

FILED

December 24, 2013

BUREAU OF REAL ESTATE



By _____

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
AMERICAL FINANCIAL GROUP INC.)
and SCOTT DOUGLAS COOPER,)
Respondents.)

No. H-5933 SAC
OAH NO. 2013010079

In the Matter of the Accusation of)
FELICIA SPRING BRIDGE and)
SCOTT DOUGLAS COOPER,)
Respondents.)

No. H-5970 SAC
OAH NO. 2013031152

DECISION

The Proposed Decision dated November 21, 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 with the following corrections:

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

All references to Commissioner as "she" or "her" are amended to "he" or "his".

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

Conditions "2" and "6" on page 25 of the Order of the Proposed Decision are not adopted and shall not be part of the Decision.

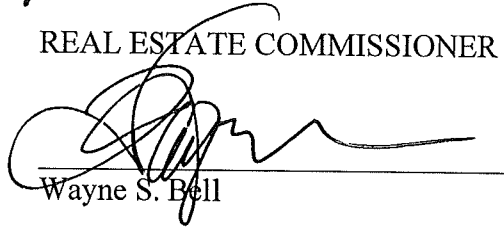
The Decision suspends or revokes the real estate license and/or license rights; however, the right to a restricted real estate license is granted to Respondents.

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 Section 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 JAN 13 2014.

IT IS SO ORDERED 12/20/2013

REAL ESTATE COMMISSIONER



Wayne S. Bell

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

AMERICAL FINANCIAL GROUP, INC.,
and SCOTT DOUGLAS COOPER

Respondents.

Case No. H-5933 SAC

OAH No. 2013010079

FELICIA SPRING BRIDGE and
SCOTT DOUGLAS COOPER,

Respondents.

Case No. H-5970 SAC

OAH No. 2013031152

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, on October 23, 2013, in Sacramento, California.

Truly Sughrue, Counsel, Bureau of Real Estate (Bureau), represented Tricia D. Sommers, a Deputy Real Estate Commissioner, State of California (Complainant).

Scott D. Cooper (respondent Cooper or respondent), as the designated-officer of Americal Financial Group, Inc. (respondent Americal or Americal), was present and represented respondents' interests.

The case against respondents Scott Cooper and Americal was submitted for decision on October 23, 2013.¹

¹ Respondent Felicia S. Bridge, failed to return a Notice of Defense requesting a hearing in the matter filed against her (Case No. H-5970 SAC). An Order of Default against Ms. Bridge was filed on April 10, 2013. A default decision was entered against Ms. Bridge by the Commissioner effective June 10, 2013.

SUMMARY

In June 2012, the Bureau conducted an audit of respondents' accounting and record keeping practices during the prior 18 months to determine whether their mortgage loan origination activities and trust fund management were in accordance with the Real Estate Law. The Bureau identified several violations including unlicensed activity and conversion of trust funds. The Bureau filed two Accusations alleging supervisory/managerial violations related to mortgage loan activities (No. H-5933 SAC), and trust fund violations related to property management activities (H-5970 SAC). The Bureau alleged that respondents' violations constituted cause for disciplinary action. Respondents' violations warrant discipline of their license and licensing rights.

FACTUAL FINDINGS

1. Complainant made and filed these Accusations in her official capacity on December 24, 2012 (No. H-5933 SAC), and March 18, 2013 (H-5970 SAC). By a Default Decision effective June 10, 2013, the Bureau resolved allegations as to Ms. Bridge. As such, she is no longer a party to this proceeding.

2. The Bureau issued corporate real estate broker license number C/01254370 to Americal, on February 24, 1999. Americal's corporate broker license will expire on February 23, 2015, unless renewed. The main office address is 1424 Lincoln Avenue, Suite C, Calistoga. Respondent Cooper was registered as sole designated officer of Americal from September 4, 2007, through February 23, 2015. Americal obtained two fictitious business names: Cal Green Lending on September 8, 2008, and Cal Green Estates on May 10, 2010. Americal obtained its Mortgage Loan Originator (MLO) License Endorsement on January 21, 2011 (MLO ID. 349298).²

3. The Bureau issued respondent Cooper a salesperson license on April 28, 2004, and a real estate broker license (B/01415175) on August 22, 2007. Respondent was initially employed by Americal as a salesperson, but as of September

² In order to perform residential mortgage loan activities in California, real estate licensees must obtain a Mortgage Loan Originator (MLO) license endorsement. Mandated requirements are based on the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE), a federal law signed into law in 2008. The SAFE Act requirements were added to California state law through Senate Bill 36, enacted in 2009. A MLO is required to take residential mortgage loan applications or negotiate terms of a residential loan, and to be compensated for arranging the loan. A residential loan is secured by real property with a residential structure of 1-4 units. Individuals who conduct business as independent loan processors or underwriters must hold a real estate broker license with an MLO endorsement. (Bus. & Prof. Code, §§ 10166.02, subd. (b), & 10166.03, subd. (c).)

4, 2007, respondent became the sole designated broker-officer of Americal. Respondent received his individual MLO License Endorsement (MLO ID. 349298) effective January 21, 2011. His broker license was active at all times relative to this matter and will expire on August 21, 2015, unless renewed or revoked. As the designated broker-officer of Americal respondent was involved in mortgage loan origination, real estate sales, and property management activities. As a real estate broker, he had duties relative to these activities under the Real Estate Law. (Bus. & Prof. Code, § 10131, subds. (a), (b), & (d).)

4. The Bureau issued Felicia S. Bridge a salesperson license (No. S/01406824) on February 26, 2004. She was employed by respondent Cooper from August 11, 2008, through August 19, 2011. Her salesperson license expired on February 25, 2012, and was revoked by the Bureau effective June 10, 2013, for cause set forth in Accusation No. H-5970 SAC.

5. The Bureau issued Teri Linn Tate a salesperson license (No. S/01713900) on December 22, 2005. Ms. Tate received her individual MLO License Endorsement effective December 28, 2010. Her salesperson license was activated under employing broker Nikki Lynn Blakely, in Concord, from January 6, 2006, through October 3, 2012, when it was then activated under Americal through August 13, 2013. Ms. Tate obtained her broker license on August 14, 2013, which will expire on August 13, 2017, unless renewed.

Bureau Audit (Accusation H-5993 SAC)

6. Robert Leonard is employed by the Bureau as a general auditor. His duties include conducting routine (random) and investigative (based on a complaint) audits of licensees. From June 1 to July 31, 2012, he conducted an audit of Americal's mortgage loan activity (OK-11-0087) and property sales activity (OK-12-0003) for the 18 month period of January 1, 2011, to May 31, 2012. The auditor interviewed respondent, obtained and examined records on a sample basis, performed account analysis, prepared an audit report dated July 31, 2012, and testified at hearing.

7. Respondent is president, Chief Financial Officer, and a 50 percent shareholder of Americal. His mother, Kathleen Cooper, was the corporate secretary and 50 percent shareholder of Americal. Americal was involved in residential loan origination activity (involving one to four unit properties) and property resales. Companies involved in the mortgage lending business assist borrowers in obtaining mortgage loans, package applications, and submitting the documents to institutional lenders. During the audit period, Americal originated approximately 53 institutional mortgage loans. Americal engaged in limited property resale activity during the audit period: a property at 37 Olivia Drive, Novato that sold for \$210,000 on June 30, 2011, and an agricultural property in Dixon that sold for \$810,000 on November 23, 2011.

Mortgage Lending and Property Resale Violations

8. A loan processor packages loan applications and ensures all mandated conditions are satisfied. Some loan processors work in-house for one broker and are not required to be licensed or possess an MLO license. An independent loan processor operates independently for one or more brokers and is required to have a broker and MLO license. Americal used the services of an independent loan processor, Teri Tate of Integrity Loan Processing. Through October 3, 2012, Ms. Tate's salesperson license was activated under her broker, Ms. Blakely. Respondent and Ms. Tate signed an agreement dated March 15, and effective April 1, 2011, that set forth the tiered compensation respondent would pay Ms. Tate depending on the amount of each loan she processed. Respondent was not Ms. Tate's employing broker. Nowhere in the agreement is Ms. Tate's employing broker mentioned.

Ms. Tate serviced 48 of Americal's loan transactions during the audit period. Respondent compensated her directly for her services. A 2011 report to the Internal Revenue Service of Miscellaneous Income (Form 1099-MISC) paid by Americal to Ms. Tate reflects "non-employer compensation" of \$9,105. The auditor also obtained copies of Americal checks made out to Ms. Tate with the borrower name in the memo section. It is unlawful for a broker to compensate any licensee except through the broker under whom he or she is at the time licensed. Respondent's direct payment of compensation to Ms. Tate, a licensed real estate salesperson employed by another broker, violated the Real Estate Law. (Bus. & Prof. Code, § 10137.)

9. Larry Jones was registered with the Bureau as a licensed salesperson (Lic. No. 01732218) in respondent's employ during the audit period. Though Mr. Jones did not transact any business for Americal during the audit period, he was engaged in property sales activity under another broker in another city. According to respondent, Mr. Jones referred some clients to respondent for financing or property sales transactions, but respondent was not otherwise aware of Mr. Jones's real estate activities.

A real estate salesperson's license must remain in the possession of the broker until canceled or the salesman leaves the employ of the broker, and the license must be made available for inspection by the commissioner or his designated representative. Upon request by the auditor, respondent could not produce Mr. Jones's original license certificate. A photocopy of Mr. Jones's license certificate was hanging on the wall. However, the auditor testified that a photocopy is insufficient because the purpose of the law is to ensure that the agent is working for only one broker at a time. Respondent's failure to retain Mr. Jones's original license certificate and exercise reasonable supervision and control over the activities of his employee violated the Real Estate Law. (Bus. & Prof. Code, § 10160; Cal. Code Regs., tit. 10, § 2753.)

10. A broker-salesperson agreement is entered into at the time the employee is hired. The written agreement identifies the duties, compensation, supervision, and other terms of employment. Every broker is required by law to execute and maintain a written salesperson agreement with new employees. The Bureau issued a real estate salesperson license to Renee Anderson on February 12, 1980 (Lic. No. 00771968). She was registered with the Bureau as employed by respondent from November 16, 2009, through June 19, 2012. However, respondent could not produce a written salesperson agreement upon request by the auditor. Respondent admitted that he did not prepare a written salesperson agreement upon hiring Ms. Anderson. Respondent explained at hearing that Ms. Anderson never generated any business for Americal and as such, he would not know how to structure a salesperson agreement prospectively. The explanation is unsatisfactory since contracts are typically created before work begins. Respondent's failure to enter into a written employment agreement with a licensed salesperson in his office violated the Real Estate Law. (Cal. Code Regs., tit. 10, § 2726.)

11. In January and February 2011, respondent used the DBA "Pacific West Realty" to complete a sales transaction on a property located at 37 East Olivia Drive, Novato. The name appeared on several file documents including counter-offer documents, the transfer disclosure statement, visual inspection document, and seller questionnaire. Respondent explained that though he did not subscribe to the multiple listing service (MLS), an agent in his employ, Felicia Bridge (Lic. No. 01406824), had an MLS account under the name Pacific West Realty. When respondent obtained the listing for the Novato property, he used Ms. Bridge's DBA. Respondent testified that he did not have an MLS account because it was expensive and they rarely did sales transactions. As such, he "thought it would be okay" to use Ms. Bridge's MLS. A broker can conduct business under a fictitious business name (DBA) if they first obtain a real estate license bearing the name to be used. Respondent's use of a DBA not associated with his license was in violation of the Real Estate Law. (Bus. & Prof. Code, § 10159.5; Cal. Code Regs., tit. 10, § 2731.)

12. During the audit period and specifically in June 2011, respondent transacted business under the fictitious names "Cal Green Lending" and "Cal Green Estates." These DBAs were properly registered under Americal's broker license. Respondent distributed a Cal Green Lending business card to the auditor that did not contain both his broker and MLO license numbers. At hearing, respondent explained that those cards were printed before the new law was enacted requiring an MLO endorsement. He did not immediately order new business cards. It is noted that the law became effective in California in 2009, and the audit was conducted in June 2012. A broker is required to disclose his real estate identification number and MLO number (if he has one), on all "first point of contact" solicitation materials, such as business cards, stationery, and fliers. Respondent's distribution of business cards lacking mandated license identifiers violated the Real Estate Law. (Bus. & Prof. Code, § 10140.6, subd. (b)(1); Cal. Code Regs., tit. 10, § 2773.)

13. Steve Kriske is a licensed real estate broker (Lic. No. 00963705), and obtained his individual MLO License Endorsement (No. 359651) on November 29, 2010. Respondent employed Mr. Kriske as one of three broker associates at Americal. Mr. Kriske, as a broker associate of Americal, transacted mortgage loan for a customer (Ms. Shiratori, real property in San Mateo), which closed on September 2, 2011. Brokers who employ "broker associates" to conduct MLO activities must provide employment sponsorship information to the National Mortgage Licensing System (NMLS) and Registry within five days of the start of employment. Upon searching the NMLS Registry, the auditor found no NMLS record indicating that Mr. Kriske was authorized to transact mortgage loans on behalf of Americal. Respondent testified that the NMLS process is complex. He admitted that he did not meet the five-day deadline. However, he did ultimately register and conduct business through Mr. Kriske. Respondent's failure to timely notify the NMLS Registry of his broker association with Mr. Kriske was a violation of the Real Estate Law. (Cal. Code Regs., tit. 10, § 2758.5.)

14. Respondent, as the designated officer of Americal (a corporate broker) is responsible for the supervision and control of all activities conducted on behalf of the corporation by its officers and employees, including associate brokers and salespersons. This is necessary to ensure full compliance with the Real Estate Law. Respondent's acts and omissions, as set forth above in Factual Findings 8 through 13, demonstrate a lack of reasonable supervision and oversight of activities conducted on behalf of Americal. Respondent's failure to properly supervise and control Americal's activities violated the Real Estate Law. (Bus. & Prof. Code, § 10159.2, subd. (a).)

Costs (Accusation H-5933 SAC)

15. Pursuant to Business and Professions Code section 10106, the Bureau is authorized to seek reimbursement of the reasonable costs of investigation and enforcement at hearing from a licensee found to have committed a violation of the Real Estate Law. The Bureau submitted signed declarations of costs expended developing and litigating this matter.

Between June 1, and July 30, 2012, Bureau auditor Mr. Leonard, spent 96 hours investigating this case. His time was spent planning, interviewing, reviewing records, traveling, and report writing. At a cost of \$57 per hour, total investigation costs of \$5,472 are reasonable and appropriate for the tasks performed. Between December 24, 2012, and October 10, 2013, counsel spent 19 hours preparing the case for hearing. Her time was spent communicating with parties, preparing settlement proposals and prehearing motions, and hearing preparation. At a cost of \$89 per hour, total prosecution costs of \$1,691, are reasonable and appropriate.

The total cost of investigation and prosecution of Accusation H-5933 amounts to \$7,163, and is reasonable and appropriate considering the tasks performed.

Property Management Violations (Accusation H-5970 SAC)

16. Marcus Beltramo is employed by the Bureau as a special investigator. Prior to that, he was a deputy commissioner for the Bureau. His duties include investigating consumer complaints to determine if a violation of the Real Estate Law has occurred and making recommendations for legal review. In 2011, he began investigating consumer complaints involving Felicia Bridge, doing business as Pacific West Realty Property Management (PWR), in Fairfield. Complaints included that owners were not receiving rents, properties were not being taken care of, and bills were not being paid.

17. Ms. Bridge was licensed as a real estate salesperson when she affiliated with respondent for the purpose of conducting property management activities under his broker license. Ms. Bridge had reportedly purchased PWR, an established property management business with about 50 properties, from a broker named Dale Elvrum. After a short telephone interview, respondent agreed to allow Ms. Bridge to work under his broker's license in August 2008. In exchange, respondent received from Ms. Bridge a monthly payment of \$400 over the course of approximately three years. Respondent admittedly did not perform any duties or manage the activities of Ms. Bridge and PWR. PWR was never licensed with the Bureau as a DBA under Americal's or respondent's broker licenses. Respondent did not maintain or review any records or files associated with PWR's property management activities. Respondent never opened or maintained a trust account for rents, deposits, expenses, and disbursements necessary to operate PWR as a property management company.

18. In approximately June 2011, respondent began receiving complaints from clients of PWR. He received reports that owners were not getting their rent money and tenants were not receiving their deposits. Additionally, Ms. Bridge was reportedly smoking crack cocaine with employees at the PWR office. Respondent stated that he was tipped off by an employee. Respondent stated that he attempted to facilitate a resolution of two customer complaints. But, in August 2011, respondent gave Ms. Bridge 30 days' notice that he would be removing her from his broker's license. As of September 2011, respondent had limited contact with Ms. Bridge and her Fairfield office was reportedly vacant with broken windows.

19. In November 2011, Mr. Beltramo contacted respondent as part of his investigation. Respondent was cooperative in providing correspondence received from dissatisfied clients who had contacted him. Respondent never entered into a formal written employee agreement with Ms. Bridge. In his email dated November 29, 2011, he admitted to Mr. Beltramo that "It was in informal agreement over the phone to let her work under my license for \$400 per month. She told me she did not do any real estate transactions, so I didn't think there would be much risk for property management..."

20. Ramiro Miranda, a dissatisfied client of PWR, testified at hearing. In addition, the Bureau submitted declarations from 14 dissatisfied clients of PWR. Pursuant to Government Code section 11514, notice was proper and absent objection by respondent, these statements were considered direct evidence. Their complaints are summarized below:

- 1) Ramiro M., owner of property at 176 Del Sur Court, Fairfield. Complaint: Rent proceeds not deposited into owner's checking account. Monthly home owner's dues in the amount of \$300 not paid by PWR for three months; owner had to pay out of his own funds. Deposit of \$900 not returned to owner and is unaccounted for.
- 2) Glenn G., owner of property at 110 Pau Court, Fairfield. Complaint: Poor communication about new prospective tenants, owners not provided tenant application, credit report, copy of lease, or tenant contact information. Rent proceeds were substantially short with no explanation. Owner did not receive \$3,680 in rent proceeds and \$2,000 in tenant deposits.
- 3) Shirley P., owner of property at 320 Hamilton Drive, Fairfield. Complaint: Property previously managed by Solano Property Management. Ms. Potter did not enter into a written agreement for Ms. Bridge or Pacific West Realty to manage her property. Tenant timely paid rent to PWR, but check issued by PWR to the owner bounced. PWR phone disconnected without notice. Messages left when service resumed were not returned. Owner did not receive \$1,000 in rent proceeds, \$1,200 in tenant deposits, and lost escrow balance of \$420.
- 4) Vincent B., owner of property at 513 Avalon, Suisun. Complaint: Poor communication, monthly statements not consistently received, no pool service, pool service company not being paid, and discrepancies in rental income received.
- 5) Lashun C., owner 2437 White Drive, Fairfield. Complaint: Owner did not receive rents and deposits paid by tenants and held in escrow. Owner did not recover \$2,375 in tenant deposits and \$1,820 in rent proceeds.
- 6) Gary L., owner 1067 Mockingbird Court, Fairfield. Complaint: No written property management agreement with PWR after Ms. Bridge purchased account. Owner lost \$5,750 in rent proceeds and \$1,800 in tenant deposits.
- 7) Wayne and Fran E., owners 3015 Poplar Court, Fairfield. Complaint: Owner did not have a written property management agreement with PWR after Ms. Bridge purchased account. Monthly statements were inconsistent and missing receipts. Owners did not receive \$1,775 in rent proceeds.

- 8) Danny C., owner 540 Pacific Avenue and 2155 North Texas Street, both in Fairfield. Complaint: A check in the amount of \$1,258 issued to the owner by PWR was returned for insufficient funds. Owner severed his relationship with PWR by letter dated October 1, 2011. As of December 20, 2011, he was still due outstanding rents/security deposits in the amount of \$15,193 (Pacific Ave.) and \$8,550 (No. Texas Street).
- 9) Kim D., owner 454 Mountain Meadow Drive, Cordelia. Complaint: Inability to communicate as telephone was disconnected. Owner due \$2,400 in rent proceeds, \$500 in tenant deposits, and \$334 improperly deducted from rental payments.
- 10) Ed S., owner 1536 Empire Street, Fairfield. Complaint: Poor communication and service. Check from PWR to owner returned for insufficient funds. Owner did not receive \$1,200 in rent proceeds and \$1,200 in tenant deposits. Also, lease was for tenant to pay \$1,800 per month but amount received by owner was \$400 short. Owner suspects PWR may have received and "stolen" the difference.
- 11) Jose and Jacqueline A., owners 206 Tokay Court, Fairfield. Complaint: Owners received rent proceeds late and never in full (net payments short). PWR owes owners \$3,909 in rents/deposits, and a refund of a \$500 eviction fee for eviction that was cancelled.
- 12) Genovefa C., owners 824 Greenhead Way, Suisun. Complaint: Rent proceeds received late and not in full (payment \$200 short). Monthly statements not received to account for payments and deductions. Poor communication, Ms. Bridge not returning calls to resolve complaints, no one answering phone and no answering machine to leave a voice mail message. PWR owes owner \$200 net rent shortage and \$1,500 security deposit.
- 13) Esther F., owner 518 Fortuna Court, Suisun City. Complaint: Poor communication, statement incorrect and did not show security deposit in escrow. PWR owes owner \$1,850 rent proceeds and \$1,850 security deposit.
- 14) Betty Cronaur, owner 1214 Pheasant Drive and 807 Scaup Lane, both in Suisun City, and 2007 Sousa Court, Fairfield. Complaint: Poor communication, calls not returned, no answering machine. Owner terminated contract with PWR by letter dated October 24, 2011. Owner did not receive statements on her three rental properties. Owner did not receive October rent proceeds on her three properties (approximately \$1,300) and September rent proceeds on Pheasant Drive property was short by \$256.
- 15) Doerthe D., owner 1150 Cormorant Place, Fairfield. Complaint: Owners entered into management contract with PWR but not with new owner,

Ms. Bridge. PWR owes owner \$1,288 in rent proceeds and a \$1,400 security deposit. On October 18, 2011, Ms. Bridge told owner that these checks were in the mail but as of October 24, 2011, the checks were still not received.

Unlicensed Activity

21. Mr. Beltramo learned from the Fairfield Finance and Planning Department that the DBA for PWR was owned by Ms. Bridge and Gordon Kent Hill. Mr. Beltramo contacted Mr. Hill who stated that he was Ms. Bridge's partner. Mr. Hill put up the money and Ms. Bridge was to handle operations. Mr. Hill was not licensed by the Bureau to conduct real estate transactions.

Mr. Beltramo testified that a fictitious name must be in the name of the broker, not issued to a salesperson. (*MKB Management, Inc. v. Melikian* (2010) 184 Cal.App.4th 796, 802 [A broker's license is required for offering and leasing apartment units and collecting rents (Bus. & Prof. Code § 10131, subd. (b)), but is not required for other management duties such as repairing, decorating, and general maintenance].)

After respondent agreed to employ Ms. Bridge to operate a property management business, he knowingly allowed her to operate under the fictitious name PWR. Respondent's failure to register this fictitious name under his broker's license violated the Real Estate Law. (Bus. & Prof. Code, § 10131, subd. (b); Cal. Code Regs., tit. 10, § 2731.) It is noted that respondent also used the MLS associated with PWR for real estate sales transactions in violation of the Real Estate Law. (Factual Finding 11.)

Trust Account Violations

22. After respondent terminated his association with Mr. Bridge, she contacted David Roth, apparently a broker, and told him she was closing her shop and referring her clientele over to him to handle. Ms. Bridge gave Mr. Roth the signatory cards for two accounts, a business account and a client trust account. A trust account is required to hold money on behalf of property owners and tenants in connection with renting or leasing property.

23. Mr. Beltramo issued a subpoena for PWR's bank account records at West America Bank. He obtained all records including bank statements, signatory cards, cancelled checks, and all documents reflecting transactions between January 1, and December 31, 2011.

The business account (No. 102-49856-5) was entitled "Felicia-S. Bridge, DBA Pacific West Realty," a partnership. The "authorized signers" were Ms. Bridge and Mr. Hill. They signed the card on June 14, 2007. Respondent is not listed as a

signatory and his name does not appear anywhere on the business account signature card.

The trust account (No. 102-49826-8) was entitled "Pacific West Realty, Common Client Trust Account." The authorized signers on this trust account were Ms. Bridge and Mr. Hill who signed the card on June 14, 2007. Respondent is not listed as a signatory and his name does not appear anywhere on the trust signature card. Bank statements show an on-line debit of \$400 from the trust account to respondent on or about the 15th of each month through August 2011, after which time respondent ended his business relationship with Ms. Bridge.

24. Mr. Beltramo reviewed copies of checks deposited into the trust account. He verified that tenant funds such as monthly rent checks were deposited by Ms. Bridge into the trust account. He also verified that disbursements were made from the trust account in that numerous checks signed by Ms. Bridge were drawn on the trust account. There was no written agreement between Ms. Bridge and respondent specifically authorizing her to withdraw money from the client trust account. Respondent permitted Ms. Bridge to collect rents from tenants on his behalf without requiring her to immediately deliver the funds to him, his principal, a neutral escrow depository, or the broker's trust account. As such, he violated the Real Estate Law. (Bus. & Prof. Code, § 10145, subd. (c).)

25. A broker is required to maintain trust funds and the trust account must be in the broker's name. Because PWR was not a fictitious name licensed to respondent and respondent was not a signatory on the trust account, the account was not in compliance with the Real Estate Law. (Bus. & Prof. Code, § 10145, Cal. Code Regs., tit. 10, § 2832.) Because Mr. Hill was not licensed by the Bureau and was not an unlicensed employee of respondent covered by a fidelity bond, his designation as an authorized signer on the trust account violated the Real Estate Law. Because Ms. Bridge was not specifically authorized in writing by the broker to make withdrawals from the trust fund account, her status as an authorized signer on the trust account was in violation of the Real Estate Law. (Cal. Code Regs., tit. 10, § 2834.)

Records Violations

26. Respondent informed Mr. Beltramo that he never reviewed any PWR client files. He stated that the only information he had was from those customers who complained directly to him. A licensed real estate broker is required to retain for three years copies of all listings, bank records including deposit receipts and cancelled checks, and other business documents. (Bus. & Prof. Code, § 10148.) Respondent's failure to maintain trust records, client files, and other documents in connection with PWR transactions amounted to a violation of the Real Estate Law.

Lack of Supervision

27. As is set forth in Factual Finding 20, Ms. Bridge is responsible for the conversion and theft of funds she received on behalf of property owners. The funds are still unaccounted for. Many of the owners had to pay expenses related to their properties that should have come out of rent proceeds. Ms. Bridge took an undisclosed amount of compensation from PWR accounts unbeknownst to respondent in violation of the Real Estate Law. Her conduct constituted fraud and/or dishonest dealing. (Bus. & Prof. Code, § 10176, subs. (g) & (i).) Respondent's failure to adequately supervise the activities of Ms. Bridge and PWR allowed the conversion of funds to take place unnoticed for several months.

28. Respondent admitted to Mr. Beltramo that he had no knowledge of Ms. Bridge activities and that he just accepted the money. Respondent also acknowledges that he had a duty to supervise Ms. Bridge as a licensed salesperson working under his broker's license. Respondent's failure to supervise Ms. Bridge's activities related to PWR violated the Real Estate Law. (Bus. & Prof. Code, § 10159.2.)

Costs (Accusation H-5970 SAC)

29. Pursuant to Business and Professions Code sections 10148, subdivision (b) and 10106, the Bureau is authorized to seek reimbursement of the reasonable costs of investigation and enforcement at hearing from a licensee found to have committed a violation of the Real Estate Law. The Bureau submitted signed declarations of costs expended developing and litigating this matter.

Between January 3, 2012, and January 14, 2013, Bureau auditor Mr. Beltramo, spent 23 hours investigating the case. His time was spent planning, interviewing, reviewing records, traveling, and report writing. At a cost of \$62 per hour, plus miscellaneous clerical expenses of \$40.25, total investigation costs of \$1,466.25 are reasonable and appropriate for the tasks performed. Between March 7, and October 21, 2013, counsel spent 53.25 hours preparing the case for hearing. Her time was spent communicating with parties, preparing settlement proposals and prehearing motions, and hearing preparation. At a cost of \$89 per hour, total prosecution costs of \$4,739.25, are reasonable and appropriate.

The total cost of prosecution and investigation of Accusation H-5970 amounts to \$6,205.50, and is reasonable and appropriate considering the tasks performed.

Mitigation/Rehabilitation

30. Respondent testified that over 95 percent of his business involved mortgage loan origination, not sales or property management. So far in 2013, Americal has funded 45 mortgage loans or about 15 per quarter. Americal did not subscribe to the MLS because they did very few sales transactions. Americal did not

carry a trust fund because they had not previously engaged in property management activity. Because of poor business, they had to let their in-house loan processor go. As such, respondent retained Ms. Tate, a licensed salesperson and independent loan processor working under the business name Integrity Loan Processing. Respondent stated that he did not realize he was breaking any law when he paid Ms. Tate directly instead of through her broker.

31. Respondent admitted that after Mr. Jones moved out of Americal's office he should have disaffiliated Mr. Jones's salesperson license. Mr. Jones was a family friend who began working for Americal in 2006. In 2008, business was slow. Mr. Jones was inexperienced and not generating work. Mr. Jones left to seek other employment outside of real estate. He believes Mr. Jones did return to the real estate business.

32. Regarding the problems uncovered during the audit, respondent admitted that they "obviously made some mistakes." He stated they had thousands of clients over 12 years. He knows he needs to be more diligent. He believes that the core elements of "doing right" and running a professional business have been met. When the audit uncovered mistakes, he saw it as a "sort of house cleaning." He stated that he corrected every problem within a matter of days.

33. Regarding the problems related to the property management activities of Ms. Bridge, respondent began receiving complaints in July 2011. One of her employees called him and disclosed that Ms. Bridge was smoking crystal methamphetamines in the office. When he went to her office to meet with Ms. Bridge and one of PWR's disgruntled clients, it was "obvious [Ms. Bridge] was on drugs." She was "in a complete daze" and did not have the necessary paperwork. Respondent stated that he wanted to help Ms. Bridge and tried to work with her for a month. On August 19, 2011, respondent terminated Ms. Bridge from her employment by e-mail. Respondent feels that drug addiction is a disease and it is hard to hold anyone responsible.

34. On cross-examination, respondent recalled that PWR client Barbara S. contacted him on June 20, 2011. She was one of the first owners to contact him. When respondent met with Ms. Bridge and another client, Debra G., he again found Ms. Bridge to be "scatter brained." He stated that Ms. Bridge made some effort to address the issues and then "disappeared." Respondent tried to "step in to connect the parties." He stated that "rather than take it on myself, I terminated her." However, respondent did not audit the books. He did not ensure that the clients received their money. He did not take any steps to refer Ms. Bridge to another broker. It is noted that at hearing, when asked if he knew he had a fiduciary duty as a broker, respondent replied, "If you say so." His unwillingness to clearly acknowledge this most basic duty is reflected in his approach to the property management venture from start to finish.

35. Respondent stated that he understands he must operate in compliance with the law. However, he did not demonstrate that he knows the law. He explained that after the start of the real estate crisis in 2008, there was a “huge onslaught” of new incoming regulations to address the credit collapse. He stated it was challenging to be aware of everything and that rules came in and were repealed and changed. He felt he needed a staff of attorneys to decipher them. He stated that he has taken required and continuing education courses in management, ethics, and supervision. He has taken the required real estate courses on handling trust funds but nothing more. Respondent read the audit report of Mr. Leonard and agreed with the findings.

LEGAL CONCLUSIONS

Applicable Laws

1. “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....” (Bus. & Prof. Code, § 10130.)

2. Business & Professions Code section 10131 states: “A real estate broker ... is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

- (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.
- (b) Leases 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.
- (c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.
- (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

(e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.”

3. “It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him or her, ... No real estate salesperson shall be employed by or accept compensation from any person other than the broker under whom he or she is at the time licensed.” (Bus. & Prof. Code, § 10137.)

4. 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 him or her or obtained by him or her 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 his or her 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. (Bus. & Prof. Code, § 10148, subd. (a).)

5. “A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.” (Cal. Code Regs., tit. 10, § 2731, subd. (a).)

6. “The real estate salesman's license shall remain in the possession of the licensed real estate broker employer until canceled or until the salesman leaves the employ of the broker, and the broker shall make his license and the licenses of his salesman available for inspection by the commissioner or his designated representative.” (Bus. & Prof. Code, § 10160; Cal. Code Regs., tit. 10, § 2753.)

7. “Every real estate broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties, including supervision of licensed activities, duties and compensation.” (Cal. Code Regs., tit. 10, § 2726.)

8. “Every person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified copy of his fictitious business name statement filed with the county clerk ...” (Bus. & Prof. Code, § 10159.5.) “A licensee shall not use a

fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.” (Cal. Code Regs., tit. 10, 2731.)

9. “A real estate licensee shall disclose his or her license identification number and, if that licensee is a mortgage loan originator, the unique identifier assigned to that licensee by the Nationwide Mortgage Licensing System and Registry, on all solicitation materials intended to be the first point of contact with consumers and on real property purchase agreements when acting as an agent in those transactions.” (Bus. & Prof. Code, § 10140.6, subd. (b)(1).) “Solicitation materials intended to be the first point of contact with consumers, and in which a licensee must disclose a license identification number, include ...business cards, stationery, websites owned, ...promotional and advertising fliers, brochures...” (Cal. Code Regs., tit. 10, § 2773.)

10. Brokers who employ broker associates to conduct mortgage loan originator activities must provide employment sponsorship information to the Nationwide Mortgage Licensing System and Registry within five (5) days of the commencement of employment. Termination of a broker/broker associate employment relationship must be reported to the Nationwide Mortgage Licensing System and Registry within five (5) days of the termination. (Cal. Code Regs., tit. 10, § 2758.5, subd. (d).)

11. The “officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.” (Bus. & Prof. Code, § 10159.2, subd. (a).)

12. “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.” (Bus. & Prof. Code, § 10145, subd. (a)(1).)

“A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker’s principal or a neutral escrow depository or shall deposit the funds into the broker’s trust fund account.” (Bus. & Prof. Code, § 10145, subd. (c).)

13. "Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson." (Cal. Code Regs., tit. 10, § 2832, subd. (a).)

14. California Code of Regulations, title 10, section 2831 governs how trust funds must be held and recorded 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 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.

15. California Code of Regulations, title 10, section 2834, subdivision (a) states: "Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

- (1) a salesperson licensed to the broker.
- (2) a person licensed as a broker who has entered into a written agreement pursuant to section 2726 with the broker.
- (3) 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.”

16. Business and Professions Code section 10166.051 grants the commissioner the authority to:

- (a) Deny, suspend, revoke, restrict, or decline to renew a mortgage loan originator license endorsement for a violation of this article, or any rules or regulations adopted hereunder.
- (b) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license endorsement, if an applicant or endorsement holder fails at any time to meet the requirements of Section 10166.05 or 10166.09, or withholds information or makes a material misstatement in an application for a license endorsement or license endorsement renewal.
- (c) Issue orders or directives to licensees who hold mortgage loan originator license endorsements, as follows:

17. Business and Professions Code section 10176 authorizes the Commissioner to suspend or revoke the license of a real estate licensee had done any of the following:

[¶]...[¶]

- (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 employer of the licensee the full amount of the licensee’s compensation, commission, or profit under any agreement authorizing or employing 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.

[¶]...[¶]

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

[¶]...[¶]

18. Business and Professions Code section 10177 authorizes the Commissioner to suspend or revoke the license of a real estate licensee or corporation if an officer, director, or person owning or controlling ten percent or more of the corporation's stock has done any of the following:

- (d) Willfully disregarded or violated the Real Estate Law

[¶]...[¶]

- (g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.
- (h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

[¶]...[¶]

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

Cause for Discipline

19. As to Accusations H-5933 SAC and H-5970 SAC, clear and convincing evidence to a reasonable certainty established cause for disciplinary action against respondents Americal and Cooper, pursuant to Business and Professions Code sections 10130, 10131, 10137, 10145, 10148, 10159.2, 10137, 10140.6, 10160, 10166.051, 10176, and 10177, subdivisions (d), (g), (h) and (j); and California Code of Regulations, title 10, sections 2726, 2731, 2753, 2773, 2831, 2831.1, 2832, 2834, and 2832.2.

Accusation H-5933 SAC

20. As to Accusation H-5933 SAC, cause for discipline of respondent's license as a real estate broker was established by reason of the matters set forth in Factual Findings 6-14 and Legal Conclusion 19. Respondent violated the Real Estate Law as stated below:

- a. Respondent paid Teri Tate, a real estate salesperson under the employ of another broker, directly for her services as an independent loan processor. A broker may not compensate a licensee except through their employing broker. (Bus. & Prof. Code, § 10137.)³
- b. Respondent did not retain the original real estate salesperson license of Larry Jones at all times Mr. Jones's license was registered with the Bureau as under respondent's employ. He was required to maintain the original until the salesperson is no longer employed under the broker's license. (Bus. & Prof. Code, § 10160; Cal. Code Regs., tit. 10, § 2753.)
- c. Respondent did not enter into a written broker-salesperson agreement when he employed Renee Anderson and could not, therefor, produce a copy for the auditor. A broker must execute a written salesperson agreement with licensed new employees. (Cal. Code Regs., tit. 10, § 2726.)
- d. Respondent used the MLS account of Pacific West Realty (PWR) for re-sales transactions. PWR is a fictitious business name owned by Felicia Bridge, a real estate salesperson. A broker cannot do business under a DBA unless it is licensed under his broker name. (Bus. & Prof. Code, § 10159.5; Cal. Code Regs., tit. 10, § 2731.)
- e. Respondent distributed business cards for his DBA Cal Green Lending that did not contain both his broker and his MLO license numbers. Pursuant to the law effective in California in 2009, all first point of contact materials must disclose these identification numbers. (Bus. & Prof. Code, § 10140.6, subd. (b)(1); Cal. Code Regs., tit. 10, § 2773.)
- f. Respondent did not timely report to the National Mortgage Licensing System (NMLS) and Registry the start of employment for broker associate Steve Kriske. The broker must report the association within five days. (Cal. Code Regs., tit. 10, § 2758.5.)

³ The Bureau alleged that respondent allowed Ms. Tate to perform acts in violation of laws regulating mortgage loan processing. An independent contractor employed by a mortgage loan originator must obtain a mortgage loan originator license to perform loan processing or underwriting for residential mortgage loans. (Bus. & Prof. Code, § 10166.03, subd. (c).) A real estate license and MLO endorsement are required before an individual can function as a mortgage loan originator. (Bus. & Prof. Code, § 10166.02, subd. (b).) Ms. Tate was issued her MLO endorsement effective December 28, 2010. There was no evidence to establish that Ms. Tate performed real estate sales or mortgage loan origination activities on behalf of respondent. As such, no violations of Business and Professions Code sections 10166.02, subdivision (b), and 10166.03, subdivision (c), are found.

g. By virtue of Legal Conclusions 6 through 14, respondent failed to adequately supervise and control the activities conducted on behalf of Americal by its corporate officers and employees. He is required to exercise reasonable supervision and control to ensure compliance with the Real Estate Law. (Bus. & Prof. Code, § 10159.2, subd. (a).)

Accusation H-5970 SAC

21. As to Accusation H-5970 SAC, cause for discipline of respondent's license as a real estate broker was established by reason of the matters set forth in Factual Findings 16-28 and Legal Conclusion 19. Respondent violated the Real Estate Law as stated below:

a. Respondent permitted Ms. Bridge, under his employ, to conducted property management operations under a fictitious business name that was not licensed to respondent as the broker. The DBA must be registered to the broker's license. (Bus. & Prof. Code, § 10131, subd. (b); Cal. Code Regs., tit. 10, § 2731.)

b. Respondent permitted Ms. Bridge to collect rents from tenants on his behalf without requiring her to deliver the funds directly to him, the principal, a neutral escrow depository, or the broker's trust account. Respondent exercised absolutely no control of client trust accounts and relinquished all control to Ms. Bridge in violation of law. (Bus. & Prof. Code, § 10145, subd. (c).)

c. Respondent allowed trust funds associated with property management activity under his license to be deposited into a trust account with an invalid designation using a DBA that was not licensed to respondent. Further, he was not a signatory on the trust account. Trust funds must be deposited in neutral escrow depository, or into the hands of the broker's principal, or into a trust account maintained by the broker in a bank or recognized depository. (Bus. & Prof. Code, § 10145 (a), Cal. Code Regs., tit. 10, § 2832.)

d. Respondent allowed trust funds associated with property management activity under his license to be deposited and disbursed by two invalid signatories. Ms. Bridge and Mr. Hill were not valid signatories on the trust account. Withdrawals from the trust account may be made only upon the signature of the broker or legally permitted individuals designated in writing by the broker. (Cal. Code Regs., tit. 10, § 2834, subd. (a).)

e. Respondent did not maintain or review client files, bank records, and other documents associated with his property management business. He is required to control and maintain all transaction documents for three years. (Bus. & Prof. Code, § 10148, subd. (a).)

f. By virtue of Legal Conclusions 16 through 28, respondent failed to adequately supervise and control the activities conducted on behalf of PWR by his employee Felicia Bridge. He is required to exercise reasonable supervision and control to ensure compliance with the Real Estate Law. (Bus. & Prof. Code, § 10159.2, subd. (a).)

Cost Recovery Analysis

22. The Commissioner has discretion to recoup audit costs after a final desist and refrain order or after a disciplinary hearing if the broker has been found to have violated Business and Professions Code section 10145 or any related regulation. (Bus. & Prof. Code, § 10148, subd. (b).) Additionally, the Commissioner may request the administrative law judge (ALJ) to direct a licensee found to have committed a violation of the Real Estate Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106, subd. (a).)

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 ALJ should consider the public interest in regulating the targeted conduct.

At hearing, respondent presented evidence that his sole source of income is from his brokerage activity. He is actively engaged in mortgage loan origination. There is no evidence that he lacked a “subjective good faith belief” in the merits of his position. He did not, however, present a colorable challenge to the discipline sought. He is married and has no dependents. His wife is not employed as she had been a graduate student for the last two years. His business supports both his and his mother’s housing expenses.

By reason of the matters set forth in Factual Findings 15 and 29, in conjunction with an analysis pursuant to the factors set forth in *Zuckerman, supra*, it is determined that the billed prosecution, investigation, and enforcement costs totaling \$13,368.50 represent a reasonable assessment to impose on respondent. Respondents Americal and Cooper, relative to Accusation H-5933 SAC, shall reimburse the Bureau in the amount of \$7,163. Respondent Cooper, relative to Accusation H-5970 SAC, shall reimburse the Bureau in the amount of \$6,205.50.

Conclusion

23. Respondent was originally licensed in 2004 as a real estate salesperson and in 2007 as a broker. It was established that from 2008 through 2011, respondent failed to exercise diligence in the performance of his brokerage duties to the public. In mitigation, respondent has not been previously disciplined by the Bureau. He is no longer engaged in property management activities. Also, respondent was cooperative during the investigation.

Under Accusation H-5993 SAC, the violations were largely managerial/administrative. The 2011/2012 Audit of Americal uncovered numerous violations of the Real Estate Law, including respondent's failure to maintain the original license of a salesperson, failure enter into a written broker-salesperson agreement, failure to register a broker-associate with the NMLS, direct payment to a salesperson who was employed by another broker, use of a DBA not registered to his brokerage, and distribution of business cards that did not contain the required MLO license information. The laws and regulations governing respondent's brokerage activities are in place to protect the public. Fortunately, it does not appear that any of his omissions, as alleged in Accusation H-5993 SAC, led to actual harm to the public.

Under Accusation H-5970 SAC, the violations involved a complete lack of oversight and concern for the property management activities conducted under respondent's license. Respondent has a duty to see to it that his broker license is not used in violation of the law and he is responsible for the actions of his employees. (*Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 360.) The courses respondent took to obtain his broker's license included courses in trust fund handling. It was unsound of respondent to enter into a verbal contract over the phone with Ms. Bridge, a woman he never met, to allow her to conduct business under his license while using her own DBA. His conduct showed a complete lack of fiduciary oversight to the public starting in 2008. Respondent understood that additional regulations were promulgated after 2008 to minimize the risk of harm to the public seeking mortgage loans. Respondent ignored regulations that were already in place to protect the public seeking property management services. His acts and omissions caused actual and significant harm to the clients of PWR as is set forth in Factual Finding 20.

Further, when respondent began receiving complaints from clients in 2011, other than meeting with two property owners, he still took no steps to confiscate client files, or review bank records. He did not attempt to determine the scope of the damage by contacting all clients. He did not offer to make clients whole. He simply cancelled the verbal contract with Mr. Bridge, in writing, without referring her to another broker. His conduct was dismissive at best, and focused only on minimizing his own financial exposure. He utterly failed in his fiduciary responsibility to the public. He showed a blatant lack of interest in the affairs of PWR. As argued by counsel for the Bureau, when he agreed to associate as the broker for Ms. Bridge, her

customers became his clients. Respondent failed to acknowledge this at any time from 2008 to present.

24. Having considered these several factors it would be contrary to the public interest to allow respondent to retain his broker license at this time. Though his cooperation with the investigation is noted, he presented no evidence of steps he has taken to ameliorate the Bureau's valid concern that he lacks a working knowledge of the Real Estate Law and does not appreciate the importance of its safeguards. There was no evidence that his ability to comply with regulations and ensure reasonable supervision and control of the affairs of his office is any better today. As such, there is insufficient evidence that he will exercise greater judgment in the performance of his duties as a designated broker-officer.

25. It would not be contrary to the public interest to allow Americal Financial to retain its corporate broker license, with appropriate restrictions in place. Respondent Cooper's broker license is properly revoked. However, it would not be contrary to the public interest to issue respondent a restricted real estate salespersons license. The matters set forth in the Factual Findings and Legal Conclusions as a whole were considered in making the following order.

ORDER

All licenses and licensing rights of respondent Americal Financial Group Inc., and respondent Cooper, under the Real Estate Law are REVOKED; provided, however, a RESTRICTED corporate real estate broker license shall be issued to Americal and a restricted salespersons license shall be issued to respondent Scott Douglas Cooper, pursuant to Section 10156.5 of the Business and Professions Code if respondents make application therefor and pay to the Bureau of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision.

Order as to Respondent Americal Financial Group, Inc.:

1. Costs (Accusation H-5933 SAC). Pursuant to Business and Professions Code section 10106, respondent Americal shall pay the Commissioner's reasonable cost for prosecution, investigation, and enforcement of this disciplinary action in the amount of \$7,163. Respondents Americal and Cooper are jointly and severally liable for this cost amount. These costs shall be paid in full or in accordance with a payment schedule as agreed to between respondents and the Commissioner. The Commissioner may, in her discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between respondents and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until

respondents enter into an agreement satisfactory to the Commissioner to provide for payment.

2. Within 60 days of the date of this order, respondent Cooper shall submit to the Bureau the name of another designated broker-officer for advance approval by Bureau.

Not adopted }

3. The restricted corporate real estate license issued to respondent Americal shall be subject to 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.

4. The restricted license issued to respondent Americal may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

5. The restricted license issued to respondent Americal may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

Respondent Americal shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

6. Respondent Americal 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Not adopted }

Order as to Respondent Scott Douglas Cooper:

The restricted real estate salespersons license issued to respondent Cooper 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:

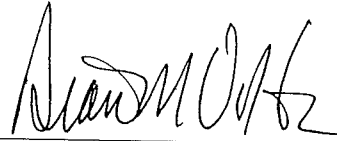
1. Respondent Cooper shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
2. Costs (Accusations H-5933 SAC and H-5970 SAC). Pursuant to Business and Professions Code section 10106, respondent Cooper shall pay the Commissioner's reasonable cost for prosecution, investigation, and enforcement of these disciplinary actions in the following amounts: \$7,163 (Accusation H-5933 SAC) and \$6,205.50 (Accusation H-5970 SAC). Respondents Americal and Cooper are jointly and severally liable for the costs associated with Accusation H-5933. These costs shall be paid in full or in accordance with a payment schedule as agreed to between respondent and the Commissioner. The Commissioner may, in her discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment.
3. The restricted salesperson license issued to respondent Cooper may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
4. The restricted license issued to respondent Cooper may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
5. Respondent Cooper shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
6. Respondent Cooper shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

7. Respondent Cooper 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

8. Professional Responsibility Condition:

Respondent Cooper shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

DATED: November 21, 2013



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings