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**FILED**  
MAR 08 2016  
BUREAU OF REAL ESTATE  
By L. Frost

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	
	)	No. H-6232 SAC
MICHAEL PATRICK REILLY,	)	OAH No. 2015040421
	)	
Respondent.	)	

**DECISION AFTER REJECTION**

This matter came on for hearing before Timothy J. Aspinwall, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, State of California, in Sacramento, California, on October 1 and 2, 2015. Real Estate Counsel Stephanie K. Sese represented Complainant Tricia D. Parkhurst, in her official capacity as a Deputy Real Estate Commissioner with the Bureau of Real Estate ("Bureau"). Respondent MICHAEL PATRICK REILLY ("Respondent") was present and represented by William A. Munoz, Esq., of Murphy, Pearson, Bradley & Feeney.

Oral and documentary evidence was received, and the case was submitted for decision on October 2, 2015. On October 26, 2015, the ALJ rendered a Proposed Decision ("the Proposed Decision") which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's





1                   (a) That the employing broker has read the Decision of the Real Estate

2                   Commissioner which granted the right to a restricted license; and

3                   (b) That the employing broker will exercise close supervision over the

4                   performance by the restricted licensee relating to activities for which a  
5                   real estate license is required.

6                   5. Respondent shall, within nine (9) months from the effective date of this

7 Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has,  
8 since the most recent issuance of an original or renewal real estate license, taken and  
9 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of  
10 the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this  
11 condition, Respondent's real estate license shall automatically be suspended until Respondent  
12 presents evidence satisfactory to the Real Estate Commissioner of having taken and  
13 successfully completed the continuing education requirement.

14                   6. All licenses and licensing rights of Respondent are indefinitely

15 suspended unless or until Respondent provides proof satisfactory to the Real Estate  
16 Commissioner, of having taken and successfully completed the continuing education course on  
17 trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section  
18 10170.5 of the Code. Proof of satisfaction of these requirements includes evidence that  
19 Respondent has successfully completed the trust fund account and handling continuing  
20 education courses, no earlier than 120 days prior to the effective date of the Decision in this  
21 matter. Proof of completion of the trust fund accounting and handling course must be  
22 delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA  
23 95813-7013 or by fax at 916-263-8758, prior to the effective date of this Decision.

24                   7. Respondent shall, within six (6) months from the effective date of this

25 Decision, take and pass the Professional Responsibility Examination administered by the  
26 Bureau including the payment of the appropriate examination fee. If Respondent fails to

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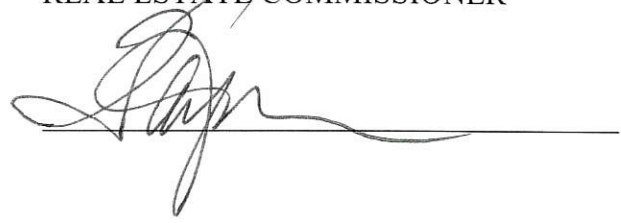
1 satisfy this condition, Respondent's real estate license shall automatically be suspended until  
2 Respondent passes the examination.

3           8. All licenses and licensing rights of Respondent are indefinitely  
4 suspended unless or until Respondent pays the sum of \$9,867.25 for the Real Estate  
5 Commissioner's reasonable cost of the investigation and enforcement which led to this  
6 disciplinary action. Said payment shall be in the form of a cashier's check made payable to the  
7 Bureau of Real Estate. The investigative and enforcement costs must be delivered to the  
8 Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to  
9 the effective date of this Decision.

10           This Decision shall become effective at 12 o'clock noon on **MAR 28 2016**

11 IT IS SO ORDERED 2/29/2016

12           WAYNE S. BELL  
13           REAL ESTATE COMMISSIONER

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**FILED**

NOV 23 2015

BUREAU OF REAL ESTATE

By K. Contreras

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	CalBRE No. H-6232 SAC
MICHAEL PATRICK REILLY,	)	OAH No. 2015040421
Respondent.	)	

NOTICE

TO: MICHAEL PATRICK REILLY, Respondent, and WILLIAM A. MUNOZ , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated October 26, 2015, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated October 26, 2015, is attached hereto for your information.

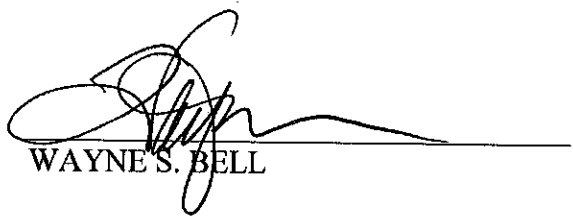
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on October 1 and October 2, 2015, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of October 1 and October 2, 2015, at the Sacramento office of the Bureau of Real Estate unless an extension of the time is granted for good cause shown.

1                   Written argument of complainant to be considered by me must be submitted within  
2 15 days after receipt of the argument of respondent at the Sacramento Office of the Bureau of Real  
3 Estate unless an extension of the time is granted for good cause shown.

4                   DATED: 11/22/2015.

5                   REAL ESTATE COMMISSIONER

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8                   WAYNE S. BELL

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BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHAEL PATRICK REILLY,

Respondent.

Case No. H-6232 SAC

OAH No. 2015040421

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Timothy J. Aspinwall, State of California, Office of Administrative Hearings, on October 1 and 2, 2015, in Sacramento, California.

Stephanie K. Sese, Counsel, Bureau of Real Estate (Bureau), represented Tricia D. Parkhurst, a Deputy Real Estate Commissioner, State of California (complainant).

William A. Munoz, Esq., of Murphy, Pearson, Bradley & Feeney represented Michael P. Reilly (respondent), who was present.

The case was submitted for decision on October 2, 2015.

**FACTUAL FINDINGS**

1. Complainant made and filed this Accusation in her official capacity on March 2, 2015.<sup>1</sup>
2. The Bureau issued respondent an original salesperson license on January 6, 2007, which has not been renewed. The Bureau issued respondent a broker license on November 15, 2010. Respondent does business as Green Isle Properties, Inc. His broker license will expire on November 14, 2018, unless earlier renewed or revoked.

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<sup>1</sup> Complainant amended the Accusation at hearing to delete the word "General" at page 3, line 3, and replace it with the word "Glencole."



### *Bureau Audit*

3. On or about March 12, 2014, the Bureau began a routine audit of respondent's property management activities to determine whether he was in compliance with the Real Estate Law and the Commissioner's Regulations. Corena de Sonnaville, an auditor with the Bureau, was assigned to conduct a review of relevant records related to respondent's property management activities between March 1, 2013, and February 28, 2014, the audit period. The auditor interviewed respondent and obtained and examined records on a sample basis. The auditor prepared an audit report dated May 14, 2014.

4. The auditor testified that respondent cooperated with the audit process. He provided documents and answered questions as requested during the audit.

5. During the audit period, respondent managed approximately 36 properties with 64 units and 35 owners. Respondent's management activities included collecting rents, paying expenses, and screening tenants. Respondent received average annual trust funds of approximately \$904,000. For his services he charged a management fee of \$70 to \$80 per month, plus one half of the first month's rent on new leases.

### *Respondent's Bank Accounts*

6. Respondent maintained four bank accounts for handling trust funds from property management activities. The accounts were as follows:

Chase Bank  
5801 Sunrise Blvd.  
Citrus Heights, CA 95610

Bank Account #1  
Green Isle Properties, Inc.

Respondent maintained Bank Account #1 to receive and disburse trust funds related to property management activities. Deposits consisted of property owner proceeds paid from Bank Account #2. Disbursements from this account consisted of property owner proceeds by means of Automatic Clearing House (ACH), whereby trust funds are automatically distributed to property owners.

Respondent also used this account to pay the mortgage on one of his own rental properties. The amount of mortgage payments was matched by corresponding deposits into Bank Account #1 from respondent's personal account.

El Dorado Savings Bank  
4701 Manzanita Avenue  
Carmichael, CA 95608

Trust Account #1

Green Isle Properties, Inc.  
Trust Account

Respondent maintained Trust Account #1 to receive and disburse trust funds from property management activities. Respondent deposited most of the trust funds into this account. Deposits consisted of rental and security deposit payments made by tenants and property owner contributions. Disbursements from this account consisted of security deposit disbursements, repair and maintenance bills, owner proceeds, and management fees.

Trust Account #2

Green Isle Properties, Inc.  
Glencole Trust Account

Respondent closed Trust Account #2 in June 2013. No violations were found with respect to this account.

Bank Account #2

Green Isle Properties, Inc.  
General Account

Respondent used Bank Account #2 for several purposes, including:

A business operating account for respondent's property management business under Green Isle Properties, Inc.;

Handling trust funds for client property owners;

In addition, respondent transferred funds from Trust Account #1 to Bank Account #2, then wrote checks from Bank Account #2 to Bank Account #1 for the purpose of making ACH payments to property owners.

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### *Account Balances*

7. The auditor prepared a combined bank account reconciliation for the accounts as of February 28, 2014. The combined accounts contained a shortage in the amount of \$64,096.97. The auditors were able to identify \$9,923.54 of the shortage as follows:

- (a) Negative Balances in the amount of \$2,045.15;
- (b) Bank Account Deficit in the amount of \$6,602.39; and
- (c) Bank Charges in the amount of \$1,276.

8. The auditors were not able to identify the remaining \$54,173.43 of the shortage. Respondent did not obtain the written consent of his client property owners before disbursement of funds that reduced the balance of the trust accounts below the aggregate trust fund liability of respondent to his client property owners. (Cal. Code Regs., tit. 10, § 2832.1.) There was no evidence that respondent converted any of the funds for his own use.

9. Based on the trust account shortages, and the absence of any explanation for such shortages, it is clear that respondent failed to maintain trust funds deposited into the accounts until disbursed according to instructions from respondent's client property owners. (Bus. & Prof. Code, § 10145, subd. (a)(1).)

### *Trust Account Records*

10. As of February 28, 2014, respondent failed to maintain a record of trust funds received and disbursed ("Control Record") for Bank Account #1. (Bus. & Prof. Code, § 10145, subd. (g); Cal. Code Regs., tit. 10, § 2831.)

11. Respondent also failed to maintain separate records for each beneficiary ("Separate Records") of trust funds received and disbursed for Trust Account #1, Bank Account #1, and Bank Account #2. (Bus. & Prof. Code, § 10145, subd. (g); Cal. Code Regs., tit. 10, § 2831.1.) The separate records per beneficiary showed withdrawals from Trust Account #1, but not the flow of funds from Bank Account #2 to Bank Account #1.

### *Trust Account Reconciliation*

12. During the audit period, respondent failed to reconcile at least once per month the sum of the Separate Records with the corresponding Control Record for Trust Account #1 and Bank Account #2. Respondent did not maintain a Control Record for Bank Account #1. (Cal. Code Regs., tit. 10, § 2831.2.)

### *Trust Account Designation*

13. Respondent failed to designate Bank Account #1 or Bank Account #2 as a trust account in the name of respondent or respondent's dba as trustee. Respondent

designated Trust Account #1 as a trust account, but not in the name of respondent or respondent's dba as trustee. (Bus. & Prof. Code, § 10145; Cal. Code Regs., tit. 10, § 2832.)

#### *Comingling of Funds*

14. Respondent used Bank Account #1 and Bank Account #2 for handling trust funds from property management activities. He also used the accounts for his own business and personal purposes. Specifically, during the audit period respondent used Bank Account #1 to make disbursements to client property owners, and also to make mortgage payments on his own rental property. Respondent used Bank Account #2 primarily as his business operating account. He also used Bank Account #2 to transfer funds from Trust Account #1 to Bank Account #1 from which the funds were disbursed to owners. (Bus. Prof. Code, § 10176, subd. (e); Cal. Code Regs., tit. 10, § 2835.)

#### *Unlicensed Corporation*

15. During the audit period respondent conducted licensed activity as Green Isle Properties, Inc., which was not licensed by the Bureau. (Bus. & Prof. Code, § 10130.)

#### *Respondent's Testimony*

16. Respondent began working in property management in 2007, when a client for a duplex purchase asked him to manage the property. Respondent agreed to do so, though he had never before managed property.

17. Respondent's property management activity increased. During the audit period he was spending approximately 80 percent of his time on property management. Respondent sold his property management business in June 2015, because it had become a time-consuming headache, and he did not want to do it anymore.

18. Respondent candidly testified that he did not have a good understanding of trust accounts, and that his trust account records were a mess. He also testified that prior to the audit he did not know about certain requirements including: maintenance of a Control Record of trust funds received and disbursed; maintenance of Separate Records for each beneficiary or property; reconciliation at least once per month of the Separate Records with the corresponding Control Record; designation of any account holding owner funds as a trust account naming respondent or respondent's dba as trustee; that the trustee obtain written consent from each owner of trust funds prior to allowing the balance of the funds to be reduced below the aggregate liability; and that any corporation through which respondent conducts licensed activity must be licensed by the Bureau.

19. Respondent testified that he did not recall covering these topics in the courses he took in order to obtain a broker's or realtor's license, and that he does not recall the substance of courses he completed.

20. Respondent was aware of the prohibition against comingling funds, though not of the specific statute and regulation. (Bus. Prof. Code, § 10176, subd. (e); Cal. Code Regs., tit. 10, § 2835.) Regardless of his knowledge, he chose to comeingle his personal and business funds with client trust funds. (Factual Finding 14.) Respondent did not give any clear explanation at hearing why he comingled funds when he knew his conduct was prohibited.

21. Respondent was surprised at the approximately \$64,000 trust fund shortage when he learned of it from the auditor. For purposes of restoring the trust account balance, respondent accepted the Bureau's audit report and restored the trust funds with his personal funds. Respondent believes that the actual shortage was probably less than \$64,000, but he did not conduct his own audit or present any evidence that the auditor's calculation of the shortage was incorrect. Respondent nonetheless argued at hearing that the shortage was a lesser amount.

22. Respondent never missed a payment to any of the property owners.

#### *Testimony and Letters of Support on Respondent's Behalf*

23. Claudia Bishop, one of respondent's former property owner clients, wrote a letter of support and testified on respondent's behalf. Ms. Bishop has known respondent for approximately six or seven years. She and her late husband met respondent when they were referred to him by a property developer for purposes of managing a condominium they had purchased in Orangevale. Respondent did an excellent job managing the Orangevale property. When they purchased another condominium in Fair Oaks they asked respondent to also manage that property. Ms. Bishop has great confidence in respondent's honesty and integrity. Respondent never missed any payments to her, and sent her detailed monthly statements regarding her account. Ms. Bishop relied upon respondent's honesty and integrity, especially after her husband passed, as he had handled their finances.

Ms. Bishop had not reviewed the Accusation prior to the hearing, nor was she aware that there had been a shortage of approximately \$64,000 in respondent's trust accounts. These facts do not change Ms. Bishop's high opinion of Respondent.

24. Dana Hart, a heating and air-conditioning contractor, wrote a letter of support and testified on respondent's behalf. Mr. Hart has done over 500 jobs involving repairs and replacements for respondent's clients. Respondent has always paid Mr. Hart for his work. Mr. Hart describes respondent as a principled and sometimes pushy businessman, who always wants to protect his client property owners and their tenants.

Mr. Hart read the Accusation on the morning of the hearing in this matter. The allegations do not change his high opinion of respondent, nor would his opinion about respondent change if the allegations were proven true.

25. Lakhbir Grewal purchased respondent's property management business in June, 2015. The asset purchase agreement includes a covenant not to compete, by which respondent is restricted from working in property management within 200 miles of the present business location for a period of seven years from the date of purchase.

26. Respondent submitted five additional letters of support from individuals who have known respondent on both a professional and personal basis for several years as property management clients, and other business owners. All of the writers speak highly of respondent's integrity and commitment to excellent service for his clients. The persuasive value of these letters is diminished by the fact that respondent, as he volunteered in his testimony, did not tell the writers of the pending Accusation until after they had written the letters. Respondent offered no explanation why he did not tell the letter writers of the Accusation when he asked them to write the letters.

### *Discussion*

27. There is no evidence that respondent converted any of the trust funds for his personal use. Respondent cooperated with the auditor, and when he learned that the audit revealed a shortage in the trust accounts he immediately took steps to restore the trust balance. None of respondent's client property owners suffered any financial loss because of his conduct in this matter. Respondent's property owner clients and service vendors were satisfied and felt he conducted himself ethically and in good faith.

28. Notwithstanding the fact that respondent restored the trust account balances, a number of concerns must be addressed to ensure that the public is protected. First, it is very concerning that respondent allowed the trust account shortages to occur. Second, it is also concerning that respondent continues to believe and argue, without presenting any supporting evidence, that the trust found shortage was less than the amount determined by the auditors. Third, an additional concern is that respondent comingled his own monies with the trust funds, even though he knew comingling of funds is prohibited. Respondent did not have a clear explanation for his choice to comingle funds. Fourth, respondent testified to the effect that he did not have the knowledge or skills to effectively manage the trust accounts in compliance with the applicable laws and regulations. Respondent testified that he did not take courses relevant to trust funds, and/or that he did not recall the substance of courses he completed to obtain his broker's license.

29. The concerns for public protection are only partially addressed by respondent's sale of his property management business and his intent to no longer engage in property management. Public protection requires that respondent remediate his deficiencies in knowledge as a precondition of licensure, even on a restricted basis, and that he maintain a rigorous education program to ensure he is equipped to serve as a licensed real estate broker. Public protection also requires that respondent serve a period of suspension to ensure that he understands and has time to reflect upon the gravity of his misconduct, especially in light of his insistence that the trust fund shortage was less than the amount which the evidence so clearly shows.

## *Costs*

30. Pursuant to Business and Professions Code sections 10148, subdivision (b), and 10106, the Bureau is authorized to seek reimbursement of the reasonable costs of the audit, investigation, and enforcement at hearing from a licensee found to have committed a violation of the Real Estate Law. The Bureau submitted a signed declaration and activity/cost detail for enforcement and prosecution of this case.

31. Bureau auditors spent 90.25 hours on this case at a cost of \$5,266. Bureau investigators and staff spent 13.85 hours investigating the case at a cost of \$863.25. Legal counsel spent 84.9 hours from February 25 to September 29, 2015, preparing this case for hearing at a cost of \$7,556.10. Given the very thorough work done by the Bureau's auditors and investigators, a more reasonable amount of time for legal counsel to prepare this matter would be 42 hours at \$89 per hour. Based on this adjustment, and per the declaration and cost detail, a total cost assessment of \$9,867.25 is reasonable for the tasks performed.

32. Respondent declined to testify about how much income he receives through his real estate business. He did, however, testify that he would be able to pay the full cost assessment if ordered to do so.

## LEGAL CONCLUSIONS

### *Applicable Statutes*

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 ...." (Bus. & Prof. Code, § 10130.)

2. "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).)

3. "The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds." (Bus. & Prof. Code, § 10145, subd. (g).)

4. The Commissioner may suspend or revoke the license of a real estate licensee who is guilty of "[c]omingling with his or her own money or property the money or other property of others which is received and held by him or her." (Bus. & Prof. Code, § 10176, subd. (e).)

5. The Commissioner may 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 "[w]illfully disregarded or violated the Real Estate Law ... or the rules and regulations of the commissioner ..." (Bus. & Prof. Code, § 10177, subd. (d)), or "[d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license." (Bus. & Prof. Code, § 10177, subd. (g).)

#### *Applicable Regulations*

6. "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 funds previously deposited to an account, check number and date of related disbursement.
- (6) With respect to funds not deposited in an account, identity of other depository and date funds were forwarded.
- (7) Daily balance of said account."

(Cal. Code Regs., tit. 10, § 2831, subd. (a).)

7. "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)." (Cal. Code Regs., tit. 10, § 2831, subd. (b).)

8. "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 containing 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." (Cal. Code Regs., tit. 10, § 2831, subd. (c).)

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



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

(Cal. Code Regs., tit. 10, § 2831.1, subd. (a).)

10. "Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2." (Cal. Code Regs., tit. 10, § 2831.1, subd. (b).)

11. "The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions." (Cal. Code Regs., tit. 10, § 2831.2.)

12. "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 the broker's salesperson." (Cal. Code Regs., tit. 10, § 2832, subd. (a).)

13. "The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds." (Cal. Code Regs., tit. 10, § 2832.1.)

14. "'Co-mingling' as used in Section 10176(e) of the Code is prohibited except as specified in this section." (Cal. Code Regs., tit. 10, § 2835.)

### *Causes for Discipline*

15. As to Accusation H-6232 SAC, clear and convincing evidence to a reasonable certainty established cause for disciplinary action against respondent's license pursuant to Business and Professions Code sections 10130, 10145, subdivisions (a) and (g), 10176, subdivision (e); and California Code of Regulations, title 10, sections 2831, 2831.1, 2831.2, 2832, 2832.1, and 2835, as set forth in Factual Findings 2 through 22. By committing each of these violations, respondent demonstrated negligence or incompetence in performing acts for which he is required to be licensed under the Real Estate Law. (Bus. & Prof. Code, § 10177, subd. (g).)

16. There was clear and convincing evidence that respondent willfully disregarded or violated the Real Estate Law (Bus. & Prof. Code, § 10177, subd. (d)), by comingling of funds (Bus. & Prof. Code, § 10176, subd. (e); Cal. Code Regs., tit. 10, § 2835), and engaging in activities for which a license is required through an unlicensed corporation Green Isle Properties, Inc. (Bus. & Prof. Code, § 10130), as set forth in Factual Findings 14 and 15. With respect to the other violations, complainant did not present clear and convincing evidence that respondent's acts and omissions were intentional.<sup>2</sup>

### *Cost Recovery Analysis*

17. The Commissioner has discretion to recoup audit costs 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).)

18. *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.

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<sup>2</sup> "In civil cases the word 'willful' as ordinarily used in courts of law, does not necessarily imply anything blameable ... but merely that the thing done or omitted to be done, was done or omitted intentionally. It amounts to nothing more than this: That the person knows what he is doing, intends to do what he is doing, and is a free agent." *Milner v. Fox* (1980) 102 Cal.App.3d 567, fn. 9, quoting *Goodhew v. Industrial Acc. Com.* (1958) 157 Cal.App.2d 252, 256-257.

19. By reason of the matters set forth in Factual Findings 30 through 32, in conjunction with an analysis pursuant to the factors set forth in *Zuckerman*, it is determined that a cost assessment of \$9,867.25 represents a reasonable amount to impose on respondent. Respondent shall reimburse the Bureau in this amount.

### ORDER

All licenses and license rights of respondent Michael Patrick Reilly, under the Real Estate Law are REVOKED; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent 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. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for 30 days from the date of issuance of said restricted license.

2. Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the education requirements of Business and Professions Code section 10170.5 for renewal of a real estate license. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the education requirements of Business and Professions Code section 10170.5 within 120 days prior to the effective date of the Decision in this matter.

3. Respondent 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.

4. Respondent shall, within nine months from the effective date of this Decision, present proof satisfactory to the Commissioner that respondent has taken and successfully completed a three semester unit course in each of the following: Real Estate Practice, and Legal Aspects of Real Estate, as required for broker license applicants under Business and Professions Code section 10153.2, subdivisions (a)(1)(A) and (B). Respondent shall complete these courses with an educational provider approved in advance by the Commissioner. If respondent fails to satisfy this education requirement, the Commissioner may order the suspension of the restricted license until respondent presents such proof.

5. Respondent shall, within 18 months from the effective date of this Decision, present proof satisfactory to the Commissioner that respondent has taken and successfully

Not Adopted

completed a three semester unit course in each of the following: Advanced Legal Aspects of Real Estate, Real Estate Principles, and Property Management, as required for broker license applicants under Business and Professions Code section 10153.2, subdivisions (a)(2)(A), (F), and (G). Respondent shall complete these courses with an educational provider approved in advance by the Commissioner. If respondent fails to satisfy this education requirement, the Commissioner may order the suspension of the restricted license until respondent presents such proof.

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

7. The restricted license issued to respondent 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.

8. The restricted license issued to respondent 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.

9. Respondent shall report in writing to the Bureau of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which respondent engaged during the period covered by the report.

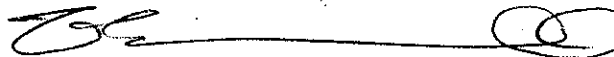
10. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until five years have elapsed from the effective date of this Decision.

11. Pursuant to Business and Professions Code sections 10106 and 10148, subdivision (b), respondent shall pay the Commissioner's reasonable costs for prosecution, investigation, and enforcement of this disciplinary action in the amount of \$9,867.25. 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 suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, 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 suspension shall remain in effect until payment is made in full or until respondent enters into an

*Not Adopted*

agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATED: October 26, 2015

A handwritten signature in black ink, appearing to read 'T. Aspinwall', is written over a horizontal line. The signature is stylized and includes a circular flourish at the end.

**TIMOTHY J. ASPINWALL**  
Administrative Law Judge  
Office of Administrative Hearings