

FILED

November 29, 2018

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
SHEILA EVONNE BENNETT,
Respondent.

DRE No. H-6513 SAC

OAH No. 2017040231

STIPULATION AND AGREEMENT
AND DECISION AFTER REJECTION

This matter came on for hearing before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on August 17 and October 4, 2017, and April 16 and 17, 2018. Evidence was received and the record remained open for the submission of closing briefs. Complainant's closing brief was submitted on June 15, 2018. Respondent's closing brief was submitted on July 3, 2018. Complainant's reply closing brief was submitted on July 10, 2018. The record was closed and submitted on July 10, 2018.

Jason Lazark, Counsel, represented the Complainant, Thomas Cameron, in his official capacity as a Supervising Auditor with the Department of Real Estate ("Department").¹ Respondent SHEILA EVONNE BENNETT was represented by Leslie A. Baxter.

On July 31, 2018, the Administrative Law Judge rendered a Proposed Decision

¹ Effective July 1, 2018, the Bureau of Real Estate became the Department of Real Estate. (Bus. & Prof. Code, § 10005.)

1 which the Real Estate Commissioner ("Commissioner") declined to adopt as his Decision herein.
2 Pursuant to Section 11517 of the Government Code of the State of California, Respondent was
3 served with notice of the Commissioner's determination not to adopt the Proposed Decision along
4 with a copy of the Proposed Decision.

5 The parties wish to settle this matter without further proceedings.

6 The following shall constitute the Decision of the Commissioner in these
7 proceedings.

8 The Findings of Fact and Legal Conclusions in the Proposed Decision dated July 31,
9 2018, and attached hereto as Exhibit A are hereby adopted in full as part of this Decision.

10 Pursuant to Section 11517(c)(2)(E) of the California Government Code, the Order in
11 the Proposed Decision dated July 31, 2018, is hereby amended as follows:

12 ORDER

13 The real estate broker license and licensing rights of Respondent SHEILA
14 EVONNE BENNETT are revoked; provided, however, a restricted real estate salesperson
15 license shall be issued to Respondent pursuant to Section 10156.5 of the Business and
16 Professions Code ("the Code"). The restricted license issued to Respondent shall be subject
17 to all of the provisions of Section 10156.7 of the Code and to the following limitations,
18 conditions and restrictions imposed under authority of Section 10156.6 of the Code:

19 1. The license shall not confer any property right in the privileges to be
20 exercised, and the Commissioner may by appropriate order suspend the right to exercise
21 any privileges granted under this restricted license in the event of:

22 (a) The conviction of Respondent (including a plea of nolo
23 contendere) of a crime that is substantially related to

24 Respondent's fitness or capacity as a real estate licensee; or

25 (b) The receipt of evidence that Respondent has violated

26 provisions of the California Real Estate Law, the subdivided
27

lands law, regulations of the Commissioner or conditions
attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real
estate license nor the removal of any of the limitations, conditions, or restrictions of a restricted
license until four (4) years have elapsed from the date of the issuance of the restricted license to
Respondent. Respondent shall be not eligible to apply for any unrestricted licenses until all
restrictions attaching to the licenses have been removed.

3. Respondent shall submit with any application for license under an employing
broker, or any application for transfer to a new employing broker, a statement signed by the
prospective employing real estate broker on a form approved by the Department which shall
certify:

(a) That the employing broker has read the Decision and Order of the
Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the
performance by the restricted licensee relating to activities for which a real
estate license is required.

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

1 5. Respondent shall, within nine (9) months from the effective date of this
2 Decision and Order, present evidence satisfactory to the Commissioner that Respondent has, since
3 the most recent issuance of an original or renewal real estate license, taken and successfully
4 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
5 Law for renewal of a real estate license. If Respondent fails to satisfy this condition,
6 Respondent's real estate license shall automatically be suspended until Respondent presents
7 evidence satisfactory to the Commissioner of having taken and successfully completed the
8 continuing education requirements. Proof of completion of the continuing education courses
9 must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013,
10 Sacramento, CA 95813-7013.

11 6. Respondent shall, within six (6) months from the effective date of this Decision
12 and Order, take and pass the Professional Responsibility Examination administered by the
13 Department including the payment of the appropriate examination fee. If Respondent fails to
14 satisfy this condition, Respondent's real estate license shall automatically be suspended until
15 Respondent passes the examination.

16 7. Respondent shall notify the Commissioner in writing within seventy-two (72)
17 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real
18 Estate, P.O. Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of
19 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
20 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
21 constitute an independent violation of the terms of the restricted license and shall be grounds for
22 the immediate suspension or revocation of that license.

23 8. All license and licensing rights of Respondent are indefinitely suspended unless
24 or until Respondent pays the sum of \$6,000 for the Commissioner's reasonable cost of the
25 investigation and enforcement which led to this disciplinary action. Said payment shall be in the
26 form of a cashier's check made payable to the Department of Real Estate. The investigative and
27

1 enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O. Box
2 137013, Sacramento, CA 95813-7013, prior to the effective date of the Decision and Order.

3
4
5 Dated _____

_____ KYLE JONES, Counsel
Department of Real Estate

6 ***

7 I have read the Stipulation and Agreement and Decision After Rejection and its terms are
8 understood by me and are agreeable and acceptable to me. I understand that I am waiving rights
9 given to me by the Administrative Procedure Act, and I willingly, intelligently, and voluntarily
10 waive those rights.

11
12 Dated _____

_____ SHEILA EVONNE BENNETT
Respondent

14 *I have reviewed this Stipulation and Waiver as to form and content and have
15 advised my client accordingly.*

16 11/5/18
17 Dated _____

_____ *Leslie A. Baxter*
LESLIE A. BAXTER
Attorney for Respondent

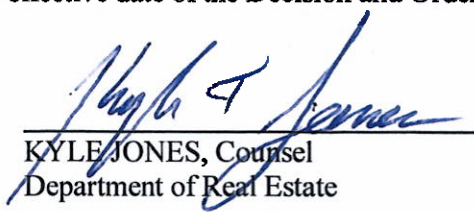
19 The foregoing Stipulation and Agreement and Decision After Rejection is hereby
20 adopted as my Decision and Order in this matter and shall become effective at 12 o'clock noon on
21 _____

22 IT IS SO ORDERED _____

23 DANIEL J. SANDRI
24 REAL ESTATE COMMISSIONER
25
26
27

1 enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O. Box
2 137013, Sacramento, CA 95813-7013, prior to the effective date of the Decision and Order.

3
4 11/9/18
5 Dated


KYLE JONES, Counsel
Department of Real Estate

6 ***

7 I have read the Stipulation and Agreement and Decision After Rejection and its terms are
8 understood by me and are agreeable and acceptable to me. I understand that I am waiving rights
9 given to me by the Administrative Procedure Act, and I willingly, intelligently, and voluntarily
10 waive those rights.

11
12 11/5/18
13 Dated


SHEILA EVONNE BENNETT
Respondent

14 *I have reviewed this Stipulation and Waiver as to form and content and have*
15 *advised my client accordingly.*

16
17 Dated

LESLIE A. BAXTER
Attorney for Respondent

18
19 The foregoing Stipulation and Agreement and Decision After Rejection is hereby
20 adopted as my Decision and Order in this matter and shall become effective at 12 o'clock noon on
21 December 20, 2018.

22 IT IS SO ORDERED November 28, 2018.

23
24 DANIEL J. SANDRI
REAL ESTATE COMMISSIONER

25
26 
27

Flag

FILED

SEP 04 2018

DEPARTMENT OF REAL ESTATE
By B. Melinas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

11 In the Matter of the First Amended Accusation of) 12 SHEILA EVONNE GREEN,) 13 Respondent.)	DRE No. H-6513 SAC OAH No. 2017040231
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NOTICE

TO: SHEILA EVONNE GREEN, Respondent, and LESLIE A. BAXTER, her Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 31, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 31, 2018, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on August 17 and October 4, 2017 and April 16 and 17, 2018, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of August 17 and October 4, 2017 and

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

SHEILA EVONNE GREEN,

Respondent.

Case No. H-6513 SAC

OAH No. 2017040231

PROPOSED DECISION

This matter was heard before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 17 and October 4, 2017, and April 16 and 17, 2018, in Sacramento, California.

Jason Lazark, Counsel for the Department of Real Estate (Department), represented complainant Thomas Cameron, Assistant Commissioner for the Department.¹

Leslie Baxter, Attorney at Law represented respondent Sheila Evonne Bennett, who was present at the hearing.²

Evidence was received and the record remained open for the submission of closing briefs. Complainant's closing brief, marked as Exhibit 22, was submitted on June 15, 2018. Respondent's closing brief, marked as Exhibit L was submitted on July 3, 2018. Complainant's reply closing brief, marked as Exhibit 23, was submitted due July 10, 2018. The record was closed and submitted on July 10, 2018.

FACTUAL FINDINGS

1. On or about May 6, 2005, respondent was licensed as a real estate broker by the Department, license number B/01493166 (license). Her license will expire on May 5, 2020, unless renewed or revoked. Effective on November 20, 2014, respondent was doing

¹ Effective July 1, 2018, the Bureau of Real Estate became the Department of Real Estate. All references to the Department also refer to actions taken by the Bureau.

² Effective on May 24, 2017, respondent changed her last name to Bennett with the Department, which is reflected on her license history.

business as Catalyst Property Management Solutions (Catalyst). Catalyst was cancelled with the Department on September 2, 2016. On or about December 30, 2014, respondent obtained an Individual Mortgage Loan Originator License Endorsement, number 1235844 (MLO endorsement). Respondent has no history of discipline.

2. On or about March 13, 2017, complainant filed an Accusation against respondent and on August 30, 2018, filed a First Amended Accusation (Accusation) seeking to discipline her license and MLO endorsement, based on her alleged violations of real estate law related to her operation of Catalyst. Complainant also alleged that respondent engaged in fraud by failing to report on the Nationwide Mortgage Licensing System and Registry (NMLS) mortgage loan originator license endorsement renewal application (MLO Renewal Application), the pending Accusation against her license.

3. Respondent 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.

Background

4. As of September 2014, respondent worked as a broker at Catalyst Real Estate Professionals (Catalyst Real Estate). She conducted residential purchase and sales transactions, engaged in mortgage loan activities, and managed five properties. In October 2014, respondent was contacted by Phillip Hammons, the owner of All In One Property Management (AIO), a property management company and Active Builders, a construction business. Mr. Hammons was referred to respondent by Constance Carter, respondent's partner at Catalyst Real Estate. Mr. Hammons was not licensed by the Department. Mr. Hammons had been notified by the Department that he could not engage in property management activities without a broker license. AIO managed over 100 properties. Respondent agreed to take over the property management of the properties managed by AIO.

5. On or about October 30, 2014, Jeffrey Mason, Chief Deputy Commissioner signed an "Order to Desist and Refrain" (Order) against Mr. Hammons and Morgan Friendly, Inc. (MFI), pursuant to Business and Professions Code section 10086. The Order stated that based on an investigation, the Department determined that Mr. Hammons and MFI "have engaged in, are engaging in, or attempting to engage in, acts or practices constituting violations of the Business and Professions Code (Code), including the business of, acting in the capacity of an/or advertising or assuming to act as a real estate broker. . . ." Mr. Hammons was ordered to "desist and refrain from soliciting or providing or participating in property management services for others and for compensation, unless and until he obtained a real estate broker license." The Order was filed by the Department on December 1, 2014.

6. After the Department issued the Order against Mr. Hammons, respondent managed some of the properties that had previously been managed by AIO. Respondent allowed Active Builders to provide maintenance services on the AIO properties that she

managed. Catalyst and Active Builders shared office space in Stockton for period of time. During that time, respondent also employed Mr. Hammons' daughter Twanna Hammons and Mr. Hammons' employee Maria Tellez, to perform data entry related to the properties respondent managed.

7. In approximately October 2015, respondent discovered that Mr. Hammons was collecting money for rent from tenants occupying properties managed by respondent. However, Mr. Hammons was not giving the money to respondent or paying the property owners the rent he received. Additionally, respondent learned that Mr. Hammons was continuing to operate AIO, requested that property owners sign new property management agreements with AIO and directed the tenants to pay AIO directly.

8. Respondent sent a letter to properties owners for the properties Catalyst managed, dated November 16, 2015, explaining that in October 2014, Mr. Hammons had requested respondent take over the management of AIO's existing clients due to the Order issued by the Department. The letter explained that Catalyst had taken over the management duties of AIO, but did not receive copies of all of the property management agreements from AIO in order to create updated agreements with Catalyst. Respondent also explained that Mr. Hammons had failed to provide Catalyst with a "full list" of properties that received rent supplements from the Department of Housing. As a result, those payments were electronically deposited into the AIO bank account rather than with Catalyst. Respondent informed the property owners that in order to have Catalyst continue to manage the properties, a new management agreement was required to be signed and returned to Catalyst by November 23, 2015.

9. On November 23, 2015, respondent filed an online police report with the Stockton Police Department. Respondent explained that Mr. Hammons and his staff were embezzling money from Catalyst. Specifically, that Mr. Hammons was collecting rent from tenants living in properties managed by Catalyst, and failed to give the rent payments to Catalyst. Respondent also wrote that she had hired an attorney to prepare a "Cease and Desist order."

10. By letter dated December 2, 2015, Linda Blackwell, counsel for respondent, sent Mr. Hammons a "Cease and Desist Letter." Ms. Blackwell ordered Mr. Hammons, in part, to cease engaging in the unauthorized management of properties, from collecting rent payments from tenants, and embezzling funds from Catalyst.

Allegations Related to Trust Fund Violations

AUDIT SCOPE

11. In March 2016, the Department notified respondent that a routine audit of her license activities would be scheduled. By letter dated March 25, 2016, Thomas Cameron, at the time Supervising Auditor for the Department, informed respondent that the audit was scheduled to begin on April 12, 2016. Alvin Samareta, an auditor with the Department, was

assigned to conduct the audit and review relevant records related to respondent's real estate broker activities between January 1, 2015 and February 29, 2016 (audit period). Respondent was informed that she needed to provide Mr. Samareta documents and records related to her real estate brokerage activities, including bank statements for all trust funds and general accounts, trust fund records or receipts and disbursements, separate records for each beneficiary, cancelled checks and deposits slips for the trust fund accounts and transactions filed for the audit period.

12. On or about April 12, 2016, the Department began an audit of respondent's license activities to determine whether she was in compliance with the Real Estate Law and the Commissioner's Regulations. Mr. Samareta conducted an entrance conference with respondent at her office. During the conference, respondent did not provide Mr. Samareta with all of the documentation requested in the March 25, 2016 letter from Mr. Cameron. She provided Mr. Samareta with the bank statements for the Trust Account. Respondent informed Mr. Samareta about her relationship with Mr. Hammons and that she believed he had embezzled money from Catalyst. Respondent explained that she was concerned that there would be some discrepancies in the property accounts as a result of issues she had with Mr. Hammons.

13. During the course of the audit, Mr. Samareta obtained and examined records on a sample basis. In addition to the bank statements received during the entrance conference, on April 27, 2016, respondent provided Mr. Samareta with control records. However, due to respondent's failure to provide all requested records, Mr. Samareta issued a subpoena duces tecum to obtain all of the records in her custody related to her broker activities. Respondent ultimately complied with the request for documents. Respondent also provided Mr. Samareta copies of the November 23, 2015 police report she filed against Mr. Hammons and the December 2, 2015 letter sent from respondent's attorney to Mr. Hammons.

14. Mr. Samareta prepared an audit report dated June 23, 2016, and testified at hearing. During the audit period, respondent managed properties for 14 owners, which included approximately 23 residential properties and three multiplexes that totaled eight units. Respondent's management activities included collecting rents, soliciting tenants, advertising properties and ensuring that repairs and maintenance of the properties was performed. Generally, respondent charged owners management fees of between six and eight percent of monthly rents collected. For some owners respondent charged a flat fee of \$200. Respondent collected approximately \$774,000 in annual rents.

15. Respondent maintained one trust account titled "Catalyst Property Mgmnt Solutions Trust Account," with Wells Fargo Bank (Trust Account), for handling trust funds from property management activities³. The Trust Account was used for deposits and

³ Respondent also maintained a bank account titled "Catalyst Property Mgmnt Solutions" with BBVA Compass. Respondent closed the Bank Account during the audit period. There are no allegations in the Accusation related to the BBVA Compass account.

disbursements related to the properties. Deposits consisted of rents paid, security deposits collected from tenants and property management related fees. Disbursements consisted of payments for repairs, maintenance, broker fees, and owner proceeds.

TRUST FUND ACCOUNTABILITY AND BALANCES

16. Mr. Samareta prepared a reconciliation of the Trust Account as of February 29, 2016. The reconciliation covered the time period from January 1, 2015, through February 29, 2016. The purpose of preparing a reconciliation of the Trust Account is to calculate the adjusted bank balance, which is the amount of cash in the Trust Account. The adjusted bank balance is calculated by taking the ending balance of the Trust Account, as of a given date, and making adjustments for any deposits or disbursement that have not been made by the bank, but have been recorded by the broker. The adjusted account balance should match the accountability, which is the total liability, or how much money should be in the account. A "shortage" means that the Trust Account balance is less than the accountability.

17. Mr. Samareta reviewed the bank statements and general ledgers respondent maintained for each beneficiary. Mr. Samareta determined that as of February 29, 2016, the adjusted bank balance for the Trust Account was \$348.77. The accountability was \$44,644.34. The shortage was \$44,295.57. Mr. Samareta determined that \$484.10 of the shortage was caused by negative balances in accounts for seven property owners. Mr. Samareta could not identify the cause of the remaining shortage of \$43,811.47.

18. During the audit, respondent did not provide Mr. Samareta with evidence that she obtained written consent from every principal who was an owner of funds in the Trust Account, prior to disbursement of money to an amount that is less than the total liability.

INACCURATE CONTROL RECORDS

19. Mr. Samareta determined through a bank reconciliation of the Trust Account that as of February 29, 2016, the adjusted bank balance did not match the running balance of respondent's control records. The running balance listed was \$43,456.24. However, the adjusted bank balance calculated by Mr. Samareta was \$348.77. Mr. Samareta determined that the control records respondent kept were inaccurate. He explained that the control records are records of all trust funds received and disbursed, with documentation of the check number, the payer, the amount of the transaction and a running balance, which should match the adjusted bank balance.

20. On or about April 27 and June 15, 2016, respondent provided Mr. Samareta additional control records. Mr. Samareta determined that the control records remained inaccurate because the control records running balance as of February 29, 2016, did not match the running balance of the new control records.

INACCURATE RECONCILIATION OF THE CONTROL AND SEPARATE RECORDS

21. Mr. Samareta also determined that respondent failed to accurately reconcile at least one time per month, the balance of all separate records of the trust funds received and disbursements made from the Trust Account. During the course of the audit, respondent provided Mr. Samareta with “multiple reports” reflecting the “Summary of Accountability” for the Trust Account as of February 29, 2016. Specifically, on the May 26, 2016 Summary of Accountability, the balance of the Trust Account was \$44,160.24, as of February 29, 2016. However, on a Summary of Accountability provided by respondent on June 17, 2016, the Trust Account balance listed as of February 29, 2016, was \$2,278.53.

EXIT INTERVIEW

22. On June 24, 2016, Mr. Samareta conducted an exit interview with respondent to discuss the audit findings and the items of non-compliance. Mr. Samareta provided respondent with a summary of the areas of non-compliance. Respondent noted on the non-compliance summary that she was “aware of the findings and believe it to be attributed to erroneous record entries.” Respondent again spoke to Mr. Samareta about her belief that errors in the Trust Fund balance were a result of conduct by Mr. Hammons.

23. During the exit interview, Mr. Samareta urged respondent to file a complaint against Mr. Hammons with the Department. During the course of the audit, Mr. Samareta informed Mr. Cameron that he had obtained documentation from respondent demonstrating that Mr. Hammons was continuing to engage in property management activities in violation of the of the Order. Mr. Samareta requested that an investigation be opened into Mr. Hammons’ activities or if there was any action that could be taken. Mr. Samareta attempted to contact Mr. Hammons twice, but was not able to locate him either time. No investigation was opened against Mr. Hammons.

24. Mr. Samareta testified that when rendering his audit findings, he did not consider the allegations respondent made against Mr. Hammons concerning embezzlement of funds and inference with the operations of Catalysts, because she should have “conducted more due diligence” before accepting AIO’s clients.

MLO Renewal Application

25. On May 26, 2017, respondent filed with the Department through the NMLS an MLO Renewal Application. Under the “Regulatory Action” section of the application, respondent was required to answer “yes” or “no” to the following pertinent questions:

- (K) Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever:

[] . . . []

(2) found you to have been involved in a violation of a financial services-related business regulations(s) or statute(s)?

[] ... []

(4) entered an order against you in connection with a financial services-related activity?

(5) revoked your registration or license?

(6) denied or suspended your registration or license or application for licensure, discipline you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities?

[] ... []

(9) entered an order concerning you in connection with any license or registration?

[] ... []

(N) Is there a pending regulatory action proceeding against you for any alleged violations described in (K) ...

26. The MLO Renewal Application does not provide a definition for a "financial services-related business." Respondent marked "no" in response to questions (K)(2), (4), (5), (6), and (9), and (N).

Mitigation and Rehabilitation Evidence

27. Respondent testified that in approximately October 2014, Mr. Hammons asked her to take over the management of rental properties he managed through AIO, because he did not have a broker's license, and he was not working under a broker. On October 29, 2014, respondent and Mr. Hammons entered into an "Independent Contractor Agreement" (Agreement) in which Catalyst agreed to serve as the broker over properties previously managed by AIO. In exchange AIO would receive 70 percent of the rental income received by the properties managed by AIO and perform various property management activities. Respondent explained that the Agreement was not implemented because the Department issued Mr. Hammons the Order which prevented him from engaging in any property management activities. As a result, respondent agreed to take over the management of AIO properties.

28. In order to make the transition smooth, respondent agreed to allow Mr. Hammons through his company Active Builders, to continue to perform maintenance on the rental properties. Respondent also purchased AppFolio, property management accounting software, to transition all of the properties she managed into a new system. Respondent trained Ms. Hammons and Ms. Tellez to perform some of the data entry in AppFolio.

29. Approximately one year after respondent took over the management of the AIO properties, respondent discovered that Mr. Hammons was representing to tenants that he worked for Catalyst. He collected rent payments that he did not submit to Catalyst. Respondent discovered the issues when she was contacted by several tenants who claimed to have paid rent to Mr. Hammons, but the payments were not reflected on the tenant ledgers. Respondent later reviewed information in AppFolio and discovered that information had been entered as if the rent money had been collected, even though it was not received by Catalyst. Respondent became concerned that Ms. Hammons and Ms. Tellez were putting false information into AppFolio. As a result, she revoked their access to the program. Ms. Hammons and Ms. Tellez testified at hearing as witnesses for the Department and denied entering any erroneous entries into AppFolio.

30. Additionally, on at least two occasions, Mr. Hammons wrote checks to Catalyst for rents he improperly collected from tenants living in properties managed by Catalyst. One check for \$16,153 written in June 2015, was returned for insufficient funds. The other check for \$8,000 also written in 2015, was returned after Mr. Hammons put a stop payment on the funds.

31. Respondent explained she sent a November 16, 2015 letter to property owners explaining the dispute with Mr. Hammons, because she did not want to be liable for the properties if the owners chose to work with Mr. Hammons. Respondent gave the owners one week to return the signed Catalyst property management agreement. If she did not receive the agreement, she de-activated the account.

32. When respondent was notified by the Department in March 2016, that an audit was going to be conducted, she was dealing with serious health issues and recovering from major surgery. She was in the process of starting to close Catalyst. Respondent decided to operate the business until the audit concluded and she learned of the findings. Respondent explained that during her initial entrance meeting with Mr. Samareta, she explained the situation with Mr. Hammons. Respondent also explained that she believed there were erroneous entries in AppFolio, but she had not yet identified the errors.

33. Respondent explained that as the broker for Catalyst, she takes full responsibility for any Trust Fund shortage. After the audit was completed, respondent worked with property owners to ensure that they received all monies that were owed. She did not collect her property management fees for a period of time to ensure there were sufficient funds in the Trust Account. Respondent closed Catalyst in September 2016. At hearing, respondent submitted letters from eight properties owners which attested that respondent provided a full accounting of all monies that were owed and that there was no

outstanding balance. Respondent was not able to reach the remaining six owners to obtain statements. Additionally, after the audit, respondent took all of the information from bank statements, deposit slips and cleared checks, for all of the properties managed by Catalyst and inputted the information into QuickBooks. The QuickBooks reports demonstrate that as of November 2016, all of the property owners had been in full paid.

34. Respondent is currently employed at Summit Funding. She works as a loan officer. She is not engaging in any real estate sales transactions and does not intend to work in property management. However, she needs her license and MLO Endorsement to prepare certain types of real estate loans. Respondent explained that when she completed her MLO Renewal Application on May 26, 2017, she answered "no" in response to the questions concerning whether she had a pending regulatory matter against her license, because she understood the questions to be referring to a financial services business. Respondent did not believe that property management, which gave rise to the Accusation, was a financial services business.

TESTIMONY OF PHILLIP HAMMONS

35. Mr. Hammons was called as a witness for the Department. He initially contended that the October 29, 2014 Agreement he entered into with respondent, was implemented throughout 2015. He contended that AIO was performing property management activities and was owed 70 percent of all property management fees collected by Catalyst for properties that were managed by AIO prior to October 29, 2014. Mr. Hammons admitted that he put a stop payment on the \$8,000 check he wrote to Catalyst. He had received the money in the form of a cashier's check from a tenant living in a property managed by Catalyst. The tenant paid six months of rent in advance. Mr. Hammons deposited the money into his account and then wrote a check to Catalyst. Mr. Hammons contended that Catalyst owed him property management fees, so he put stop payment on the check. He also admitted that the \$16,153 he wrote to Catalyst that was returned for insufficient funds could also have been from rents he collected for properties managed by Catalyst.

36. Under questioning, Mr. Hammons changed his testimony about the implementation of the October 29, 2014 Agreement. Mr. Hammons admitted that none of the terms of the Agreement had been implemented, other than the provision that he receive 70 percent of the management fees collected by Catalyst on properties previously managed by AIO. However, he acknowledged that engaging in property management activities and collecting property management fees was a violation the Order. He then admitted that respondent had never paid him any property management fees. He only received payment for maintenance work he performed. Additionally, Mr. Hammons contended that he repaid Catalyst the \$24,153 he owed as a result of the two checks he wrote that were returned. Mr. Hammons contended that he repaid the money in the fall of 2015, after respondent complained.

Discussion

37. Complainant established that during the audit period, the records maintained by respondent and provided to the Department demonstrated that there was a shortage in the Trust Fund of \$44,295.57. Additionally, respondent failed to maintain accurate control records and failed to accurately reconcile the control records and separate records. However, the mitigating evidence in this matter is significant. Respondent took over the property management of properties managed by Mr. Hammons after he was ordered by the Department to cease his illegal activity. In good faith, respondent allowed Mr. Hammons to continue maintenance work on the properties. Unbeknownst to respondent, Mr. Hammons collected rents from tenants and failed to provide the money to Catalyst or the owners. Mr. Hammons admitted that in 2015, he took over \$24,000 owed to Catalyst for rental payments made by tenants living in properties managed by Catalyst.

38. While respondent should have undertaken more steps to ensure that property owners signed new tenant agreements with Catalyst after she took over management, which may have addressed some of the issues she encountered, at hearing, respondent took responsibility for her mistakes. Despite suffering serious medical issues leading up to and during the audit, respondent ensured that the owners of the properties she managed received all the monies that were owed. Respondent closed Catalyst in September 2016. Since that time respondent has attempted to identify the sources of the inaccurate accounting information. She established that as of November 2016, all of the owners had been paid in full. The Department is not seeking any restitution from respondent.

39. Additionally, complainant failed to establish that respondent made a fraudulent statement on her MLO Renewal Application. Respondent was required to disclose information related to any pending actions related to her "financial services-related business." However, the term is not defined in the application and left up to interpretation. Without a definition, respondent reasonably concluded that her property management activities were not a financial services-related business.

40. The purpose of disciplinary actions is to protect the public, not to punish the violator. Respondent has no history of discipline with the Department. When all the facts are considered and weighed, discipline must be imposed on respondent for her violations. However, it would not be contrary to the public interest to issue respondent a restricted real estate broker license, subject to terms and conditions designed to monitor her activities and protect the public.

Costs

41. Pursuant to Business and Professions Code sections 10106 and 10148, subdivision (b), the Department is authorized to seek reimbursement of audit and enforcement costs at hearing. The Department incurred \$4,539 in attorney charges in connection with the prosecution of this case. Additionally, the Department incurred audit charges totaling \$6,772.16. At hearing, the Department submitted statements of costs,

declarations, and supporting documentation of investigation and audit costs. As set forth in Legal Conclusions 11 and 12, the costs of prosecution, investigation, and enforcement totaling \$11,311.16, should be reduced.

LEGAL CONCLUSIONS

Burden of Proof

1. In an Accusation seeking to revoke, suspend, or otherwise discipline a professional license, the Department has the burden of proof to establish the allegations in the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App. 3d 853, 856.)

Applicable Law

2. 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:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

[¶] . . . [¶]

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

[¶] . . . [¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

[¶] . . . [¶]

(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.

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.

4. 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.

5. California Code of Regulations, title 10, section 2831, provides in in pertinent part that:

(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.

6. California Code of Regulations, title 10, section 2831.2 states that “[t]he 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 as 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.”

Cause for Discipline

7. As set forth in Factual Findings 11 through 18, complainant established by clear and convincing evidence that as of the audit period, respondent caused a trust fund shortage totaling \$44,295.57, without obtaining prior written consent from the owners. Therefore, respondent’s broker license is subject to discipline due to her 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.

8. As set forth in Factual Findings 19 and 20, complainant established by clear and convincing evidence that respondent failed to maintain accurate written control records of all trust funds received and disbursed from the Trust Account. Therefore, respondent’s broker license is subject to discipline due to her 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.

9. As set forth in Factual Finding 21, complainant established by clear and convincing evidence that respondent failed to perform accurate monthly reconciliations of the Trust Account. Therefore, respondent's broker license is subject to discipline due to her 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.

10. As set forth in Factual Findings 25, 26, 34, and 39, complainant failed to establish by clear and convincing evidence that respondent's answers in the MLO Renewal Application constituted fraud, misrepresentation, deceit, making a material misstatement of fact, or dishonesty. Therefore, no cause for discipline exists pursuant to Business and Professions Code section 10177, subdivisions (a) or (j).

Cost Recovery Analysis

11. 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).) 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).)

12. 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. 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 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 to the alleged misconduct. Here, the scope of the investigation was appropriate to the alleged misconduct. However, respondent was successful at challenging the cause for discipline concerning the MLO Application Renewal, which was added as a cause for discipline in the amended Accusation. Additionally, given the mitigating circumstances, she had a colorable challenge to license revocation. As a result, the costs are reduced to \$6,000.

Conclusion

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

ORDER

All licenses and license rights of respondent Sheila Evonne Bennett, under the Real Estate Law are REVOKED; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
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 a restricted license until three (3) 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
5. Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the 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 prior to the effective date of the Decision in this matter.

6. Pursuant to Business and Professions Code sections 10106 and 10148, subdivision (b), respondent shall pay the Commissioner's reasonable costs for prosecution, investigation, and enforcement of this disciplinary action in the amount of \$6,000. 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 real estate broker license issued to respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an 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: July 31, 2018

DocuSigned by:
Marcie Larson
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MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings