

BEFORE THE BUREAU OF REAL ESTATE

FILED

STATE OF CALIFORNIA

FEB 06 2018

* * *

BUREAU OF REAL ESTATE

By B. Nicholas

In the Matter of the Accusation of) CalBRE No. H-6509 SAC
)
BRYANT PROPERTY) OAH No. 2017071141
MANAGEMENT, INC., and RANDY)
SCOTT BRYANT)
)
Respondents.)

DECISION

The Proposed Decision dated January 10, 2018, 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)(B) 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 corporation and/or broker license is granted to Respondents.

Pursuant to Government Code Section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. 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 **FEB 27 2018**.

IT IS SO ORDERED 2/5/18

WAYNE S. BELL
REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to read "Daniel J. Sandri", is written over a horizontal line.

By: DANIEL J. SANDRI
Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

BRYANT PROPERTY MANAGEMENT,
INC. AND RANDY SCOTT BRYANT,

Respondents.

Case No. H-6509 SAC

OAH No. 2017071141

PROPOSED DECISION

This matter was heard before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 13, 2017, in Sacramento, California.

Thomas D. Cameron, Supervising Auditor of the State of California (Complainant) was represented by Truly Sughrue, Counsel, Bureau of Real Estate (Bureau).

Respondents Bryant Property Management (BPM) and Randy Scott Bryant (respondent or Mr. Bryant) were represented by Michele Louise Giguere, Attorney at Law.

Evidence was received, the record was closed, and the matter was submitted for decision on December 13, 2017.

FACTUAL FINDINGS

1. On July 9, 1990, the Bureau issued respondent a real estate salesperson license. On July 9, 2015, respondent was issued a real estate broker license number 01081579 (license). His license will expire on July 8, 2019, unless renewed or revoked.

2. On February 24, 2014, the Bureau issued BPM, a real estate broker corporation license 01946044 (BPM license). Pearl Elaine Becknell was the initial designated officer for BPM. On October 13, 2015, respondent was designated as the officer of BPM. The BPM license will expire on February 23, 2018, unless renewed or revoked. Respondent owns 90 percent of the shares of BPM and his wife Teri Bryant owns 10 percent of the shares.

3. On March 7, 2017, complainant signed and thereafter filed an Accusation against respondents seeking to discipline the licenses issued to BPM and respondent, based upon the findings of an audit conducted for the period of April 1, 2015, through April 30, 2016.

4. Respondents timely filed a Notice of Defense 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.

Audit Scope and Background

5. On or about June 13, 2016, the Bureau began a routine audit of respondents' license activities to determine whether respondents were in compliance with the Real Estate Law and the Commissioner's Regulations. Alvin Samareta, General Auditor II for the Bureau was assigned to conduct a review of relevant records related to respondents' property management activities from April 1, 2015, through April 30, 2016. Mr. Samareta interviewed respondent and Mrs. Bryant, examined bank and property management records. Mr. Samareta assembled the records provided to him by respondent into working papers which were admitted into evidence at hearing. Mr. Samareta prepared an audit report dated February 28, 2017, and testified at the hearing in this matter.

6. During the audit period, respondents managed properties for approximately 192 owners. The properties included 233 residential properties, one apartment complex with six units, three commercial properties with 25 units, and 125 duplexes with 250 units. Respondents' management activities included collecting rents, soliciting tenants, advertising properties, paying expenses and ensuring that repairs and maintenance was completed on the properties. Respondents received average annual trust funds of approximately \$5,200,000. Respondents' charged a management fee of eight percent from rents collected per month and a flat fee from some owners that ranged from \$35 to \$55 per month.

7. Respondents maintained one bank account for handling trust funds from property management activities. The bank account at American River Bank was titled "Bryant Property Management, Inc. California Investors" (BPM Account). The account was used for the deposits and disbursement related to the properties managed by BPM. Deposits into the account consisted of rents, security deposits, and property management fees. Disbursements were made for repairs, maintenance, broker fees and owner proceeds. The signatories on the account were respondent, Mrs. Bryant, and Ms. Becknell, who was listed as the designated officer for "F&E Management Services, Inc.," (F&E) who was also engaged in property management activities.

///

Audit Findings

TRUST FUND ACCOUNTABILITY AND BALANCES

8. Mr. Samareta prepared a reconciliation for the BPM Account as of April 30, 2016. The reconciliation covered the time period from April 1, 2015, through April 30, 2016. Mr. Samareta compared the adjusted bank balance to the sum of the balances of all the separate records. The adjusted account balance should match the accountability, which is the amount of money that should be in the BPM Account. Mr. Samareta determined that as of April 30, 2016, the adjusted bank balance for the BPM Account was \$80,125.06. The accountability was \$174,137.27. The shortage was \$94,012.21.

Mr. Samareta determined that \$638 of the shortage was caused by negative balances in accounts for multiple property owners. He determined that respondents failed to deposit \$49,370.29 into the BPM Account, which had been erroneously deposited into the F&E bank account. Ms. Bryant informed Mr. Samareta that she was aware that receipts of trust funds that had been booked into the control and separate records for the BPM Account had been erroneously deposited by BPM employee Stacy Lynn Fields, into the F&E bank account. Ms. Fields was a licensed real estate broker and bookkeeper for both BPM and F&E.

9. Mr. Samareta determined that Ms. Fields was not listed as a signatory to the BPM Account. However, documents provided by respondents revealed that Ms. Fields signed BPM Account checks and made a total of \$15,719.27, in withdrawals from the BPM Account. As a result, Mr. Samareta determined that the withdrawals were unauthorized. The withdrawals should have been made from the F&E Account. The \$15,719.27 withdrawal errors were corrected during the audit.

10. Mr. Samareta also excluded \$2,875.51 in deposits to the BPM Account, as "deposits in transit." The deposits had not cleared the bank at the time of the audit and respondent failed to provide source documentation, such as deposit slips, for the deposits. Mr. Samareta could not identify the cause of the remaining shortage of \$25,409.14.

11. Respondents disbursed funds which resulted in the balance of the BPM Account to fall below the trust fund liability. Respondents provided no evidence that written consent of any property owner was obtained to allow disbursement of funds from the BPM Account to an amount less than the trust fund liability. Such prior written consent is required if a disbursement of funds would reduce the balance below the trust fund liability.

INACCURATE CONTROL RECORDS

12. The reconciliation performed by Mr. Samareta revealed that the adjusted bank balance of \$80,125.06 for the BPM Account, did not match the balance of \$173,499.27, listed in respondents' control records as of April 30, 2016. As a result, Mr. Samareta determined that respondents' control records were not accurate.

INACCURATE RECONCILIATION OF CONTROL AND SEPARATE RECORDS

13. During the audit period, respondents failed to accurately reconcile at least once a month, the balance of all separate records with the records of trust funds received and disbursed for the BPM Account. Mr. Samareta determined that the balance of all of the separate records reviewed did not match the adjusted bank balance.

TRUST ACCOUNT DESIGNATION AND SIGNATORY

14. During the audit period, respondents failed to designate the BPM Account as a trust account. Respondents also failed to designate respondent's name as the trustee on the signature card for the BPM Account. Respondent corrected these errors during the audit. The BPM Account was designated as a trust account and the signature card was updated. Mr. Samareta found no evidence that the BPM Account was used for any purpose other than for BPM property management activities.

15. Mr. Samareta also determined that the multiple withdrawals from the BPM Account by Ms. Fields during the audit period were not authorized because she did not obtain prior authorization from respondent and was not listed as a signatory for the account.

LACK OF BROKER SUPERVISION

16. Mr. Samareta determined that the shortage of over \$94,012.21 in the BPM Account was a result of respondent's failure to maintain adequate supervision over the property management activities of BPM. Additionally, respondent failed to supervise Ms. Fields and ensure that she was not withdrawing funds from the BPM Account without authorization. The lack of supervision resulted in the erroneous withdrawal of over \$15,000, which should have been taken from the F&E Account.

17. On November 9, 2016, Mr. Samareta held an exit conference with respondent. Mr. Samareta prepared a "non-compliance" summary which listed the findings of the audit. Respondent signed the summary.

Evidence of Justification, Mitigation, and Rehabilitation

18. Respondent explained that in December 2007, he purchased from William Martin a portion of California Investor, a property management company. California Investor had offices in Sacramento and Auburn, California. Respondent purchased the Sacramento Office, which he named California Investors. Mr. Martin continued to own the Auburn office, which continued to operate under the name California Investor. Ms. Fields was the bookkeeper for both offices. Respondent agreed to continue to employ Ms. Fields as bookkeeper for the Sacramento office after the purchase.

19. From December 2007, until approximately October 13, 2015, Ms. Becknell was the supervising broker for both offices. Ms. Becknell was also an officer for F&E, in which California Investors was under. Ms. Becknell supervised Ms. Fields, who was responsible for entering and depositing all monies received from tenants and owners into a property management software system. Ms. Fields was also responsible for reconciling the accounts each month. Ms. Fields was authorized to sign checks for California Investor, but not California Investors.

Respondent learned from Ms. Becknell that due to the similarity of the two property management company names, Ms. Field would sometimes deposit trust fund monies into the wrong account. For example, instead of depositing a rent check for a property managed by California Investors, she deposited the check into the California Investor trust account. Both companies had bank accounts at American River Bank. When Ms. Becknell discovered the errors, she asked Ms. Fields to correct the deposit mistakes.

20. On February 23, 2014, BPM was issued a corporation license by the Bureau. On February 24, 2014, "DBA California Investors" was added to the license. All of the property management activities of California Investors were conducted under the BPM license. Ms. Becknell was the designated officer and respondent's broker at BPM until October 13, 2015.

Mrs. Bryant testified that before respondent took over as the broker of record for BPM, she reviewed the California Investors deposits for 2014 and 2015. Mrs. Bryant took on some of the bookkeeping duties and found that \$51,546.03 in deposits was missing from the account. Mrs. Bryant informed Ms. Becknell of the discrepancy. Ms. Becknell wrote a check to California Investors for \$51,546.03, which Mrs. Bryant deposited in the BPM Account and entered as a deposit in the property management software. Mrs. Bryant testified that she is not sure whether entering the money as a deposit into the property management software system was correct, because the deposits had already been recorded as deposits in the tenant or owner ledgers. In fact, the \$51,546.03 was a shortage refund not a new deposit.

21. After respondent became the broker for BPM, he discovered that there were still accounting problems, which Mrs. Bryant believed were due to the property management software. In January 2016, BPM migrated to new property management software, which Mrs. Bryant began to manage. Approximately six months after respondent became the broker of record for BPM, he learned of the audit by the Bureau. Respondent had intended to terminate Ms. Fields due to the repeated accounting errors that had been discovered, but decided that he needed her assistance to access information about past deposits and accounting information. Ms. Fields was terminated on September 12, 2016, after the completion of the audit.

22. Currently, Mrs. Bryant is responsible for the bookkeeping. She ensures that the BPM Account is reconciled each month. She learned how to correctly reconcile the account as a result of the audit. In approximately October 2017, respondent hired Merrill Accountancy to conduct an audit of the property management files to assist in finding the

amount of the remaining trust fund shortage. The audit has not been completed. However, in a letter dated December 12, 2017, the Merrill auditor opined that the remaining discrepancy is approximately \$24,000. Respondent has set aside \$94,012.21, while awaiting the Merrill Accountancy audit findings. Respondent intends to deposit any funds necessary to make up for any shortage in the BPM Account. He contended that no owners have been affected by the accounting errors and all owners have been timely paid.

Discussion

23. Prior to becoming the broker of record for BPM, respondent undertook important steps to ensure that BPM accounting was accurate. Respondent was aware that Ms. Fields had made errors in accounting relative to the BPM account. Mrs. Bryant reviewed records and discovered \$51,546.03 in deposits was missing from the account. The monies were returned to BPM and deposited into the BPM Account. In January 2016, respondent began implementing a new property management software system.

Since the completion of the audit, respondent has undertaken a focused effort to correct the violations noted in the audit report. The trust fund account was properly designated and the signature card was updated. Mrs. Bryant has learned how to correctly reconcile the BPM Account on a monthly basis. Respondent also hired an accounting firm to identify the trust fund shortage and has set aside money to address any discrepancy.

24. Although there is no evidence that respondent committed fraud and no clients have lost money as a result of respondent's conduct, he failed to comply with the Bureau's statutes and regulations. The result was a significant and unidentified shortage in the BPM account. Furthermore, respondent was aware before he became the broker of record for BPM, that Ms. Fields had made accounting errors. Despite this information, he failed to ensure that Ms. Fields was properly supervised and performing her functions on behalf of BPM in accordance with Real Estate Law and the Commissioner's regulations.

25. The purpose of disciplinary actions is to protect the public, not to punish the violator. When all the facts are considered, discipline must be imposed on respondents for the violations identified during the audit. Complainant recommended that respondents be issued restricted licenses to allow for continued auditing and to ensure that the Real Estate Law and Commissioner's regulations are followed. It would not be contrary to the public interest to issue BPM a restricted corporation license, and issue respondent a restricted real estate broker license, subject to terms and conditions designed to provide additional training, monitor his activities, and protect the public.

Costs

26. Pursuant to Business and Professions Code sections 10106 and 10148, subdivision (b), the Bureau is authorized to seek reimbursement of audit and enforcement costs at hearing. As of December 11, 2017, the Bureau incurred \$2,781.25 in attorney charges, in connection with the prosecution of this case. Additionally, the Bureau incurred

audit charges totaling \$3,802.59. At hearing, the Bureau submitted statements of costs and supporting documentation of enforcement and audit costs. As set forth in Legal Conclusion 18, the costs of enforcement and audit costs totaling \$6,583.84 are reasonable.

LEGAL CONCLUSIONS

Burden of Proof

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.)

Applicable Statutes and Regulations

2. Business and Professions Code section 10050.1 provides:

Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

3. Business and Professions Code section 10145, provides in pertinent part:

(a)(1) 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.

(2) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of that broker, or in the case of a corporate broker, only upon the signature of an officer through whom the corporation is licensed pursuant to Section 10158 or 10211, or one, or more, of the following persons if specifically authorized in writing by the individual broker or officer:

- (A) A real estate salesperson licensed to the broker.
- (B) Another broker acting pursuant to a written agreement with the individual broker that conforms to the requirements of this part and any regulations promulgated pursuant to this part.
- (C) An unlicensed employee of the individual broker, if the broker has fidelity bond or insurance coverage equal to at least the maximum amount of the trust funds to which the unlicensed employee has access at any time. For purposes of this section, bonds or insurance providing coverage must protect the broker from intentional wrongful acts committed by an employee of that business, including theft, dishonest acts, or forgery. Bonds and insurance providing coverage may be written with a deductible of up to 5 percent of the coverage amount. For bonds and insurance with a deductible, the employing broker shall have evidence of financial responsibility that is sufficient to protect members of the public against a loss subject to the deductible amount.

4. Business and Professions Code section 10159.2, subdivision (a), provides that:

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

5. Business and Professions Code section 10177 authorizes the Commissioner to suspend or revoke the license of a real estate licensee or corporation if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock 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 or she is required to hold a license.
- (h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

6. California Code of Regulations, title 10, section 2725, provides that:

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.
- (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- (g) Regular and consistent reports of licensed activities of salespersons. The form and extent of such policies, rules, procedures and systems shall take into consideration the number of

salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

7. California Code of Regulations, title 10, section 2831 governs how trust funds must be held and recorded as follows:

- (a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:
 - (1) Date trust funds received.
 - (2) From whom trust funds received.
 - (3) Amount received.
 - (4) With respect to funds deposited in an account, date of said deposit.
 - (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
 - (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
 - (7) Daily balance of said account.
- (b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).
- (c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data

processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

8. California Code of Regulations, title 10, section 2831.2 states that:

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.

9. California Code of Regulations, title 10, section 2832 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.”

10. California Code of Regulations, title 10, section 2832.1 provides:

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.

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

- (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.

Cause for Discipline

12. As set forth in the Factual Findings 8 through 11, clear and convincing evidence established that as of April 30, 2016, respondents' caused, suffered, or permitted the balance of the funds in the BPM Account to be reduced to an amount of approximately \$94,012.21 less than the aggregate liability of the BPM Account to all owners of such funds. Therefore, respondents' licenses are subject to discipline for violations of Business and Professions Code section 10145, in conjunction with section 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, section 2832.1.

13. As set forth in the Factual Finding 14, clear and convincing evidence established that respondents' failed to deposit trust funds into a trust fund account in the

name of BPM as trustee at a bank. Therefore, respondents' licenses are subject to discipline for violations of Business and Professions Code section 10145, in conjunction with section 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, section 2832.

14. As set forth in the Factual Findings 8 through 13, clear and convincing evidence established that respondents failed to maintain an accurate columnar record in chronological sequence of all trust funds received and disbursed from the BPM Account containing all of the required information set forth in California Code of Regulations, title 10, section 2831. Therefore respondents' licenses are subject to discipline due to the violations of Business and Professions Code section 10145, in conjunction with section 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, section 2831.

15. As set forth in the Factual Finding 13, clear and convincing evidence established that respondents failed to reconcile at least once a month, the balance of separate beneficiary or transactions records with the control record of trust funds received and failed to maintain a record of reconciliations for the BPM Account. Therefore, respondents' licenses are subject to discipline due to violations of Business and Professions Code section 10145, in conjunction with section 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, section 2831.2.

16. As set forth in the Factual Finding 15, clear and convincing evidence established that respondents' caused, permitted or allowed the withdrawal of trust from the BPM Account by Ms. Fields, who was not authorized in writing by respondent to make such withdrawals. Therefore, respondents' licenses are subject to discipline for violations of Business and Professions Code section 10145, in conjunction with section 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, section 2834.

17. As set forth in the Factual Findings 15, 16, 19, and 20, clear and convincing evidence established that respondent failed to exercise reasonable supervision over the actions of BPM in a manner that allowed the acts and violations set forth in Legal Conclusions 3 through 16. Therefore, respondent's license is subject to discipline for violations of Business and Professions Code section 10145, in conjunction with sections 10177, subdivisions (d), (g) and (h), and 10159.2, and California Code of Regulations, title 10, section 2725.

Cost Recovery Analysis

18. The Commissioner has discretion to recover 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).) As set forth in Factual Finding 26, complainant established that the Bureau incurred audit charges totaling \$3,802.59, which the Bureau is entitled to recover from respondents. The Commissioner may also request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and

enforcement of the case. (Bus. & Prof. Code, § 10106, subd. (a).) The Bureau established that it incurred \$2,781.25 in attorney charges in connection with the prosecution of this case.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. Respondents did not establish a basis to reduce or eliminate the costs in this matter. In the absence of evidence to the contrary, costs of the investigation and prosecution are reasonable. As set forth in the Order, respondents shall pay the Bureau \$6,583.84 for the total cost of the audit and enforcement of this matter.

Conclusion

19. When considering the Factual Findings and Legal Conclusions as a whole, discipline of respondents' licenses is warranted. However, it would not be contrary to the public interest to issue BPM a restricted corporation license and respondent a restricted real estate broker license based upon the terms and conditions set forth in the Order.

ORDER

All licenses and licensing rights of respondents Bryant Property Management, Inc., and Randy Scott Bryant under the Real Estate Law are REVOKED, provided however, that a restricted corporation license shall be issued to Bryant Property Management, Inc. and a restricted real estate broker license shall be issued to Randy Scott Bryant pursuant to Section 10156.5 of the Business and Professions Code, if Randy Scott Bryant makes application 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 Bryant Property Management, Inc., and Randy Scott Bryant 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 license issued to Randy Scott Bryant may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Randy Scott Bryant's conviction or plea of nolo contendere to a crime which is substantially related to his fitness or capacity as a real estate licensee.
2. The restricted licenses issued to Bryant Property Management, Inc., and Randy Scott Bryant 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 licenses.

3. Respondents shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
4. Randy Scott Bryant shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he 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 Mr. Bryant fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Mr. Bryant presents such evidence. The Commissioner shall afford Mr. Bryant the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
5. Randy Scott Bryant 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 Mr. Bryant has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.
6. Randy Scott Bryant 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 licenses are in effect such information concerning his 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 Bryant Property Management, Inc., and Mr. Bryant and periodic summaries of salient information concerning each real estate transaction in which the Bryant Property Management, Inc., and Mr. Bryant engaged during the period covered by the report.

7. Pursuant to Section 10148 of the Business and Professions Code, respondents 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 respondents have corrected the trust fund violations found in paragraphs 8 through 13 of the Factual Findings. 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. Respondents 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 respondents 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 respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

8. Pursuant to Business and Professions Code sections 10106 and 10148, subdivision (b), respondents shall pay the Commissioner's reasonable costs for audit and enforcement of this disciplinary action in the amount of \$6,583.84. 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 licenses issued to respondents 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 respondents enter 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.

Dated: January 10, 2018

DocuSigned by:

Marcie Larson

F72F4885838541C...

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings