

**FILED**

APR 24 2013

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
By L. Frost

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In the Matter of the Accusation of )

ARBOUR REAL ESTATE )  
MANAGEMENT, INC. and )  
JUDITH MAE MUNZ, )

Respondents. )  
\_\_\_\_\_ )

NO. H-5670 SAC

OAH NO. 2011110564

DECISION

The Proposed Decision dated March 11, 2013, 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.

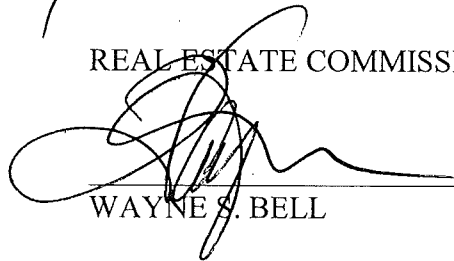
This Decision shall become effective at 12 o'clock noon on \_\_\_\_\_

**MAY 13 2013**

IT IS SO ORDERED

4/22/2013

REAL ESTATE COMMISSIONER



WAYNE S. BELL

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ARBOUR REAL ESTATE  
MANAGEMENT, INC.  
and JUDITH MAE MUNZ,

Respondents.

Case No. H-5670 SAC

OAH No. 2011110564

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on January 9, 2013, in Sacramento, California.

Jason D. Lazark, Counsel, represented Tricia D. Sommers (complainant), a Deputy Real Estate Commissioner with the Department of Real Estate (Department).

Judith Mae Munz represented Arbour Real Estate Management, Inc., in her capacity as its director and sole shareholder. She also appeared on her own behalf.

Evidence was received and the record remained open pending receipt of additional evidence, and confirmation that the parties had memorialized the terms of a stipulation relating to Arbour Real Estate Management, Inc., in writing. The parties were to submit such matters on or before January 25, 2013. Respondent submitted a letter from Trident Corporation dated January 14, 2013, and a letter she wrote to Mr. Lazark dated January 21, 2013. These were received on January 16 and 23, 2013, respectively, and marked as Exhibits C and D for identification. Complainant filed a letter response dated January 23, 2013, which was received on January 24, 2013, and marked as Exhibit 15 for identification. Respondent subsequently filed a letter dated February 7, 2013, which was marked as Exhibit E for identification. Complainant filed a letter response dated February 14, 2013, which was received on February 15, 2013, and marked as Exhibit 16 for identification.

Consideration having been given to the matters submitted after January 25, 2013, discretion was exercised in favor of extending the submission date to February 15, 2013. The matter was accordingly submitted for decision on February 15, 2013.

## FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.
2. Respondent Arbour Real Estate Management, Inc. (Arbour) is currently licensed by the Department and has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a corporate real estate broker. At all times relevant to this matter, Arbour was acting by and through Lambert Munz as its designated broker officer.
3. Mr. Munz was licensed as an individual real estate broker. He was the designated broker officer of Arbour, and he was also the broker of record for his spouse, Judith Mae Munz (respondent). Mr. Munz's individual real estate broker license expired in 2003. However, his designated officer license had been renewed through October 16, 2013. Mr. Munz practiced in real estate for approximately 45 years. He and respondent were married for approximately 35 years. Mr. Munz passed away on December 13, 2010.
4. Respondent is licensed by the Department as a real estate salesperson. At no time has she applied for and obtained a real estate broker license.

### *Respondent Arbour Real Estate Management, Inc. – Stipulations*

5. At the time of hearing, the parties entered into certain stipulations regarding respondent Arbour Real Estate Management, Inc., the terms of which follow.

Respondent is Arbour's Director and sole shareholder. She confirmed that Arbour engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California for or in expectation of compensation, for which a real estate license is required under Business and Professions Code section 10131, subdivision (b). Arbour engaged in the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation, it leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenant, or negotiated for sale, purchase or exchanges of leases on real property, or on a business opportunity, or collected rent from real property, or improvements thereon, or from business opportunities.

6. Respondent further stipulated to surrendering Arbour's corporate real estate broker license. In doing so, respondent stipulated to all audit violations specifically alleged against Arbour in the Department's First Amended Accusation. (Amended Accusation Paragraphs 5 through 16.) She also stipulated to allegations in the First Amended Accusation related to Arbour operating without a designated broker-officer, from December 14, 2010, to present. (Amended Accusation Paragraphs 17 through 19.)

7. Under Business and Professions Code section 10148, subdivision (b), the Department shall charge a real estate broker for the cost of any audit if the Commissioner has found in a final decision that the broker has violated section 10145, or regulations interpreting this section. At the time of hearing, the parties further agreed that the cost associated with two audits of Arbour conducted by the Department totaled \$13,212.41. The first Department audit examined Arbour records for the period July 1, 2008, through November 30, 2009 (audit period #1). The second Department audit examined Arbour records for the period January 1, 2010, through April 30, 2011 (audit period #2). The record includes a Statement of Costs certifying the Department's total for all audit costs. Respondent agreed at hearing that Arbour and respondent would be jointly and severally liable for Department audit costs totaling \$13,212.41. Respondent understood that this meant that she would be individually liable for these audit costs. The parties made no representations regarding the time or manner of payment of audit costs.

The parties agreed that the record would remain open for a period after the hearing, not to exceed one month, over which time the terms of the stipulation relating to Arbour would be memorialized. They further agreed that if no written stipulation was executed, that the terms of their agreement would instead be incorporated into this Proposed Decision.

8. The post-hearing submissions confirmed that the parties were unable to reach terms regarding Arbour, and no formal written stipulation was executed. The parties could not agree on the manner and time of payment of audit costs. Respondent has further asserted that in consideration of her surrendering Arbour's corporate license, the Department had stipulated that she be allowed to keep her real estate salesperson license. These matters will be considered separately in this decision.

9. The parties' post-hearing failure to reach a signed stipulation has triggered, by their express agreement on the record, the alternative of incorporating the stipulation into this Proposed Decision. Accordingly, paragraphs 5 through 19 of the Amended Accusation are expressly incorporated into the Factual Findings. The parties have stipulated that within both audit periods #1 and #2, Arbour made collections to and disbursements from trust funds that constituted violations of sections 10177, subdivisions (d) and (g) of the Business and Professions Code. The factual basis for this stipulation is set forth in Findings 10 and 11.

10. Audit Period #1. In the course of the collection and disbursement of trust funds over this audit period, Arbour:

- a. Failed to designate Bank Account #1, used to hold tenant security deposits, as a trust account in violation of section 10145 of the Business and Professions Code (Code) and section 2832 of chapter 6, title 10, California Code of Regulations (Regulations);

- b. Failed to maintain accurate separate beneficiary records for Trust Account #1 resulting in the inability of the Department to determine trust fund accountability as of September 30, 2009, in violation of section 10145 of the Code, and section 2832.1 of the Regulations;
- c. Failed to maintain accurate separate beneficiary records for Bank Account #1 in that there were negative account balances totaling \$3,454.92, and unidentified shortages of \$384, and \$4,490 in the account were attributable to broker funds wrongfully commingled with trust funds, all of which violate section 10145 of the Code, and section 2832.1 of the Regulations;
- d. Commingled broker funds with trust funds in Bank Account #1 from the period beginning February 19, 2009, and continuing through December 28, 2009, in violation of section 10176, subdivision (e) of the Code, and section 2835 of the Regulations;
- e. Maintained control records for Trust Account #1 and Bank Account #1 that were inaccurate and incomplete in violation of section 10145 of the Code, and section 2831 of the Regulations;
- f. Maintained separate beneficiary records for Trust Account #1 that were inaccurate, incomplete and unreliable in violation of section 10145 of the Code and section 2831.1 of the Regulations;
- g. Failed to reconcile the balance of all separate beneficiary records with the balance of trust funds received and disbursed from Trust Account #1 and Bank Account #1 in violation of section 10145 of the Code, and section 2831.2 of the Regulations.

11. Audit Period #2. In the course of the collection and disbursement of trust funds over this audit period, Arbour:

- a. Failed to maintain accurate trust fund records in that Trust Account #1 contained a shortage of \$14,418.92, Trust Account #2 contained unidentified and/or unaccounted for funds of \$1,032.93 and a \$4,370 deposit error, and Trust Account #3 contained a shortage of \$38,663.99;
- b. Failed to maintain accurate and separate records of the receipts and disposition of the trust funds deposited into Trust Account #2, which contained unidentified and/or unaccounted for funds of \$1,032.93, in violation of sections 10145 of the Code, and 2832.1 of the Regulations; and

- c. Failed to reconcile at least once per month the balance of all separate beneficiary records with the balance of all trust funds received and disbursed from Trust Account #1, Trust Account #2 and Trust Account #3, in violation of sections 10145 of the Code, and 2831.2 of the Regulations.

12. Operating Without a Designated Broker-Officer. The parties stipulated that from the time that Mr. Munz passed away on December 13, 2010, Arbour has been and continued to be operating without a validly licensed designated broker-officer, in violation of section 10130 of the Code.

#### *Respondent's Unlicensed Activity*

13. Respondent has at no time been licensed as a real estate broker. Respondent acknowledged that from the time of her husband's passing in December 2010, until the Department issued a Cease and Desist Order on March 12, 2012, Arbour continued to operate without a designated broker-officer, and respondent continued to manage and operate Arbour as a real estate salesperson. She did so acting on her own and not under the supervision and control of a real estate broker. By so doing, respondent engaged in unlicensed activity as real estate broker. It was established that respondent operated and conducted a property management business with the public wherein, on behalf of others, for compensation, she leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated for sale, purchase or exchange of leases on real property, or on a business opportunity, or collected rent from real property, or improvements thereon, or from business opportunities, as defined by Business and Professions Code section 10131, subdivision (b).

14. The Department placed respondent on notice that she could not operate Arbour without a designated broker-officer. Rana Tarazi is a Department auditor. She conducted the second audit of Arbour. She performed the audit from May 23, 2011, through September 19, 2011, working primarily with respondent. Ms. Tarazi discussed the Arbour trust fund shortages with respondent. She was aware that respondent was operating Arbour at that time. Ms. Tarazi advised respondent around July 2011 that she needed to find another broker-officer. Respondent had earlier executed a declaration on June 27, 2011, confirming that since her husband's death, she had been operating Arbour. She indicated in her declaration that after the Department audit was completed, "Odell Murray, Broker, has agreed to be the broker of record. It is my intention to study and pass the broker's exam in the future."

15. Kyle Jones is a Department special investigator. He was assigned to the Arbour matter after the Department received complaints regarding Arbour's failure to refund security deposits. Mr. Jones interviewed respondent by telephone on October 18, 2011. Respondent acknowledged at that time that she had been running Arbour since December 2010. She averred that she had a real estate broker who would be "taking over," but she did

not identify who that would be. Mr. Jones told respondent that she was in violation of real estate laws. Respondent replied that counsel representing her on this issue would be contacting Mr. Jones. This did not occur.

16. Over the period that respondent managed Arbour, the Department received complaints relating to Arbour's failure to refund security deposits, two of which are described below.

- a. Reginald Lal is a real estate broker. In August 2009, he retained Arbour to manage three or four of his Sacramento properties, one of which was located at 6633 Rodolfo Court, Sacramento. Arbour collected an \$800 security deposit, which was to be held in Arbour's trust account. In August 2011, Mr. Lal stopped receiving rent from the Rodolfo Court property. He learned that the tenants had moved out, and he went by Arbour's business office several times on different days to meet with respondent without success. Telephone calls and emails to Arbour went unreturned. Carrie Crowder is Mr. Lal's office manager. Ms. Crowder sent emails to respondent on September 28, 2011, and on October 7 and 10, 2011. Respondent called her back on October 14, 2011, acknowledging receipt of the emails, and promising to get back to Ms. Crowder with more details. Ms. Crowder sent another email on November 8, 2011, requesting an update. Ms. Crowder sent a last email on December 19, 2011, asking respondent to remit the security deposit as soon as possible. Respondent had not paid Mr. Lal by the time of hearing. Respondent represented that Mr. Lal has since been paid.
- b. Shahab Rejali owns the property located at 8869C La Riviera Drive, Sacramento. On October 3, 2009, he contracted to have Arbour manage this property. In April 2011, Mr. Rejali contacted Arbour and asked to have Arbour arrange for a new lease agreement with his tenant. He never heard back from Arbour. Mr. Rejali determined to terminate the property management contract with Arbour, which he understood to be month to month. He called Arbour "a few" times to have his master keys and tenant's security deposit (\$1,375) returned. He also sent four separate emails between June 23 and 24, 2011. Arbour did not return the calls or emails. Mr. Rejali personally traveled from San Francisco to Arbour's office on July 8, 2011. Respondent was not present. Office staff advised him that they could not help him. Mr. Rejali sought the assistance of counsel, who wrote a letter to respondent. Respondent subsequently refunded the security deposit to him.

#### *Respondent's Testimony*

17. Respondent was devastated by the events leading up to and following her husband's death. Her husband had been diagnosed with T-Cell Non-Hodgkin's Lymphoma, and by Thanksgiving 2010, had contracted pneumonia. He was hospitalized and died within three days. She was left with trying to manage his affairs, including Arbour. Her husband

had worked in real estate for 45 years. Upon his death, she suffered financially. She noted that she did not qualify for unemployment or Social Security benefits. She also had no health insurance. She had to move out of her home. Respondent is age 64.

18. Respondent averred that she could not sell Arbour, and no one would assume responsibility as either the designated broker-officer of Arbour, or as her supervising real estate broker. Within a week of her husband's death, real estate broker O'Dell Murray called respondent and indicated that he would serve as broker. However, Mr. Murray subsequently qualified his offer and indicated that he would not serve as broker until after the audit of Arbour was completed.

19. Respondent described the first year following her husband's death as a blur, and being overwhelmed by grief. She continued working with the Department during its audit, and managed Arbour on her own, doing the best she could. After being served with the Cease and Desist Order on March 16, 2012, respondent immediately closed business, and took down Arbour's website. She arranged for all remaining Arbour property management agreements and accounts to be transferred to Trident Corporation. On April 13, 2012, respondent executed an assignment document. It identified 100 property management agreements for properties to be assigned to Trident Corporation at that time.

20. Respondent is currently employed by Trident Corporation as a property manager for residential single family and duplex properties in the Sacramento area. She is supervised by real estate brokers Dennis H. McNeil and Ruth Browning. Mr. McNeil is the president of Trident Corporation. By letter dated January 14, 2013, he confirmed that respondent's duties include showing rental property, executing rental agreements, managing maintenance requests, coordinating property inspections with Sacramento County and the City of Sacramento, and other rental related activities. Mr. McNeil noted that respondent "is not a signer on, and does not handle the accounting of, the property owner's funds or security deposit trust fund accounts." Mr. McNeil gave no indication that he was aware of the accusation allegation against respondent, or that he is willing to supervise her should she be granted a restricted license.

21. Respondent works for Trident Corporation part time, 20 hours per week. She works largely out of her home. Rents and monies from rental properties are transmitted directly to Trident Corporation's main office in Yuba City. She handles no cash, and she does not handle money generally.

Respondent observed in retrospect that she should have closed the business after her husband died. She noted that this was difficult because she had clients and employees counting on her to continue Arbour. She suggested that if it was important that she not operate Arbour as she did, that the Department should have issued its cease and desist order earlier.



## *Discussion*

22. During the 15-month period from December 14, 2010, through March 15, 2012, respondent managed Arbour's property management business without having a designated broker-officer for Arbour, and without being under the supervision and control of a real estate broker. She did so at a time that Arbour was being audited, and when rather serious audit findings were being made. For example, during Audit Period #1, the Department made the findings set forth in Finding 10, including negative account balances totaling \$3,454.92; and \$4,490.00 attributable to broker funds wrongfully commingled with trust funds. For Audit Period #2, the Department determined that there was a shortage in Trust Account #1 of \$14,418.92, and that there was a shortage in Trust Account #3 of \$38,663.99. (Finding 11.) The Audit #2 period ran through April 30, 2011, when respondent was managing Arbour without broker supervision.

23. Reasonable allowance and consideration should be given for the very difficult circumstances respondent suddenly faced in December 2010. After her husband died, she would have required at least several months to either obtain a new broker, or close down the business. She made a good faith effort to do the former, and believed that Mr. Murray would do so. But this did not occur and she was aware of this by early 2011. By July and October 2011, two different Department representatives had advised her that she needed to have a supervising broker. Department Special Investigator Jones told her in so many words that she was in violation of real estate laws. Respondent nevertheless continued to operate Arbour. It appears that she was managing at least 100 different properties, and deriving income as before. She may have been managing even more properties. The May 19, 2010 Audit Report indicated that Arbour had managed 282 properties for 160 different owners, with annual receipts approximating \$3 million. Respondent continued to manage Arbour for an extended period of time, with no apparent plans for change. And but for the Department's Cease and Desist Order, Respondent would have worked in such unlicensed capacity well past March 2012. Over this same period the Department received complaints from individuals regarding Arbour, and at a time when Arbour was not subject to any oversight by a real estate broker. (Finding 16.) Respondent's ongoing failure to comply with the Department's requests to have a supervising broker resulted in the Department having to take more drastic action and issue the cease and desist order in March 2012.

24. That respondent was able to transfer property management accounts to Trident Corporation on relatively short notice following the cease and desist order suggests that such transfers could have occurred much earlier. She now continues to work as a property manager for Trident, and for many of the same properties. She does so part time, and with minimal supervision. She works primarily out of her home. Respondent has offered no evidence that her current employer is aware of the allegations in this case, or is willing to supervise her were she to be issued a restricted real estate salesperson license.

The above matters having been considered, it would not be in the public interest for respondent to continue as a real estate licensee, even on a restricted basis. Her refusal over

an extended period to comply with the Department's request that she have a supervising broker makes license revocation appropriate in this case.

25. There remains the matter of reimbursement of Department costs associated with the two Arbour audits. Respondent agreed at hearing that Arbour and she would be jointly and severally liable for audit costs totaling \$13,212.41. She agreed to be personally liable for the costs of the two audits. However, it is also the case that respondent would not be liable for audit costs under Business and Professions Code section 10148, subdivision (b), which provides as follows:

(b) The commissioner shall charge a *real estate broker* for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the *broker* has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145. [Italics added.]

26. Respondent is not licensed as a real estate broker, and the Department therefore has no authority to charge her for costs associated with any audit. Respondent was not made aware of this at the time that she entered into the stipulation at hearing. Such omission was material, as one would presumably not enter into any agreement to be personally liable for costs that would not be ordered in any final decision following a disciplinary hearing. Accordingly, any order to reimburse the Department for costs shall be limited to Arbour as a corporate real estate broker. Notwithstanding respondent's agreement at the time of hearing to pay costs, she is not individually liable for the Arbour audit costs.

27. Finally, any suggestion now made by respondent that the stipulation was made with the understanding that she would be allowed to keep her salesperson license is inaccurate. The only matter litigated at hearing was whether she should be allowed to keep her real estate salesperson license in some capacity. Complainant advocated for revocation at the time of hearing, and there was no mistaking by respondent that this has been complainant's position throughout.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (d), provides that the commissioner may take disciplinary action against licensees who "[w]illfully 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."

2. Business and Professions Code section 10177, subdivision (g), further provides that the commissioner may take disciplinary action against licensees who demonstrated "negligence or incompetence in performing any act for which he or she is required to hold a license."

*Arbour Real Estate Management, Inc.*

3. Cause for disciplinary action exists against Arbour under Business and Professions Code section 10177, subdivisions (d) and (g), by reason of the matters set forth in Findings 5 through 11.

In connection with the collection and disbursement of trust funds, Arbour violated Business and Professions Code section 10145 relating to the management of trust funds by a broker. Arbour also violated section 10176, subdivision (e), relating to commingling with a licensee's own money or property, the money or other property of others which is received and held by a licensee. Arbour further violated California Code of Regulations, title 10, sections 2831, 2831.1, 2831.2, 2832, 2832.1 and 2835.

4. Cause for disciplinary action exists against Arbour under Business and Professions Code section 10177, subdivision (d), and California Code of Regulations, title 10, section 2740, by reason of the matters set forth in Finding 12. Arbour operated without a designated broker-officer.

5. The Department is entitled to reimbursement of its audit costs pursuant to Business and Professions Code section 10148. The matters set forth in Findings 7, 8, 25 and 26 have been considered. Arbour shall reimburse the Department for costs associated with the two audits totaling \$13,212.41. Such order of reimbursement shall be limited to Arbour as the corporate real estate broker.

*Respondent Judith Mae Munz*

6. Business and Professions Code section 10130 provides in part: "It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department, or to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state without having obtained a license endorsement."

7. Cause for disciplinary action exists against respondent under Business and Professions Code sections 10130 and 10177, subdivision (d), by reason of the matters set forth in Finding 13.

8. The matters set forth in Findings 14 through 24 have been considered. It would not be in the public interest for respondent to continue as a real estate licensee, even

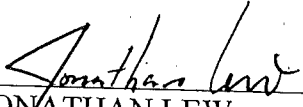
on a restricted basis. Her refusal over an extended period to comply with the Department's request that she have a supervising broker makes license revocation appropriate in this case.

### ORDER

1. All licenses and licensing rights of Arbour Real Estate Management, Inc. under the Real Estate Law are revoked pursuant to Legal Conclusions 3 and 4. Pursuant to Business and Professions Code section 10148, respondent Arbour Real Estate Management, Inc. shall pay the Commissioner's reasonable cost for the two audits which led to this disciplinary action. Such audit costs total \$13,212.41.

2. All licenses and licensing rights of Judith May Munz under the Real Estate Law are revoked pursuant to Legal Conclusion 7.

DATED: March 11, 2013

  
JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings