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JAN 04 2017

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

MICHAEL STEPHEN THOMAS,

Respondent.

No. H-6242 SAC
OAH No. 2015050054

ORDER NUNC PRO TUNC
CORRECTING CLERICAL ERROR

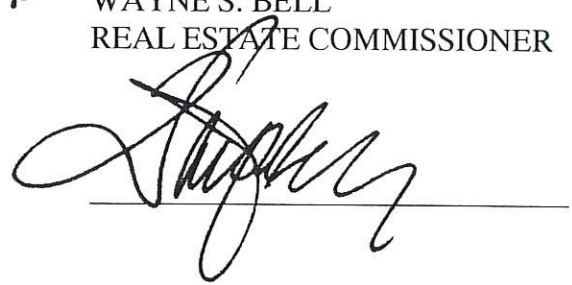
It having been called to the attention of the Real Estate Commissioner that there was a clerical error in the Decision dated December 14, 2016, and good cause appearing therefor, the Decision is:

Amended to show that the effective date is January 06, 2017.

This Decision shall become effective effectively immediately.

IT IS SO ORDERED 1/2/2017

WAYNE S. BELL
REAL ESTATE COMMISSIONER



FILED

BEFORE THE BUREAU OF REAL ESTATE

DEC 16 2016

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By B. Nicholas

In the Matter of the Accusation of)	CalBRE No. H-6242 SAC
MICHAEL STEPHEN THOMAS,)	OAH No. 2015050054
Respondent.)	

DECISION

The Proposed Decision dated November 14, 2016, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

On page 4, number 12 of the Factual Findings of the Proposed Decision should be amended to read:

“Ms. Stewart was the sole steward of TRC’s trust accounts, and was responsible for making deposits into those accounts.”

“...until Ms. Stewart or another TRC employee obtained their own broker’s licenses.”

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

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau’s power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the

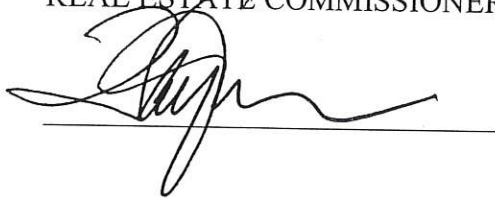
Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JAN 06 2016

IT IS SO ORDERED

12/14/2016

WAYNE S. BELL
REAL ESTATE COMMISSIONER



A handwritten signature in black ink, appearing to read 'Wayne S. Bell', is written over a horizontal line.

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

MICHAEL STEPHEN THOMAS,

and

KEELY ANN STEWART,

Respondents.

Case No. H-6242 SAC

OAH No. 2015050054

PROPOSED DECISION

This matter was heard before Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 11, 2016, in Sacramento, California.

Mary F. Clarke, Counsel for the Bureau of Real Estate (Bureau), represented complainant Tricia D. Parkhurst, Supervising Special Investigator of the State of California.

Respondent Keely Ann Stewart's real estate salesperson license was revoked effective June 3, 2016, and is no longer a party in this matter. The matter proceeded against Michael Stephen Thomas (respondent), who was present and represented by Frank M. Buda, Attorney at Law.

Evidence was received, the matter was submitted, and the record was closed on October 11, 2016.

FACTUAL FINDINGS

1. On October 8, 2005, the Bureau issued real estate salesperson license number S01711892 to respondent.¹ On November 29, 2006, the Bureau issued real estate broker license number B01711892 to respondent. The license expires on November 28, 2018,

¹ Respondent's license history did not provide the renewal and/or expiration dates of his real estate salesperson license.

unless renewed or revoked. On November 10, 2010, the Bureau approved individual and company mortgage loan originator license endorsements on respondent's real estate broker license. Keely Ann Stewart was listed as a real estate salesperson employed by respondent from July 23, 2013 to October 21, 2014.

2. On December 14, 2015, complainant made and filed the First Amended Accusation in her official capacity. Complainant seeks to revoke respondent's real estate broker license on the grounds that respondent, while acting as a broker for Tahoe Rental Connection (TRC), received funds in trust, and failed to safeguard those funds pursuant to his duties as a real estate broker.

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

4. At hearing, complainant requested that Paragraph 7, subparagraph (f), on page 4, lines 1 to 3, be deleted. Complainant also requested that Paragraph 9, subparagraph (f), on page 4, lines 23 to 24, be deleted. Respondent did not object to the changes, and the First Amended Accusation was amended as requested.

Background

5. TRC was a property management company in South Lake Tahoe owned by Dan Shideler, and managed by real estate salesperson Keely Stewart. On approximately three occasions in 2013, Ms. Stewart approached respondent, inquiring whether respondent would be interested in becoming the broker for TRC. Respondent accepted, and added TRC as a "dba"² under his real estate broker license on October 18, 2013. Three months earlier, Ms. Stewart had been added as a real estate salesperson under respondent's broker license. Respondent had not been previously involved with a property management company, nor did he have any property management experience when he agreed to become the broker for TRC. Respondent's primary experience was mortgage loan origination.

6. TRC paid respondent \$1,000 per month as the broker of record. However, respondent did not involve himself with TRC's property management activities, or the handling of trust funds related to such activities. Ms. Stewart managed the day-to-day operations of TRC, and respondent "went along with that." As the broker, respondent met with Ms. Stewart once a month at TRC's office to collect his broker's check, and to discuss TRC's property management activities. He would ask Ms. Stewart how things were going in general, and did not discuss specific items. Respondent conceded that he did not have an accounting background, and that he did not have the expertise to "know what to look for."

² DBA stands for "doing business as."

7. The Bureau's Enforcement Division received a complaint regarding respondent's oversight of TRC's property management activities. The Bureau scheduled an audit at TRC's office beginning on October 29, 2014. The scope of the audit covered the property management activities of respondent and TRC. A week before the scheduled audit, Mr. Shideler received a phone call from criminal defense attorney Larry Pilgrim, who told Mr. Shideler that he represented Ms. Stewart, and that Ms. Stewart had "come clean" and disclosed that she stole a substantial amount of money from TRC's trust accounts. Mr. Pilgrim emphasized that Ms. Stewart was the sole perpetrator, and that no one else was involved, or knew of the thefts.

8. Mr. Pilgrim had also called Bureau auditor Bosco Li, informing Mr. Li of Ms. Stewart's theft of the funds from TRC's trust accounts. Mr. Pilgrim stated that Ms. Stewart was responsible for maintaining the accounting records for TRC, and that Ms. Stewart took funds from TRC's trust accounts for personal use. Mr. Pilgrim informed Mr. Li that Ms. Stewart had been taking money from the trust accounts for approximately seven or eight years. Mr. Pilgrim informed Mr. Li that the amounts stolen were substantial, and "at least in the six figure range." Mr. Pilgrim stated that Ms. Stewart recorded the cash received from tenants, but did not deposit the cash into the trust accounts. Mr. Pilgrim was retained to defend Ms. Stewart in the event of a criminal investigation and trial.

Audit

9. The audit examination was conducted from October 29, 2014 to November 14, 2014, at TRC's office in South Lake Tahoe. The audit covered the period from November 1, 2011 to October 31, 2014. Prior to the audit, respondent phoned Ms. Stewart, who falsely assured respondent that TRC's records were accurate, and all of the trust account funds were accounted for. An entrance conference was held at TRC on October 29, 2014. Respondent, Mr. Li, Mr. Shideler and his attorney Michael Johnson, TRC's new bookkeeper Jody Boles, and Devin Maple, a Bureau special investigator, were present. During the entrance conference, respondent acknowledged that he did not know TRC's business activities.

10. During the entrance conference, Mr. Li and Mr. Maple learned that there was approximately \$320,000 missing in TRC's trust accounts. Mr. Johnson explained that the trust balances in Trust Account No. 1 and No. 2 were approximately \$350,000. He further stated that there should be approximately \$200,000 in tenant security deposits held in Trust Account No. 1. Mr. Johnson further stated that TRC was holding funds of approximately \$120,000 in Trust Account No. 1, per property owner Kathy Howley's instruction. TRC had collected rents for "Howley's" properties, but did not disburse any owner proceeds for a long period of time per the owner's request, due to a pending divorce proceeding. In addition, Mr. Johnson related that Trust Account No. 2 should have had a trust liability of approximately \$30,000. Mr. Johnson stated that the total cash balance in both trust accounts was approximately \$30,000. Therefore, TRC used these amounts to calculate the \$320,000 shortage. ($\$350,000 - \$30,000 = \$320,000$.)

11. Mr. Shideler asserted that a few days prior to the audit, he transferred approximately \$200,000 of his own personal funds into the trust accounts to cure the shortage, and planned to take out a second mortgage on a building he owned in order to cover the remainder of the shortage. Mr. Shideler did not provide documentation to Mr. Li regarding the transfer of his personal funds, thus Mr. Li was unable to verify whether the transfer actually took place.

12. Ms. Stewart was the sole steward of TRC's trust accounts, and was responsible for making deposits those accounts. TRC's checks were signed by Ms. Stewart with a signature stamp. Neither Mr. Shideler nor respondent were in the office to supervise Ms. Stewart's activities. During the audit period, Ms. Stewart collected rents and security deposits. Mr. Shideler believed that Ms. Stewart collected cash payments from tenants for rent, and only deposited half of the money. Respondent admitted during the entrance conference that he was not involved in TRC's day-to-day operations, and he was only letting TRC and Ms. Stewart use his broker's license until Ms. Stewart or another TRC employee obtained their own broker's license. Respondent confirmed that he was paid \$1,000 per month for the use of his broker's license. Respondent received a total compensation of \$16,000 during the audit period. Respondent was not aware of any shortages in the trust accounts until he was notified by Mr. Shideler prior to the audit.

13. Mr. Li conducted a bank reconciliation for Trust Account No. 1. He reviewed owner statements showing "owner reserves" (to cover maintenance and repairs) and other left over funds maintained in Trust Account No. 1, and security deposit accountability (by sampling lease agreements, deposit details and a spreadsheet of security deposits paid). Mr. Li determined the accountability for Trust Account No. 1 as follows:

Adjusted bank balance 9/30/2014:		\$20,569.78
Identified Accountability 9/30/2014		
Security Deposits:	\$198,735	
Owner Reserves:	\$133,794.77	\$332,529.77
Shortage:		\$<311,959.99>

(Bold in original.)

The owners of the trust account funds did not give their consent to allow respondent to reduce the balance of the trust account funds to an amount less than the existing aggregate trust fund liabilities.

14. Mr. Li was unable to conduct a bank reconciliation for Trust Account No. 2, due to many inaccuracies in the owner statements. He concluded that the accountability for Trust Account No. 2 was "indeterminable."

15. Respondent did not know how many trust accounts were used to handle trust account funds. Mr. Shideler and Ms. Boles told Mr. Li that there were two trust accounts – Trust Accounts No. 1 and No. 2. However, Ms. Stewart, in a declaration, stated that funds were commingled in TRC's general business account. Mr. Li examined TRC's general account maintained at Bank of the West to determine whether trust funds were maintained there. However, because TRC did not maintain separate records for its general business bank account, Mr. Li could not determine whether there were trust funds maintained in the general business account. He concluded that the accountability for TRC's general business bank account was "indeterminable."

16. Mr. Li determined that respondent failed to exercise reasonable supervision over the activities of his salespersons and transactions requiring a real estate license. He found the following:

- a. Trust Account No. 1 and No. 2's signature cards showed that respondent was not a signatory during the audit period.
- b. Respondent did not maintain broker-salesperson agreements for his salespersons, Ms. Stewart and Zachary Mosedale.
- c. In a signed declaration, respondent stated that "at no time would I ever be involved in the day-to-day operation, my relationship was purely to provide a temporary broker's license."
- d. Respondent did not know how many trust accounts were used to maintain trust account funds. Respondent did not know the software TRC used to maintain accounting records.
- e. Respondent was compensated \$1,000 per month as the broker of record for TRC. During the audit period, respondent received a total compensation of \$16,000 from TRC.

17. Mr. Li also determined that respondent failed to perform and maintain a monthly reconciliation comparing the balance of all separate beneficiary or transaction records (separate records) to the balance of the record of all trust funds received and disbursed (control record) for Trust Account No.'s 1 and No. 2.

18. Regarding trust account withdrawals, respondent allowed the following unlicensed persons: Mr. Shideler, Ward Shideler and Anne Shideler, to be signatories on TRC's trust accounts. Fidelity bonds were not maintained for these individuals during the audit period.

19. TRC's trust accounts were entitled "Dan Shideler DBA Tahoe Rental Connection Real Estate Trust Account." However, Mr. Shideler was not licensed by the Bureau.

20. Respondent added the DBA Tahoe Rental Connection to his broker's license from October 18, 2013 to October 26, 2014. During the audit, it was disclosed that from November 1, 2011, to October 17, 2013, property management activities were conducted under the unregistered business name, "Tahoe Rental Connection" without a real estate broker.

21. By its Decision and Order effective June 3, 2016, the Bureau revoked Ms. Stewart's real estate salesperson's license, on the basis that she embezzled trust account funds in the amount of approximately \$300,000 from her employer, TRC, from 2006 to 2014.

Respondent's Evidence

22. Respondent testified at hearing. He admitted that he should have been the signatory on TRC's trust accounts. He admitted that he did not adequately supervise TRC's property management activities. He immediately severed his ties to TRC when he found out that Ms. Stewart had embezzled trust account funds. It was never his goal to become TRC's broker of record, and he did so reluctantly. After a short period of time, Ms. Stewart or another associate in the office were supposed to obtain their broker's license and take over the property management activities. However, they never obtained their broker's licenses. Respondent admitted that it was his responsibility to be actively involved in TRC's property management activities. Respondent has no desire to become involved in property management activities ever again.

23. Respondent participates in community service as a volunteer crew leader for the Tahoe Area Mountain Bike Association, known as TAMBA. TAMBA builds and maintains multi-use trails in the Tahoe basin. As a crew leader, respondent is responsible for the safety of volunteers. He shows volunteers how to work on the trails. Respondent has been a crew leader for one year, and a volunteer for over four years. He works on the trails approximately 50 days out of the year, and has volunteered approximately 200 to 400 hours.

24. Respondent submitted character reference letters which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).³

³ Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

- (a) John A. Mengarelli, President of Alternative Risk Solutions, wrote in his signed and dated letter of November 6, 2015, that he has known respondent for over 10 years. Mr. Mengarelli has been respondent's mortgage client and has referred clients to respondent over the years. Mr. Mengarelli is aware of the Bureau's disciplinary action against respondent. Mr. Mengarelli wrote that respondent became the broker for TRC with the intention of temporarily helping a reputable small business in the community. He described respondent as a "true finance guy," an ethical person and true professional.
- (b) AJ Banford, President of The Radford Company, a mortgage brokerage firm licensed in Nevada, in his signed and dated letter of November 9, 2015, wrote that he has known respondent in a professional capacity for four years, and has worked closely with respondent in connection with loans that respondent has originated for his company. Mr. Banford is aware of the Bureau's accusation. Mr. Banford described respondent to be "of the highest moral character and professional integrity." Respondent has demonstrated "thorough knowledge of the laws and regulations applicable to our industry and follows them to the letter." Mr. Banford has never known respondent to act in an unprofessional or dishonest manner.
- (c) Mark Witte, President and Founder of ReferralClix, wrote in his signed, undated letter, that he has known respondent since college, and has observed respondent develop into a respected mortgage professional. Mr. Witte consoled respondent when he explained the "awful news" regarding the embezzlement of TRC's trust accounts by Ms. Stewart. Mr. Witte described respondent being more concerned about the victims of Ms. Stewart's embezzlement rather than himself. Mr. Witte wrote that respondent's motivation for "hanging his license" with TRC was "that of a local businessperson trying to help another local real estate company while they pursued their own broker's license. Mr. Witte described respondent as a "victim of his own good will," and as having tremendous guilt and remorse over what happened.
- (d) Tasha Thomas, respondent's wife, wrote in her signed letter dated October 10, 2016, that the situation at TRC was deeply troubling for respondent. He accepted responsibility for his actions, and regrets that he became involved with TRC. Respondent has shown remorse, and understands that proper oversight is required. He knows now that letting another business use his license was both wrong and irresponsible. Mrs. Thomas stated that respondent spends his weekends as a volunteer with TAMBA. Respondent is a trusted source by those who work with him, and he survives entirely by his good reputation. Mrs. Thomas stated that she and respondent rely on his license to pay their bills, and asked the court for compassion.

All of the letter writers have known respondent for an extended period of time. They all know of respondent's involvement with TRC as the broker of record. They have direct knowledge of respondent's professionalism, character and integrity before, during and after his involvement with TRC. They are in the best position to observe respondent's efforts at rehabilitation. Mr. Mengarelli and Mr. Witte wrote of respondent's willingness to help another business out of goodwill. However, neither expressed knowledge that respondent collected \$1,000 each month for the use of his broker's license, or that respondent did little to no work as a broker for TRC. Mr. Banford wrote of respondent's "highest moral character and integrity" in the mortgage loan business, but did not address respondent's motivation to engage in property management activities, when he knew nothing about this type of work. Mrs. Thomas wrote on behalf of her husband because she relies on his license for family income. The letters, while commendable, are given nominal weight.

Discussion

25. The Bureau has developed guidelines for use in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee. In this case, respondent has not been convicted of a crime. However, the criteria are still applicable in cases where harm to the public has occurred. Rehabilitation criteria include, but are not limited to: passage of not less than two years from the act that is substantially related to the qualifications, functions or duties of a licensee; restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee; correction of business practices; new and different social and business relationships from those which existed at the time of the commission of the acts; stability of family life; completion of formal educational or vocational training courses for economic self-improvement; significant and conscientious involvement in the community; and change in attitude from that which existed at the time of the conduct in question. (Cal. Code Regs., tit. 10, § 2912.)

26. Considering the Bureau's applicable rehabilitation guidelines, it has been approximately three years since respondent became the broker of record for TRC. Respondent has not been asked or ordered to pay restitution to TRC, nor has he voluntarily offered to pay any amount of restitution due to the trust account shortages. Respondent has changed his business practices by avoiding property management activities. He cancelled the DBA Tahoe Rental Connection from his license on October 27, 2014. He has returned to mortgage loan origination as his sole source of income, and has no desire to engage in property management activities ever again.

27. Respondent's family life is stable, and he has commendably worked in the mortgage business since his graduation from college. Respondent did not present any evidence to show that he has taken any formal educational or vocational training courses for economic self-improvement, other than that required for his real estate broker's license. Respondent has engaged in significant and conscientious involvement in his community through his work with TAMBA, and he continues to do so at the present time. Respondent

expressed remorse for TRC's monetary losses, and admitted that he did not adequately supervise the property management activities of TRC. It has been judicially recognized that rehabilitation requires an acknowledgment of wrongdoing. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Ca1.3d 933, 940 [Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation].) Respondent has acknowledged his wrongdoing.

28. Respondent has demonstrated some rehabilitation since October 2014, when he removed TRC from his broker's license. It is very troubling, however, that respondent accepted a total of \$16,000 in compensation from TRC as its broker, but did virtually nothing in exchange. He agreed to become TRC's broker of record, but admittedly knew nothing about property management. He removed himself as TRC's broker of record only after he learned of Ms. Stewart's embezzlement. He did not pay back the \$16,000 TRC gave him, or any restitution to TRC. Respondent did not take real estate courses in ethics or fiduciary responsibilities to gain insight into his duties as a real estate broker. Had respondent been proactive in his duties as a broker for TRC, he could or would have discovered the shortages in the trust accounts due to Ms. Stewart's embezzlement. Harm to TRC's clients was significant. Based on the foregoing, it is not in the public interest to allow respondent to continue to hold a real estate broker's license at this time.

Costs

29. Complainant has requested reimbursement for costs incurred by the Bureau in connection with prosecution and investigation of this matter, in the total amount of \$15,213.09. (\$4,552.35 for prosecution, and \$3,154.05 for investigation, \$7,506.69 for the audit). The costs were certified in the manner provided by Business and Professions Code sections 10106. The cost of the audit has been charged against respondent in accordance with Business and Professions Code section 10148, subdivision (b). The time spent appears to be reasonable, and the activities claimed were necessary to the development and presentation of the case. Respondent testified that he makes his living through mortgage loan commissions, and he does not have a steady income. His ability to pay \$15,213.09 in total costs will be difficult. Complainant's request for costs is addressed further in the Legal Conclusions below.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Complainant has the burden of proving the grounds for discipline alleged in the First Amended Accusation by clear and convincing evidence to a reasonable certainty. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Business and Professions Code section 10131, subdivision (b), defines a real estate broker, in part, as one who leases or rents, or offers to lease or rent, or collects rents from real property.

3. Business and Professions Code section 10145 provides, in part, that a real estate broker who accepts funds belonging to others, must place those funds into a trust fund account maintained by the broker. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker per instructions from the person entitled to the funds. (Bus. & Prof. Code, § 10145, subd. (a)(1).)

Withdrawals may be made from a trust fund account of an individual broker only upon the signature of that broker, or a real estate salesperson licensed to the broker, or an unlicensed employee of the individual broker, if the broker has fidelity bond coverage equal to at least the maximum amount of the trust funds. (Bus. & Prof. Code, § 10145, subds. (a)(2)(A), (a)(2)(C).)

4. Business and Professions Code section 10148, subdivision (b) provides that the commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found in a final decision following a disciplinary hearing, that the broker has violated Business and Professions Code section 10145 or a regulation or rule of the commissioner interpreting Business and Professions Code section 10145.

5. Business and Professions Code section 10159.2 provides, in part, that the officer designated by a corporate broker licensee shall be responsible for the supervision and control of the activities conducted on behalf of the corporation.

6. Business and Professions Code section 10177, subdivisions (d), (g), (h) and (j) provide, in part, that the commissioner may suspend or revoke a real estate license, if the licensee has done any of the following:

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(g) Demonstrated negligence or incompetence in performing an act for which he 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.

7. California Code of Regulations, title 10, section 2725 provides, in part, that a broker shall exercise reasonable supervision over the activities of his salespersons. A broker shall establish a system for monitoring compliance with policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering compliance, so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker. Pursuant to subdivision (d), reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures, and systems to review, oversee, inspect and manage the handling of trust funds.

8. California Code of Regulations, title 10, section 2726 provides that a real estate broker shall have a written broker-salesperson arrangement with each of his salespersons. 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.

9. California Code of Regulations, title 10, section 2831.2 provides:

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.

10. California Code of Regulations, title 10, section 2832.1 provides that the real estate broker shall obtain written consent of every principal who is an owner of the funds in the trust account prior to each disbursement, if the 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.

11. California Code of Regulations, title 10, section 2832 provides, in part:

(a) 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.

[¶] ... [¶]

12. California Code of Regulations, title 10, section 2834 provides:

(a) 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.

(b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:

(1) an officer through whom the corporation is licensed pursuant to section 10158 or 10211 of the Code; or

(2) one of the persons enumerated in paragraph (1), (2) or

(3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account.

(c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, or the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

Causes for Discipline

13. Cause for discipline of respondent's real estate broker license was established pursuant to California Code of Regulations, title 10, section 2832.1, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Finding 13, in that respondent caused, suffered or permitted a shortage in Trust Account No. 1 in the amount of \$311,959.99, less than the aggregate liability of respondent to all owners of such funds, without the prior written consent of the owners of the funds.
14. Cause for discipline of respondent's real estate broker license was established pursuant to Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 12 and 19, in that respondent failed to place trust funds entrusted to him as the broker of record into a neutral escrow depository or a trust account in his name as trustee.
15. Cause for discipline of respondent's real estate broker license was established pursuant to California Code of Regulations, title 10, section 2831.2, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 16 and 17, in that respondent failed to reconcile at least once a month, the balance of all separate beneficiary or transaction records with Trust Account No's. 1 and 2.
16. Cause for discipline of respondent's real estate broker license was established pursuant to California Code of Regulations, title 10, section 2834, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Finding 18, in that respondent authorized Dan Shideler, Ward Shideler and Anne Shideler, unlicensed persons without fidelity bond coverage, to make withdrawals from Trust Account No's. 1 and 2.
17. Cause for discipline of respondent's real estate broker license was established pursuant to California Code of Regulations, title 10, section 2726, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Finding 16b, in that respondent failed to obtain written agreements with real estate salespersons Zachary Mosedale and Ms. Stewart.
18. Cause for discipline of respondent's real estate broker license was established pursuant to Business and Professions Code sections 10159.2, and 10177, subdivisions (g) and (h), and California Code of Regulations, title 10, section 2725, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 12, 16 and 22, in that respondent failed to exercise reasonable supervision over the acts of TRC and its agents and employees.

//

Conclusion

19. When all the evidence is considered, protection of the public requires that respondent's real estate broker license be revoked. (Findings 25 to 28.)

Costs of Investigation and Prosecution

20. Business and Professions Code section 10106 provides, in pertinent part, that the commissioner may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Subdivision (c), states:

A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

In addition, Business and Profession Code section 10148, subdivision (b), provides that the commissioner shall charge a real estate broker for the cost of any audit.

21. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 10106. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

22. As set forth in Finding 29, complainant requested that respondent be ordered to pay the costs of the investigation and enforcement (including the audit) incurred up to the date of hearing in the total amount of \$15,213.09. When all the relevant factors set forth in *Zuckerman* are considered, and balancing respondent's concerns against the Bureau's obligation to protect the public through licensing actions such as this one, assessment of costs in the amount of \$15,213.09, in bringing and prosecuting the First Amended Accusation is reasonable and appropriate.

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ORDER

1. The real estate broker license of respondent Michael Stephen Thomas is REVOKED, by reason of Legal Conclusions 13 to 18.

2. Respondent shall pay to the Bureau costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 10106 in the amount of \$15,213.09, in a manner as prescribed by the Bureau.

DATED: November 14, 2016

DocuSigned by:
Danette C. Brown
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DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings