

FILED

BEFORE THE BUREAU OF REAL ESTATE

MAR 30 2018

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By B. Nicholas

* * *

In the Matter of the Accusation of

TIMOTHY THOMAS KATZAKIAN,

Respondent.

) CalBRE No. H-6580 SAC

) OAH No. 2017090945

DECISION

The Proposed Decision dated March 6, 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.

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

Pursuant to Government Code Section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The 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.

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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 **APR 20 2018**

IT IS SO ORDERED March 29, 2018

WAYNE S. BELL
REAL ESTATE COMMISSIONER



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:

TIMOTHY THOMAS KATZAKIAN,

Respondent.

Case No. H-6580 SAC

OAH No. 2017090945

PROPOSED DECISION

This matter was heard before Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 14, 2018, in Sacramento, California.

Richard Uno, Counsel for the Bureau of Real Estate (Bureau), assisted by Legal Intern Amanda Vavak, represented complainant Tricia D. Parkhurst, Supervising Special Investigator of the Bureau, State of California.

Timothy Thomas Katzakian (respondent), represented himself.

Evidence was received, the matter was submitted, and the record was closed on February 14, 2018.

FACTUAL FINDINGS

1. On September 2, 2009, the Bureau issued a real estate broker license number B01008683 to respondent. The license expires December 6, 2021, unless renewed or revoked. On September 28, 2017, the Bureau issued real estate corporation license number C02040307 to Ted Katzakian Co., Inc., doing business as Ted Katzakian Property Management (TKPM), with respondent as designated officer. The license expires on September 27, 2021, unless renewed or revoked.

2. On August 1, 2017, complainant made and filed the Accusation in her official capacity. Complainant seeks to discipline respondent's real estate broker license, and the corporation license of Ted Katzakian Co., Inc., doing business as TKPM, on the grounds that respondent, while acting as a broker for TKPM, received funds in trust for property

management activities, failed to safeguard those funds pursuant to his duties as a real estate broker, used trust funds for his personal use, and used an unlicensed entity while conducting property management activities.

3. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing pursuant to Government Code section 11500 et seq.

Audit

4. The Bureau conducted an audit of respondent's accounting and other records for the period December 1, 2013 to July 31, 2016, to determine whether respondent handled and accounted for trust funds, and whether respondent performed licensed real estate activities in accordance with the Real Estate Law and the Commissioner's Regulations. The Bureau initiated the audit after a complaint had been filed regarding respondent's handling of properties he managed that were under receivership for PEKK, LLC and Paul Lehr (PEKK/Lehr). The complaint alleged, among other things, that respondent failed to perform monthly reconciliations. Corena de Sonnaville, a Bureau auditor, conducted the audit. Ms. de Sonnaville testified at hearing, consistent with her Audit Report, which was admitted into the record.

5. The audit examined respondent's TKPM property management activities, and was performed intermittently beginning on September 7, 2016, and ending on February 16, 2017. In conducting the audit, Ms. de Sonnaville examined the following records on a sample basis:

- a. Bank Signature Cards
- b. Bank Statements
- c. General Ledger Reports ("Record of Trust Funds Received and Disbursed")
- d. Check and Deposit Registers
- e. General Ledger by Portfolio ("Separate Records for Each Beneficiary")
- f. Bank Balance Breakdown Report ("Summary of Separate Records")
- g. Cancelled Checks and Deposit Records
- h. Property Management and Lease Agreements

6. On August 17, 2016, respondent requested additional time to prepare for the audit because he needed to catch up on his reconciliations. During the entrance conference held at respondent's office on September 7, 2016, respondent admitted to Ms. de Sonnaville that the trust account had a \$80,000 shortage, due to respondent disbursing funds in excess of his management fees from the trust account. Respondent stated that he had used the funds to pay the mortgage on a property that he owned.

7. During the relevant time period, respondent managed approximately 100 properties with 165 units for 68 owners under the dba TKPM. Respondent collected approximately \$2,200,000 in average annual trust funds.

8. As of July 31, 2016, trust funds collected from the property management activities were handled through one account with Umpqua Bank. During the audit period, respondent maintained three additional accounts for the handling of trust funds from property management activities, but those accounts were closed on July 31, 2016. Respondent's property management activities included collecting rents and security deposits for real property; soliciting for tenants; advertising properties; making mortgage, property tax, and insurance payments; and conducting repairs and maintenance. Respondent generally charged management fees of \$50 to \$75 per unit per month, or between five and seven percent of collected rents per unit per month.

9. Respondent maintained the following bank accounts for the handling of trust funds from property management activities. The accounts were maintained at Umpqua Bank, located at 89 Lakewood Mall in Lodi, California.

Bank Account No. 1

Account Title: Ted Katzakian Co. Inc.
TKPM Lehr Pekk Receiver

Account No.: 992890749

Description: During the audit period, Bank Account No. 1 was maintained for the receipt and disbursement of trust funds from property management activities specific to properties held in receivership for PEKK/Lehr. The account was not designated as a trust account in the name of respondent as broker or respondent's dba as trustee. Deposits consisted of rent and security deposits. Disbursements consisted of security deposit disposition, repair and maintenance payments, and management fees. Respondent was the only signer on the account. The account was closed on February 26, 2016.

Bank Account No. 2

Account Title: Ted Katzakian Co. Inc.
Burton Court Apartments Marysville

Account No.: 9931123942

Description: During the audit period, Bank Account No. 2 was maintained for the receipt and disbursement of trust funds from property management activities specific to Burton Court Apartments in Marysville, California. Respondent

was the only signer on the account. The account was closed on December 22, 2015.

Trust Account No. 1

Account Title: Ted Katzakian Co. Inc.
Property Management Trust Account

Account No.: 993016831

Description: As of July 31, 2016, Trust Account No. 1 was used for the handling of trust funds from property management activities. Deposits consisted of rent and security deposits, and owner contributions. Disbursements consisted of owner proceeds, security deposit disposition, repair and maintenance payments, and management fees. Respondent was the only signer on the account. This account was designated as a trust account, but was not in the name of respondent as broker or respondent's dba as trustee.

Trust Account No. 2

Account Title: Ted Katzakian Co. Inc.
Property Management Trust Account

Account No.: 991567009

Description: Prior to February 2014, Trust Account No. 2 was used for handling of trust funds from property management activities. Deposits consisted of rent and security deposits, and owner contributions. Disbursements consisted of owner proceeds, security deposit disposition, repair and maintenance payments, and management fees. As of September 30, 2014, the account was closed and all funds were transferred to Trust Account No. 1.

Bank Account No. 1 Shortage

10. On February 26, 2016, Ms. de Sonnaville conducted a bank account reconciliation for Bank Account No. 1. She did so by comparing the adjusted bank balances¹ to the sum of the balances of all the separate records, as follows:

¹ The adjusted bank balance is the bank balance on a certain cutoff date minus any outstanding checks plus any deposits in transit.

Adjusted bank balance on February 26, 2016:	(\$186.66) ²
Accountability on February 26, 2016:	\$0
Total Accountability on February 26, 2016:	\$0
Shortage as of February 26, 2016:	<u>(\$186.66)</u>

Trust Account No. 1 Shortage

11. Ms. de Sonnaville also conducted a reconciliation for Trust Account No. 1, and found a shortage of \$163,399.17 as follows:

Adjusted bank balance on June 30, 2016:	\$11,056.49
Accountability on June 30, 2016:	\$174,455.66
Total Accountability on February 26, 2016:	\$174,455.66
Shortage as of June 30, 2016:	<u>(\$163,399.17)</u>

12. Ms. de Sonnaville determined that the \$138,796.07 of the \$163,399.17 shortage was caused by:

- a. Negative balances in the amount of \$4,019.67;
- b. Negative balances in respondent-owned properties in the amount of \$4,238.48;
- c. Over-disbursement of management fees in the amount of \$120,351.14; and,
- d. Deposit errors in the amount of \$5,910.25.

13. As of June 7, 2017, respondent cured \$117,929.05 of the total shortage for Trust Account No. 1. With the exception of management fees earned, respondent did not deposit any additional funds to Trust Account No. 1.

14. From January 1, 2013 through June 30, 2016, respondent deducted \$4,276.53 in bank fees from Trust Account No. 1. Respondent posted the bank fees to the management fee ledger, with the intent of deducting the bank fees from the management fees due to him. During the same time period, respondent disbursed excess management fees totaling \$120,351.14 from Trust Account No. 1. Documents revealed that respondent regularly

² Figures enclosed in parentheses indicate a negative balance.

disbursed funds in excess of management fees earned. For example, respondent earned and disbursed funds from Trust Account No. 1 as follows:

<u>Month/Year</u>	<u>Total Earned</u>	<u>Total Disbursed</u>	<u>Difference</u>
January 2015	\$12,132.25	\$22,697.28	(\$10,565.03)
June 2015	\$11,969.04	\$9,257.36	\$2,711.68
September 2015	\$12,154.25	\$20,595.75	(\$8,441.50)
November 2015	\$11,960.13	\$11,578.47	\$381.66
April 2015	\$13,022.98	\$18,932.99	(\$5,910.01)
June 2016	\$12,147.52	\$13,187.07	(\$1,039.55)

15. In calculating the total amount of excess management fees disbursed, Ms. de Sonnaville totaled the net amount disbursed by month. The majority of funds were transferred from Trust Account No. 1 to respondent's business account ending in 6993. Respondent told Ms. de Sonnaville at the time of the audit, and testified at hearing that he used the funds to pay the mortgage payment on a property he inherited from his father named Auto Center Drive.

16. Respondent did not obtain written consent from the beneficiaries of the funds in Bank Account No. 1 and Trust Account No. 1, that allowed for the reduction of the balance of the funds in the accounts to an amount less than their corresponding existing aggregate liabilities.

17. Ms. de Sonnaville did not conduct reconciliations for Bank Account No. 2 and Trust Account No. 2, because these accounts were closed during the audit period.

18. Ms. de Sonnaville found, and the evidence established that:

a. As of February 26, 2016, Bank Account No. 1 had a shortage of \$186.66. Bank Account No. 1 was closed on February 26, 2016;

b. As of June 30, 2016, Trust Account No. 1 contained a shortage of \$163,399.17, and as of the date of the Audit Report, respondent had cured \$117,929.05 of the total shortage;

c. Respondent did not have written consent from the beneficiaries of the funds in Bank Account No. 1 and Trust Account No. 1, that allowed for a reduction in the accounts in an amount less than the existing aggregate liability;

d. Respondent did not designate Bank Account Nos. 1 and 2 as trust accounts in the name of respondent as broker, or respondent's dba as trustee. In addition, although Trust Account No. 1 was designated as a trust account, it was not designated with respondent as broker, or as respondent's dba as trustee.

e. Respondent did not perform a monthly reconciliation of the balance of all Separate Records with the Control Record for Trust Account No. 1.

f. Respondent conducted property management activities under the unlicensed entity Ted Katakian Co. Inc., for which he was sole owner and served as President, Secretary, and Chief Financial Officer. Respondent represented to Ms. de Sonnaville that the unlicensed dba TKPM was used to conduct licensed activity.

g. Respondent overdisbursed property management fees of \$120,351.04 to make mortgage payments on real property that he owned.

Respondent's Testimony

19. Respondent stipulated to all the allegations in the Accusation. He did not dispute Ms. de Sonnaville's findings, and admitted that he used trust monies to pay the mortgage on a warehouse property that he inherited from his father. He stated, "I didn't mean for this to get blown up into a big thing." Respondent asserted that he accounted for all of the money he took out of the trust account as management fees. He could not explain why his reconciliation amounts differed from Ms. de Sonnaville's. He was assured by his software company that his portfolio balance "should be true and correct." Respondent did not explain which account he was referring to.

20. Respondent explained that the warehouse property he inherited had tenants. One of the tenants filed bankruptcy, "which was pretty significant." Respondent tried to pay the property taxes and modify the loan on the property. He was having difficulty making timely payments. He stated that he "used trust funds to preserve that property. It was never a mystery where the money went, it was always in front of everybody." In hindsight, respondent conceded that he "probably had other options with the property," like refinancing his house to make the mortgage payments on the property. He stated that he was in "survival mode," trying to support his family, run his business, and put "someone" through college.

21. Respondent asserted that he needs "a window of time" to make corrections to his trust accounts. He hopes that the Bureau can conduct another future audit to ensure that he has made the appropriate corrections, so that he can "move forward." Respondent asserted that no one was harmed, and "everyone got their money."

Discussion

22. The Bureau has developed guidelines for use in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee. In this case, respondent has not been convicted of a crime. However, the criteria are still applicable in cases where harm to the public has occurred.

23. Rehabilitation criteria include, but are not limited to: passage of not less than two years from the act that is substantially related to the qualifications, functions or duties of a licensee; restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee; correction of business practices; new and different social and business relationships from those which existed at the time of the commission of the acts; stability of family life; completion of formal educational or vocational training courses for economic self-improvement; significant and conscientious involvement in the community; and change in attitude from that which existed at the time of the conduct in question. (Cal. Code Regs., tit. 10, § 2912.)

24. Considering the Bureau's applicable rehabilitation guidelines, it has been over a year since the discovery of the shortages in Trust Account No. 1, improper designation of the trust accounts, and the overdisbursement of management fees during the Bureau's audit. Such property management discrepancies occurred under the purview of respondent's real estate broker license, while conducting property management activities under TKPM, which was an unlicensed entity at the time, and are substantially related to the qualifications, functions and duties of a real estate licensee.

25. Respondent has not made corrections to his business practices, and asks the Bureau to provide him additional time. He did not indicate what corrections he still needed to make, or what he would do to avoid trust account shortages in the future. He did not indicate whether he designated Bank Account No. 1 as a trust account in his name or his broker's dba as trustee. He did not indicate whether he put Trust Account No. 1 in his name as broker or his broker's dba as trustee. He did not indicate whether he is reconciling his trust accounts at least once per month as required by the Real Estate Law. He most recently obtained a corporate license, on September 28, 2017, for Ted Katzakian Co., Inc., dba TKPM.

26. Respondent did not testify whether he has taken a trust handling course, a prudent course of action, or whether he plans to. He presented no evidence that he has engaged in significant and conscientious involvement in the community. His failure to recognize that his diversion of trust funds to pay for his own real property was a serious breach of his duties as a broker, and his false representations that "it was always in front of everybody," meaning that everyone knew what he was doing with the trust funds, and that "no one was harmed," does not indicate a change in attitude from that which existed at the time of the conduct in question.

27. Respondent has acknowledged some wrongdoing, by stipulating to the allegations in the Accusation. It has been judicially recognized that rehabilitation requires an acknowledgment of wrongdoing. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Ca1.3d 933, 940 [Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation].)

28. However, it is very troubling that respondent failed to safeguard the trust accounts that the Bureau identified. Although he asserted that "it was always in front of everybody," and that "everyone got their money," this is not the case. The shortage in Bank Account No. 1 has not been totally cured. Respondent failed to obtain written consent from the trust account beneficiaries which would have allowed for a reduction of the balance of the funds to an amount less than their corresponding existing aggregate liability. Respondent acted with fraudulent or dishonest intent by failing to safeguard the trust accounts for the benefit of the beneficiaries. Respondent lacks insight into his fiduciary duties as a broker.

29. Despite his financial difficulties with his warehouse property, rather than protecting the interests of the trust account beneficiaries, respondent sought to protect his own interests first. He acknowledged that he could have refinanced his home to pay the mortgage on his warehouse property. Instead, for over a year, respondent took funds from the trust account to pay the mortgage on the warehouse. He could have stopped at any time during that year, but did not. He did not safeguard the trust accounts, or protect the interests of the owners and beneficiaries of the trust account funds, in accordance with his fiduciary duties. Harm to TKPM's clients was significant due to the shortage in Trust Account No. 1. To protect the safety and interests of his clients and the public, respondent's real estate broker's license, and his real estate corporation license should be revoked.

Costs

30. Complainant has requested reimbursement for costs incurred by the Bureau in connection with prosecution and investigation of this matter, in the total amount of \$15,664.65. (\$1,521.90 for prosecution, \$2,312.30 for investigation, and \$11,830.45 for the audit). The costs were certified in the manner provided by Business and Professions Code section 10106. The cost of the audit has been charged against respondent in accordance with Business and Professions Code section 10148, subdivision (b). The time spent appears to be reasonable, and the activities claimed were necessary to the development and presentation of the case. Complainant's request for costs is addressed further in the Legal Conclusions below.

LEGAL CONCLUSIONS

Applicable Law

1. Complainant has the burden of proving the grounds for discipline alleged in the Accusation by clear and convincing evidence to a reasonable certainty. (*Realty Projects*,

Inc. v. Smith (1973) 32 Cal.App.3d 204, 212.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

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

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

4. Business and Professions Code section 10176, provides, in pertinent part, that the "commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:"

(a) Making any substantial misrepresentation.

[¶] . . . [¶]

(c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.

[¶] . . . [¶]

(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

[¶] . . . [¶]

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission, or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission, or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident

with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.

[¶] . . . [¶]

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

5. Business and Professions Code section 10177, provides, in pertinent part, that the commissioner may suspend or revoke the license of a real estate licensee, or a corporation, if an officer, director or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[¶] . . . [¶]

(d) Willfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law . . .

[¶] . . . [¶]

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

6. Business and Professions Code section 10106, subdivision (a) provides that the commissioner may request the Administrative Law Judge to direct a licensee found to have committed a violation of the Real Estate Law to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. Subdivision (e) provides that a certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

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

8. California Code of Regulations, title 10, section 2731, subdivision (a), provides, "[a] licensee shall not use a fictitious name in the conduct of any activity for which

a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.”

9. California Code of Regulations, title 10, section 2832, subdivision (a), provides, “[c]ompliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.”

10. California Code of Regulations, title 10, section 2832.1 provides that the real estate broker shall obtain written consent of every principal who is an owner of the funds in the trust account prior to each disbursement, if the disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

11. California Code of Regulations, title 10, section 2835 prohibits “‘Commingling’ as used in Section 10176(e) of the Code . . .” The section sets forth acts that do not constitute commingling: (a) deposit of funds into a trust account not to exceed \$200, to pay service charges or bank fees; (b) deposit of funds into a trust account belonging to broker’s principal and the broker when it is not reasonably practicable to separate such funds; (c) deposit of funds into a trust account broker owned funds in connection with activities involving payment collection or loan servicing.

Causes for Discipline

12. Cause for discipline of respondent’s real estate broker license and the corporation license of Ted Katzakian Co., Inc., dba TKPM, was established pursuant to Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832, by reason of Findings 9, 18 and 19, in that respondent failed to designate Bank Account No. 1 and Bank Account No. 2 as trust accounts.

13. Cause for discipline of respondent’s real estate broker license and the corporation license of Ted Katzakian Co., Inc., dba TKPM, was established pursuant to Business and Professions Code section 10145, by reason of Findings 10, 18 and 19, in that Bank Account No. 1 had a shortage of \$186.66, pursuant to the Bureau’s audit.

14. Cause for discipline of respondent’s real estate broker license and the corporation license of Ted Katzakian Co., Inc., dba TKPM, was established pursuant to Business and Professions Code section 10145, by reason of Findings 11, 18 and 19, in that Trust Account No. 1 had a shortage of \$163,399.17, pursuant to the Bureau’s audit.

15. Cause for discipline of respondent’s real estate broker license and the corporation license of Ted Katzakian Co., Inc., dba TKPM, was established pursuant to

California Code of Regulations, title 10, section 2832.1, by reason of Findings 16, 18 and 19, in that respondent failed to obtain written permission from owners of trust funds in Bank Account No. 1 and Trust Account No. 1, to allow the balance to drop below accountability.

16. Cause for discipline of respondent's real estate broker license and the corporation license of Ted Katzakian Co., Inc., dba TKPM, was established pursuant to Business and Professions Code sections 10176, subdivisions (a), (c), (e), (g), and (i), and California Code of Regulations, title 10, section 2835, by reason of Findings 12, 14 and 19, in that respondent overdisbursed property management fees in the amount of approximately \$120,351.04, to himself for personal use, including but not limited to, making mortgage payments on his own real property.

17. Cause for discipline of respondent's real estate broker license and the corporation license of Ted Katzakian Co., Inc., dba TKPM, was established pursuant to California Code of Regulations, title 10, section 2731, by reason of Findings 18 and 19, in that respondent used an unlicensed entity, Ted Katzakian Co., Inc., pursuant to the Bureau's audit.

18. Cause for discipline of respondent's real estate broker license and the corporation license of Ted Katzakian Co., Inc., dba TKPM, was established pursuant to Business and Professions Code sections 10176, subdivisions (a), (c), (e), (g), and (i), by reason of Findings 14, 18 and 19, in that respondent withdrew trust funds for his personal use.

Conclusion

19. When all the evidence is considered, protection of the public requires that respondent's real estate broker license be revoked.

Costs of Investigation and Prosecution

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

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

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

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

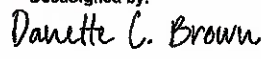
22. As set forth in Finding 30, complainant requested that respondent be ordered to pay the costs of the investigation and enforcement (including the audit) incurred up to the date of hearing in the total amount of \$15,664.65. When all the relevant factors set forth in *Zuckerman* are considered, and balancing respondent's concerns against the Bureau's obligation to protect the public through licensing actions such as this one, assessment of costs in the amount of \$15,664.65, in bringing and prosecuting the Accusation is reasonable and appropriate.

ORDER

1. All licenses and licensing rights of respondent Timothy Thomas Katzakian, including the corporation license of Ted Katzakian Co., Inc., dba Ted Katzakian Property Management, under the Real Estate Law are REVOKED.

2. Respondent shall pay to the Bureau costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 10106 in the amount of \$15,664.65, in a manner as prescribed by the Bureau.

DATED: March 6, 2018

DocuSigned by:

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DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings