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JAN 07 2020

DEPARTMENT OF REAL ESTATE

By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:) DRE No. H-6750 SAC
CHRIS THE THAM,) OAH No. 2019050777
Respondent.)
_____)

ORDER DENYING RECONSIDERATION

On November 13, 2019, a Decision was rendered in the above-entitled matter. The Decision was to become effective on December 10, 2019, and was stayed by separate Order to January 09, 2020.

On December 09, 2019, Respondent petitioned for reconsideration of the Decision of November 13, 2019.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of November 13, 2019, and reconsideration is hereby denied.

IT IS SO ORDERED 2/7/20.

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER

[Signature]

Flag

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DEC 10 2019

DEPARTMENT OF REAL ESTATE
By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:) DRE NO. H-6750 SAC
CHRIS THE THAM,) OAH NO. 2019050777
Respondent(s).)

ORDER STAYING EFFECTIVE DATE

On November 13, 2019, a Decision was rendered in the above-entitled matter to become effective December 10, 2019.

IT IS HEREBY ORDERED that the effective date of December 10, 2019, is stayed for a period of 30 days to allow Respondent CHRIS THE THAM to file a petition for reconsideration or consider Respondent's petition for reconsideration.

The Decision of November 13, 2019, shall become effective at 12 o'clock noon on January 09, 2020.

DATED: 12/10/19

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER

Sandra Knaus

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

NOV 19 2019

DEPARTMENT OF REAL ESTATE
By B. Nicholas

* * *

In the Matter of the Accusation of:	}	DRE No. H-6750 SAC
CHRIS THE THAM,		OAH No. 2019050777
Respondent.		

DECISION

The Proposed Decision dated October 25, 2019, 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 Department 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 Department'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 DEC 10 2019.

IT IS SO ORDERED November 13, 2019

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER



**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

CHRIS THE THAM, Respondent

Case No. H-6750 SAC

OAH No. 2019050777

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on October 9, 2019, in Sacramento, California.

Truly Sughrue, Counsel, represented complainant Tricia Parkhurst, a Supervising Special Investigator of the State of California.

Respondent Chris The Tham represented himself. Neither he nor anyone acting on his behalf appeared at hearing, his default was entered, and this matter proceeded as a default proceeding pursuant to Government Code section 11520.

Evidence was received, the record was closed, and the matter was submitted for written decision on October 9, 2019.

SUMMARY

Complainant seeks to discipline respondent's license to practice real estate because he violated numerous provisions of the Real Estate Law (Bus. & Prof. Code, § 10000 et seq.) and regulations adopted pursuant to it. Complainant established cause for discipline by clear and convincing evidence. No evidence of respondent's continued fitness to perform the duties of a real estate licensee, even on a restricted basis, was introduced. Therefore, his license should be revoked.

FACTUAL FINDINGS

Jurisdictional Matters

1. The Department of Real Estate (Department) issued respondent Real Estate Salesperson License Number S/01216179, on a conditional basis pursuant to Business and Professions Code section 10153.4, on December 19, 1996. The conditional license expired June 19, 1998, and was suspended indefinitely pursuant to Business and Professions Code section 10153.4, subdivision (c), the following day.

2. Respondent's salesperson license was reinstated February 24, 1999, and was terminated July 17, 2004. That same day, the Department issued respondent Real Estate Broker License Number B/01216179. The Department added the fictitious business name "Honesty Realty & Mortgage" to the broker license on July 30, 2004, and removed the name on June 14, 2016. No other fictitious business name has been added to the broker license. The broker license expires July 16, 2020, unless renewed or revoked. There is no history of prior discipline of the broker license.

3. Complainant signed the Accusation on October 30, 2018, solely in her official capacity. The Accusation seeks to discipline respondent's real estate license based on his mishandling of trust funds and performing real estate activities under an unlicensed fictitious business name.¹

Department's Audit of Respondent's Real Estate Activities

4. Jenny Hong is an Auditor employed by the Department. She audited respondent's real estate activities during the period of October 1, 2016, through October 31, 2017 (audit period) to determine if he handled and accounted for trust funds in accordance with the Real Estate Law and regulations adopted pursuant to it. The Department received a consumer complaint, which prompted the audit.

5. Ms. Hong performed her audit between December 19, 2017, and May 17, 2018. She reviewed bank statements, various records respondent prepared, canceled checks, and bank deposit slips. She also reviewed pertinent records the Department maintained, and interviewed respondent.

¹ Reading the Accusation as a whole, it is apparent that there are numerous typographical errors with regard to references to certain paragraphs. Specifically: 1) the reference to "Paragraph 5" in Paragraph 6 should be to "Paragraph 4;" 2) the reference to "Paragraph 8" in Paragraph 7 should be to "Paragraph 6;" 3) the reference to "Paragraph 4" in Paragraph 8 should be to "Paragraph 7;" and 4) the references to "Paragraph 10(a)," "Paragraph 10(b)," "Paragraph 10(c)," "Paragraph 10(d)," "Paragraph 10(e)," and "Paragraph 10(f)" in Paragraph 9 should be to "Paragraph 8(a)," "Paragraph 8(b)," "Paragraph 8(c)," "Paragraph 8(d)," "Paragraph 8(e)," and "Paragraph 8(f)," respectively. The Accusation is read as if the above typographical errors were not made.

RESPONDENT'S PROPERTY MANAGEMENT ACTIVITIES

6. During the audit period, respondent managed 20 properties for 18 owners, including multiple properties jointly owned by Wing Chee and Stanley Zhu. Specifically, he: 1) advertised vacant properties; 2) solicited and screened prospective tenants; 3) collected rents, security deposits, and late fees; 4) requested, supervised, and paid for repairs; and 5) sent the monthly proceeds to the respective property owners. Respondent performed his property management activities under the fictitious names "Honest Realty Solutions" and "Honest Realty." He charged a monthly property management fee of \$50 to \$60 per property. Additionally, he received \$400 each time he placed a new tenant.

RESPONDENT'S HANDLING OF TRUST FUNDS

7. During the audit period, respondent deposited all monthly rent payments collected from tenants into a checking account at Wells Fargo Bank (trust account). The trust account was in the name "Chris Tham dba Honest Realty Solutions." Ms. Hong was not able to determine if the account was properly opened as a trust account, because respondent never provided a copy of the signature card.

8. Respondent accounted for all rent payments collected each month during the audit period by creating a spreadsheet listing for each payment the: 1) property's address; 2) tenant's name; 3) amount collected; 4) date collected; and 5) date the owner was paid his share. None of the spreadsheets included any of the following information the: 1) date each rent payment was deposited into the trust account; 2) check number and date of any disbursements of trust funds previously deposited in the trust account; or 3) trust account's daily balance. Respondent did not

maintain any other written record containing the information missing from his monthly spreadsheets.

9. Respondent also accounted for rent payments collected each month on behalf of each owner by creating a separate statement for each owner that itemized: 1) the amount collected; 2) the address(es) for which rent was collected; 3) respondent's management fee; and 4) the amount paid for repairs made to the owner's property or properties. None of the statements included the: 1) date the rent collected was deposited into the trust account; 2) date and amount of each disbursement from the owner's funds; or 3) balance after each deposit and disbursement. Respondent did not maintain any other written record for each owner containing the information missing from his monthly statements.

10. Usually each month respondent sent each property owner the monthly statement accounting for the rent collected that month, along with the owner's share of the rent. Respondent admitted to Ms. Hong, however, that he had personal financial issues in early 2017, and did not send Mr. Chee and Mr. Zhu their share of the rent collected in May, June, and July 2017. He owed them a total of \$26,304 for those months, and had not paid any portion of that amount as of October 31, 2017.

11. During the audit period, respondent never reconciled the monthly statements of trust funds he held on behalf of Mr. Chee and Mr. Zhou with the corresponding spreadsheet of trust funds he held on behalf of all property owners.

RECONCILIATION OF THE TRUST ACCOUNT

12. The balance in the trust account as of October 31, 2017, was \$13,213.20. Therefore, the account was short the funds necessary to pay the \$26,304 respondent owed Mr. Chee and Mr. Zhu by \$13,090.80. After reviewing bank statements for the

trust account, Ms. Hong traced a portion of the shortage to nine payments or withdrawals totaling \$6,281.17 respondent made between September 11 and October 27, 2017, that appeared to be for personal expenses. Respondent subsequently confirmed each of those payments or withdrawals was for personal expenses unrelated to his property management activities. He never obtained Mr. Chee's or Mr. Zhu's written permission to use their share of the monthly rents collected to pay his personal obligations.

Discussion

13. Respondent collected rent payments on behalf of property owners, including Mr. Chee and Mr. Zhu, during the audit period. He held those funds in trust for the benefit of the property owners. The payments constituted "trust funds," and he was required to, within three days of receipt: 1) deliver the payment to the rightful property owner; 2) deposit the payment with a neutral escrow depository; or 3) deposit the payment into a trust account maintained at a bank or other financial institution. Respondent chose to deposit the rents collected into an account maintained at Wells Fargo Bank.

14. On October 31, 2017, the balance in the trust account was \$13,213.20. Respondent admitted he owed Mr. Chee and Mr. Zhu \$26,304 as of that date. Therefore, the balance in the trust account was \$13,090.80 less than the aggregate liability of the trust account to Mr. Chee and Mr. Zhu. At least a portion of that shortage (\$6,281.17) was caused by respondent's commingling of trust funds with personal funds. He never obtained Mr. Chee's or Mr. Zhu's written permission to make a disbursement from the trust account that would cause a shortage in the remaining trust funds on deposit.

15. During the audit period, respondent failed to maintain a written accounting of the trust funds held on behalf of all property owners showing the: 1) date each rent payment was deposited into the trust account; 2) check number and date of each disbursement from the account; and 3) daily account balance. He also failed to maintain a written accounting of the trust funds held on behalf of Mr. Chee and Mr. Zhu showing the: 1) date each rent payment was deposited into the trust account; 2) date and check number of each disbursement from the funds; 3) amount of each disbursement; and 4) balance after each deposit and disbursement. Respondent never reconciled his written accounting of trust funds held on behalf of Mr. Chee and Mr. Zhu with his written accounting of trust funds held on behalf of all property owners.

16. Respondent conducted his activities during the audit period under the fictitious business names "Honest Realty Solutions" and "Honest Realty." Neither name was listed on his real estate license at the time.

Summary

17. Complainant established by clear and convincing evidence cause to discipline respondent's real estate license based on his numerous violations of the Real Estate Law and regulations adopted pursuant to it. There was no evidence of respondent's continued fitness to perform the duties of a real estate licensee, even on a restricted basis. Therefore, his license must be revoked.

Request for Costs of Audit

18. At hearing, complainant requested that respondent be ordered to pay \$3,681.50 for the cost of Ms. Hong's audit. Evidence of the cost of the audit was admitted without objection. As explained in Legal Conclusion 16, respondent is

required to pay such costs within 60 days of the Department's mailing a notice of billing.

Request for Costs of Investigation and Enforcement

19. Complainant requested costs pursuant to Business and Professions Code section 10106 in the total amount of \$2,836. That amount consists of investigation costs in the amount of \$1,323 and enforcement costs in the amount of \$1,513. At hearing, complainant introduced a Certified Statement of Investigation Costs certifying under penalty of perjury that the Department incurred costs in the amount of \$1,323 for the time staff spent investigating this matter. Attached to the Certified Statement of Investigation Costs is a spreadsheet itemizing the time spent by staff member, date, task, time, hourly rate, and total amount. Complainant also introduced a Certified Statement of Costs certifying under penalty of perjury that the Department incurred costs in the amount of \$1,513 for the time Ms. Sughrue spent on this matter prior to hearing. Attached to the Certified Statement of Costs is a spreadsheet itemizing her time by date, task, time, hourly rate, and total amount.

20. The Certified Statement of Investigation Costs and Certified Statement of Costs constitute prima facie evidence of the reasonable costs of investigation and enforcement in this matter. No evidence was introduced to rebut that prima facie evidence. Therefore, the entire amount of the costs of investigation and enforcement complainant requested is reasonable in light of the issues involved in this matter as discussed in Legal Conclusion 19.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation, and must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 532, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"]; *Realty Projects, Inc. v. Smith* (1973) Cal.App.3d 204, 212 [the standard of proof applicable to proceedings for the discipline of a real estate license is clear and convincing evidence to a reasonable certainty].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

Applicable Law

2. A "real estate broker" is one who, on behalf of others, "leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase, or exchanges of leases of real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities" in exchange for payment or the expectation of payment. (Bus. & Prof. Code, § 10131, subd. (b).)

3. A person may not act as a real estate broker without first obtaining a real estate broker license from the Department. (Bus. & Prof. Code, § 10130.) A person who wants to conduct business as a real estate broker under a fictitious name must have the name listed on his license. (Bus. & Prof. Code, § 10159.5, subd. (a)(1); Cal. Code Regs., tit. 10, § 2731, subd. (a).)

4. A real estate broker who receives money belonging to a client holds the money in trust on behalf of the client, and must, within three days of receipt: 1) deliver the money to the client; 2) deposit it with a neutral escrow depository; or 3) deposit it into a trust account with a bank or other financial institution. (Bus. & Prof. Code, § 10145, subd. (a); Cal. Code Regs., tit. 10, § 2832, subd. (a).)

5. A real estate broker must keep a written record of all trust funds received, which shall include: 1) the date on which the funds were received; 2) from whom they were received; 3) the amount received; 4) for those funds deposited into a trust account, the date of deposit; 5) the check number and date of any disbursement from the trust account; 6) for those funds deposited with a neutral escrow depository, the identity of the depository and the date the funds were delivered; and 7) the daily balance in the neutral escrow depository or trust account. (Cal. Code Regs., tit. 10, § 2831, subd. (a).)

6. In addition to maintaining a written record of all trust funds received, a real estate broker must maintain a separate record of all trust funds received on behalf of each beneficiary. (Cal. Code Regs., tit. 10, § 2831.1, subd. (a).) The separate record must include the: 1) date of deposit; 2) amount of deposit; 3) date of each disbursement; 4) check number for each disbursement; 5) amount of each disbursement; and 6) balance after each posted transaction. (*Ibid.*)

The broker must reconcile his written record of all trust funds received with his separate records each month, except for those months in which no trust funds were received or disbursed, and he must keep a written record of such reconciliation. (Cal. Code Regs., tit. 10, § 2831.2.)

7. A real estate broker may not make a disbursement from his trust account "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" without the prior written permission of each owner. (Cal. Code Regs., tit. 10, § 2832.1.) A broker may not commingle personal funds with trust funds in a trust account. (Cal. Code Regs., tit. 10, § 2835.)

Cause for Discipline

8. A real estate license may be disciplined if the licensee engaged in "fraud or dishonest dealing." (Bus. & Prof. Code, § 10176, subd. (i).) A license may also be disciplined if the licensee has "willfully disregarded or violated the Real Estate Law" or the regulations adopted pursuant to it. (Bus. & Prof. Code, § 10177, subd. (d).) A license may be disciplined if the licensee has "demonstrated negligence or incompetence in performing an act for which he or she is required to hold the license." (Bus. & Prof. Code, § 10177, subd. (g).)

9. Cause exists to discipline respondent's real estate license pursuant to Business and Professions Code sections 10176, subdivision (i), and 10177, subdivisions (d) and (g), individually and collectively, as those statutes relate to Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.1, because he caused a shortage of trust funds in the trust account in the amount of \$13,090.80 as of October 31, 2017.

10. Cause exists to discipline respondent's real estate license pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), individually and collectively, as that statute relates to California Code of Regulations, title 10, section 2831.2, because he never reconciled his written record of all trust funds held with his separate records during the audit period, and did not keep written records of any such reconciliation.

11. Cause exists to discipline respondent's real estate license pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), individually and collectively, as that statute relates to California Code of Regulations, title 10, section 2831, because he failed to maintain a written record of all trust funds during the audit period.

12. Cause exists to discipline respondent's real estate license pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), individually and collectively, as that statute relates to California Code of Regulations, title 10, section 2831.1, because he failed to maintain a separate record of all trust funds held on behalf of Mr. Chee and Mr. Zhu during the audit period.

13. Cause exists to discipline respondent's real estate license pursuant to Business and Professions Code section 10176, subdivision (e), because he commingled his personal funds with trust funds in the trust account between September 1 and October 27, 2017.

14. Cause exists to discipline respondent's real estate license pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), individually and collectively, as that statute relates to Business and Professions Code section 10159.5 and California Code of Regulations, title 10, section 2731.1, because he conducted

business as a real estate broker under the fictitious business names "Honest Realty Solutions" and "Honest Realty," despite not being licensed under either name.

Conclusion

15. Cause exists to discipline respondent's real estate license for the reasons explained in Legal Conclusions 9 through 14, individually and collectively. There was no evidence of his continued fitness to perform the duties of a real estate licensee. Therefore, his license must be revoked.

Award of Costs of Audit

16. A real estate broker shall reimburse the Department for the cost of an audit after the Department issues a final decision finding that the broker violated Business and Professions Code section 10145 or any regulation interpreting that statute. (Bus. & Prof. Code, § 10148, subd. (b).) Respondent violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.1, as set forth in Legal Conclusion 9. Therefore, he is required to reimburse the Department the sum of \$3,681.50 for the cost of Ms. Hong's audit within 60 days of the Department's mailing a notice of billing. (Bus. & Prof. Code, § 10148, subds. (b) & (c).)

Award of Costs

17. An order resolving a disciplinary proceeding in the Department's favor may require the real estate licensee to pay the Department's reasonable costs of investigating and enforcing the matter. (Bus. & Prof. Code, § 10106, subd. (a).) "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." (Bus. & Prof. Code, § 10106, subd. (c).)

18. The Department may prove its reasonable costs of investigation and enforcement by submitting "Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." (Cal. Code Regs., tit. 1, § 1042, subd. (b).) When costs are sought for services provided by a Department employee, the declaration "may be executed by the [Department] or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the costs. For other costs, the bill, invoice or similar support document shall be attached." (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1).)

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. Those factors include: 1) the licensee's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners, supra*, 29 Cal.4th at p. 45.)

19. The evidence complainant introduced in support of her request for costs of investigation and enforcement constitutes prima facie evidence of the reasonableness of the costs incurred. (Bus. & Prof. Code, § 10106, subd. (c); Cal. Code Regs., tit. 10, § 1042, subd. (b)(1).) No evidence was introduced to rebut such evidence.

Therefore, after considering the evidence and the *Zuckerman* factors, the entire amount of costs of investigation and enforcement complainant requested is reasonable. Consequently, complainant is awarded costs in the total sum of \$2,836 as set forth in the Order below.

ORDER

1. All licenses and licensing rights of respondent Chris The Tham under the Real Estate Law are REVOKED.

2. Respondent shall reimburse the Department of Real Estate the sum of \$3,681.50 for the cost of Jenny Hong's audit within 60 days of the Department's mailing a notice of billing.

3. Respondent shall reimburse the Department of Real Estate the sum of \$2,836 for costs incurred while investigating and enforcing this matter. Respondent may pay these costs according to a payment plan approved by the Department or its designee.

DATE: October 25, 2019

DocuSigned by:
Coren D. Wong
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COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings