

FILED

MAY 24 2022

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-05221 SD
)	
BRUCE C ORONA,)	OAH No. 2021100316
)	
Respondent.)	

DECISION

The Proposed Decision dated April 21, 2022, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Page 9, paragraph 21, Line 4, should read “per the owner’s instructions if it is payable to owner.” The word “it” is missing.

Page 14, paragraph 30, line 2, should read “Ms. Hage testified that Mr. Orona was acting as a property manager.” The name “Mr. Hage” is incorrect.

Page 15, paragraph 31, line 6, should read “He argued that his general services agreement...” The word “His” is incorrect.

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department’s power to order reconsideration of this

Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JUN 15 2022.

IT IS SO ORDERED 5.19.22

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**BRUCE C. ORONA, doing business as BRUCE ORONA REAL
ESTATE AGENCY; and SCOTT N. ORONA, Respondents**

DRE Case No. H-05221 SD

OAH No. 2021100316

PROPOSED DECISION

Marion Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter via telephone and video on March 22, 2022.

Judith B. Vasan, Staff Counsel, represented complainant, Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate (department), State of California.

Bruce C. Orona, doing business as Bruce Orona Real Estate Agency, respondent, represented himself. Scott N. Orona, respondent, did not appear.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 22, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent Bruce Orona was originally licensed as a salesperson on February 9, 1981, and licensed as a broker on December 6, 1985, license number 00808479. "Doing business as Bruce Orona Real Estate Agency" was added on June 25, 1996. Bruce Orona became affiliated as an associate with responsible broker E&V Ranch And Coast, Inc., C/02002559 as of April 5, 2021. His broker license will expire as of July 18, 2023.

2. On April 19, 2021, complainant signed the accusation in her official capacity. The accusation alleged the following causes for discipline against Bruce Orona: misrepresentation, fraud and/or dishonest dealing, taking of secret or undisclosed compensation in his management of the Tennyson property; and failure to retain records in connection with the department's audit.

3. Complainant requested the costs of audit, investigation and enforcement.

4. On May 14, 2021, respondent Scott Orona voluntarily surrendered his real estate license pursuant to Business and Professions Code section 10100.2, thereby waiving his right to require the commissioner to prove the allegations against him, to discovery, to present evidence of defense of the allegations, and to cross-examine witnesses.

5. Respondent Scott Orona failed to file a notice of defense. Respondent Bruce Orona filed a notice of defense and this hearing followed. All further references to respondent or Mr. Orona refer to Bruce Orona.

Declaration of J. Scofield Hage

6. A declaration signed by J. Scofield Hage and dated February 26, 2020, was received into evidence without objection pursuant to Government Code section 11514. Mr. Hage did not testify. The declaration described the following checks which were attached:

- Check #1202 for \$2,300 dated June 20, 2018, from Stacie Dilks payable to Bruce Orona, for "sec. deposit"; a U.S. Bank cashier's check for \$2,150, dated July 5, 2018, payable to SB 32nd Street Apts LLC for "deposit 3746 Tennyson St."
- Check #1205 for \$2,300 dated July 1, 2018, from Stacie Dilks payable to Bruce Orona, for "July rent"; no evidence was presented to show that this check was deposited by Mr. Orona or that a corresponding cashier's check was issued to SB 32nd Street Apts LLC or to Mr. Hage.
- Check #1209 for \$2,300 dated August 1, 2018, from Stacie Dilks payable to Bruce Orona, for "Aug. rent"; a U. S. Bank cashier's check for \$2,150, dated August 3, 2018, payable to SB 32nd St Apts LLC for "3746 Tennyson St."
- Check #1128 for \$2,300 dated September 1, 2018, from Stacie Dilks payable to Bruce Orona, for "Sept rent."; a U.S. Bank cashier's check for \$2,150 dated September 4, 2018, payable to SB 32nd St Apts LLC for "3746 Tennyson St."
- Check #1133 for \$2,300 dated October 1, 2018, from Stacie Dilks payable to Bruce Orona for "Oct rent."

Testimony of Bonnie Hage

7. Bonnie Hage and her husband, Mr. Hage, met Mr. Orona more than 20 years ago. In 2008 he began to renovate and repair rental property for the Hages. In 2012, the Hages purchased a house and Mr. Orona was the mortgage broker for the purchase. Mr. Orona was property manager for several of the Hages's properties, including the Tennyson Street rental property (Tennyson property) they purchased in 2013. Mr. Orona handled leases, showed property, and collected rents. Ms. Hage believed Mr. Orona was paid \$500 for duties as a property manager on the Tennyson property. This fee did not include labor for maintenance and repairs.

The Tennyson property consisted of a large house, 3444 Tennyson, which usually had four tenants, and a small house, 3746 Tennyson, which was rented to one tenant or one couple. Tenants were to issue rent checks payable to SB 32nd St Apts LLC (the Hages's LLC or LLC.)

8. In June 2018, the Hages entered into a residential lease agreement for 3746 Tennyson. At hearing, Ms. Hage was shown a residential lease agreement for 3746 Tennyson, dated June 20, 2018, with SB 32nd St Apts LLC as landlord and Stacie Dilks as tenant, with monthly rent of \$2,150, and a lease term to begin on August 1, 2018. Ms. Hage confirmed her own initials and signature were on this agreement, as well as those of Mr. Hage. The agreement appeared to be initialed and signed by Ms. Dilks as tenant.

Ms. Hage was shown a second residential lease agreement for 3746 Tennyson, also dated June 20, 2018, with the same landlord and tenant, but with monthly rent of \$2,300, and a lease term to begin on July 1, 2018. This lease agreement contained no

initials or signatures of the parties. Ms. Hage has never seen this lease agreement before. She did not agree with the terms of this lease.

9. Ms. Hage reviewed one of the checks attached to Mr. Hage's declaration—a cashier's check for \$2,150, dated July 5, 2018, payable to the LLC for "deposit 3746 Tennyson St." This was an example of the cashier's checks she and Mr. Hage received from Mr. Orona.

10. The Hages discovered through their tenants at 3444 Tennyson, that the tenants were paying rent in cash or by checks payable to Mr. Orona. They learned that Ms. Dilks was paying rent directly to Mr. Orona, and in the amount of \$2,300. Mr. Hage wrote a letter to Mr. Orona and his brother, Scott Orona, advising that effective immediately they were no longer representing the LLC as its property managers. Mr. Hage enclosed a check for \$588.50 for the brothers' management fee for the month of October 2018.

Testimony of Stacie Dilks

11. Stacie Dilks provided a written declaration and testified at the hearing. Her testimony was consistent with her declaration. Ms. Dilks saw the rental property at 3746 Tennyson Street listed on Craigslist for \$2,300 per month. She met with Mr. Orona and Scott Orona to view the property. On June 20, 2018, she received an email from Scott Orona, with the lease agreement for \$2,300 per month and instructions to make security deposit check payable to Bruce Orona Real Estate Agency. Scott Orona wrote, "I spoke to the landlord and he wants all rental check [*sic*] to be made out to bruce [*sic*] until further change."

As requested, Ms. Dilks made her rent checks payable to Bruce Orona. She was told to place her rent check in the mailbox at the unit. In October 2018, Mr. Hage came

to her apartment and they discussed the rent discrepancy, and the fact that she was paying \$2,300 to Mr. Orona and Mr. Orona was only paying \$2,150 to Mr. Hage. Shortly after that discussion Mr. Hage told her to stop interacting with Mr. Orona or Scott Orona. He told her to begin paying \$2,150 rent on November 1, 2018, and to pay him directly.

12. On February 29, 2020, department special investigator Jesse Hafen showed Ms. Dilks a copy of a residential, month-to-month rental agreement for 3746 Tennyson Street. Although the agreement reflected that she was the tenant at 3746 Tennyson, and her initials and signature appeared on the agreement, the monthly rent and security deposit were \$2,150, and the lease term began on August 1, 2018. Ms. Dilks stated that she never signed this agreement and had never seen it before. The lease agreement she signed was for a monthly rent of \$2,300, and she began leasing the premises on July 1, 2018.

13. Ms. Dilks provided copies of five checks, each for \$2,300 and each payable to Bruce Orona. One check was for a security deposit and the remaining checks were for rent for July, August, September, and October 2018.

Testimony of Jesse Hafen, Department Special Investigator

14. Jesse Hafen has been a special investigator with the department for more than 16 years. In this role he investigates complaints and dishonesty in the real estate business, mortgage issues, licensure applicants with problems, and licensees who want their license back after discipline. He investigated the matter involving Mr. Orona.

He met with Ms. Dilks, reviewed her declaration, and reviewed documents he received from her. He met with Mr. Hage and reviewed his declaration. Mr. Hage told Mr. Hafen that he had memory problems so Mr. Hafen took information from

documents Mr. Hage had provided. Mr. Hafen requested an audit, which he does when there is a problem with trust funds for a broker; here, based on information he received from Mr. Hage and Ms. Dilks, it appeared that Mr. Orona had trust funds.

15. On October 3, 2019, Mr. Hafen prepared and served a subpoena on Mr. Orona to produce records, books, accounts, and documents relating to his real estate activities. Mr. Orona had provided no records. On October 15, 2019, Mr. Orona signed a "Declaration of Custodian of Records," indicating that he had none of the records described in the subpoena.

Testimony of Jennifer Borromeo, DRE Auditor

16. Jennifer Borromeo has worked for the department for 30 years and has been a General Auditor III for almost 22 years. She performs audits of real estate licensees, specifically regarding the handing of trust funds. Ms. Borromeo was assigned to audit Mr. Orona's real estate activities for the period September 1, 2016, through August 31, 2019. The scope of the audit was to determine whether Mr. Orona handled and accounted for trust funds and performed his real estate activities in accordance with relevant real estate laws and regulations. Ms. Borromeo prepared a written report of her findings, dated December 20, 2019, and her testimony was consistent with her report.

17. In a September 13, 2019, telephone interview, Mr. Orona told Ms. Borromeo that he managed one property during the past five years, but stopped more than one year ago. He collected rents and forwarded rents to Mr. Hage, and Mr. Hage paid him a management fee. Mr. Orona later had the tenants make the rent checks payable to himself so that he could pay property-related expenses, and he then forwarded the remaining funds to Mr. Hage with a cashier's check. He did not maintain

or need a trust account because he had an agreement with the owner. Mr. Orona stated that he had a management agreement and tenant lease agreements to provide for the examination.

18. During an October 3, 2019, in-person interview with Ms. Borromeo, Mr. Orona stated that he stopped managing the one property in 2015, but continued doing maintenance for the property until about September 2018. (This contradicted his statement on September 13, 2019, that he stopped managing properties in 2015, however, he told Ms. Borromeo that she misunderstood his prior statement.) The tenants made checks payable to SB 32nd St Apts LLC and dropped them in a box. He did not handle any trust funds and did not maintain a trust account. In early 2018, one of the tenant's rental checks bounced, so beginning in May or June 2018, he had the tenants make rental checks payable to "Bruce Orona Real Estate Agency," his fictitious business name. He took the checks to the financial institution where the checks were drawn, cashed the checks, and purchased cashier's checks to pay Mr. Hage. In July or August 2018, he had tenants start paying by cashier's checks payable to SB 32nd St Apts LLC. In contradiction, he then said that he did not collect rents. He told Mr. Hage that he could not collect rents.

In September 2018, he stopped providing maintenance for Mr. Hage. He earned \$550 per month when he managed Mr. Hage's property; he earned \$550 per month as the maintenance person for Mr. Hage's property. He did not have any management agreements or lease agreements to provide for the audit. (This contradicted the information he provided on September 13, 2019.) He then said that Mr. Hage did not want to sign another management agreement, so they went to a month-to-month agreement.

19. As of the date of Ms. Borrromeo's report, Mr. Orona had provided no records in response to the October 3, 2019, subpoena. On October 3, 2019, Mr. Orona signed a declaration stating: "I, Bruce Orona, never had trust funds set up for SB 32nd St of [sic] any time managing [sic] or any other properties" and "never performed any property management of [sic] collected any funds for SB 32nd St Apts."

20. Because of discrepancies in Mr. Orona's oral statements during the course of the audit, on November 15, 2019, Ms. Borrromeo emailed him various questions and asked that he provide a written statement regarding the handling of rental funds for owner Mr. Hage. The following is a summary of Mr. Orona's responses:

Mr. Orona managed Mr. Hage's property from 2008 to October 31, 2015. He did not earn commission as a property manager. (This contradicts his previous statement.) The tenants dropped off the rental checks in a secure mailbox for the owner, and the owner picked up the check. He did not pick up the checks, but he picked up two bounced checks that were turned into cashier's checks. The rent checks were payable to Mr. Hage, and not to Mr. Orona or his fictitious name. He started as maintenance operator for Mr. Hage's property on January 1, 2016. His tasks were to "maintain the property, clean up after tenants and pets, fix numerous mechanical problems, plumbing, electrical, windows, etc." He was paid \$588 per month. He stopped as maintenance operator on September 1, 2018, when Mr. Hage got behind on all his bills and didn't pay Mr. Orona for work on the units.

21. Mr. Borrromeo defined trust funds as "money or a thing of value received by a broker and held for the benefit of others for accounts that require a real estate license." Because Mr. Orona handled trust funds, he must keep records of checks received and checks delivered to the owner per the owner's instructions if is payable to owner. If a tenant issues a check to Mr. Orona, he must have a trust fund account set

up and record the receipt and deposit of the check and the distribution to the owner. Per Business and Professions Code section 10148, he is required to retain these records and to produce these records upon request of the department. He did not provide records.

22. The following is a summary of Ms. Borrromeo's findings:

An examination of Mr. Orona's real estate activities could not be conducted because he failed to provide real estate records. Ms. Borrromeo could not prepare a bank reconciliation or determine accountability because Mr. Orona provided no trust fund accounts or records. Mr. Orona failed to provide real estate records requested in the October 3, 2019, subpoena. His "Declaration of Custodian of Records and his statements indicated that he had none of the records described in the subpoena.

Based on the interviews with Mr. Orona on September 13, 2019, and October 3, 2019, and his written statements, Ms. Borrromeo found that, in connection with the management of the Tennyson property, Mr. Orona handled trust funds, but he did not maintain or provide any trust fund records for audit examination.

Testimony of Respondent Bruce Orona

23. From February 2016 to the day that he terminated his work with Mr. Hage, "I did not collect any money from the tenants, I did not pay for any bills, that is why there were no records." Mr. Orona only collected checks from the tenants because "he [Mr. Hage] wanted me to." Mr. Hage had tenants who were bouncing checks. At Mr. Hage's request, Mr. Orona collected the checks, got cashier's checks payable to Mr. Hage, and placed them in the mailbox. Mr. Hage collected the checks from the mailbox. Mr. Orona did not collect checks on his own.

Mr. Orona stated, "No property management agreement was ever drawn up." He did not bring any paperwork because he did not have any paperwork to bring. "I had no payment or deposit history on the checks because he [Mr. Hage] deposited them." He had a general service agreement with Mr. Hage but no agreement was provided in response to the department's subpoena. Mr. Orona had a verbal agreement with Mr. Hage to have the checks payable to himself and obtain cashier's checks. Mr. Orona said, "my brother and I were skeptical of doing things off the cuff, we didn't want anything to do with this."

24. Mr. Orona believed Mr. Hage was taking advantage of him, and "that's why I wouldn't collect rents." "He was trying to get me into a position that I did not want to be backed in to. . . ." Mr. Hage's son came to Mr. Orona in late 2017 and "said his father may be going through dementia." Mr. Orona said, "That was a big red flag for me, and that is why I let him do all the leasing."

25. In October 2018, Mr. Hage sent a letter terminating Mr. Orona's services. Mr. Orona said, "I terminated my maintenance duties. The letter referred to property management but Mr. Orona said, "there is a difference in words." He confirmed that he told the auditor that he had performed property management for the LLC. He said, "The property management was under the maintenance, that is how I defined it." He acknowledged that his definition of property management is not based upon the actual work that he did. Mr. Orona's testimony was confusing.

26. Mr. Orona did not write up any lease agreements. Mr. Hage had a template. Ms. Hage was not involved and Mr. Orona only worked with Mr. Hage. When he received Ms. Dilks's check for \$2,300, he cashed it and obtained a cashier's check for \$2,150 to the LLC. He said, "her rent was \$2,150, he [Mr. Hage] drafted the lease." He did not review the lease for Mr. Hage. Mr. Hage prepared it and "as a compliment

[sic] I would look it up and say ok, you're good to go." He then said Mr. Hage asked him to add \$150 to Ms. Dilks's lease to pay for someone to pick up dog droppings. He was paid a flat fee of \$580 per month for maintenance, which included renovation of the properties but did not include picking up dog droppings. He later said that renovation projects were separate from his maintenance duties, which included fixing a leaky faucet or removing tree branches that had fallen. He estimated that he spent about 20 to 25 hours per month doing maintenance.

27. On July 10, 2019, he completed a Broker Renewal Application. In response to the question: "Did you/your corporation, for compensation in the past 12 months, engage in property management as a real estate licensee for another or others?", he checked the box for "yes," and in response to "What was the dollar amount in rent or lease payments collected?" he checked the box for "less than \$500K." This contradicted his previous statements that he was not a property manager, for Mr. Hage or any other properties, after 2016. Mr. Orona explained that "I interpreted this as to asking if I was going to do this in the future." His explanation was neither persuasive nor credible.

28. On cross-examination, Mr. Orona confirmed that during the ten years he was managing properties, the only rent checks he collected were two rent checks from Ms. Dilks. He was then shown rent checks from three tenants at 3444 Tennyson, Mr. B, Mr. C, and Mr. N, for the period October 2017 through May 2018. Checks from each of the three tenants for October and November 2017 were payable to Mr. Orona's dba; checks for the period December 2017 through May 2018 were payable to the LLC. Mr. Orona explained that Mr. C and Mr. N were bouncing checks so Mr. Orona was asked why the first two checks were payable to his dba and the remaining checks were payable to the LLC. He responded that "two of them were bouncing" checks so he told

them to pay him, and the others paid the LLC. This response was confusing. He then said that in July 2018 when Ms. Dilks moved in, "Mr. Hage wanted me to collect the first two months checks to make sure they were good." Mr. Orona was asked if his statement that he never collected rent checks was inaccurate, he responded, "No, this was the only time I collected checks."

Mr. Orona was asked if the checks were payable to him, and he picked them up and cashed them, would that not be considered collecting rent checks? He responded, "Maybe to you, I just turned them into cashier's checks and put them in the box for Mr. Hage." He was then asked if, as a licensed broker for 38 years, he knew that when he was collecting money that belonged to a client or a beneficiary, that money needed to go into a trust fund. He responded, "Absolutely, but when he asked me to go to the bank and get cashier's checks and put them in the box, that's all I did."

Costs of Audit, Investigation, and Enforcement

29. Complainant submitted certified statements of audit, investigation, and enforcement costs incurred by the department. The certifications contained detail records of the tasks performed, the hours spent, and the cost per hour.

A Certified Statement of Audit Costs reflected that the department incurred total costs of \$2,397.50 for the services of an auditor and supervising auditors.

A Certified Statement of Investigation Costs reflected that the department incurred total costs of \$1,516.90 for the services of a special investigator, a supervising special investigator, and a program technician.

A Certified Statement of Enforcement Costs reflected that the department incurred costs of \$963.30 for the services of a legal analyst and real estate counsel.

The total costs of audit, investigation and enforcement are \$4,877.70. These costs are reasonable pursuant to Business and Professions Code section 10106.

Closing Arguments

COMPLAINANT

30. Mr. Orona made many conflicting statements to the auditor and in his testimony. He lacks credibility. Ms. Hage testified that Mr. Hage was acting as a property manager, collecting rents and obtaining cashier's checks payable to the LLC. Mr. Orona's testimony was confusing as to whether he was providing maintenance or project management services, and how he handled rent checks or trust funds. He failed to provide documents to the auditors in response to the subpoena, and said he had no documents to produce. The department is concerned about his fitness to be licensed.

We have two lease agreements for Ms. Dilks—one with \$2,150 rent signed by the Hages, and a second with \$2,300 rent signed by Ms. Dilks. Mr. Orona's explanation that Mr. Hage asked him to add \$150 to Ms. Dilks's monthly rent to cover the cost of removal of dog droppings is not persuasive, and it conflicts with Mr. Orona's statement to the auditor that this was part of his maintenance duties.

Mr. Orona submitted an inaccurate renewal application, explaining that he thought the question was asking if he meant the future 12 months, not the past 12 months. He has misrepresented rental amounts to the Hages, he was dishonest and does not have the fitness and capacity to remain licensed with the department. His license should be revoked.

MR. ORONA

31. Mr. Orona argued that he was not a property manager for Mr. Hage. He was being used by Mr. Hage, because Mr. Hage did not know what he was doing and he put Mr. Orona's license on the line. From the time he started working for Mr. Hage in 2008 through the time he stopped in September 2018, he never collected rents. He did not use his broker's license. He knows what a property manager does and that is why he never collected money or accounted for anything. His argued that his general services agreement stated that "I was never a property manager, and even though it said I collected rents, I never did this."

LEGAL CONCLUSIONS

1. The purpose of administrative proceedings involving the discipline of a professional license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. In an action seeking to impose discipline against the holder of a real estate license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.)

Applicable Disciplinary Law

3. Business and Professions Code section 10148 provides:

(a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by the broker or obtained by the broker in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or the commissioner's designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature. This subdivision shall not be construed to require a licensed real estate broker to retain electronic messages of an ephemeral nature, as described in subdivision (d) of Section 1624 of the Civil Code.

(b) The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final . . . decision following a disciplinary hearing . . . that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a

notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.

(d) The commissioner may maintain an action for the recovery of the cost of an audit in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

(e) The department may suspend or revoke the license of any real estate broker, real estate salesperson, or corporation licensed as a real estate broker, if the real estate broker, real estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books, papers, writings, documents, or tangible objects that are required to be maintained by this section or that have been sought in connection with an investigation, audit, or examination of a real estate licensee by the commissioner.

4. Business and Professions Code section 10176 states in part:

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

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade, or induce.

[1] . . . [1]

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission, or profit or the failure of a licensee to reveal to the buyer or seller contracting with the licensee the full amount of the licensee's compensation, commission, or profit under any agreement authorizing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the

agreement, whether evidenced by documents in an escrow or by any other or different procedure.

[11] . . . [11]

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

5. Business and Professions Code section 10177 states, in part, that the commissioner may suspend or revoke the license of a real estate licensee who has done any of the following:

[11] . . . [11]

(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.

[11] . . . [11]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

[11] . . . [11]

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

6. Business and Professions Code section 10131, subdivision (b), authorizes the department to seek its audit costs. Section 10106 authorizes the department to seek its investigation and enforcement costs.

Cause Exists to Discipline Mr. Orona's License

7. Cause exists under Business and Professions Code sections 10176, subdivisions (a), (b), (g), and (i); and 10177, subdivisions (d), (g), and (j), to discipline Mr. Orona's license because of his misrepresentation, fraud and/or dishonest dealing, taking of secret or undisclosed compensation in his management of the Tennyson property.

8. Cause exists under Business and Professions Code section 10148 to discipline Mr. Orona's license because he failed to retain records in connection with his real estate activities and failed to provide documents in response to a subpoena in connection with the department's audit.

Evaluation

9. Mr. Orona acted as property manager for the Hage property. He collected rent checks payable to himself, he cashed the checks, and he obtained cashier's checks payable to the LLC. The Hages signed a lease agreement with Ms. Dilks for \$2,150 per month beginning August 1, 2018, and they received a cashier's check for rent for \$2,150 beginning August 1, 2018. A second lease was created with Ms. Dilks, by Mr. Orona or Scott Orona, whereby Ms. Dilks paid \$2,300 per month

beginning July 1, 2018. There was no evidence that a cashier's check was provided to the Hages for \$2,150 or \$2,300 for the \$2,300 Mr. Orona received as July 2018 rent. Mr. Orona's explanation that Mr. Hage requested \$150 be added to Ms. Dilks's rent payment to cover the cost of hiring someone to pick up dog droppings was not credible. He told the auditor that picking up dog droppings was part of his maintenance duties, for which he was already paid \$580 per month. Mr. Orona was dishonest with the Hages and misrepresented the amount of rent he received from their tenants.

10. Mr. Orona has 35 years of experience as a licensed broker, and he acknowledged that funds received from a client must be put into a trust account. He admitted rent checks were made payable to him, and he cashed them and obtained a cashier's check issued to the LLC. He seemed to believe that because he did not actually deposit the funds into his own account, these were not considered trust funds and he was not required to provide documentation. He insisted that he did not maintain or need a trust account because he had an agreement with the owner.

11. Throughout the audit and his testimony, Mr. Orona continuously insisted that he was not a property manager for Mr. Hage. At hearing, he said he never collected money from tenants, he has no records, and he did not produce documents for the subpoena because he had none. As a licensed broker, he is required to retain records and to produce these records upon request of the department. He failed to retain or produce the records.

He then said that at Mr. Hage's request, he collected checks from the tenants, cashed the checks, got cashier's checks payable to Mr. Hage, and placed them in the mailbox. Mr. Hage collected the checks from the mailbox. Mr. Orona did not collect checks on his own. These statements were conflicting.

12. Mr. Orona explained that “the property management was under maintenance, this is how I defined it.” He did not review lease agreements prepared by Mr. Hage, although he said he looked at them for Mr. Hage and would say “you’re good to go.” After insisting that he had not done any property management since 2018, being licensed as a broker for more than 35 years, and completing renewal applications which are required every four years, Mr. Orona stated he misinterpreted the question on the application as asking whether he planned to perform property management in the future, rather than whether he had performed property management during the past 12 months. This explanation was neither credible nor persuasive.

13. On September 13, 2019, Mr. Orona told the auditor that he stopped managing properties “more than a year ago,” he collected rents for Mr. Hage and was paid a management fee, and he had tenants make rent checks payable to himself so that he could pay property-related expenses, and forwarded the remaining funds to Mr. Hage. He had a management agreement and tenant lease agreements to provide for the examination.

On October 3, 2019, Mr. Orona told the auditor that he stopped managing the one property in 2015, but continued doing maintenance for the property until about September 2018, rent checks were made payable to him at Mr. Hage’s request after two tenants bounced rent checks; and he did not have any management agreements or lease agreements to provide for the audit.

14. Mr. Orona insisted Mr. Hage took advantage of him and he “had been used”; he then said Mr. Hage did not know what he was doing and may have been suffering from dementia. As a licensed broker, Mr. Orona is charged with knowing what is and is not allowed under his license. Regardless of anything Mr. Hage may

have requested, Mr. Orona is the person holding the license and he is ultimately responsible.

Complainant has established by clear and convincing evidence that Mr. Orona does not have the fitness and capacity to remain licensed with the department and public protection therefore requires revocation of his license.

Recovery of Reasonable Costs of Audit, Investigation and Enforcement

15. Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106.)

Zuckerman v. Board of Chiropractic Examiners (2002) 29 Cal.4th 32, sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include whether the licensee had a "subjective good faith belief" in the merits of his or her position, whether the licensee raised a "colorable challenge" to the proposed discipline, and the extent of the licensee's financial ability to make later payments. Further, full costs may not be assessed when a "disproportionately large investigation" was conducted given the circumstances of the case. Finally, the department should consider the public interest in regulating the targeted conduct.

By reason of the matters set forth above, and an analysis of the factors set forth in *Zuckerman, supra*, it is determined that assessing costs in the amount of \$4,877.70 is reasonable. Mr. Orona shall reimburse the department this amount.

ORDER

1. All licenses and licensing rights of respondent Bruce C. Orona, license number 00808479, under the Real Estate Law are revoked.

2. Within 30 days of the effective date of the department's final decision, or as further directed by the department, Mr. Orona shall reimburse the department the costs of audit, investigation and enforcement in the amount of \$4,877.70.

DATE: April 21, 2022

Marion J. Vomhof

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings