

FILED

JUL 7 2010

DEPARTMENT OF REAL ESTATE

R. Honey

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	NO. H-5187 SAC
)	
ACADIAN PROPERTIES, INC. and,	)	OAH No. N2007080573
TRINIE ANN MONTIJO)	
	)	ORDER DENYING
Respondents.	)	RECONSIDERATION as to
	)	<u>TRINIE ANN MONTIJO</u>

On May 3, 2010, a Decision After Rejection was rendered in this case, including an Order to become effective May 25, 2010.

On June 8, 2010, Respondent TRINIE ANN MONTIJO petitioned for reconsideration of the Decision After Rejection in this case.

I have given due consideration to the petition of Respondent TRINIE ANN MONTIJO. I find no good cause to reconsider the Decision After Rejection of May 3, 2010, and reconsideration is hereby denied.

IT IS HEREBY ORDERED 7/7/10

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby
BY: Barbara J. Bigby
Chief Deputy Commissioner

FILED

MAY 25 2010

DEPARTMENT OF REAL ESTATE

By *R. Henry*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
	)	NO. H-5187 SAC
ACADIAN PROPERTIES, INC., and	)	OAH NO. N2009050578
TRINIE ANN MONTIJO,)	
	)	As to Respondent
<u>Respondents.</u>	)	TRINIE ANN MONTIJO.

AMENDED ORDER STAYING EFFECTIVE DATE

On May 3, 2010, a Decision was rendered in the above-entitled matter to become effective on May 25, 2010.

On May 18, 2010, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision of May 3, 2010.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days as to Respondent TRINIE ANN MONTIJO. The Decision of May 3, 2010, shall become effective at 12 o'clock noon on June 24, 2010.

DATED: MAY 25 2010, 2010.

JEFF DAVI
Real Estate Commissioner

Wayne S. Bell
By WAYNE S. BELL
Chief Counsel

FILED

MAY 25 2010

DEPARTMENT OF REAL ESTATE

By L. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
	)	NO. H-5187 SAC
ACADIAN PROPERTIES, INC., and	)	OAH NO. N2009050578
TRINIE ANN MONTIJO,)	
	)	As to Respondent
<u>Respondents.</u>	)	ACADIAN PROPERTIES, INC.

AMENDED ORDER STAYING EFFECTIVE DATE

On May 3, 2010, a Decision was rendered in the above-entitled matter to become effective on May 25, 2010.

On May 18, 2010, Respondent filed a petition for reconsideration of the Decision of May 3, 2010.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of ten (10) days as to Respondent ACADIAN PROPERTIES, INC. The Decision of May 3, 2010, shall become effective at 12 o'clock noon on June 4, 2010.

DATED: MAY 25 2010, 2010.

JEFF DAVI
Real Estate Commissioner

Wayne S. Bell
By WAYNE S. BELL
Chief Counsel

FILED

MAY 19 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
	)	NO. H-5187 SAC
ACADIAN PROPERTIES, INC., and)	
TRINIE ANN MONTIJO,)	
	)	OAH NO. N2009050578
Respondent.)	

ORDER STAYING EFFECTIVE DATE

On May 3, 2010, a Decision was rendered in the above-entitled matter to become effective on May 25, 2010.

On May 18, 2010, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision of May 3, 2010.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of May 3, 2010, shall become effective at 12 o'clock noon on June 24, 2010.

DATED: 5/19, 2010.

JEFF DAVI
Real Estate Commissioner

Jeffrey Davi

1 proceedings held on November 5, 2009, and upon any written argument offered by Respondents and
2 Complainant.

3 Respondents and Complainant submitted written argument.

4 I have given careful consideration to the record in this case including the transcript of
5 proceedings held on November 5, 2009, and the written arguments.

6 The following shall constitute the Decision of the Real Estate Commissioner in this
7 proceeding:

8 FACTUAL FINDINGS

9 1. At all times relevant, Respondent ACADIAN PROPERTIES, INC. (hereinafter
10 "ACADIAN") held corporate license number C01305110 with the Department of Real Estate
11 (hereinafter "Department"). ACADIAN's license expired on September 7, 2009. At hearing,
12 ACADIAN's Designated Officer, Respondent TRINIE ANN MONTIJO (hereinafter "MONTIJO"),
13 indicated she will renew ACADIAN's license "tomorrow."

14 2. At all times relevant, MONTIJO held real estate broker license number
15 B00368559 with the Department, and was the Designated Officer for ACADIAN. MONTIJO's
16 license expires on September 29, 2010, unless renewed.

17 3. At all times relevant, ACADIAN's President, Chief Executive Officer and
18 majority shareholder, Lisha Marie Shaw (hereinafter "Shaw") was unlicensed. Shaw previously
19 was licensed as a real estate salesperson. Shaw's salesperson license was revoked in Case No.
20 H-3332 SAC as of January 23, 1998.

21 4. As a real estate broker, MONTIJO, by and through ACADIAN, conducts a
22 property management business in which ACADIAN, on behalf of others, for compensation, leases
23 real property and collects rents. As part of the property management business, ACADIAN received
24 and accepted funds in trust from or on behalf of owners, tenants, and others in connection with the
25 leasing, renting, and collection of rents on real property, and made disbursements of those funds.
26 The trust funds ACADIAN received and accepted were deposited into a trust account maintained
27 by ACADIAN.

1 5. On April 10, 2009, Complainant filed the Accusation in his official capacity.
2 Prior to the end of the hearing, Complainant presented an oral motion to amend the Accusation at
3 page 5, paragraph 16, line 12, to read "10131, subdivision (b)," instead of "subdivision (d)."
4 Respondents objected to the amendment on the grounds that it was "too late," and "inappropriate."
5 Pursuant to Government Code section 11507, Complainant is permitted to amend the Accusation
6 "at any time before the matter is submitted for decision," and if the amendment "presents new
7 charges," Respondent is entitled to a "reasonable opportunity to prepare his defense thereto." The
8 amendment does not present new charges; rather, it corrects a typographical error and conforms to
9 evidence presented at hearing. Complainant's motion to amend is granted.

10 6. Respondents timely filed a Notice of Defense to the Accusation, pursuant to
11 Government Code section 11506. The matter was set for an evidentiary hearing.

12 *Audit: June 10, 2008 -August 4, 2008*

13 7. From June 10, 2008 to August 4, 2008, Rana Tarazi (hereinafter "Tarazi"),
14 an auditor with the Department, conducted an audit of ACADIAN's business. During the audit,
15 Tarazi examined ACADIAN's accounting and other records covering the period from June 1, 2007
16 to April 25, 2008, and interviewed Shaw, to determine whether ACADIAN had handled and
17 accounted for trust funds in accordance with the Real Estate Law and the Commissioner's
18 Regulations¹ (hereinafter "Regulations"). Respondents provided to Tarazi the records for review.
19 During the audit, Tarazi was informed ACADIAN managed 225 properties for 186 owners, for
20 which ACADIAN charge management fees between three to ten percent (10%) of collected rents.
21 ACADIAN's annual receipts were between \$6 and \$7 million.

22 8. ACADIAN maintained one bank account at First Northern Bank, to deposit
23 trust funds received from property management activities, and to disburse management fees,
24 mortgage payments, maintenance costs, and proceeds to owners. This account was designated as
25 ///

26
27

¹ California Code of Regulations, title 10, chapter 6

1 Acadian Properties, Inc. Trust Account (hereinafter "Trust Account"). MONTIJO and Shaw are
2 signatories on the Trust Account.

3 *Trust Fund Accountability*

4 9. Tarazi's audit found the following shortages and/or discrepancies in the Trust
5 Account:

6 As of April 25, 2008, the adjusted bank statement balance for Trust
7 Account #1 was \$882,059.85, and the accountability was \$891,634.61,
8 resulting in a shortage of <\$9,574.76>. The cause of the shortage was
9 not identified.

10 No evidence was presented to establish ACADIAN had the prior written consent of
11 the owners of the trust funds to reduce the funds' balance to an amount less than the existing
12 aggregate trust fund liability.

13 10. At hearing, ACADIAN's Secretary, Chief Financial Officer and minority
14 shareholder, Rhys Marohn (hereinafter "Marohn"), presented evidence to establish the
15 unreconciled adjustment of \$9,798.77 posted to their bank balance, by the Department's auditor,
16 represented two journal entries for security deposit checks that were returned to tenants in 2005
17 but were never cashed. According to Marohn, when he and Shaw took over the business in late
18 2005, the previous owners had failed to re-enter the outstanding security deposit checks against
19 the individual property owners' accounts. Marohn asserted if the previous owners had re-entered
20 the outstanding security deposit checks against the individual property owners' accounts, the
21 original balance on their books at the time they took over the business would have been less.
22 Subsequently, when the two journal entries on December 7, 2007, to void the outstanding security
23 deposit checks, they were unaware of the need to first add the \$9,798.77 to the individual property
24 owners' accounts. As a result, when ACADIAN's rewrote the security deposit checks, the journal
25 entry could not be reconciled. Thereafter, when the Department's auditor added the unreconciled
26 adjustment of \$9,798.77 to Respondents' trust account balance in July 2008, it created the
27 unidentified shortage. Had the Department's auditor not added the \$9,798.77 to the trust account
balance, Marohn believes the audit would have revealed an overage of \$224.01. On

1 August 1, 2008, respondents deposited \$9,574.76 into the Trust Account to cure the discrepancy.
2 While there was no evidence to indicate respondents intentionally failed to properly account for
3 the \$9,798.77 unreconciled adjustment, the fact remains on April 25, 2008, there was a
4 discrepancy in the balance maintained in the Trust Account.

5 11. At hearing, Tarazi admitted if she had reduced, rather than added, the
6 \$9,789.77 unidentified shortage from respondents' bank account worksheet, it would have resulted
7 in an overage of \$224.01.

8 *Control Record*

9 12. Tarazi's audit found ACADIAN did not maintain an accurate Control Record:
10 The Control Record showed an ending balance of \$875,082.23. The
11 adjusted bank balance was \$882,059.85. Therefore, on April 25, 2008,
12 Acadian's Control Record did not have an accurate balance because the
balance did not match.

13 13. At hearing, Marohn asserted he has been responsible for reconciling
14 ACADIAN's business accounts since the beginning of 2006. He closes the company's books on
15 the 25th day of each month because they are required to tender mortgage and insurance payments
16 on behalf of the individual property owners. After the 25th day of the month, all items are posted
17 to the following month, even if they clear in the month in which they are posted. According to
18 Marohn, after considering adjustments for outstanding checks, deposits in transit, and any other
19 items on the company's books but not contained on the monthly bank statement, ACADIAN's
20 books have balanced every month. No trust account reports were introduced into evidence to
21 support Marohn's testimony. Marohn believes because the Department's auditor reviewed the
22 bank statements as of the last day of the month, it was impossible to balance the accounts
23 without considering all of the adjustments. However, the audit report indicates "on April 25,
24 2008 Acadian's Control Record did not have an accurate balance because the balance did not
25 match." It appears the auditor used the 25th as the ending date, as Marohn does, and the control
26 record ending balance did not match the adjusted bank balance as required.

27 ///

1 *Trust Account Reconciliation*

2 14. Tarazi's audit found "Acadian did not reconcile the Record of Trust Funds
3 Received and Paid Out with the Separate Records for Trust #1 during the period June 1, 2007 to
4 April 25, 2008." According to Tarazi, ACADIAN is required to maintain monthly
5 reconciliations, and the ending balance of the records for all trust funds received and paid out
6 should match the ending balance for the separate records; however, ACADIAN failed to maintain
7 or deliver to the auditor such records. At hearing, Tarazi stated that it is her responsibility to
8 audit only those documents provided to her by the licensee.

9 15. Shaw testified ACADIAN maintains "a file for every single month with
10 bank statements and reconciled reports," and the client accounts, control accounts, and adjusted
11 bank balances have always matched. Shaw further indicated ACADIAN can run a report with the
12 "touch of a computer button," and "every single day of the week [they] take home a back-up
13 report by the bookkeeper so that at any given time [they] have access to everything [they] need."
14 However, no reports were introduced into evidence to support Shaw's testimony and establish
15 the reports run satisfy the trust account reconciliation requirements.

16 *Trust Account Withdrawals*

17 16. Tarazi's audit found as a signatory on the Trust Account, Shaw, who was
18 required to and did maintain a \$1,500,000 fidelity bond. However, according to Tarazi the
19 fidelity bond was insufficient to cover the proceeds in the Trust Account because the bond had a
20 \$5,000 deductible. On cross-examination, Tarazi stated the requirement for a fidelity bond not
21 include a deductible is "implied" in the department's regulations, and admitted it was impossible
22 to get a bond in California without a deductible.

23 17. At hearing, Shaw testified the funds to cover the \$5,000 deductible were
24 maintained in the company's general operating account, and the company has never had a claim
25 against its errors & omissions policy, general liability policy, or bond. Shaw was removed as a
26 signatory on respondent Acadian's bank accounts effective June 30, 2009.

27 ///

1 *Activities Requiring a License*

2 18. Tarazi's audit found as an unlicensed person, Shaw, was not authorized to,
3 but did, sign rent/lease agreements on behalf of ACADIAN.

4 19. At hearing, Shaw admitted, "I have occasionally signed the lease
5 agreements in the capacity of an agent of the corporation and employee and support staff," and
6 asserted "these agreements pass the scrutiny of the broker." However, she stopped signing the
7 rent/lease agreements as of August 4, 2008.

8 *Broker Supervision*

9 20. Tarazi's audit found MONTIJO failed to supervise the property
10 management activities of ACADIAN because she was not available during the audit process.
11 However, Tarazi admitted on cross-examination it did not matter that MONTIJO was not present
12 during the audit. Tarazi's audit also found MONTIJO failed to "maintain written policies, rules,
13 procedures and systems to review, oversee, inspect and manage (a) transactions requiring a real
14 estate license, and (b) the handling of trust funds."

15 21. MONTIJO has been the broker for ACADIAN since March 2005. She is in
16 the office approximately three to four times a week during the lunch hour or evenings, and
17 occasionally on weekends. MONTIJO speaks with Shaw on a daily basis, attends meetings,
18 interacts with employees, tenants and clients, and reviews and signs the rent/lease and
19 management agreements. She admitted at hearing Shaw has signed "some" of the agreements,
20 but asserted there have been no complaints by tenants or owners regarding the negotiations on
21 rent/lease agreements signed by Shaw. MONTIJO testified she spoke with Shaw during the
22 audit, but opted to stay away and allow Shaw to work with the department's auditor because she
23 "knows what to do ... is very good at her job," and "wouldn't take a penny from anyone that
24 didn't belong to her." MONTIJO also admitted her policies and procedures have not yet been
25 reduced to writing, but she assured the auditor she would ultimately put them in writing.
26 MONTIJO completed the accounting and trust fund management training course pursuant to the

27 ///

1 July 2, 2007 Stipulation and Waiver, and has attempted to apply what she has learned by relaying
2 the information to her bookkeepers.

3 22. At hearing, Shaw asserted ACADIAN abides by the laws, and each
4 employee signs an agreement which states the company's policies and procedures. In addition,
5 the front desk and leasing staff, and bookkeeper have manuals which contain procedures,
6 including procedures for taking deposits. Shaw admitted there is "nothing in writing regarding
7 walk-throughs."

8 *Exit Conference*

9 23. Tarazi discussed her findings with MONTIJO and Shaw during an exit
10 conference on August 4, 2008, and provided MONTIJO and Shaw with a copy of the Non-
11 Compliance Summary.

12 *Prior Disciplinary Action -July 2, 2007*

13 24. On December 13, 2006, complainant filed an Accusation (Case No. H-4618
14 SAC) against respondents, alleging violations of Business and Professions Code (hereinafter "the
15 Code") section 10145 (trust fund shortage), and sections 2832.1 (failure to obtain written consent
16 to reduce the aggregate balance in the trust fund below the aggregate trust fund liability), and
17 2834 (permitting an unlicensed individual to be a signatory on the trust account without being
18 bonded, and permitting licensed individuals who were no longer employed by the company to be
19 signatories on the trust account) of the Regulations. The Accusation also alleged against
20 MONTIJO a separate violation of sections 10177(h) (failure to exercise reasonable supervision);
21 10177(d) (willful disregard or violation of the Commissioner's rules and regulations); and
22 10159.2(a) (failure to exercise reasonable supervision and control over the officers and
23 employees) of the Code.

24 25. Effective July 2, 2007, the Department entered into a Stipulation and
25 Waiver with Respondents, wherein Respondents agreed to a 60-day suspension of their licenses
26 and licensing rights, stayed for two years; and agreed to obey all laws, and jointly and severally
27 pay the sum of \$4,980.70 for reimbursement of the Department's audit costs. In addition,

1 MONTIJO agreed to a suspension of her license until she completed a trust fund accounting and
2 handling course. No evidence was presented to establish respondents' failure to comply with the
3 terms and conditions of the Stipulation and Waiver, or that the two-year stayed suspension was
4 extended beyond July 2, 2009.

5 *Factors in Mitigation, Aggravation and Rehabilitation*

6 26: On August 1, 2008, prior to the Department's exit conference and prior to
7 discovering the cause of the unidentified shortage, Respondents deposited \$9,574.76 into the
8 Trust Account to cure the trust fund discrepancy. MAROHN is responsible for balancing
9 Respondent ACADIAN's books each month. As of August 4, 2008, Shaw no longer signs
10 rent/lease agreements on behalf of ACADIAN. Effective June 30, 2009, Shaw has been removed
11 as a signatory on ACADIAN's bank accounts. No complaints have been filed against
12 Respondents, no injuries have been reported by tenants or owners, and no clients have lost
13 money as a result of Respondents' activities and conduct. In aggravation the present Accusation
14 stems from the follow-up audit resulting in the disciplinary action discussed in Factual Findings
15 24 and 25. Many of the violations found in the previous matter still exist in this proceeding. In
16 addition MONTIJO failed to supervise the activities of ACADIAN; particularly by allowing
17 Shaw to sign lease agreements and by delegating her supervisory powers to an unlicensed
18 individual. Testimony of Shaw establishes that Shaw runs the operations of ACADIAN, not
19 MONTIJO. MONTIJO clearly misunderstands her responsibility to manage ACADIAN.

20 LEGAL CONCLUSIONS

21 *Applicable Case Law, Statutes and Regulations*

22 1. The burden of proof in this matter is on Complainant to show by clear and
23 convincing evidence to a reasonable certainty that Respondents' licenses should be suspended or
24 revoked. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-56.)

25 2. Section 10145(a)(1) of the Code, requires a broker to hold real estate
26 transaction funds belonging to others in trust.²

27

² Business and Professions Code section 10145, subdivision (a)(1), provides, in pertinent part, as follows:

1 3. Section 10177(d) of the Code, authorizes the suspension or revocation of
2 the license of a real estate licensee for "willfully" disregarding or violating the Real Estate Laws
3 or the Commissioner's Regulations.³ The term "willfully," as used in this subdivision, means
4 "done deliberately: not accidental or without purpose." (*Apollo Estates, Inc. v. Department of*
5 *Real Estate* (1985) 174 Cal.App.3d 625, 639. See also *Manning v. Fox* (1984) 151 CalApp.3d
6 531, 542 ["Section 10177, subdivision (d), is designed 'to protect the public not only from
7 conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable
8 salesman.'"].)

9 *Cause for Discipline*

10 4. Section 2831 of the Regulations, describes the trust fund records a broker
11 must maintain.⁴ As set forth in Factual Finding 12 and 13, ACADIAN failed to maintained an
12

13
14 A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall
15 deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the
16 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.

17 ³ Business and Professions Code section 10177, provides, in pertinent part, as follows:

18 The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a
19 license to an applicant, who has done any of the following, or may suspend or revoke the license of a
20 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:

21 [¶] ... [¶]

22 (d) Willfully disregarded or violated the Real Estate Law (Part I (commencing with Section (0000)) or
23 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.

24 ⁴ California Code of Regulations, title 10, section 2831, provides, in pertinent part, as follows:

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

27 (1) Date trust funds received.

(2) From whom trust funds received.

(3) Amount received.

(4) With respect to funds deposited in an account, date of said deposit.

1 accurate control record as the control record's ending balance did not match the adjusted bank
2 balance as of April 25, 2008 as required by section 2831 of the Regulations. Therefore, cause
3 exists to suspend or revoke ACADIAN's license pursuant to section 10177(d) of the Code, in
4 conjunction with section 2831 of the Regulations.

5 5. Section 2831.2 of the Regulations, provides, in pertinent part, that the
6 balance of all separate beneficiary or transaction records must be reconciled with the record of
7 all trust funds received and disbursed, at least once a month. In addition, a record of the
8 reconciliation must be maintained, and must identify the bank account name and number, the
9 date of the reconciliation, the account number or name of the principals or beneficiaries or
10 transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or
11 transactions. As set forth in Factual Finding 14 and 15 ACADIAN failed to show ACADIAN
12 reconciled the control record with the separate beneficiary records at least once each month as
13 required by section 2831.2 of the Regulations. While ACADIAN may maintain its records in an
14 automated computer system, it must still be able to print the data out in a format in compliance
15 with the department's regulations (§2831(c) of the Regulations). Therefore, cause exists to
16 suspend or revoke ACADIAN's license pursuant to section 10177(d) of the Code, in conjunction
17 with section 2831.2 of the Regulations.

18 6. Section 2832.1 of the Regulations, provides the "written consent of every
19 principal who is an owner of the funds in the account shall be obtained by a real estate broker
20 prior to each disbursement if such disbursement will reduce the balance of funds in the account
21

22 (5) With respect to trust funds previously deposited to an account, check number and date of related
disbursement.

23 (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were
forwarded.

24 (7) Daily balance of said account.

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

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

1 to an amount less than the existing aggregate trust fund liability of the broker to all owners of the
2 funds." As set forth in Factual Findings 9 through 11, had the department's auditor reduced,
3 rather than added, the \$9,789.77 unidentified shortage to ACADIAN's bank account worksheet,
4 the adjusted bank balance would have resulted in a \$224.01 overage. Cause does not exist to
5 suspend or revoke ACADIAN's license pursuant to section 10177(d) of the Code, in conjunction
6 with section 2832.1 of the Regulations. However, the fact remains that on April 25, 2008, there
7 was a discrepancy in the balance maintained in the Trust Account. Therefore, cause exists to
8 suspend or revoke ACADIAN's license pursuant to sections 10145 and 10177(d) of the Code.

9 7. Section 2834(a)(3) of the Regulations, provides withdrawals may be made
10 from a trust fund account by "an unlicensed employee of the broker with fidelity bond coverage
11 at least equal to the maximum amount of the trust funds to which the employee has access at any
12 time." As set forth in Factual Findings 16 and 17, Shaw maintained a \$1,500,000 fidelity bond
13 with a \$5,000 deductible. The plain language of section 2834 requires the fidelity bond to cover
14 the full amount of trust funds available. There is no exemption for deductibles, even if the
15 amount of the deductible can be covered by funds from the operating account. Therefore, cause
16 exists to suspend or revoke ACADIAN's license pursuant to section 10177(d) of the Code, in
17 conjunction with section 2834(a)(3) of the Regulations.

18 8. Section 10130 of the Code provides, "[i]t is unlawful for any person to
19 engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or
20 a real estate salesman within this state without first obtaining a real estate license from the
21 department." Section 10131(b), describes a real estate broker as one who "[l]eases or rents or
22 offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for
23 prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or
24 on a business opportunity, or collects rents from real property, or improvements thereon, or from
25 business opportunities." As set forth in Factual Findings 18 and 19, Shaw, an unlicensed
26 employee, signed rent/lease agreements on behalf of ACADIAN. Therefore, cause exists to

27 ///

1 suspend or revoke ACADIAN's license pursuant to sections 10130, 10131(b), and 10177(d) of
2 the Code.

3 9. Section 10159.2(a) of the Code, provides, in pertinent part, the designated
4 officer of a broker corporation shall be responsible for the supervision and control of the
5 activities conducted on behalf of the corporation by its officers and employees, including the
6 supervision of salespersons licensed to the corporation in the performance of acts for which a
7 real estate license is required. As set forth in Factual Findings 20 through 22, MONTIJO failed to
8 implement policies, rules and procedures designed to ensure compliance with the commissioner's
9 rules and regulations, such that Shaw, an unlicensed employee, was permitted to sign rent/lease
10 agreements on behalf of the corporation. Therefore, cause exists to suspend or revoke MONTIJO
11 license pursuant to section 10177(d) of the Code, in conjunction with section 10159.2(a) of the
12 Code.

13 10. Factors of mitigation and rehabilitation include: (1) respondents deposited
14 proceeds into the trust account to cure the shortage prior to their exit conference with the
15 department's auditor on August 4, 2008; (2) Shaw testified she no longer signs rent/lease
16 agreements on behalf of ACADIAN; (3) MAROHN testified ACADIAN's books are balanced
17 each month; and (4) Shaw has been removed as a signatory on ACADIAN's bank accounts
18 effective June 30, 2009. In addition, no complaints have been filed against Respondents, no
19 injuries have been reported by tenants or owners, and no clients have lost money as a result of
20 Respondents' activities and conduct. Factors of aggravation include: (1) this is Respondent's
21 second disciplinary accusation for trust fund and supervisory violations of the real estate law,
22 and the violations have not been corrected; (2) Shaw was acting as a real estate broker without
23 being properly licensed as such; and (3) MONTIJO seems unconcerned about her duties and
24 responsibilities to supervise the activities of ACADIAN. The purpose of the Real Estate Law is
25 to protect the public. While there have been no complaints from clients the audit violations
26 found still put trust funds at risk. When all the facts are considered and weighed, it would be
27 contrary to the public interest to allow respondents to retain a real estate license at this time.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

This Decision shall become effective at 12 o'clock noon on May 25, 2010.

JEFF DAVIS
Real Estate Commissioner

Real Estate Commissioner

Real Estate Commissioner

FILED

JUN - 3 2010

DEPARTMENT OF REAL ESTATE

R. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	NO. H-5187 SAC
)	
ACADIAN PROPERTIES, INC. and,	)	OAH No. N2007080573
TRINIE ANN MONTIJO)	
	)	ORDER DENYING
Respondents.	)	RECONSIDERATION as to
	)	<u>ACADIAN PROPERTIES, INC.</u>

On May 3, 2010, a Decision After Rejection was rendered in this case, including an Order to become effective May 25, 2010.

On May 18, 2010, Respondent ACADIAN PROPERTIES, INC. petitioned for reconsideration of the Decision After Rejection in this case.

I have given due consideration to the petition of Respondent ACADIAN PROPERTIES, INC. I find no good cause to reconsider the Decision After Rejection of May 3, 2010, and reconsideration is hereby denied.

IT IS HEREBY ORDERED 6/2/10

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby
BY: Barbara J. Bigby
Chief Deputy Commissioner

FILED

MAY 25 2010

DEPARTMENT OF REAL ESTATE

By L. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
	)	NO. H-5187 SAC
ACADIAN PROPERTIES, INC., and	)	OAH NO. N2009050578
TRINIE ANN MONTIJO,)	
	)	As to Respondent
<u>Respondents.</u>	)	ACADIAN PROPERTIES, INC.

AMENDED ORDER STAYING EFFECTIVE DATE

On May 3, 2010, a Decision was rendered in the above-entitled matter to become effective on May 25, 2010.

On May 18, 2010, Respondent filed a petition for reconsideration of the Decision of May 3, 2010.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of ten (10) days as to Respondent ACADIAN PROPERTIES, INC. The Decision of May 3, 2010, shall become effective at 12 o'clock noon on June 4, 2010.

DATED: MAY 25 2010, 2010.

JEFF DAVI
Real Estate Commissioner

Wayne S. Bell
By WAYNE S. BELL
Chief Counsel

FILED

MAY 19 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
	)	NO. H-5187 SAC
ACADIAN PROPERTIES, INC., and)	
TRINIE ANN MONTIJO,)	
	)	OAH NO. N2009050578
Respondent.)	

ORDER STAYING EFFECTIVE DATE

On May 3, 2010, a Decision was rendered in the above-entitled matter to become effective on May 25, 2010.

On May 18, 2010, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision of May 3, 2010.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of May 3, 2010, shall become effective at 12 o'clock noon on June 24, 2010.

DATED: 5/19, 2010.

JEFF DAVI
Real Estate Commissioner

Darbara J. Davis

1 proceedings held on November 5, 2009, and upon any written argument offered by Respondents and
2 Complainant.

3 Respondents and Complainant submitted written argument.

4 I have given careful consideration to the record in this case including the transcript of
5 proceedings held on November 5, 2009, and the written arguments.

6 The following shall constitute the Decision of the Real Estate Commissioner in this
7 proceeding:

8 FACTUAL FINDINGS

9 1. At all times relevant, Respondent ACADIAN PROPERTIES, INC. (hereinafter
10 "ACADIAN") held corporate license number C01305110 with the Department of Real Estate
11 (hereinafter "Department"). ACADIAN's license expired on September 7, 2009. At hearing,
12 ACADIAN's Designated Officer, Respondent TRINIE ANN MONTIJO (hereinafter "MONTIJO"),
13 indicated she will renew ACADIAN's license "tomorrow."

14 2. At all times relevant, MONTIJO held real estate broker license number
15 B00368559 with the Department, and was the Designated Officer for ACADIAN. MONTIJO's
16 license expires on September 29, 2010, unless renewed.

17 3. At all times relevant, ACADIAN's President, Chief Executive Officer and
18 majority shareholder, Lisha Marie Shaw (hereinafter "Shaw") was unlicensed. Shaw previously
19 was licensed as a real estate salesperson. Shaw's salesperson license was revoked in Case No.
20 H-3332 SAC as of January 23, 1998.

21 4. As a real estate broker, MONTIJO, by and through ACADIAN, conducts a
22 property management business in which ACADIAN, on behalf of others, for compensation, leases
23 real property and collects rents. As part of the property management business, ACADIAN received
24 and accepted funds in trust from or on behalf of owners, tenants, and others in connection with the
25 leasing, renting, and collection of rents on real property, and made disbursements of those funds.
26 The trust funds ACADIAN received and accepted were deposited into a trust account maintained
27 by ACADIAN.

1 5. On April 10, 2009, Complainant filed the Accusation in his official capacity.
2 Prior to the end of the hearing, Complainant presented an oral motion to amend the Accusation at
3 page 5, paragraph 16, line 12, to read "10131, subdivision (b)," instead of "subdivision (d)."
4 Respondents objected to the amendment on the grounds that it was "too late," and "inappropriate."
5 Pursuant to Government Code section 11507, Complainant is permitted to amend the Accusation
6 "at any time before the matter is submitted for decision," and if the amendment "presents new
7 charges," Respondent is entitled to a "reasonable opportunity to prepare his defense thereto." The
8 amendment does not present new charges; rather, it corrects a typographical error and conforms to
9 evidence presented at hearing. Complainant's motion to amend is granted.

10 6. Respondents timely filed a Notice of Defense to the Accusation, pursuant to
11 Government Code section 11506. The matter was set for an evidentiary hearing.

12 *Audit: June 10, 2008 -August 4, 2008*

13 7. From June 10, 2008 to August 4, 2008, Rana Tarazi (hereinafter "Tarazi"),
14 an auditor with the Department, conducted an audit of ACADIAN's business. During the audit,
15 Tarazi examined ACADIAN's accounting and other records covering the period from June 1, 2007
16 to April 25, 2008, and interviewed Shaw, to determine whether ACADIAN had handled and
17 accounted for trust funds in accordance with the Real Estate Law and the Commissioner's
18 Regulations¹ (hereinafter "Regulations"). Respondents provided to Tarazi the records for review.
19 During the audit, Tarazi was informed ACADIAN managed 225 properties for 186 owners, for
20 which ACADIAN charge management fees between three to ten percent (10%) of collected rents.
21 ACADIAN's annual receipts were between \$6 and \$7 million.

22 8. ACADIAN maintained one bank account at First Northern Bank, to deposit
23 trust funds received from property management activities, and to disburse management fees,
24 mortgage payments, maintenance costs, and proceeds to owners. This account was designated as
25 ///

26
27

¹ California Code of Regulations, title 10, chapter 6

1 Acadian Properties, Inc. Trust Account (hereinafter "Trust Account"). MONTIJO and Shaw are
2 signatories on the Trust Account.

3 *Trust Fund Accountability*

4 9. Tarazi's audit found the following shortages and/or discrepancies in the Trust
5 Account:

6 As of April 25, 2008, the adjusted bank statement balance for Trust
7 Account #1 was \$882,059.85, and the accountability was \$891,634.61,
8 resulting in a shortage of <\$9,574.76>. The cause of the shortage was
9 not identified.

10 No evidence was presented to establish ACADIAN had the prior written consent of
11 the owners of the trust funds to reduce the funds' balance to an amount less than the existing
12 aggregate trust fund liability.

13 10. At hearing, ACADIAN's Secretary, Chief Financial Officer and minority
14 shareholder, Rhys Marohn (hereinafter "Marohn"), presented evidence to establish the
15 unreconciled adjustment of \$9,798.77 posted to their bank balance, by the Department's auditor,
16 represented two journal entries for security deposit checks that were returned to tenants in 2005
17 but were never cashed. According to Marohn, when he and Shaw took over the business in late
18 2005, the previous owners had failed to re-enter the outstanding security deposit checks against
19 the individual property owners' accounts. Marohn asserted if the previous owners had re-entered
20 the outstanding security deposit checks against the individual property owners' accounts, the
21 original balance on their books at the time they took over the business would have been less.
22 Subsequently, when the two journal entries on December 7, 2007, to void the outstanding security
23 deposit checks, they were unaware of the need to first add the \$9,798.77 to the individual property
24 owners' accounts. As a result, when ACADIAN's rewrote the security deposit checks, the journal
25 entry could not be reconciled. Thereafter, when the Department's auditor added the unreconciled
26 adjustment of \$9,798.77 to Respondents' trust account balance in July 2008, it created the
27 unidentified shortage. Had the Department's auditor not added the \$9,798.77 to the trust account
balance, Marohn believes the audit would have revealed an overage of \$224.01. On

1 August 1, 2008, respondents deposited \$9,574.76 into the Trust Account to cure the discrepancy.
2 While there was no evidence to indicate respondents intentionally failed to properly account for
3 the \$9,798.77 unreconciled adjustment, the fact remains on April 25, 2008, there was a
4 discrepancy in the balance maintained in the Trust Account.

5 11. At hearing, Tarazi admitted if she had reduced, rather than added, the
6 \$9,789.77 unidentified shortage from respondents' bank account worksheet, it would have resulted
7 in an overage of \$224.01.

8 *Control Record*

9 12. Tarazi's audit found ACADIAN did not maintain an accurate Control Record:
10 The Control Record showed an ending balance of \$875,082.23. The
11 adjusted bank balance was \$882,059.85. Therefore, on April 25, 2008,
12 Acadian's Control Record did not have an accurate balance because the
balance did not match.

13 13. At hearing, Marohn asserted he has been responsible for reconciling
14 ACADIAN's business accounts since the beginning of 2006. He closes the company's books on
15 the 25th day of each month because they are required to tender mortgage and insurance payments
16 on behalf of the individual property owners. After the 25th day of the month, all items are posted
17 to the following month, even if they clear in the month in which they are posted. According to
18 Marohn, after considering adjustments for outstanding checks, deposits in transit, and any other
19 items on the company's books but not contained on the monthly bank statement, ACADIAN's
20 books have balanced every month. No trust account reports were introduced into evidence to
21 support Marohn's testimony. Marohn believes because the Department's auditor reviewed the
22 bank statements as of the last day of the month, it was impossible to balance the accounts
23 without considering all of the adjustments. However, the audit report indicates "on April 25,
24 2008 Acadian's Control Record did not have an accurate balance because the balance did not
25 match." It appears the auditor used the 25th as the ending date, as Marohn does, and the control
26 record ending balance did not match the adjusted bank balance as required.

27 ///

1 *Trust Account Reconciliation*

2 14. Tarazi's audit found "Acadian did not reconcile the Record of Trust Funds
3 Received and Paid Out with the Separate Records for Trust #1 during the period June 1, 2007 to
4 April 25, 2008." According to Tarazi, ACADIAN is required to maintain monthly
5 reconciliations, and the ending balance of the records for all trust funds received and paid out
6 should match the ending balance for the separate records; however, ACADIAN failed to maintain
7 or deliver to the auditor such records. At hearing, Tarazi stated that it is her responsibility to
8 audit only those documents provided to her by the licensee.

9 15. Shaw testified ACADIAN maintains "a file for every single month with
10 bank statements and reconciled reports," and the client accounts, control accounts, and adjusted
11 bank balances have always matched. Shaw further indicated ACADIAN can run a report with the
12 "touch of a computer button," and "every single day of the week [they] take home a back-up
13 report by the bookkeeper so that at any given time [they] have access to everything [they] need."
14 However, no reports were introduced into evidence to support Shaw's testimony and establish
15 the reports run satisfy the trust account reconciliation requirements.

16 *Trust Account Withdrawals*

17 16. Tarazi's audit found as a signatory on the Trust Account, Shaw, who was
18 required to and did maintain a \$1,500,000 fidelity bond. However, according to Tarazi the
19 fidelity bond was insufficient to cover the proceeds in the Trust Account because the bond had a
20 \$5,000 deductible. On cross-examination, Tarazi stated the requirement for a fidelity bond not
21 include a deductible is "implied" in the department's regulations, and admitted it was impossible
22 to get a bond in California without a deductible.

23 17. At hearing, Shaw testified the funds to cover the \$5,000 deductible were
24 maintained in the company's general operating account, and the company has never had a claim
25 against its errors & omissions policy, general liability policy, or bond. Shaw was removed as a
26 signatory on respondent Acadian's bank accounts effective June 30, 2009.

27 ///

1 *Activities Requiring a License*

2 18. Tarazi's audit found as an unlicensed person, Shaw, was not authorized to,
3 but did, sign rent/lease agreements on behalf of ACADIAN.

4 19. At hearing, Shaw admitted, "I have occasionally signed the lease
5 agreements in the capacity of an agent of the corporation and employee and support staff," and
6 asserted "these agreements pass the scrutiny of the broker." However, she stopped signing the
7 rent/lease agreements as of August 4, 2008.

8 *Broker Supervision*

9 20. Tarazi's audit found MONTIJO failed to supervise the property
10 management activities of ACADIAN because she was not available during the audit process.
11 However, Tarazi admitted on cross-examination it did not matter that MONTIJO was not present
12 during the audit. Tarazi's audit also found MONTIJO failed to "maintain written policies, rules,
13 procedures and systems to review, oversee, inspect and manage (a) transactions requiring a real
14 estate license, and (b) the handling of trust funds."

15 21. MONTIJO has been the broker for ACADIAN since March 2005. She is in
16 the office approximately three to four times a week during the lunch hour or evenings, and
17 occasionally on weekends. MONTIJO speaks with Shaw on a daily basis, attends meetings,
18 interacts with employees, tenants and clients, and reviews and signs the rent/lease and
19 management agreements. She admitted at hearing Shaw has signed "some" of the agreements,
20 but asserted there have been no complaints by tenants or owners regarding the negotiations on
21 rent/lease agreements signed by Shaw. MONTIJO testified she spoke with Shaw during the
22 audit, but opted to stay away and allow Shaw to work with the department's auditor because she
23 "knows what to do ... is very good at her job," and "wouldn't take a penny from anyone that
24 didn't belong to her." MONTIJO also admitted her policies and procedures have not yet been
25 reduced to writing, but she assured the auditor she would ultimately put them in writing.

26 MONTIJO completed the accounting and trust fund management training course pursuant to the

27 ///

1 July 2, 2007 Stipulation and Waiver, and has attempted to apply what she has learned by relaying
2 the information to her bookkeepers.

3 22. At hearing, Shaw asserted ACADIAN abides by the laws, and each
4 employee signs an agreement which states the company's policies and procedures. In addition,
5 the front desk and leasing staff, and bookkeeper have manuals which contain procedures,
6 including procedures for taking deposits. Shaw admitted there is "nothing in writing regarding
7 walk-throughs."

8 *Exit Conference*

9 23. Tarazi discussed her findings with MONTIJO and Shaw during an exit
10 conference on August 4, 2008, and provided MONTIJO and Shaw with a copy of the Non-
11 Compliance Summary.

12 *Prior Disciplinary Action - July 2, 2007*

13 24. On December 13, 2006, complainant filed an Accusation (Case No. H-4618
14 SAC) against respondents, alleging violations of Business and Professions Code (hereinafter "the
15 Code") section 10145 (trust fund shortage), and sections 2832.1 (failure to obtain written consent
16 to reduce the aggregate balance in the trust fund below the aggregate trust fund liability), and
17 2834 (permitting an unlicensed individual to be a signatory on the trust account without being
18 bonded, and permitting licensed individuals who were no longer employed by the company to be
19 signatories on the trust account) of the Regulations. The Accusation also alleged against
20 MONTIJO a separate violation of sections 10177(h) (failure to exercise reasonable supervision);
21 10177(d) (willful disregard or violation of the Commissioner's rules and regulations); and
22 10159.2(a) (failure to exercise reasonable supervision and control over the officers and
23 employees) of the Code.

24 25. Effective July 2, 2007, the Department entered into a Stipulation and
25 Waiver with Respondents, wherein Respondents agreed to a 60-day suspension of their licenses
26 and licensing rights, stayed for two years; and agreed to obey all laws, and jointly and severally
27 pay the sum of \$4,980.70 for reimbursement of the Department's audit costs. In addition,

1 MONTIJO agreed to a suspension of her license until she completed a trust fund accounting and
2 handling course. No evidence was presented to establish respondents' failure to comply with the
3 terms and conditions of the Stipulation and Waiver, or that the two-year stayed suspension was
4 extended beyond July 2, 2009.

5 *Factors in Mitigation, Aggravation and Rehabilitation*

6 26. On August 1, 2008, prior to the Department's exit conference and prior to
7 discovering the cause of the unidentified shortage, Respondents deposited \$9,574.76 into the
8 Trust Account to cure the trust fund discrepancy. MAROHN is responsible for balancing
9 Respondent ACADIAN's books each month. As of August 4, 2008, Shaw no longer signs
10 rent/lease agreements on behalf of ACADIAN. Effective June 30, 2009, Shaw has been removed
11 as a signatory on ACADIAN's bank accounts. No complaints have been filed against
12 Respondents, no injuries have been reported by tenants or owners, and no clients have lost
13 money as a result of Respondents' activities and conduct. In aggravation the present Accusation
14 stems from the follow-up audit resulting in the disciplinary action discussed in Factual Findings
15 24 and 25. Many of the violations found in the previous matter still exist in this proceeding. In
16 addition MONTIJO failed to supervise the activities of ACADIAN; particularly by allowing
17 Shaw to sign lease agreements and by delegating her supervisory powers to an unlicensed
18 individual. Testimony of Shaw establishes that Shaw runs the operations of ACADIAN, not
19 MONTIJO. MONTIJO clearly misunderstands her responsibility to manage ACADIAN.

20 LEGAL CONCLUSIONS

21 *Applicable Case Law, Statutes and Regulations*

22 1. The burden of proof in this matter is on Complainant to show by clear and
23 convincing evidence to a reasonable certainty that Respondents' licenses should be suspended or
24 revoked. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-56.)

25 2. Section 10145(a)(1) of the Code, requires a broker to hold real estate
26 transaction funds belonging to others in trust.²

27

² Business and Professions Code section 10145, subdivision (a)(1), provides, in pertinent part, as follows:

1 3. Section 10177(d) of the Code, authorizes the suspension or revocation of
2 the license of a real estate licensee for "willfully" disregarding or violating the Real Estate Laws
3 or the Commissioner's Regulations.³ The term "willfully," as used in this subdivision, means
4 "done deliberately: not accidental or without purpose." (*Apollo Estates, Inc. v. Department of*
5 *Real Estate* (1985) 174 Cal.App.3d 625, 639. See also *Manning v. Fox* (1984) 151 CalApp.3d
6 531, 542 ["Section 10177, subdivision (d), is designed 'to protect the public not only from
7 conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable
8 salesman.'"].)

9 *Cause for Discipline*

10 4. Section 2831 of the Regulations, describes the trust fund records a broker
11 must maintain.⁴ As set forth in Factual Finding 12 and 13, ACADIAN failed to maintained an
12

13
14 A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall
15 deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the
16 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.

17 ³ Business and Professions Code section 10177, provides, in pertinent part, as follows:

18 The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a
19 license to an applicant, who has done any of the following, or may suspend or revoke the license of a
20 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:

21 [¶] ... [¶]

22 (d) Willfully disregarded or violated the Real Estate Law (Part I (commencing with Section (0000)) or
23 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.

24 ⁴ California Code of Regulations, title 10, section 2831, provides, in pertinent part, as follows:

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

27 (1) Date trust funds received.

(2) From whom trust funds received.

(3) Amount received.

(4) With respect to funds deposited in an account, date of said deposit.

1 accurate control record as the control record's ending balance did not match the adjusted bank
2 balance as of April 25, 2008 as required by section 2831 of the Regulations. Therefore, cause
3 exists to suspend or revoke ACADIAN's license pursuant to section 10177(d) of the Code, in
4 conjunction with section 2831 of the Regulations.

5 5. Section 2831.2 of the Regulations, provides, in pertinent part, that the
6 balance of all separate beneficiary or transaction records must be reconciled with the record of
7 all trust funds received and disbursed, at least once a month. In addition, a record of the
8 reconciliation must be maintained, and must identify the bank account name and number, the
9 date of the reconciliation, the account number or name of the principals or beneficiaries or
10 transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or
11 transactions. As set forth in Factual Finding 14 and 15 ACADIAN failed to show ACADIAN
12 reconciled the control record with the separate beneficiary records at least once each month as
13 required by section 2831.2 of the Regulations. While ACADIAN may maintain its records in an
14 automated computer system, it must still be able to print the data out in a format in compliance
15 with the department's regulations (§2831(c) of the Regulations). Therefore, cause exists to
16 suspend or revoke ACADIAN's license pursuant to section 10177(d) of the Code, in conjunction
17 with section 2831.2 of the Regulations.

18 6. Section 2832.1 of the Regulations, provides the "written consent of every
19 principal who is an owner of the funds in the account shall be obtained by a real estate broker
20 prior to each disbursement if such disbursement will reduce the balance of funds in the account
21

22 (5) With respect to trust funds previously deposited to an account, check number and date of related
disbursement.

23 (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were
forwarded.

24 (7) Daily balance of said account.

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

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

1 to an amount less than the existing aggregate trust fund liability of the broker to all owners of the
2 funds." As set forth in Factual Findings 9 through 11, had the department's auditor reduced,
3 rather than added, the \$9,789.77 unidentified shortage to ACADIAN's bank account worksheet,
4 the adjusted bank balance would have resulted in a \$224.01 overage. Cause does not exist to
5 suspend or revoke ACADIAN's license pursuant to section 10177(d) of the Code, in conjunction
6 with section 2832.1 of the Regulations. However, the fact remains that on April 25, 2008, there
7 was a discrepancy in the balance maintained in the Trust Account. Therefore, cause exists to
8 suspend or revoke ACADIAN's license pursuant to sections 10145 and 10177(d) of the Code.

9 7. Section 2834(a)(3) of the Regulations, provides withdrawals may be made
10 from a trust fund account by "an unlicensed employee of the broker with fidelity bond coverage
11 at least equal to the maximum amount of the trust funds to which the employee has access at any
12 time." As set forth in Factual Findings 16 and 17, Shaw maintained a \$1,500,000 fidelity bond
13 with a \$5,000 deductible. The plain language of section 2834 requires the fidelity bond to cover
14 the full amount of trust funds available. There is no exemption for deductibles, even if the
15 amount of the deductible can be covered by funds from the operating account. Therefore, cause
16 exists to suspend or revoke ACADIAN's license pursuant to section 10177(d) of the Code, in
17 conjunction with section 2834(a)(3) of the Regulations.

18 8. Section 10130 of the Code provides, "[i]t is unlawful for any person to
19 engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or
20 a real estate salesman within this state without first obtaining a real estate license from the
21 department." Section 10131(b), describes a real estate broker as one who "[l]eases or rents or
22 offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for
23 prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or
24 on a business opportunity, or collects rents from real property, or improvements thereon, or from
25 business opportunities." As set forth in Factual Findings 18 and 19, Shaw, an unlicensed
26 employee, signed rent/lease agreements on behalf of ACADIAN. Therefore, cause exists to

27 ///

1 suspend or revoke ACADIAN's license pursuant to sections 10130, 10131(b), and 10177(d) of
2 the Code.

3 9. Section 10159.2(a) of the Code, provides, in pertinent part, the designated
4 officer of a broker corporation shall be responsible for the supervision and control of the
5 activities conducted on behalf of the corporation by its officers and employees, including the
6 supervision of salespersons licensed to the corporation in the performance of acts for which a
7 real estate license is required. As set forth in Factual Findings 20 through 22, MONTIJO failed to
8 implement policies, rules and procedures designed to ensure compliance with the commissioner's
9 rules and regulations, such that Shaw, an unlicensed employee, was permitted to sign rent/lease
10 agreements on behalf of the corporation. Therefore, cause exists to suspend or revoke MONTIJO
11 license pursuant to section 10177(d) of the Code, in conjunction with section 10159.2(a) of the
12 Code.

13 10. Factors of mitigation and rehabilitation include: (1) respondents deposited
14 proceeds into the trust account to cure the shortage prior to their exit conference with the
15 department's auditor on August 4, 2008; (2) Shaw testified she no longer signs rent/lease
16 agreements on behalf of ACADIAN; (3) MAROHN testified ACADIAN's books are balanced
17 each month; and (4) Shaw has been removed as a signatory on ACADIAN's bank accounts
18 effective June 30, 2009. In addition, no complaints have been filed against Respondents, no
19 injuries have been reported by tenants or owners, and no clients have lost money as a result of
20 Respondents' activities and conduct. Factors of aggravation include: (1) this is Respondent's
21 second disciplinary accusation for trust fund and supervisory violations of the real estate law,
22 and the violations have not been corrected; (2) Shaw was acting as a real estate broker without
23 being properly licensed as such; and (3) MONTIJO seems unconcerned about her duties and
24 responsibilities to supervise the activities of ACADIAN. The purpose of the Real Estate Law is
25 to protect the public. While there have been no complaints from clients the audit violations
26 found still put trust funds at risk. When all the facts are considered and weighed, it would be
27 contrary to the public interest to allow respondents to retain a real estate license at this time.

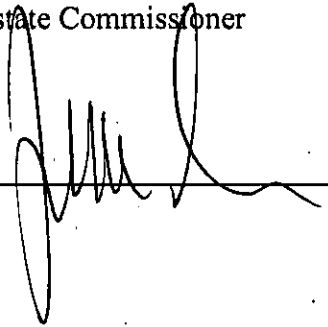
1 ORDER

2 Respondents' ACADIAN PROPERTIES, INC. and TRINIE ANN MONTIJO real
3 estate corporate and broker licenses are revoked.

4 This Decision shall become effective at 12 o'clock noon on May 25, 2010.

5 IT IS SO ORDERED 5-3-2010.

6 JEFF DAVI
7 Real Estate Commissioner

8 
9 _____
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

DEC 30 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

ACADIAN PROPERTIES, INC., and,
TRINIE ANN MONTIJO,

Respondents.

NO. H-5187 SAC

OAH NO. N-2009050578

NOTICE

TO: ACADIAN PROPERTIES, INC., and TRINIE ANN MONTIJO, Respondents,
and JAMES J. KAUFMAN, their Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated
November 23, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real
Estate Commissioner. A copy of the Proposed Decision dated November 23, 2009, is attached
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 November 5, 2009, and any written
argument hereafter submitted on behalf of Respondents and Complainant.

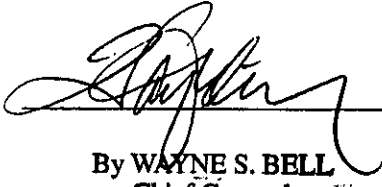
Written argument of Respondents to be considered by me must be submitted
within 15 days after receipt of the transcript of the proceedings of November 5, 2009, at the

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

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Sacramento office of the
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 12/28/2009
7

8 JEFF DAVI
9 Real Estate Commissioner

10 
11 By WAYNE S. BELL
12 Chief Counsel
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. H-5187 SAC

ACADIAN PROPERTIES, INC.,

OAH No. 2009050578

and

TRINIE ANN MONTIJO,

Respondents.

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearing, State of California, on November 5, 2009, in Sacramento, California.

Daniel E. Kehew, Counsel, represented complainant Joe M. Carrillo, a Deputy Real Estate Commissioner with the California Department of Real Estate (department).

James J. Kaufman, Esq. represented Acadian Properties, Inc. (respondent Acadian) and Trinie Ann Montijo (respondent Montijo).

Evidence was received, the record was closed, and the matter was submitted on November 5, 2009.

FACTUAL FINDINGS

1. At all times relevant herein, respondent Acadian held corporate license number C01305110 with the department. Respondent Acadian's license expired on September 7, 2009. At hearing, respondent Acadian's Designated Officer, respondent Montijo, indicated that she will renew respondent Acadian's license "tomorrow."

2. At all times relevant here, respondent Montijo held real estate broker license number B00368559 with the department, and was the Designated Officer for respondent Acadian. Respondent Montijo's license expires on September 29, 2010, unless renewed.

3. At all times relevant herein, respondent Acadian's President, Chief Executive Officer and majority shareholder, Lisha Marie Shaw, was unlicensed.

4. As a real estate broker, respondent Montijo, by and through respondent Acadian, conducts a property management business in which she, on behalf of others, for compensation, leases real property and collects rents. As part of their property management business, respondents receive and accept funds in trust from or on behalf of owners, tenants, and others in connection with the leasing, renting, and collection of rents on real property, and make disbursements of those funds. The trust funds that respondents receive and accept are deposited into a trust account maintained by respondents.

5. On April 10, 2009, complainant filed the Accusation in his official capacity. Prior to the end of the hearing, complainant presented an oral motion to amend the Accusation at page 5, paragraph 16, line 12, to read "10131, subdivision (b)," instead of "subdivision (d)." Respondents objected to the amendment on the grounds that it was "too late," and "inappropriate." Pursuant to Government Code section 11507, complainant is permitted to amend the accusation "at any time before the matter is submitted for decision," and if the amendment "presents new charges," respondent is entitled to a "reasonable opportunity to prepare his defense thereto." The amendment does not present new charges; rather, it corrects a typographical error and conforms to evidence presented at hearing. Complainant's motion to amend is granted.

6. Respondents timely filed a Notice of Defense to the Accusation, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

Audit: June 10, 2008 – August 4, 2008

7. From June 10, 2008 to August 4, 2008, Rana Tarazi, an Auditor with the department, conducted an audit of respondents' business. During the audit, Ms. Tarazi examined respondents' accounting and other records covering the period from June 1, 2007 to April 25, 2008, and interviewed Lisha Shaw, to determine whether respondents had handled and accounted for trust funds in accordance with the Real Estate Law and the Commissioner's Regulations.¹ Respondents provided to Ms. Tarazi the records for review. During the audit, respondents informed Ms. Tarazi that they manage 225 properties for 186 owners, for which respondents charge management fees between three to 10 percent of collected rents. Respondents' annual receipts were between \$6 and \$7 million.

¹ California Code of Regulations, title 10, chapter 6.

8. Respondents maintained one bank account at First Northern Bank, to deposit trust funds received from their property management activities, and to disburse management fees, mortgage payments, maintenance costs, and proceeds to owners. This account was designated as Acadian Properties, Inc. Trust Account (Trust Account). Respondent Montijo and Lisha Shaw are signatories on the Trust Account.

Trust Fund Accountability

9. Ms. Tarazi's audit found the following shortages and/or discrepancies in the Trust Account:

As of April 25, 2008, the adjusted bank statement balance for Trust Account #1 was \$882,059.85, and the accountability was \$891,634.61, resulting in a shortage of <\$9,574.76>. The cause of the shortage was not identified.

No evidence was presented to establish that respondents had the prior written consent of the owners of the trust funds to reduce the funds' balance to an amount less than the existing aggregate trust fund liability.

10. At hearing, respondent Acadian's Secretary, Chief Financial Officer and minority shareholder, Rhys Marohn, presented evidence to establish that the unreconciled adjustment of \$9,798.77 posted to their bank balance, by the department's auditor, represented two journal entries for security deposit checks that were returned to tenants in 2005 but were never cashed. According to Mr. Marohn, when he and Lisha Shaw took over the business in late 2005, the previous owners had failed to re-enter the outstanding security deposit checks against the individual property owners' accounts. Mr. Marohn asserted that if the previous owners had re-entered the outstanding security deposit checks against the individual property owners' accounts, the original balance on their books at the time they took over the business would have been less. Subsequently, when respondents made two journal entries on December 7, 2007, to void the outstanding security deposit checks, they were unaware of the need to first add the \$9,798.77 to the individual property owners' accounts. As a result, when respondents rewrote the security deposit checks, the journal entry could not be reconciled. Thereafter, when the department's auditor added the unreconciled adjustment of \$9,798.77 to respondents' trust account balance in July 2008, it created the unidentified shortage. Had the department's auditor not added the \$9,798.77 to the trust account balance, Mr. Marohn believes that the audit would have revealed an overage of \$224.01. On August 1, 2008, respondents deposited \$9,574.76 into the Trust Account to cure the discrepancy. While there was no evidence to indicate that respondents intentionally failed to properly account for the \$9,798.77 unreconciled adjustment, the fact remains that on April 25, 2008, there was a discrepancy in the balance maintained in the Trust Account.

11. At hearing, Ms. Tarazi admitted that if she had reduced, rather than added, the \$9,789.77 unidentified shortage from respondents' bank account worksheet, it would have resulted in an overage of \$224.01.

Control Record

12. Ms. Tarazi's audit found that respondents did not maintain an accurate Control Record:

The Control Record showed an ending balance of \$875,082.23. The adjusted bank balance was \$882,059.85. Therefore, on April 25, 2008, Acadian's Control Record did not have an accurate balance because the balance did not match.

13. At hearing, Mr. Marohn asserted that he has been responsible for reconciling respondents' business accounts since the beginning of 2006. He closes the company's books on the 25th day of each month because they are required to tender mortgage and insurance payments on behalf of the individual property owners. After the 25th day of the month, all items are posted to the following month, even if they clear in the month in which they are posted. According to Mr. Marohn, after considering adjustments for outstanding checks, deposits in transit, and any other items that are on the company's books but not contained on the monthly bank statement, respondents' books have balanced every month. Mr. Marohn believes that because the department's auditor reviewed the bank statements as of the last day of the month, it was impossible to balance the accounts without considering all of the adjustments.

Trust Account Reconciliation

14. Ms. Tarazi's audit found that "Acadian did not reconcile the Record of Trust Funds Received and Paid Out with the Separate Records for Trust #1 during the period June 1, 2007 to April 25, 2008." According to Ms. Tarazi, respondents are required to maintain monthly reconciliations, and the ending balance of the records for all trust funds received and paid out should match the ending balance for the separate records; however, respondents failed to maintain such records. At hearing, Ms. Tarazi stated that it is her responsibility to audit only those documents provided to her by the licensee, and that it's "not my job to play with the computer."

15. At hearing, Ms. Shaw testified that they maintain "a file for every single month with bank statements and reconciled reports," and that the client accounts, control accounts and adjusted bank balances have always matched. Ms. Shaw further indicated that they can run a report with the "touch of a computer button," and that "every single day of the week [they] take home a back-up report by the bookkeeper so that at any given time [they] have access to everything [they] need."

Trust Account Withdrawals

16. Ms. Tarazi's audit found that as a signatory on the Trust Account, respondent Acadian's President, Chief Executive Officer and majority shareholder, Lisha Marie Shaw, was required to and did maintain a \$1,500,000 fidelity bond. However, according to Ms. Tarazi the fidelity bond was insufficient to cover the proceeds in the Trust Account because the bond had a \$5,000 deductible. On cross-examination, Ms. Tarazi stated that the requirement that a fidelity bond not include a deductible is "implied" in the department's regulations, and admitted that it was impossible to get a bond in California without a deductible.

17. At hearing, Lisha Shaw asserted that the funds to cover the \$5,000 deductible were maintained in the company's general operating account, and the company has never had a claim against its errors & omissions policy, general liability policy, or bond. Ms. Shaw was removed as a signatory on respondent Acadian's bank accounts effective June 30, 2009.

Activities Requiring a License

18. Ms. Tarazi's audit found that as an unlicensed person, Acadian's President, Chief Executive Officer and majority shareholder, Lisha Marie Shaw, was not authorized to, but did, sign rent/lease agreements on behalf of respondent Acadian.

19. At hearing, Lisha Shaw testified that "I have occasionally signed the lease agreements in the capacity of an agent of the corporation and employee and support staff," and asserted that "these agreements pass the scrutiny of the broker." However, she stopped signing the rent/lease agreements as of August 4, 2008.

Broker Supervision

20. Ms. Tarazi's audit found that respondent Montijo failed to supervise the property management activities of respondent Acadian because she was not available during the audit process. However, Ms. Tarazi admitted on cross-examination that it did not matter that respondent Montijo was not present during the audit. Ms. Tarazi's audit also found that respondent Montijo failed to "maintain written policies, rules, procedures and systems to review, oversee, inspect and manage (a) transactions requiring a real estate license, and (b) the handling of trust funds."

21. Respondent Montijo has been the broker for respondent Acadian since March 2005. She is in the office approximately three to four times a week during the lunch hour or evenings, and occasionally on weekends. Ms. Montijo speaks with Lisha Shaw on a daily basis, attends meetings, interacts with employees, tenants and clients, and reviews and signs the rent/lease and management agreements. She admitted at hearing that Lisha Shaw has signed "some" of the agreements, but asserted that there have been no complaints by tenants or owners regarding the negotiations on rent/lease agreements signed by Ms. Shaw. Ms.

Montijo spoke with Lisha Shaw during the audit, but opted to stay away and allow Ms. Shaw to work with the department's auditor because Lisha "knows what to do ... is very good at her job," and "wouldn't take a penny from anyone that didn't belong to her." Ms. Montijo also admitted that while her policies and procedures have not yet been reduced to writing, she assured the auditor she would ultimately put them in writing. Ms. Montijo completed the accounting and trust fund management training course pursuant to the July 2, 2007 Stipulation and Waiver, and has attempted to apply what she has learned by relaying the information to her bookkeepers.

22. At hearing, Lisha Shaw asserted that the company abides by the laws, and each employee signs an agreement which states the company's policies and procedures. In addition, the front desk and leasing staff, and bookkeeper have manuals which contain procedures, including procedures for taking deposits. Ms. Shaw admitted that there is "nothing in writing regarding walk-throughs."

Exit Conference

23. Ms. Tarazi discussed her findings with respondent Montijo and Lisha Shaw during an exit conference on August 4, 2008, and provided respondent Montijo and Lisha Shaw with a copy of the Non-Compliance Summary.

Prior Disciplinary Action – July 2, 2007

24. On December 13, 2006, complainant filed an Accusation (Case No. H-4618 SAC) against respondents Acadian and Montijo, alleging violations of Business and Professions Code section 10145 (trust fund shortage), and California Code of Regulations, title 10, sections 2832.1 (failure to obtain written consent to reduce the aggregate balance in the trust fund below the aggregate trust fund liability), and 2834 (permitting an unlicensed individual to be a signatory on the trust account without being bonded, and permitting licensed individuals who were no longer employed by the company to be signatories on the trust account). The Accusation also alleged against respondent Montijo a separate violation of Business and Professions Code sections 10177, subdivision (h), (failure to exercise reasonable supervision); 10177, subdivision (d), (willful disregard or violation of the Commissioner's rules and regulations); and 10159.2, subdivision (a), (failure to exercise reasonable supervision and control over the officers and employees).

25. Effective July 2, 2007, the department entered into a Stipulation and Waiver with respondents, wherein respondents' agreed to a 60-day suspension of their licenses and licensing rights, stayed for two years; and agreed to obey all laws, and jointly and severally pay the sum of \$4,980.70 for reimbursement of the Real Estate Commissioner's costs of investigation and prosecution. In addition, respondent Montijo agreed to a suspension of her license until she completed a trust fund accounting and handling course. No evidence was presented to establish that respondents failed to comply with the terms and conditions of the Stipulation and Waiver, or that the two-year stayed suspension was extended beyond July 2, 2009.

Factors in Mitigation, Aggravation and Rehabilitation

26. On August 1, 2008, prior to the department's exit conference and prior to discovering the cause of the unidentified shortage, respondents deposited \$9,574.76 into the Trust Account to cure the trust fund discrepancy. Rhys Marohn is responsible for balancing respondent Acadian's books each month. As of August 4, 2008, Ms. Shaw no longer signs rent/lease agreements on behalf of respondent Acadian. Effective June 30, 2009, Ms. Shaw has been removed as a signatory on respondent Acadian's bank accounts. No complaints have been filed against respondents, no injuries have been reported by tenants or owners, and no clients have lost money as a result of respondents' activities and conduct.

LEGAL CONCLUSIONS

Applicable Case Law, Statutes and Regulations

1. The burden of proof in this matter is on complainant to show by clear and convincing evidence to a reasonable certainty that respondents' licenses should be suspended or revoked. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-56.)

2. Business and Professions Code section 10145, subdivision (a)(1), requires a broker to hold real estate transaction funds belonging to others in trust.²

3. Business and Professions Code section 10177, subdivision (d), authorizes the suspension or revocation of the license of a real estate licensee for "willfully" disregarding or violating the Real Estate Laws or the Commissioner's Regulations.³ The term "willfully," as

² Business and Professions Code section 10145, subdivision (a)(1), provides, in pertinent part, as follows:

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.

³ Business and Professions Code section 10177, provides, in pertinent part, as follows:

used in this subdivision, means "done deliberately: not accidental or without purpose." (*Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639. See also *Manning v. Fox* (1984) 151 Cal.App.3d 531, 542 ["Section 10177, subdivision (d), is designed 'to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman.'"]).)

Cause for Discipline

4. California Code of Regulations, title 10, section 2831, describes the trust fund records that a broker must maintain.⁴ As set forth in Factual Finding 15, respondents

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

⁴ California Code of Regulations, title 10, section 2831, provides, in pertinent part, as follows:

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

(1) Date trust funds received.

(2) From whom trust funds received.

(3) Amount received.

(4) With respect to funds deposited in an account, date of said deposit.

(5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.

(6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.

(7) Daily balance of said account.

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

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or

maintained computer records of all trust funds received and disbursed that included all the information required by section 2831. Therefore, cause does not exist to suspend or revoke respondents' licenses pursuant to Business and Professions Code sections 10145 and 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2831.

5. California Code of Regulations, title 10, section 2831.2, provides, in pertinent part, that the balance of all separate beneficiary or transaction records must be reconciled with the record of all trust funds received and disbursed, at least once a month. In addition, a record of the reconciliation must be maintained, and 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. As set forth in Factual Finding 13, respondents have closed and balanced their books on the 25th day of every month since January 2006. Therefore, cause does not exist to suspend or revoke respondents' licenses pursuant to Business and Professions Code section 10145 and 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2831.2.

6. California Code of Regulations, title 10, section 2832.1, provides that 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 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." As set forth in Factual Findings 9 through 11, had the department's auditor reduced, rather than added, the \$9,789.77 unidentified shortage to respondents' bank account worksheet, the adjusted bank balance would have resulted in a \$224.01 overage. Therefore, cause does not exist to suspend or revoke respondents' licenses pursuant to Business and Professions Code sections 10145 and 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2832.1.

7. California Code of Regulations, title 10, section 2834, subdivision (a)(3), provides that withdrawals may be made from a trust fund account by "an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time." As set forth in Factual Findings 16 and 17, Lisha Shaw maintained a \$1,500,000 fidelity bond with a \$5,000 deductible. There are no fidelity bonds available in California without a deductible, and no deductible restriction can be implied from the language of California Code of Regulations, title 10, section 2834, subdivision (a)(3). To do so, creates an unfair advantage for unsuspecting licensees. Therefore, cause does not exist to suspend or revoke respondents' licenses pursuant to Business and Professions Code section 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2834, subdivision (a)(3).

8. Business and Professions Code section 10130 provides that "[i]t is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as

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.

a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department." Business and Professions Code section 10131, subdivision (b), describes a real estate broker as one who "[l]eases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities." As set forth in Factual Findings 18 and 19, Lisha Shaw, an unlicensed employee, signed rent/lease agreements on behalf of respondents Acadian and Montijo. Therefore, cause exists to suspend or revoke respondents' licenses pursuant to Business and Professions Code sections 10130, 10131, subdivision (b), and 10177, subdivision (d).

9. Business and Professions Code section 10159.2, subdivision (a), provides, in pertinent part, that the designated officer of a broker corporation shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required. As set forth in Factual Findings 20 through 22, respondents failed to implement policies, rules and procedures designed to ensure compliance with the commissioner's rules and regulations, such that Lisha Shaw, an unlicensed employee, was permitted to sign rent/lease agreements on behalf of the corporation. Therefore, cause exists to suspend or revoke respondents' licenses pursuant to Business and Professions Code section 10159.2, subdivision (a).

10. Respondents deposited proceeds into the trust account to cure the "deficiency" prior to their exit conference with the department's auditor on August 4, 2008, and Lisha Shaw no longer signs rent/lease agreements on behalf of the corporation. Respondent Acadian's books are balanced each month; and Lisha Shaw has been removed as a signatory on respondent Acadian's bank accounts effective June 30, 2009. In addition, no complaints have been filed against respondents, no injuries have been reported by tenants or owners, and no clients have lost money as a result of respondents' activities and conduct. When all the facts are considered and weighed, it would not be contrary to the public interest to allow respondents to obtain restricted corporate and real estate broker licenses, subject to terms and conditions designed to monitor their activities and protect the public.


ORDER

All licenses and license rights of respondents Acadian Properties, Inc. and Trinie Ann Montijo, under the Real Estate Law are REVOKED; provided, however, a restricted corporate license and restricted real estate broker license shall be issued to respondents, respectively, pursuant to Section 10156.5 of the Business and Professions Code if respondents make application thereof and pay to the department the appropriate fees for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to respondents shall be subject to all of the provisions of Section 10156.7 of

the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

- not adopted*
1. Respondents shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
 2. The restricted licenses issued to respondents may be suspended prior to hearing by Order of the real estate commissioner on evidence satisfactory to the commissioner that respondents have violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the real estate commissioner or conditions attaching to the restricted licenses.
 3. Respondents shall not be eligible to apply for the issuance of unrestricted real estate licenses nor for the renewal of any of the conditions, limitations or restrictions of a restricted licenses until two (2) years have elapsed from the effective date of this Decision.
 4. Respondent Montijo shall, within nine months from the effective date of this Decision, present evidence satisfactory to the real estate 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 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. Respondents shall report in writing to the department as the real estate commissioner shall direct by his Decision herein or by separate written order issued while the restricted licenses are in effect such information concerning respondents' activities for which a real estate license is required as the commissioner shall deem 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 respondents and periodic summaries of salient information concerning each real estate transactions in which respondents engaged during the period covered by the report.

DATED: November 23, 2009


REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings

1 DANIEL E. KEHEW, Counsel
2 State Bar No. 231550
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007

6 Telephone: (916) 227-0425

FILED

APR 10 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-5187 SAC
13 ACADIAN PROPERTIES, INC., and,)
14 TRINIE ANN MONTIJO,) ACCUSATION
15 Respondents.)

16 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of
17 the State of California, for Causes of Accusation against ACADIAN PROPERTIES, INC., and
18 TRINIE ANN MONTIJO, is informed and alleges as follows:

19 1

20 Respondents ACADIAN PROPERTIES, INC. ("ACADIAN") and TRINIE ANN
21 MONTIJO ("MONTIJO") (or jointly "Respondents") are presently licensed and/or have license
22 rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions
23 Code ("Code").

24 2

25 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of
26 the State of California, makes this Accusation against Respondents in his official capacity and
27 not otherwise.

At all times herein mentioned, Respondent ACADIAN was and is licensed by the Department of Real Estate ("Department") as a real estate broker corporation acting by and through Respondent MONTIJO as its designated broker officer.

At all times herein mentioned, Respondent MONTIJO was and is licensed by the Department as a real estate broker, and as the designated broker officer of Respondent ACADIAN.

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent ACADIAN, such allegation shall be deemed to mean that the officers, directors, employees, agents, and real estate licensees employed by or associated with Respondent ACADIAN committed such act or omission while engaged in the furtherance of the business or operations of Respondent ACADIAN and while acting within the course and scope of their corporate authority and employment.

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California, within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent and placed for rent, and solicited listings of places for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

\\

\\

\\

1 PRIOR PROCEEDING

2 7

3 On December 13, 2006, following an audit and investigation into the licensed
4 activities described above, the Department filed an Accusation, Departmental Case Number
5 H-4618 SAC, against Respondents ACADIAN and MONTIJO alleging violations of Sections
6 10145 and 10177(d) of the Code, and violations of Sections 2832.1 and 2834 of Chapter 6, Title
7 10, of the California Code of Regulations ("Regulations"); and, separately as to Respondent
8 MONTIJO, alleging violations of Section 10177(h) of the Code and/or Section 10159.2(a) of the
9 Code in conjunction with Section 10177(d) of the Code.

10 8

11 Effective June 8, 2007, a Stipulation and Agreement between the parties in the
12 case described in Paragraph 7, above, was adopted by the Commissioner. This Stipulation and
13 Agreement included admissions by Respondent ACADIAN and Respondent MONTIJO to the
14 allegations of the Accusation in that matter.

15 FIRST CAUSE OF ACCUSATION

16 9

17 Beginning on or about June 10, 2008, the Department conducted an audit of
18 Respondent ACADIAN's property management business for the period of June 1, 2007 to
19 April 25, 2008 as set forth in Audit No. SC 07-0051 dated August 8, 2008. During the course of
20 the property management activities described in Paragraph 6, Respondent ACADIAN received
21 and disbursed funds held in trust ("trust funds") on behalf of others.

22 10

23 The trust funds accepted or received by Respondent ACADIAN were deposited or
24 caused to be deposited by Respondent ACADIAN into a bank account maintained by Respondent
25 ACADIAN for the handling of trust funds at First Northern Bank of Dixon, 11 West Court
26 Street, Woodland, California, in Account No. 8019654, entitled "Acadian Properties Inc Trust
27 Account" ("Trust Account #1").

11

Within the three year period preceding the filing of this Accusation, in connection with the collection and disbursement of trust funds, Respondent ACADIAN failed to deposit and maintain the trust funds in a trust account or neutral escrow depository, or to deliver said funds into the hands of the owners of the funds, as required by Section 10145 of the Code, in such a manner that as of April 25, 2008, there was a trust fund shortage in the approximate sum of \$9,574.76 in Trust Account #1.

12

Within the three year period preceding the filing of this Accusation, in connection with the collection and disbursement of trust funds, as alleged above, Respondent ACADIAN failed to obtain the prior written consent of the owners of the funds in Trust Account #1 for the reduction of the aggregate balance of trust funds in Trust Account #1 to an amount less than the existing aggregate trust fund liability to the owners of said funds in conformance with Section 2832.1 of the Regulations.

13

Within the three year period preceding the filing of this Accusation, in connection with the receipt and disbursement of trust funds as alleged above, Respondent ACADIAN failed to maintain an accurate "control record" required under Section 2831 of the Regulations, in that as of April 25, 2008, Respondent ACADIAN's control record showed an ending balance of \$875,082.23 where the adjusted bank balance on Trust Account #1 showed an ending balance of \$882,059.85.

14

During the period from June 1, 2007, through April 25, 2008, Respondent ACADIAN failed to reconcile the control record with the separate beneficiary records required by Section 2831.1 of the Regulations, at least once each month, as required under Section 2831.2 of the Regulations.

\\

Within the three year period preceding the filing of this Accusation, in connection with the receipt and disbursement of trust funds as above alleged, Respondent ACADIAN permitted Lisha Shaw, a person who neither held a California real estate license nor was fully bonded without deductible, to be a signatory on Trust Account #1 in violation of Section 2834 of the Regulations.

Within the three year period preceding the filing of this Accusation, in connection with the real estate activities described in Paragraph 6, above, Respondent ACADIAN permitted Lisha Shaw, a person who did not hold a California real estate license, to sign a rent/lease agreement on behalf of Respondent ACADIAN, an act requiring a real estate license according to Section 10131(d) of the Code.

The facts alleged in Paragraphs 1 through 6 and Paragraphs 9 through 16, above, are grounds for the suspension or revocation of the licenses and license rights of Respondent ACADIAN under the provisions of the Code and/or the Regulations noted above in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACCUSATION

There is hereby incorporated in this Second, separate and distinct Cause of Accusation, all of the allegations contained in Paragraphs 1 through 16, inclusive, with the same force and effect as if herein fully set forth.

At all times above mentioned, Respondent MONTIJO was responsible, as the designated broker/officer of Respondent ACADIAN, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. Respondent MONTIJO failed to exercise reasonable supervision and control over the property management

1 and employment activities of Respondent ACADIAN. In particular, Respondent MONTIJO
2 permitted, ratified and/or caused the conduct described in the First Cause of Accusation above to
3 occur, and failed to take reasonable steps, including but not limited to the handling of trust funds,
4 maintaining of trust account records, and the implementation of policies, rules, procedures, and
5 systems to ensure the compliance of Respondent ACADIAN with the Real Estate Law.

6 20

7 The above acts and/or omissions of Respondent MONTIJO constitute grounds for
8 suspension or revocation of her real estate broker license under the provisions of Section
9 10177(g) and/or (h) of the Code and/or Section 10159.2(a) of the Code in conjunction with
10 Section 10177(d) of the Code.

11 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
12 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary
13 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of
14 Division 4 of the Business and Professions Code), and for such other and further relief as may be
15 proper under other provisions of law.

16
17
18 
19 JOE M. CARILLO
20 Deputy Real Estate Commissioner
21

22 Dated at Sacramento, California
23 this 11 day of March, 2009.
24
25
26
27