

FILED

OCT 06 2022

DEPARTMENT OF REAL ESTATE  
By B. H. Chiu

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of:	)	DRE No. H-7100 SAC
	)	
JAMES ANDREW JOHNSON, IV,	)	OAH No. 2022020856
	)	
Respondent.	)	

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DECISION

The Proposed Decision dated August 23, 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 broker license is granted to Respondent.

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 OCT 27 2022

IT IS SO ORDERED 10.4.22

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER



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

**FILED**

**SEP 20 2022**

DEPARTMENT OF REAL ESTATE  
By B. Nicholas

**In the Matter of the Accusation Against:**

**JAMES ANDREW JOHNSON, IV, Respondent**

**Agency Case No. H-7100 SAC**

**OAH No. 2022020856**

**PROPOSED DECISION**

Jessica Wall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 2, 2022, from Sacramento, California.

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

Rebecca Sem, Attorney at Law, represented respondent James Andrew Johnson, IV, who was present at hearing.

Evidence was received, the record closed, and the matter submitted for decision on August 2, 2022.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. The Department originally issued respondent a conditional real estate salesperson license on February 20, 2003, which was later suspended for failing to meet the education requirements under Business and Professions Code section 10153.4, subdivision (c). Respondent's salesperson license was reinstated on September 21, 2004, and the Department issued him broker license no. B/01368706 (broker license) on September 5, 2013. The broker license is in full force and effect and will expire on September 13, 2025, unless renewed.

2. On January 21, 2022, complainant, acting in her official capacity, filed an Accusation against respondent. The Accusation seeks to discipline respondent's broker license based upon allegations he 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.) and the regulations adopted pursuant to it. Respondent timely filed a Notice of Defense. This hearing followed.

### **The Department Audit**

3. In 2021, the Department's Enforcement Unit received an anonymous complaint against respondent alleging he was delinquent in paying association dues at a property he managed. As part of the investigation into the complaint, the Department discovered no audit had been conducted on respondent's property management activities. The Enforcement Unit requested an audit be conducted to determine whether respondent had properly handled trust funds in accordance with the Real Estate Law and the regulations adopted pursuant to it.

4. Robert J. Leonard has been an auditor with the Department for 20 years. His 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 March 2021 through August 2021, he conducted an audit of respondent's property management activity for the 14-month period of January 1, 2019, through February 28, 2021 (audit period). Mr. Leonard interviewed respondent, obtained and examined records on a sample basis, performed account analysis, and prepared an audit report dated August 27, 2021, wherein he listed six areas of violation. Mr. Leonard testified at hearing consistent with his report.

### **TRUST FUNDS**

5. During the audit period, respondent managed seven residential properties for five owners. Respondent's activities included collecting rents and security deposits, advertising for and screening tenants, and general maintenance and repair. For his services, respondent charged a monthly management fee ranging five to 10 percent of collected rents.

6. During the audit period, in connection with his property management activities, respondent accepted or received funds in trust (trust funds) from or on behalf of property owners. Based on all rents collected, respondent's annual trust fund collections totaled approximately \$120,000. Respondent deposited, or caused to be deposited, said trust funds into a trust account (Trust Account #1) and a bank account (Bank Account #1), both maintained at Bank of the West in Stockton, California. The title for Trust Account #1 was "James A Johnson dba Johnson Realty Group Trustee." The title for Bank Account #1 was "James A Johnson dba Johnson Realty Group." Respondent was the sole authorized signatory of the two accounts. During January

and February 2020, respondent deposited trust funds into Bank Account #1. Bank Account #1 was not designated as a trust account.

7. Mr. Leonard prepared a trust account reconciliation for Trust Account #1 as of January 31, 2021. The first time he ran the reconciliation, there was a minimum shortage of \$102,166.20. The shortage was attributable to negative balances in two beneficiary accounts (\$101,217.22), bank charges (\$795), and a negative adjusted bank balance (\$153.98). One property, Sutter, was responsible for most of the negative balance (\$101,129.72).

8. Respondent requested that Mr. Leonard run a second reconciliation that omitted the Sutter property. He informed Mr. Leonard that Sutter's running balance was incorrect based on a software switch. Mr. Leonard ran the second reconciliation for Trust Account #1 on January 31, 2021, omitting Sutter. The second reconciliation found a shortage of at least \$33,939.90. The shortage was based on negative balances in the El Camino property records (\$87.50), bank charges (\$795), a negative bank balance (\$153.93), and unidentified causes (\$32,903.42). Respondent did not have 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.

9. Mr. Leonard found that, during the audit period, respondent failed to maintain an accurate written control record for Trust Account #1 that contained all the information required by Department regulations. Respondent's control record included transactions from both Bank Account #1 and Trust Account #1 but did not list the transfers between the two accounts. Additionally, respondent's control record included entries for receipts that were not deposited into either of the two accounts without noting the identity of the other depository and date the funds were forwarded.

10. Additionally, Mr. Leonard found that respondent failed to maintain adequate separate records for each beneficiary during the audit period. The separate records failed to identify the check numbers for disbursements by check and set forth inaccurate daily balances after posting balances. For the Sutter property, \$68,226.30 was unaccounted for, and no separate record accounted for those funds.

11. Mr. Leonard further determined that respondent had failed to perform monthly reconciliations of each bank account holding trust funds, as required by Department regulations. Finally, Mr. Leonard found that respondent commingled his own property or money with his clients' trust funds during the audit period by transferring money between Bank Account #1 and Trust Account #1.

12. On July 29, 2021, Mr. Leonard sent respondent a copy of the Non-Compliance Summary. He sent a first Revised Non-Compliance Summary on August 6, 2021, followed by a second Revised Non-Compliance Summary on August 25, 2021. Respondent did not respond to or dispute the second Revised Non-Compliance Summary.

### **Respondent's Evidence**

13. Respondent testified at hearing. He works as a real estate broker and opened his own brokerage, Johnson Realty Group, in 2013. He completes about seven to 15 real estate transactions each year. Respondent started working in property management in 2009 and learned about the industry while working under another broker. Respondent currently has four employees: a part-time assistant, a real estate salesperson, and two maintenance staff. During the audit period he also employed a property manager. His assistant receives the rent payments, processes them, and

deposits them into the accounts. His property manager previously collected rent payments, delivered notices, and facilitated maintenance.

14. In late 2019, respondent took a continuing education course and learned that Bank Account #1 was not set up properly to hold trust funds. He created Trust Account #1 shortly thereafter. However, Bank Account #1 still received multiple rent payments in January and February 2020 because the automated clearing house (ACH) transfer information had not been changed. Another issue with the accounts arose in February and March 2020, when respondent accidentally paid several Sprint bills out of Trust Account #1, rather than Bank Account #1, before catching the error and correcting it. Additionally, when his office purchased a check reader, his assistant accidentally scanned trust account checks into Bank Account #1 instead of Trust Account #1. Respondent had to transfer funds between the accounts to correct these errors. Nevertheless, he did not record those transfers in his control record.

15. Mr. Leonard called respondent to inform him about the audit and request certain records for the audit period. The records included bank account statements, statements from respondent's PayPal account, separate records for each property, and a control record for the seven managed properties. For his control and separate records, respondent used the Rentec Direct software program. His employees used Rentec Direct to note the payment amounts and dates received,<sup>1</sup> as well as the charges and expenses at each property. To comply with Mr. Leonard's records

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<sup>1</sup> Tenants paid respondent and property owners by money order or ACH transfers. Respondent did not accept personal checks from tenants.



requests, respondent went into Rentec Direct, populated reports for the audit period, and sent them to Mr. Leonard without reviewing them first.

16. After Mr. Leonard's first reconciliation, respondent recognized that there were issues with the accuracy of the records for the Sutter property. Sutter is a multi-family property with six units. Tenants generally pay the property owner directly, rather than addressing the payments to respondent. Respondent logged these payments in his records to reflect that the tenants were current on rent but did not log disbursements. This resulted in the Sutter records showing a significant shortage in funds. Respondent was unaware of this because he did not independently reconcile the Sutter records. Instead, he met with Sutter's owner each month to go over income and expenses, which the owner tracked in a spreadsheet. Mr. Leonard performed a second reconciliation that removed the records from the Sutter property, as respondent requested, but respondent did not understand the findings enough to object to the resulting shortage of \$33,939.90.

17. Since receiving the second Revised Non-Compliance Summary, respondent has reviewed his records to see what caused the shortage. So far, he has determined that about \$19,425 of the shortage was attributable to repairs that were not recorded, such as roofing, tree trimming, plumbing, and air conditioning services at multiple properties. Respondent has not finished reconciling receipts and still cannot account for \$14,514.90 of the shortage. He is trying to learn more about the regulations so he can be meticulous in his reconciliation, and the process is taking him longer than he expected. Although he has a bookkeeper for his general business account, he has not found a bookkeeper able to do his property management accounting, despite looking for four months. Respondent believes that his records

during the audit period were unreliable and that he does not actually have a trust fund shortage. None of his clients have complained about his recordkeeping.

18. Respondent submitted a copy of his updated records to show the progress he has made in reconciling receipts. The records still list a shortage of several thousand dollars in the balance column as of May 2021. Additionally, the updated records still lack check number identification for the checks paid out of Trust Account #1 during the audit period. While respondent takes responsibility for providing Mr. Leonard with inaccurate records, he does not believe that his conduct was willful. He argues that he should not be placed on a restricted license because his conduct was not egregious, and this is his first violation. Respondent is willing to undergo training, complete continuing education, and have his records reviewed again in the future to ensure his compliance with Department regulations.

## **Analysis**

19. Respondent was originally licensed in 2003 as a real estate salesperson and in 2013 as a broker. He has been working in property management since 2009. Nevertheless, despite over a decade of experience, the evidence established that, during the audit period: (1) the balance of Trust Account #1 fell below the aggregate liability of trust obligations; (2) Bank Account #1 held trust funds without being designated as a trust account; (3) respondent's control records did not document transfers between Bank Account #1 and Trust Account #1, failed to document all disbursements from Trust Account #1, and lacked check numbers; (4) respondent's separate property records lacked check numbers and showed inaccurate daily balances; (5) respondent failed to perform monthly reconciliations; and (6) respondent commingled business and trust funds when he transferred money between Bank Account #1 and Trust Account #1.

20. In mitigation, respondent's broker license has no prior discipline. He cooperated with the Department's audit and has made some progress on addressing the issues of noncompliance. Respondent intends to hire an accountant or bookkeeper to prevent further accounting violations in his property management business, though none has been retained yet. Finally, respondent argued that he did not act willfully or intend to violate the law.

21. Notwithstanding the above, respondent's violations of his duties as a broker are serious. Respondent downplayed the gravity of these issues as sloppy recordkeeping and attributed many errors to members of his staff. He could not explain why he had not performed any monthly reconciliations during the audit period. As the broker in charge of his property management business, it was respondent's duty to adequately supervise his employees and ensure that his business complied with the Real Estate Law and the regulations adopted pursuant to it. (See *Milner v. Fox* (1980) 102 Cal.App.3d 567, 574 fn. 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."].) Respondent cannot eschew his broker responsibilities by blaming his employees or claiming ignorance of the law, which he should have known.

22. Though respondent was remiss in fulfilling his duties, there was no evidence he acted maliciously or in bad faith. He is working to correct many of the identified issues and demonstrated a willingness to cooperate with the Department to correct the remaining issues. Thus, outright revocation of respondent's broker license is unnecessary to protect the public. Rather, respondent should be allowed to retain his broker license, subject to appropriate restrictions.

## **Costs**

### **AUDIT COSTS**

23. Under Business and Professions Code section 10148, subdivision (b), the Commissioner shall charge a real estate broker for the cost of any audit if cause for discipline under Business and Professions Code section 10145 is found. Complainant submitted a signed Certified Statement of Audit Costs and spreadsheet documenting the hours that auditors worked on this matter.

24. Mr. Leonard spent 155 hours on the case at a rate of \$58 per hour, for a total cost of \$8,990. Some of these hours resulted from performing additional reconciliation requested by respondent based on the inaccurate records he provided. Because respondent and his poor record keeping caused the duplication of efforts, he should be responsible for the full cost. Supervising Auditor Corena de Sonnaville spent 1.5 hours at \$89 per hour, for a total of \$133.50. Supervising Auditor Michael Rivera spent 0.5 hours<sup>2</sup> on the matter at the rate of \$89 per hour, for a total of \$44.50. The total audit costs, which must be billed to respondent, are \$9,168.

### **INVESTIGATION AND ENFORCEMENT COSTS**

25. Under Business and Professions Code section 10106, complainant may seek reimbursement of the reasonable costs of the investigation and enforcement at hearing from a licensee found to have committed a violation of the Real Estate Law.

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<sup>2</sup> The certification lists Mr. Rivera's time as one hour, but the total correctly assesses it as 0.5 hours because the sum is \$44.50.

Complainant submitted a signed declaration and activity/cost detail for the investigation and enforcement of this case.

26. The Department investigators spent 10.25 hours investigating the case at a cost of \$832.25. Legal counsel spent 36.75 hours preparing this case for hearing at a cost of \$3,528. The scope of work and amounts charged by complainant are reasonable considering the allegations and legal issues in this matter. Thus, the total of complainant's reasonable costs for the investigation and enforcement are \$4,360.25.

## **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. The Department may suspend or revoke a license if the licensee has willfully disregarded or violated the Real Estate Law or the Department's rules and regulations (Bus. & Prof. Code, § 10177, subd. (d)); or demonstrated negligence or incompetence in performing acts that require a license (Bus. & Prof. Code, § 10177, subd. (g)). "Disciplinary procedures provided for in the Business and Professions Code, such as section 10177(d), are to protect the public not only from conniving real estate [licensees] but also from the uniformed, negligent, or unknowledgeable [licensees]." (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518.)

4. The Department may also suspend or revoke a license at any time if the licensee commingles personal funds with trust funds held for clients. (Bus. & Prof. Code, § 10176, subd. (e).)

### **TRUST ACCOUNTS**

5. 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 business 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).)

6. 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 of any funds deposited and date of any disbursement; (6) with respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded; and (7) the daily balance in the trust account. (Cal. Code Regs., tit. 10, § 2831, subd. (a).)

7. 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) the date of deposit; (2) the amount deposited; (3) the date of each related disbursement; (4) the check number of each related disbursement; (5) the amount of each related disbursement; (6) if applicable, dates and amounts of interest earned and credited to the account; and (7) the balance after posting transactions on any date. (Cal. Code Regs., tit. 10, § 2831.1, subd. (a).)

8. 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.) A broker may not commingle personal funds with trust funds in a trust account. (Cal. Code Regs., tit. 10, § 2835.)

9. The broker must reconcile his written record of all trust funds deposited with his separate records every month in which trust funds are received or disbursed, and he must keep a written record of the reconciliation. (Cal. Code Regs., tit. 10, § 2831.2.)

### **Cause for Discipline**

10. Cause for discipline against respondent's broker license exists under Business and Professions Code section 10177, subdivisions (d) and (g), individually and collectively. As set forth in the Factual Findings as a whole, respondent violated the Real Estate Law in the following manner:

a. Respondent allowed the account balance for Trust Account #1 to fall below the aggregate liability of his trust obligations, resulting in a shortage at least \$14,000, without obtaining the prior written consent of each owner of the funds. (Bus. & Prof. Code, § 10145; Cal. Code Regs., tit. 10, § 2832.1.)

b. Respondent failed to designate Bank Account #1 as a trust account while using it to hold trust funds. (Bus. & Prof. Code, § 10145; Cal. Code Regs., tit. 10, § 2832.)

c. Respondent did not maintain an adequate and accurate written control record of all trust funds because his record lacked the check number of funds deposited and date of any disbursement, as well as the identity of another depository and date funds were forwarded when not deposited in the trust account. (Bus. & Prof. Code, § 10145; Cal. Code Regs., tit. 10, § 2831.)

d. Respondent did not maintain adequate and accurate separate records of all trust funds collected and disbursed for each property owner because his records did not include the check number of each related disbursement and an accurate daily balance after transactions posted. (Bus. & Prof. Code, § 10145, subd. (g); Cal. Code Regs., tit. 10, § 2831.1.)

e. Respondent failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records with the record of all trust funds received and disbursed for Trust Account #1. (Cal. Code Regs., tit. 10, § 2831.2.)

11. Cause for discipline against respondent's broker license exists under Business and Professions Code section 10176, subdivision (e), because he transferred money between Bank Account #1 and Trust Account #1 on multiple occasions, commingling trust and personal funds.



12. As set forth in the Factual Findings as a whole, and in particular, Factual Findings 19 through 22, allowing respondent to retain his broker license with appropriate restrictions is not contrary to public protection.

## **Costs**

### **AUDIT COSTS**

13. The Commissioner shall 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).) Respondent must pay audit costs within 60 days after the mailing of a notice of billing, or the Commissioner may suspend or revoke his license. (Bus. & Prof. Code, § 10148, subd. (c).)

14. By reason of the matters set forth in Factual Findings 23 and 24, respondent shall be responsible to reimburse the Department in the amount of \$9,168 for audit costs within 60 days of mailing a notice of billing.

### **INVESTIGATION AND ENFORCEMENT COSTS**

15. The Commissioner may request the 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).)

16. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court 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.

17. At hearing, respondent acknowledged his errors and showed a "subjective good faith belief" in the merits of his position. Respondent did not, however, present a colorable challenge to the discipline sought. Nor did he present any evidence of a financial inability to pay.

18. By reason of the matters set forth in Factual Findings 25 and 26, in conjunction with an analysis under the *Zuckerman factors*, it is determined that \$4,360.25 represents a reasonable assessment to impose on respondent for the costs of investigation and enforcement. He shall be ordered to reimburse the Department in this amount for investigation and enforcement costs.

## **ORDER**

1. All licenses and licensing rights of respondent James Andrew Johnson, IV, under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all the provisions of Section 10156.7 of the Business

and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

- a. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
- b. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted license.
- c. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations, or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
- d. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford

respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

2. Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

3. Pursuant to Section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's cost for: (a) the audit which led to this disciplinary action and, (b) a subsequent audit to determine if respondent has corrected the trust fund violations found in Legal Conclusion 10. In calculating the amount of the Commissioner's cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 60 days of mailing an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide

for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

4. Respondent James Andrew Johnson, IV, shall reimburse the Department of Real Estate the sum of \$4,360.25 for costs incurred while investigating and enforcing this matter. These costs may be paid pursuant to a payment plan approved by the Department or its designee.

DATE: August 23, 2022

*Jessica Wall*

JESSICA WALL AUG 22, 2022 12:59 PDT

JESSICA WALL

Administrative Law Judge

Office of Administrative Hearings