

**FILED**

MAY 19 2017

BUREAU OF REAL ESTATE

By M. Roberts

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	
	)	CalBRE No. H-6400 SAC
AMERICAN HORIZON GROUP	)	
SERVICES INC., and	)	OAH No. 2016061213
ROBERT ALLEN BUSSELL	)	
_____ Respondents.	)	

DECISION

The Proposed Decision dated March 21, 2017, 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 correction:

Pursuant to Section 11517(c)(2)(C) of the Government Code, Paragraph 6 of the "ORDER" as found on page 15 of the Proposed Decision requiring Respondent to report in writing to the Bureau of Real Estate respondent's activities for which a real estate license is required is deleted.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker license is granted to ROBERT ALLEN BUSSELL and a restricted corporation license is granted to AMERICAN HORIZON GROUP SERVICES INC.

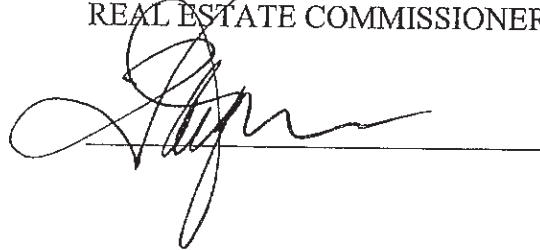
Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever 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 JUN 09 2017.

IT IS SO ORDERED 5/12/2017

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



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

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

In the Matter of the Accusation Against:

AMERICAN HORIZON GROUP  
SERVICES, INC.,

and

ROBERT ALLEN BUSSELL,  
Respondents.

Case No. H-6400 SAC

OAH No. 2016061213

**PROPOSED DECISION**

This matter was heard before Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 21 and 22, 2017, in Sacramento, California.

Adriana Z. Badilas, Counsel for the Bureau of Real Estate (Bureau), represented complainant Tricia D. Parkhurst, Supervising Special Investigator of the Bureau, State of California.

Frank M. Buda, Attorney at Law, represented Robert Allen Bussell (respondent), owner of American Horizon Group Services, Inc.

Evidence was received, the matter was submitted, and the record was closed on February 22, 2017.

**FACTUAL FINDINGS**

1. On July 11, 2001, the Bureau issued a real estate salesperson license to respondent, which was terminated on October 3, 2015. On October 4, 2005, the Bureau issued real estate broker license number B01312822 to respondent. The license expires on January 12, 2018, unless renewed or revoked. On January 12, 2006, the Bureau issued real estate corporation license number C01521108 to American Horizon Group Services, Inc.

(American Horizon), with respondent as designated officer.<sup>1</sup> The license expires on January 11, 2018, unless renewed or revoked.

2. On May 31, 2016, complainant made and filed the Accusation in her official capacity. Complainant seeks to revoke respondent's real estate broker license, and the corporation license of American Horizon, on the grounds that respondent, while acting as a broker for American Horizon, received funds in trust for property management activities, and failed to safeguard those funds pursuant to his duties as a real estate broker.

3. Respondent timely filed a Notice of Defense. 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.

#### *Audit*

4. The Bureau conducted a routine audit of American Horizon's records for the period January 1, 2014, to January 31, 2015, to determine whether American Horizon handled and accounted for trust funds, and whether American Horizon performed licensed real estate activities in accordance with the Real Estate Law and the Commissioner's Regulations. Rana Tarazi, Auditor III with the Bureau, conducted the audit. Respondent and Stacy Bussell, respondent's wife, cooperated during the audit, and provided documents to Ms. Tarazi as requested. Ms. Tarazi testified at hearing, consistent with her Audit Report, which was admitted into the record.

5. The routine audit was limited to American Horizon's property management activities, and was performed intermittently beginning on February 12, 2015, and ending on September 18, 2015. In conducting her audit, Ms. Tarazi examined the following records on a sample basis:

- a. Bank Signature Cards
- b. Bank Statements
- c. Trust Account Detail Report (Separate Records for Each Beneficiary)
- d. Trust Account Balance Report
- e. Bank Account Activity Report (Control Records)
- f. Check Register
- g. Cancelled Checks
- h. Invoices
- i. Property Management and Lease Agreements
- j. Transaction Files

6. During the relevant time period, American Horizon conducted property management activities for 204 property owners. The company managed 247 residential

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<sup>1</sup> Respondent is President and 100 percent shareholder of American Horizon.

properties, one apartment complex, and one commercial building, totaling 335 units, and paid expenses for compensation. American Horizon's property management activities included: collecting rents; soliciting tenants; advertising properties; paying mortgages, property taxes and insurance; and making repairs and maintenance. American Horizon charged management fees as a flat fee or six percent of collected rents per unit per month.

7. As of January 31, 2015, trust funds collected from the property management activities were handled through two trust accounts at Bank of America. The trust accounts were maintained as follows:

**Trust Account No. 1**

Bank Name: Bank of America

Bank Address: 2221 Douglas Boulevard, Roseville, CA 95661

Account Name: Robert Bussell  
American Horizon Group Services, Inc.  
Trust Account (Property Management)

Account No.: [REDACTED]

Signatories: Robert Bussell (Real Estate Broker)  
Stacy Bussell

Signature Required: One

Description: Trust Account No. 1 was used for the deposits and disbursements related to 247 properties and their owners. Deposits consisted of rents, security deposits, and any property management related fees. Disbursements were made for repairs, maintenance, broker fees, and owner proceeds.

**Trust Account No. 2**

Bank Name: Bank of America

Bank Address: 2221 Douglas Boulevard, Roseville, CA 95661

Account Name: American Horizon Group Services, Inc.  
Trust Account (Property Management)

Account No.: [REDACTED]

Signatories: Robert Bussell  
Stacy Bussell  
Wisfe Aish

Signature Required: One

Description: Trust Account No. 2 was used for the deposits and disbursements related to one apartment complex with sixty units and their owners. Deposits consisted of rents, security deposits, and any property management related fees. Disbursements were made for repairs, maintenance, broker fees, and owner proceeds.

*Trust Account No. 1 Shortages*

8. On December 31, 2014, Ms. Tarazi conducted a bank account reconciliation for Trust Account No. 1. She did so by comparing the adjusted bank balances<sup>2</sup> to the sum of the balances of all the separate records, as follows:

Adjusted bank balance on December 31, 2014:	\$452,970.20
Accountability on December 31, 2014:	\$530,811.28
<b>Shortage:</b>	<b><u>\$77,841.08</u></b>

9. Ms. Tarazi determined that the \$77,841.08 shortage in Trust Account No. 1 was caused by: (1) over disbursements of management fees of \$25,785; (2) software charges for "App Folio" of \$4,612; (3) bank service charges of \$1,195.75, not reimbursed by American Horizon; and (4) an unidentified shortage of \$46,248.33.

10. Ms. Tarazi noted in her audit report the existence of a property named "mang1234-1234 Melody Lane" (Melody Lane) in the Trust Account Balance Ledger. The property had a negative balance of \$77,841.08 as of December 31, 2014. This balance matched the shortage amount in Trust Account No. 1. Mrs. Bussell, American Horizon's bookkeeper, told Ms. Tarazi that Melody Lane was not a real property that was being managed. Mrs. Bussell created Melody Lane in the computer system to enter any charges or credits related to property management. Mrs. Bussell also stated that the shortage was due to over disbursements of management fees, bank fees, application fees, and fees charged via "PayPal" to collect application fees. Ms. Tarazi found no evidence during the audit that American Horizon obtained written consent from every principal who was an owner of funds in Trust Account No. 1 prior to each disbursement from the account.

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<sup>2</sup> The adjusted bank balance is the bank balance on a certain cutoff date minus any outstanding checks plus any deposits in transit.

11. Ms. Tarazi also conducted a bank account reconciliation for Trust Account No. 2, but did not find a shortage. The adjusted bank balance of \$16,153.38 as of December 31, 2014, matched the accountability of \$16,153.38.

*Unlicensed Signatories on Trust Accounts*

12. Ms. Tarazi reviewed the signature cards for both trust accounts. Mrs. Bussell was a signatory on Trust No. 1. Mrs. Bussell and property owner Wisfe Aish (Aish) were signatories on Trust No. 2. Respondent was a signatory on both trust accounts. Mrs. Bussell and Aish were unlicensed individuals. Neither held fidelity bond coverage at least equal to the amount of the trust funds to which they had access at any time.

13. During the audit, respondent provided updated signature cards to Ms. Tarazi, showing that Mrs. Bussell was no longer a signatory to Trust Account No. 1, and that Mrs. Bussell and Aish were no longer signatories to Trust Account No. 2.

*Overdisbursement of Management Fees*

14. American Horizon's management fees were earned on either a flat rate, or were based on a percentage of rents collected. From January 1, 2014 and December 31, 2014, respondent earned a total of \$199,667.50 in management fees from property management activities. However, total disbursements of management fees were \$225,452.50. Respondent disbursed excess management fees of \$25,785, which contributed to the shortage in Trust Account No. 1.

*Respondent's Evidence*

MRS. BUSSELL

15. Mrs. Bussell testified at hearing. She and respondent have been married for 17 years, and have one child together, and two children from respondent's previous marriage. Mrs. Bussell is not an officer of American Horizon. Mrs. Bussell is a high school graduate and attended a half a year of junior college. Mrs. Bussell does not have an accounting background. She recently obtained her real estate salesperson license. Mrs. Bussell's job at American Horizon was to oversee the staff, perform bookkeeping for property management activities and corporate accounts, and process payments from property owners and renters. Mrs. Bussell has been the bookkeeper for American Horizon since 2006.

16. Mrs. Bussell testified that respondent became ill in late 2010 or early 2011.



17. Mrs. Bussell created the Melody Lane fictional property in American Horizon's Yardi Genesis property management software, which was set up in 2007. Mrs. Bussell explained that Melody Lane served as a "link" to the company's property management activities associated with charges and credits. In 2014, American Horizon switched to an online-based system software called Appfolio. During the switch to Appfolio, the property management database from Yardi Genesis was transferred to Appfolio. American Horizon "went live" with Appfolio on January 1, 2014, and after a few "glitches," the company began using Appfolio full time in February or March 2014. Mrs. Bussell conceded that trust reconciliations did not occur in 2014 until May of that year.

18. Mrs. Bussell acknowledged the shortage that Ms. Tarazi found in Trust Account No. 1. With regard to the overdisbursement of management fees, she explained that she charged management fees on the first of each month. The fees were based on a flat fee or percentage of rent. If the disbursement was less, she would credit it into the Melody Lane account to cure the shortage. After charging for management fees earned at the beginning of each month, Mrs. Bussell took a draw from Trust Account No. 1 in anticipation of those fees coming in. She did so "to keep the daily business running." Mrs. Bussell did not know that she could not take an advance on the fees she was going to earn. She was not a real estate licensee at the time, did not know the real estate laws and regulations pertaining to trust accounts, and she admittedly did not reconcile the bank records as frequently as she should have.

19. Mrs. Bussell also admitted that disbursements were made from Trust Account No. 1 to Appfolio for software charges. Payments were made by automatic deduction to Appfolio. Mrs. Bussell did not know that such charges could not be made from Trust Account No. 1. She stopped disbursing funds to Appfolio after the audit.

20. Mrs. Bussell also admitted that bank services charges were disbursed from Trust Account No. 1. The bank also charged its fees via automatic direct payments. She also did not know that such payments could not be made from Trust Account No. 1.

21. Mrs. Bussell did not tell respondent about the shortage in Trust Account No. 1 until January 2015. Respondent was "mad about it," and told Mrs. Bussell that she could not take any advances for management fees from the trust account. Mrs. Bussell stopped taking advances, and started putting money into Trust Account No. 1 to cure the shortage. Respondent and Mrs. Bussell had no discussions during the time that respondent was out of the office, about respondent stepping aside and having another designated officer take his place.

#### RESPONDENT

22. Respondent testified that he has been a real estate licensee since 2001, and has been the only designated officer for American Horizon since 2006. He has no prior discipline. He conceded that he has no accounting background. Respondent's testimony was



consistent with his letter to the Bureau dated September 17, 2015, explaining the shortage in Trust Account No. 1, as follows:

This letter is in regards to the property listed in the trust account balance named "mang1234-1234 Melody Lane". This is not a real property being managed, it exists in the system as our previous software (Yardi Genesis) required the management company to have a property to associate any charges or credits to.


The shortage in this property is due to several factors pointed out by the auditor, management fees have been over-disbursed, bank service fees, application service fees, and fees charged via "PayPal" have contributed to the issue. Since the audit started we have made the changes necessary to have these expenses paid from the company's operating account and not through the trust account. In addition, we have put more than \$11,000 back into the trust account to reduce the shortage. The current general ledger and copy of cleared checks are enclosed to show funds credited into trust account.

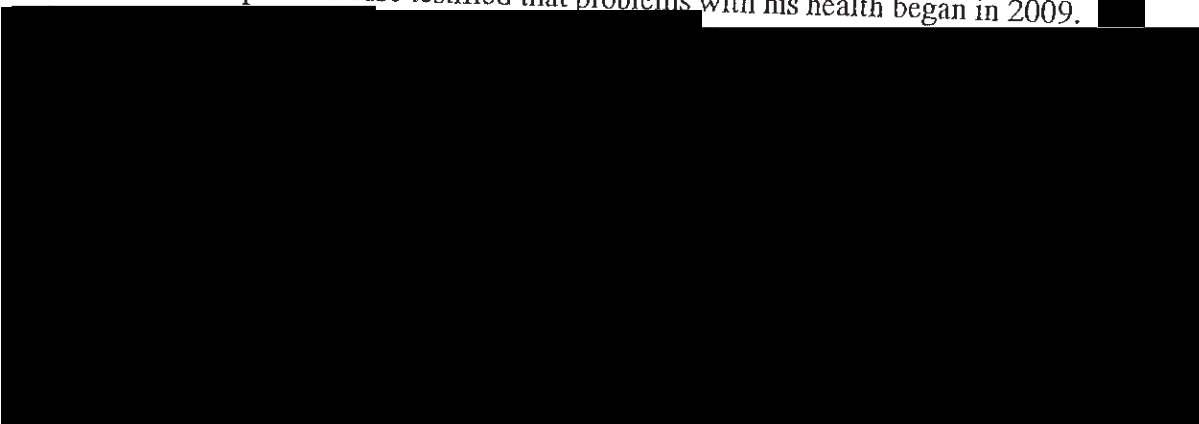
PayPal is no longer being used to collect application fees. All application fees are credited to the property the applicants are applying for, once the screening is performed the fee is paid out to the management company. The costs associated with using the Appfolio accounting system (screening & unit fees) are paid from the company's operating account now. All management fees due are charged to the actual property, no "draws" have been taken as lump sums from the "Melody" property so that management fees are no longer over-dispersed. We will continue to add funds into the trust account on a monthly basis until the shortage is fully repaid.

This was American Horizon's and my first audit thru the BRE, I have never been taught or shown how to handle Trust fund's and had to rely on educational materials, since the audit I have taken a refresher course on Trust accounts and had my office manager who does the accounting take a Trust handling course so this type of issue does not happen again. We have fully cooperated with the auditor and want to thank her for showing our errors.

(Signature on original.)

23. With regard to having Aish as a signatory on Trust Account No. 2, respondent explained that Aish's attorney required Aish to be a signatory on the trust account. Respondent copied language from another property management agreement prepared by a well-known national company, and he included the signatory language in his own property management agreement with Aish. He was not aware that Aish could not be a signatory under California Real Estate Law.

24. Respondent also testified that problems with his health began in 2009. 



25. Respondent never discussed advanced fees with Mrs. Bussell. Due to his unfortunate health issues, Mrs. Bussell was forced to take control of the company, and "she just didn't understand." He stated, "It never crossed my mind to have someone else step in" to run the business for him while he was ill and sought medical treatment.

26. Respondent currently has six employees working for American Horizon. Mrs. Bussell is the office manager and is a licensed real estate salesperson, but does not actively engage in real estate sales. There is a receptionist, and three licensed real estate salespersons. Property management is 90 percent of the business, and 10 percent is real estate sales. American Horizon now has only one trust account.

#### CHARACTER LETTERS

27. Respondent submitted several email testimonials from current property management clients which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).<sup>3</sup> The emails attest to American Horizon's competency in servicing their clients, maintaining properties, and collecting rents. However, none of the clients expressed knowledge about the shortage in Trust Account No. 1, and respondent's absence from the office in 2013 and 2014. The emails, while kind, are given nominal weight.

<sup>3</sup> 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."

## *Discussion*

28. 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.)

29. Considering the Bureau's applicable rehabilitation guidelines, it has been over two and a half years since the discovery of the shortage in Trust Account No. 1, improper signatories to the trust accounts, and the overdisbursement of management fees during the Bureau's routine audit. Such property management discrepancies occurred under the purview of respondent's real estate broker license, and American Horizon's corporation license, and are substantially related to the qualifications, functions and duties of a real estate licensee.

30. Respondent has made corrections to his business practices, by having only one trust account that he reviews on the 15th of every month. His current trust account has approximately 253 properties, and 240 beneficiaries. Respondent did not indicate whether anyone else, besides himself, is the signatory on the sole trust account. Respondent has taken a trust account course since the audit, and his office manager has taken a trust handling course to ensure that a shortage in the trust account does not happen again. Due to respondent's health improvements, he is present at the office, and is actively engaged in the company's property management activities, indicating a change in attitude from that which existed at the time of the conduct in question.

31. Respondent has acknowledged his wrongdoing. Respondent expressed remorse for the shortage in Trust Account No. 1, and admitted that he did not adequately supervise the property management activities of American Horizon in 2013 and 2014. The shortage in Trust Account No. 1 has been cured. 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 Cal.3d 933, 940 [Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation].)

32. In addition to his rehabilitation evidence, respondent provided evidence in mitigation establishing that he was ill at the time of the shortage to Trust Account No. 1. However, it is very troubling that respondent allowed an unlicensed individual, his wife, to run the business during his illness. Mrs. Bussell had no training in accounting, yet she was in charge of reconciling the trust accounts. Further, Mrs. Bussell did not know that she could not take advances in anticipation of incoming management fees from Trust Account No. 1. Due to her lack of knowledge, and respondent being unaware of her actions, the evidence did not establish that respondent acted fraudulently or dishonestly, but rather, he demonstrated severe recklessness by failing to supervise the operations of the company.

Respondent admitted that it did not occur to him to have another real estate broker step in to assist him with the business, which would have been prudent. Respondent did not take proactive steps to safeguard the trust accounts, and to protect the interests of the owners and beneficiaries of the trust account funds, in accordance with his fiduciary duties. Harm to American Horizon's clients was significant due to the shortage in Trust Account No. 1. Although respondent's health has improved, and he has educated himself on trust accounting, to ensure the safety and interests of his clients and the public, respondent should be monitored. Given respondent's efforts to cure his transgressions, he should be placed on a restricted real estate broker's license for three years.

#### *Costs*

33. Complainant has requested reimbursement for costs incurred by the Bureau in connection with prosecution and investigation of this matter, in the total amount of \$7,536.40. (\$2,794.60 for prosecution, \$506.30 for investigation, and \$4,235.50 for the audit). The costs were certified in the manner provided by Business and Professions Code section 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. Complainant's request for costs is addressed further in the Legal Conclusions below.

### LEGAL CONCLUSIONS

#### *Applicable Law*

1. Complainant has the burden of proving the grounds for discipline alleged in the 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).)

Business and Professions Code section 10145 further provides that 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) and (a)(2)(C).)

4. Business and Professions Code section 10176, subdivision (i), provides that the "commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of ... (i) any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing."

5. Business and Professions Code section 10177, subdivision (d), provides that the commissioner may suspend or revoke the license of a real estate licensee, or a corporation, if an officer, director or person owning or controlling 10 percent or more of the corporation's stock has willfully disregarded or violated the Real Estate Law or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law.

6. Business and Professions Code section 10106, subdivision (a) provides that the commissioner may request the Administrative Law Judge 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 investigation and enforcement of the case. Subdivision (e) provides that 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 enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

7. 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.

8. 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.

9. 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*

10. Cause for discipline of respondent's real estate broker license and American Horizon's corporation license was established pursuant to Business and Professions Code section 10145, in conjunction with California Code of Regulations, title 10, section 2832.1, and Business and Professions Code section 10177, subdivision (d), by reason of Findings 8 to 11, in that respondent caused, suffered or permitted a shortage in Trust Account No. 1 in the amount of \$77,841.08, less than the aggregate liability of respondent to all owners of such funds, without the prior written consent of the owners of the funds.

11. Cause for discipline of respondent's real estate broker license and American Horizon's corporation 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 Findings 12 and 13, in that respondent authorized Mrs. Bussell, an unlicensed person without fidelity bond coverage, to make withdrawals from Trust Account No. 1.

Cause also exists for discipline of respondent's real estate broker license and American Horizon's corporation 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 Findings 12 and 13, in that respondent authorized Mrs. Bussell and Aish, unlicensed persons without fidelity bond coverage, to make withdrawals from Trust Account No. 2.

12. Cause for discipline of respondent's real estate broker license and American Horizon's corporation license was not established pursuant to Business and Professions Code section 10176, subdivision (i), in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of Findings 18 to 21, and 32, in that respondent's actions did not constitute an act of fraud or dishonesty.

### *Conclusion*

13. When all the evidence is considered, protection of the public requires that respondent's real estate broker license be revoked, the revocation stayed, and that respondent be issued a restricted real estate broker license for a period of three years.

### *Costs of Investigation and Prosecution*

14. 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.

15. 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.

16. As set forth in Finding 33, 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 \$7,536.40. 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 \$7,536.40, in bringing and prosecuting the Accusation is reasonable and appropriate.

#### ORDER

All licenses and licensing rights of respondent Robert Allen Bussell, including the corporation license of American Horizon Group Services, Inc., under the Real Estate Law are revoked; provided, however, a restricted real estate broker license and corporation license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code, if respondent makes applications therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this

Decision. The restricted licenses 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. The restricted licenses 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.



2. The restricted licenses 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.

3. 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 restricted licenses until three years have elapsed from the effective date of this Decision.

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

5. 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 licenses until respondent passes the examination.

6. 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.

7. Pursuant to Section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if respondent has corrected the trust fund violation(s) found in the Audit Report. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may

suspend the restricted licenses 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 respondent and the Commissioner. The suspension 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, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

8. Respondent shall, prior to and as a condition of the issuance of the restricted licenses, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days after to the effective date of the Decision in this matter.

9. 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 \$7,536.40, in a manner as prescribed by the Bureau.

DATED: March 21, 2017

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