling of the

client trust account when he allowed Ms. Djeddah to remain a signatory on the account after her license was revoked and he used dbas to conduct licensed activity when the dbas were not attached to his broker license, it was not shown that Mr. Marx willfully intended to violate any provision of real estate law.

15. Cause does not exist to suspend or revoke Mr. Marx's broker license pursuant to Business and professions Code section 10177, subdivision (j), 10176, subdivision (i), for any reason. While Mr. Marx's actions may have been negligent with respect to the allegations in this matter, there is no evidence that Mr. Marx did anything that constituted fraud or dishonest dealing.

16. Cause exists to impose discipline against Mr. Marx's license pursuant to Business and Professions Code section 10177, subdivision (g), because he allowed deficiencies in the Nine Trust to exist at the beginning and end of the audit period without first obtaining consent of each owner of said funds, as alleged in paragraph 8(a) of the accusation, and in violation of Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.1.

17. Cause exists to impose discipline against Mr. Marx's broker license pursuant to Business and Professions Code section 10177, subdivision (g), because he failed to maintain accurate trust account control records in the form of a columnar record in chronological order of all trust funds received, deposited, and disbursed from the Nine Trust, as alleged in paragraph 8(b) of the accusation, and in violation of Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.

18. Cause exists to impose discipline against Mr. Marx's broker license pursuant to Business and Professions Code section 10177, subdivision (g), because he

failed to maintain accurate separate trust account records for each beneficiary and transaction during the audit period, as alleged in paragraph 8(c) of the accusation, and in violation of Business and Professions Code section 10145 and California Code of Regulations, title 10 section 2831.1.

19. Cause exists to impose discipline against Mr. Marx's broker license pursuant to Business and Professions Code section 10177, subdivision (g), because he failed to accurately reconcile trust account records at least once a month, as alleged in paragraph 8(d) of the accusation, and in violation of Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.2.

20. Cause exists to impose discipline against Mr. Marx's broker license pursuant to Business and Professions Code sections 10177, subdivision (g) and (h), and California Code of Regulations, title 10, section 2725, because he allowed an unlicensed and unbonded person to be signatory on a client trust account, as alleged in paragraph 8(e) of the accusation, and in violation of Business and Professions Code section 10145, and California Code of Regulations, title 10 section 2834.

21. Cause exists to impose discipline against Mr. Marx's broker license pursuant to Business and Professions Code section 10177, subdivision (g) and (h), and California Code of Regulations, title 10, section 2725, because he placed client funds in a client trust account that was owned by an unlicensed and unbonded person and failed to designate the client trust account as a client trust account, as alleged in paragraph 8(f) of the accusation, and in violation of Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.

22. Cause exists to impose discipline against Mr. Marx's broker license pursuant to Business and Professions Code section 10177, subdivision (g) because he

used fictitious business names to conduct licensed activities without the fictitious business names being attached to his broker license, as alleged in paragraph 8(g) of the accusation, and in violation of Business and Professions Code section 10159.5, and California Code of Regulations, title 10, section 2731.

Appropriate Discipline

23. Mr. Marx has taken positive steps to reform the deficiencies in the client trust account that he operates. Mr. Marx added all his dbas to his broker license. Ms. Djeddah's name was taken off the client trust account and the account is properly designated. With respect to many of the uncashed checks that existed from the old Seven Trust before it was closed, Mr. Marx has gone to great lengths to locate those who should have received checks they never cashed. Also in Mr. Marx's favor is the fact that he has been a real estate licensee since 1992, and has never had discipline imposed against his license. When Ms. Djeddah engaged in wrongdoing concerning Genmar's client trust accounts in 2012, Mr. Marx could (and probably should) have walked away. But, because of his work ethic and dedication to the company and its clients, Mr. Marx stepped in and continued running Genmar for their benefit. Mr. Marx tried to reconcile all the problems with the trust accounts, which included conducting audits and closing out old accounts (like the One Trust and the Seven Trust) and opening the Nine Trust to start fresh. However, because Ms. Djeddah took such a large sum of money, the surviving Nine Trust inherited and always maintained a deficit. Hence, the deficit of \$208,752.46 was due to Ms. Djeddah's wrongdoing. The \$252,507.11 deficit at the end of the 2017 audit period, less Ms. Djeddah's wrongdoing, totaled \$43,754.65. That was listed in the audit report as simply, "unexplained." Though failing to maintain accurate records and failing to balance a client trust account, in addition to the other founded violations, is serious, Mr. Marx's

actions were negligent as opposed to willful. Mr. Marx cooperated with the department during the 2017 audit and does not pose a threat to the public if allowed to continue to engage in the licensed activities that he has engaged in for almost four decades.

For these reasons, it would not be contrary to the public interest to issue a public reproof. Respondent should reimburse the department for its expense in conducting the audit which revealed respondent's misconduct and prompted reformation of his deficient business practices; an expense the department would not have incurred but for respondent's misconduct.

Costs

24. Business and Professions Code section 125.3, subdivision (a), authorizes an administrative law judge to direct a licensee who has violated the applicable licensing act to pay a sum not to exceed the reasonable costs of investigation and prosecution. The certification of costs in all respects satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and the certification supports a finding that costs in the amount of \$13,178.77 are reasonable in both the nature and extent of the work performed.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth five factors to be considered in determining whether a particular licensee should be ordered to pay the reasonable costs of investigation and prosecution under statutes like Business and Professions Code section 125.3. Those factors are: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to

the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Ibid.*)

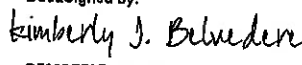
Applying the *Zuckerman* factors to this case leads to the following conclusions: Mr. Marx was successful in getting some of the charges reduced or dismissed; Mr. Marx asserted a good faith belief in the merits of his position; Mr. Marx raised a colorable challenge to the proposed discipline; it is unknown if Mr. Marx has the financial ability to pay costs; and the scope of the investigation was appropriate in light of the alleged misconduct.

25. In consideration of all the factors of this case, the costs should be reduced by half. Mr. Marx shall pay to the board \$6,589.39.

ORDER

Broker License Number 01131401, issued to respondent Peter Marx, is hereby publicly reprovved. This decision shall serve as the public reproval. Respondent shall pay to the board \$6,589.39 in costs no later than 60 days following the effective date of the decision in this matter.

DATE: October 1, 2020

DocuSigned by:

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KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings