

FILED

AUG 29 2022

DEPARTMENT OF REAL ESTATE
By *By dew*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-7000 SAC
)	
ALLEGIANCE PROPERTY MANAGEMENT)	OAH No. 2022020362
and ADAM ALEXANDER OWENS,)	
)	
Respondents.)	

DECISION

The Proposed Decision dated JUNE 30, 2022, 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, but the right to a restricted corporate license is granted to Respondent ALLEGIANCE PROPERTY MANAGEMENT, and, the right to a restricted broker license is granted to Respondent ADAM ALEXANDER OWENS.

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.

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

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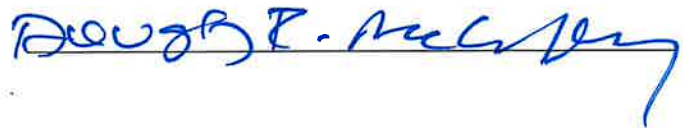
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11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on SEP 19 2022.

IT IS SO ORDERED 8.12.22

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

A handwritten signature in blue ink, appearing to read "Douglas R. McCauley", is written over a horizontal line.

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

In the Matter of the Accusation against:

**ALLEGIANCE PROPERTY MANAGEMENT and ADAM
ALEXANDER OWENS, Respondents**

Agency Case No. H-7000 SAC

OAH No. 2022020362

PROPOSED DECISION

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 1, 2022, via telephone and videoconference, from Sacramento, California.

Megan Lee Olsen, Attorney III, represented complainant Tricia D. Parkhurst, in her official capacity as Supervising Special Investigator for the Department of Real Estate (Department).

MaryJo Smart, Attorney at Law, represented respondents Allegiance Property Management and Adam Alexander Owens.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 1, 2022.

SUMMARY

From November 2019 through January 2020, the Department conducted an audit of respondents' accounting and record keeping practices during a nine-month period in 2019, to determine whether their property management and trust fund activities were conducted in accordance with the Real Estate Law. The audit discovered numerous trust account irregularities and other violations of the Real Estate Law. Complainant filed an accusation alleging cause for disciplinary action. Though no malfeasance or bad faith was established, the violations are supported by sufficient evidence and therefore, support cause for disciplining respondents' licenses and licensing rights.

FACTUAL FINDINGS

1. The Department originally issued respondent Adam Owens (Adam)¹ a real estate salesperson license on December 12, 2012. It subsequently issued him broker license number B/01924321 on April 12, 2016. The broker license is in full force and effect and will expire on June 22, 2024, unless renewed.

2. Respondent Allegiance Property Management (APM) offers property management services and is co-owned by Adam and his brother, Gabriel Owens (Gabriel). On December 7, 2016, the Department issued APM corporate broker license

¹ Because they share the same last name, and for convenience only, this Decision refers to respondent Adam Owens as "Adam" and witness Gabriel Owens as "Gabriel."

number C/02012126 listing Adam as the designated officer. The corporate license expired on July 1, 2021.²

3. On March 12, 2021, complainant, acting in her official capacity, filed an Accusation against respondents. The Accusation seeks to discipline respondents licenses based upon allegations they failed to comply with the laws governing the handling of trust funds, and committed other violations of the Real Estate Law (Bus. & Prof. Code, §§ 10000 et seq.) Respondents timely filed Notices of Defense. This hearing followed.

Department Audit

4. In 2019, the Department's Enforcement Unit received an anonymous complaint against APM regarding various landlord-tenant issues involving one of its managed properties. As part of the investigation into the complaint, the Department discovered no audit had been conducted on APM's property management activities. Thus; the Enforcement Unit requested an audit be conducted to determine whether APM had properly handled trust funds in accordance with the Real Estate Law.

5. Rana Tarazi has been an auditor with the Department for 16 years. Her duties include conducting audits of real estate brokerages engaged in property management, mortgage lending, and property sales, to determine how they handle trust funds and comply with the law. From November 2019, through June 2020, she conducted an audit of APM's property management activity for the nine-month period of January 1 through September 30, 2019 (audit period). Ms. Tarazi interviewed Adam

² The broker license originally expired on December 6, 2020. However, the license was extended to June 30, 2021, pursuant to Executive Order No. N-83-20.

and Gabriel, obtained and examined records on a sample basis, performed account analysis, and prepared an audit report dated June 24, 2020, wherein she listed seven areas of violation. Ms. Tarazi testified at hearing consistent with her report.

CORPORATE ADDRESS

6. At the start of the audit, APM's main office and mailing address on file with the Department was 1909 39th Street, Sacramento, California 95816. When Ms. Tarazi contacted APM to schedule an in-person visit, Adam stated the main office was at 1751 Cebrian Street, West Sacramento, 95691. On August 11, 2020, APM updated its main office and mailing address with the Department to reflect the West Sacramento address.

SUSPENDED STATUS

7. On June 27, 2018, the California Secretary of State (SOS) suspended APM's corporate powers, rights and privileges. APM continued to do business and perform property management activities while suspended during the audit period. APM's good standing was restored with the SOS in or around July 2020.

TRUST FUNDS

8. During the audit period, APM managed approximately 18 single-family residential properties with 22 rental units, and one apartment complex with 12 units, for 11 owners. APM's activities included collecting rents and security deposits, paying expenses, advertising, screening tenants, and general maintenance and repair. For its services, APM charged a monthly management fee ranging from \$50 to \$75 per rental unit.

9. During the audit period, in connection with its property management activities, APM accepted or received funds in trust (trust funds) from or on behalf of property owners. APM deposited, or caused to be deposited, said trust funds into a bank account (Bank Account #1) maintained at American River Bank in Sacramento. The title for Bank Account #1, as listed on the signature card and bank statements, was "Allegiance Property Management." The account was not designated as a trust account. Both Adam and Gabriel were authorized signatories; however, Gabriel was not a licensed salesperson listed under APM's corporate broker license.

10. Ms. Tarazi prepared a trust account reconciliation for Bank Account #1 as of August 31, 2019. The account contained a shortage in the amount of \$15,370.82. The shortage was caused by negative balances in the following owner accounts: Cynthia Ballesteros (\$50); Jeff Holden (\$2,582.87); and Julio Gonzalez (\$12,737.95). Respondents failed to obtain the written consent of the trust fund owners to allow him to reduce the balance of the trust account to an amount less than the existing aggregate trust fund liabilities.

11. Ms. Tarazi found that, during the audit period, respondents failed to maintain separate records of the receipt and disbursements of all trust funds deposited into Bank Account #1. Additionally, respondents failed to reconcile on a monthly basis the balance of all separate beneficiary or transaction records (separate records) with the corresponding balance records of all trust funds received and disbursed (control record) for Bank Account #1. Ms. Tarazi explained the purpose of monthly reconciliation is to ensure the real estate broker has sufficient funds at the end of each month to pay what is owed to each beneficiary. Here, Ms. Tarazi's reconciliation revealed that Bank Account #1 contained unidentified and/or unaccounted for funds in the amount of \$6,226.50.

FOLLOW UP WITH RESPONDENTS

12. Ms. Tarazi presented her written determination of violations to Adam, who signed and acknowledged receipt of the same on June 24, 2020. She also discussed each violation and the necessary corrections with him. On July 15, 2020, Tammy Becerril, Special Investigator for the Department's Enforcement Section, issued respondents a Non-Compliance Summary of the violations found in the audit. Respondents replied on July 22, 2020, outlining the corrective action taken by APM. Specifically, Bank Account #1 was designated a trust account and Gabriel was removed as a signatory. APM opened a second trust account (Bank Account #2) solely for security deposits. Bank Account #2 is properly identified as a trust account and Adam is the only signatory. Respondents also provided an AppFolio printout listing the deposits made to Bank Account #2; however, these amounts could not be verified as no corresponding bank statement for that account was provided.

Additionally, respondents assured that "future monthly review of [t]rust accounts will be meticulous and documented," and that "[a]ll trust funds received and disbursed will have clear identification and accounting." They subsequently submitted a reconciliation report for Bank Account #1 as well as a balance sheet showing rents and deposits received, as of July 31, 2020.

Respondents also furnished proof that APM's good standing with the SOS had been restored. Finally, respondents also made efforts to correct APM's address on file with the Department. APM completed and submitted a Corporation Change Application, listing its West Sacramento office, on or about August 6, 2020.

13. Ms. Tarazi reviewed the July 31, 2020 reconciliation report and balance sheets. However, these documents were insufficient to determine if Bank Account #1

was properly balanced. Assuming the rents and security deposits were maintained in Bank Account #1, Ms. Tarazi calculated a shortage of \$56,332.24 (\$9,961.86 cash balance less \$66,294.10 liabilities). Ms. Tarazi explained there was no way to determine from the records provided whether the security deposits were maintained in a separate account or, if so, whether there was still a shortage. Moreover, the provided records do not explain or mitigate the shortage that existed as of August 31, 2019.

Respondents' Evidence

14. Adam and Gabriel both testified at hearing. Each brother is a 50-percent shareholder in APM. Adam serves as APM's chief executive officer (CEO), chief financial officer (CFO), and designated broker. Gabriel is the corporation's secretary and office manager. Gabriel is also a licensed real estate salesperson under the broker license of Allison James. He has never been listed under APM's broker license.

15. As office manager, Gabriel's duties include general oversight of the office as well as work orders, maintenance and repairs for the rental properties. During the audit period, APM employed a bookkeeper to collect rents and facilitate owner payments using a third party software application and support service, AppFolio. APM utilized AppFolio to keep track of each rental property, onboard new tenants, track incoming rental payments, and distribute funds to investors.

16. As CEO and CFO, Adam's duties include overseeing management of the rental properties (move-ins, move-outs, setting up tenants in AppFolio, collecting deposits), overseeing owner statements, monthly reconciliation, accounting, maintenance requests, work orders, and working with owners closely. When asked, Adam did not know whether he or anyone else at APM had prepared monthly reconciliations during the audit period.

17. Gabriel and Adam were unaware of the shortage in Bank Account #1 prior to the audit. After learning about it, they worked diligently with AppFolio's support team to examine the three owner accounts identified by Ms. Tarazi as having negative balances to determine what had caused them.

a. The account for Julio Gonzalez had a negative balance of \$12,737.95. Mr. Gonzalez owned two adjacent properties managed by APM: an eight-unit property and a four-unit property. Gabriel explained that when the Gonzalez properties were initially inputted into AppFolio, they were mischaracterized as twelve separate properties, rather than two multi-family properties. For each of his twelve rental properties, Mr. Gonzalez collected the security deposit directly. The deposits were never in APM's possession or deposited to Bank Account #1. However, AppFolio mistakenly reflected that APM had collected and distributed those deposits to Mr. Gonzalez, creating the negative balance. Mr. Gonzalez's accounts have since been correctly labeled as two multi-family properties.

b. A similar issue occurred with the account for Jeff Holden, creating a negative balance of \$2,582.87. Mr. Holden owned one property managed by APM. He collected the security deposit directly; it was never held by APM. Nonetheless, AppFolio reflected that APM had collected and held the deposit.

c. Cynthia Ballesteros is a personal friend of Adam and has never been a client of APM. Ms. Ballesteros owns a rental property and, at one point, reached out to Adam regarding possibly retaining APM for property management. Adam began the process of onboarding Ms. Ballesteros as a client and also began marketing the property. He received two applications and collected a \$25 credit history fee from two potential lessees. Ultimately, Ms.

Ballesteros did not hire APM and elected to find a tenant on her own. The \$50 collected by Adam was used to run credit histories on the two prospective tenants; however, these funds were mislabeled in AppFolio as deposits, resulting in a negative balance of \$50 in Ms. Tarazi's reconciliation.

18. Regarding the \$6,226.50 in unidentified funds, respondents were unaware of this issue until it was discovered by Ms. Tarazi during the audit. At hearing, they introduced a trust account detail sheet for Bank Account #1, created in AppFolio, for the time period of September 1 through 6, 2019. Respondents asserted this was a separate record which explains the source and allocation of the \$6,226.50 in identified funds noted during the audit. Respondents did not specifically explain why these unidentified funds were not properly accounted for during the audit period.

19. Respondents assert they have learned from their mistakes, and have since taken steps ensure the issues identified will not recur, including the creation of Bank Account #2 for security deposits only, and setting up most of the rental properties for automatic electronic payments. APM is also planning to hire Laura Paxton, Adam and Gabriel's aunt, as an accountant and to perform the monthly reconciliations. Respondents did not provide a specific date when Ms. Paxton will be hired.

Analysis

20. Adam was originally licensed in 2012 as a real estate salesperson and in 2016 as a broker. Eight months later, in December 2016, he became the designated broker for APM. Clear and convincing evidence established that, during the audit period: (1) Bank Account #1 was not properly designated as a trust account; (2) Gabriel, a salesperson not listed under APM's broker license, was a signatory on Bank

Account #1; (3) Bank Account #1 developed a shortage of \$15,370.82; (4) Bank Account #1 contained unidentified funds in the amount of \$6,226.50; and, (5) respondents failed to perform monthly reconciliations of Bank Account #1. The evidence further established that APM conducted property management services while its corporate powers, rights and privileges were suspended by the SOS, and that APM failed to update its address with the Department in a timely manner.

21. In mitigation, respondents' licenses have no prior discipline. They cooperated with the Department's audit and addressed a majority of the issues of noncompliance within a reasonable time frame after they were identified in the audit. There was no evidence that any of APM's client property owners suffered any financial loss resulting from the violations discussed herein. Respondents intend to hire an accountant to prevent further accounting violations and prepare monthly reconciliations, though none has been retained yet. Finally, respondents argue that Adam did not act willfully or with intent to violate the law.

22. Notwithstanding the above, respondents' violations of their duties as brokers are serious. Respondents downplayed the gravity of these issues as "technical violations" and blaming AppFolio for the trust fund irregularities, including over \$15,000 in shortage of funds, and over \$6,000 in unidentified funds. Respondents offered no excuse for listing Gabriel as a signatory to the trust account even though Gabriel did not meet any of the legal requirements to serve as such. Additionally, Adam testified he was not aware that the SOS had suspended APM's corporate status or that APM's address was not updated with the Department, asserting he was not informed until the audit. He was also unable to explain why APM had not performed any monthly reconciliations during the audit period. As the designated broker for APM, it was and is Adam's duty to ensure that APM is in compliance with the Real

Estate Law at all times. (See *Milner v. Fox* (1980) 102 Cal.App.3d 567, 574 n.9 [“Willfully’ as used in section 10177, subdivision (d) does not require an intent to violate the law, only an intent to engage in the act or conduct prohibited by the statute is required.” (Citations omitted)].) Respondents cannot eschew their broker responsibilities by blaming third party software or claiming ignorance of facts or law which they knew or should have known.

23. Though respondents were remiss in fulfilling their duties, there was no evidence they acted maliciously or in bad faith. They have corrected many of the identified issues and demonstrated a willingness to cooperate with the Department to correct the remaining issues. Thus, outright revocation of respondents’ individual and corporate broker licenses is unnecessary to protect the public. Rather, respondents should be allowed to retain their licensure with appropriate restrictions in place.

Costs

24. Pursuant to Business and Professions Code sections 10148, subdivision (b), and 10106, complainant is authorized to seek reimbursement of the reasonable costs of the audit, investigation, and enforcement at hearing from a licensee found to have committed a violation of the Real Estate Law. Complainant submitted a signed declaration and activity/cost detail for the audit, investigation, and enforcement of this case.

25. Department auditors spent 66 hours on this case at a cost of \$3,890.32, including travel expenses. Department investigators and staff spent 16.25 hours investigating the case at a cost of \$1,301.75. Finally, legal counsel spent 11.25 hours preparing this case for hearing at a cost of \$1,001.25. The scope of work and amounts charged by complainant are reasonable in light of the allegations and legal issues in

this matter. Thus, the total of complainant's reasonable costs for audit, investigation and enforcement are \$6,193.32.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving, by clear and convincing evidence, that the charges in the accusation are true. (Evid. Code § 115; *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Applicable Law

BROKERS

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 for prospective tenants, . . . or collects rents from real property, or improvements thereon, . . ." in exchange for payment or the expectation of payment. (Bus. & Prof. Code, § 10131, subd. (b).)

3. "A real estate salesperson . . . is a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in [section] 10131 . . ." (Bus. & Prof. Code, § 10132.) A real estate broker "shall exercise reasonable supervision over the activities" of real estate salespersons in its employ. (Cal. Code Regs., tit. 10, § 2725.)

4. A real estate broker license issued to a corporation authorizes one of the corporation's officers to act as a real estate broker on the corporation's behalf without having to obtain a separate license. (Bus. & Prof. Code, § 10211; see Bus. & Prof. Code, § 10159 [the designated officer on a corporate real estate broker license "need not be a licensed real estate broker"].) The officer designated to act on the corporation's behalf "shall be responsible for the supervision and control of the activities conducted on behalf of the corporation" (Bus. & Prof. Code, § 10159.2, subd. (a).)

5. "A corporation licensed under Section 10211 of the Code shall not engage in the business of a real estate broker while not in good legal standing with the Office of the Secretary of State." (Cal. Code Regs., tit. 10, § 2742, subd. (c).)

6. Every real estate licensee is required to "have and maintain a definite place of business ... which shall serve as [their] office for the transaction of business." (Bus. & Prof. Code, § 10162, subd. (a); Cal. Code Regs., tit. 10, § 2715.) The licensee shall inform the Department of any change to their office or mailing address no later than 30 days after making the change. (Bus. & Prof. Code, § 10162, subd. (c)(2).)

TRUST ACCOUNTS

7. 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).)

8. A real estate broker who deposits funds into a trust account with a bank or other financial institution must keep a written record of all trust funds deposited, including: 1) the date of receipt; 2) from whom they were received; 3) the amount

received; 4) the date of deposit; 5) the check number and date of any disbursement; and 6) the daily balance in the trust account. (Cal. Code Regs., tit. 10, § 2831, subd. (a).)

9. In addition to maintaining a written record of all trust funds deposited into a trust account, the real estate broker must also maintain a separate record of all trust funds deposited on behalf of each client. (Bus. & Prof. Code, § 10145, subd. (g); 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 disbursement; 4) check number for disbursement; 5) amount of disbursement; and 6) balance after each posted transaction. (Cal. Code Regs., tit. 10, § 2831.1, subd. (a).)

10. Prior to making a withdrawal from a trust account that will reduce the available balance to an amount less than the existing trust fund liability, the broker shall obtain the written consent of all beneficiaries who own money in the trust account. (Cal. Code of Regs., tit. 10, § 2832.1.)

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

(a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

(1) a salesperson licensed to the broker.

(2) a person licensed as a broker who has entered into a written agreement pursuant to section 2726 with the broker.

(3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

(b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:

(1) an officer through whom the corporation is licensed pursuant to section 10158 or 10211 of the Code; or

(2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account.

(c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, or the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

Cause for Discipline

12. A real estate broker license may be disciplined when the broker has willfully disregarded or violated any provision of the Real Estate Law or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 10177, subd. (d).) Additionally, a license

may be disciplined if the licensee acts negligently or incompetently in performing an act for which a license is required; fails to exercise reasonable supervision over the activities of his salespersons; or, if the designated officer for a corporate broker license, fails to exercise reasonable supervision and control of the corporation's activities. (Bus. & Prof. Code, § 10177, subds. (g)-(h).)

13. Cause for discipline against APM's corporate broker license and Adam's broker license exists pursuant to Business and Professions Code section 10177, subdivisions (d), (g), and (h). As set forth in the Factual Findings as a whole, respondents violated the Real Estate Law in the following manner:

a. Respondents failed to designate Bank Account #1 as a trust account. (Bus. & Prof. Code, § 10145; Cal. Code Regs., tit. 10, § 2832.)

b. Respondents allowed the account balance for Bank Account #1 to fall below the aggregate liability of their trust obligations, resulting in a shortage of \$15,370.82, without obtaining the prior written consent of each owner of the funds. (Bus. & Prof. Code, § 10145; Cal. Code Regs., tit. 10, § 2832.1.)

c. Respondents maintained an unidentified and unaccounted for amount of \$6,226.50 in Bank Account #1 for which no separate record was maintained. (Bus. & Prof. Code, § 10145, subd. (g); Cal. Code Regs., tit. 10, § 2831.1)

d. Respondents failed to properly and accurately reconcile, on a monthly basis, the balance of all separate beneficiary or transaction records for Bank Account #1. (Cal. Code Regs., tit. 10, § 2831.2.)

e. Respondents authorized a salesperson not listed under the corporate broker license, or otherwise authorized by law, to be a signatory on Bank Account #1. (Cal. Code Regs., tit. 10, § 2834.)

f. Respondents engaged in the business of a real estate broker while not in good legal standing with the California Office of the Secretary of State. (Cal. Code Regs., tit. 10, § 2742, subd. (c).)

g. Respondents failed to inform the Department of the change to respondent APM's office and/or mailing address within 30 days. (Bus. & Prof. Code, § 10162.)

14. By virtue of Legal Conclusions 12 and 13, respondent Owens, as the designated broker officer, failed to exercise reasonable supervision and control to ensure that APM was in full compliance with the Real Estate Law. (Bus. & Prof. Code, § 10177, subs. (g) & (h).)

15. As set forth in the Factual Findings as a whole, and in particular, Factual Findings 20 through 23, allowing respondents to retain their real estate licensure with appropriate restrictions is not contrary to public protection.

Costs

16. The Commissioner has discretion to recoup 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).) Additionally, the Commissioner may request the administrative law judge (ALJ) 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 the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106, subd. (a).)

17. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include whether the licensee had a "subjective good faith belief" in the merits of his or her position, whether the licensee raised a "colorable challenge" to the proposed discipline, and the extent of the licensee's financial ability to make later payments. Further, full costs may not be assessed when a "disproportionately large investigation" was conducted given the circumstances of the case. Finally, the ALJ should consider the public interest in regulating the targeted conduct.

18. At hearing, respondents presented evidence that they are actively engaged in property management activities. There is no evidence that they lacked a "subjective good faith belief" in the merits of their position. Respondents did not, however, present a colorable challenge to the discipline sought. Nor did they present any evidence of a financial inability to pay.

19. By reason of the matters set forth in Factual Findings 24 and 25, in conjunction with an analysis pursuant to the factors set forth in *Zuckerman*, it is determined that a cost assessment of \$6,193.32 represents a reasonable assessment to impose on respondents, and they shall be ordered to reimburse the Department in this amount.

ORDER

All licenses and licensing rights of respondents Allegiance Property Management and Adam Alexander Owens under the Real Estate Law are REVOKED; provided, however, a restricted corporate real estate broker license shall be issued to Allegiance Property Management, and a restricted real estate broker license shall be issued to respondent Adam Alexander Owens, pursuant to Business and Professions Code section 10156.5, if respondents make application therefor and pay to the Department of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision.

The restricted broker licenses issued to respondents shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. Respondents shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.

2. Respondents APM and Owens shall pay the Department's costs associated with its audit, investigation and enforcement pursuant to Business and Professions Code sections 10106, subdivision (a) and 10148, subdivision (b), in the amount of \$6,193.32. Respondents APM and Owens are jointly and severally liable for these costs. These costs shall be paid in full or in accordance with a payment schedule as agreed to between respondent Owens and the Department.

Respondents' failure to make payments in accordance with any formal agreement entered into with the Department shall constitute an independent violation

of the terms of the restricted licenses and shall be grounds for the suspension or revocation of said licenses.

3. The restricted licenses issued to respondents 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.

4. The restricted licenses issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondents have 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.

5. Respondents shall not be eligible to apply for the issuance of unrestricted real estate licenses nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

6. Respondent Owens shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent Owens fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent Owens presents such evidence. The Commissioner shall afford respondent Owens the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

7. Respondent Owens shall, within sixty days from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department of Real Estate, including the payment of the appropriate examination fee. If respondent Owens fails to satisfy this condition, the Commissioner may order suspension of respondent's license until he passes the examination.

DATE: June 30, 2022



TIFFANY L. KING

Administrative Law Judge

Office of Administrative Hearings