

FILED

AUG 10 2023

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-7182 SAC
)	
PROFESSIONAL PROPERTY)	OAH No. 2023020439
MANAGEMENT SERVICES and)	
DEBORAH LEAH HENNING.)	
)	
<u>Respondents.</u>)	

DECISION

The Proposed Decision dated June 7, 2023, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

Pursuant to Section 11517(c)(2)(B) of the Government Code, the proposed penalty set forth in Paragraph 5, of the "ORDER" on page 14, "Respondents shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order..." is omitted from the Decision.

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.

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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 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 AUG 31 2023

IT IS SO ORDERED Aug 7, 2023

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Stephen Lerner

FILED

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

DEPARTMENT OF REAL ESTATE
By B. Nicholas

In the Matter of the Accusation Against:

**PROFESSIONAL PROPERTY MANAGEMENT SERVICES and
DEBORAH LEAH HENNING, Respondents**

Agency Case No. H-7182 SAC

OAH Case No. 2023020439

PROPOSED DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on May 31, 2023, by videoconference from Sacramento, California.

Truly Sughrue, Counsel, represented complainant Tricia D. Parkhurst, Supervising Special Investigator for the Department of Real Estate (Department).

Respondent Deborah Leah Henning (Henning) represented herself and respondent Professional Property Management Services (PPMS).

Evidence was received, the record closed, and the matter submitted for decision on May 31, 2023.

FACTUAL FINDINGS

Jurisdiction

LICENSES

1. Initially, the Department issued Henning a real estate salesperson license on December 5, 1978. On December 31, 2009, the Department issued her real estate broker License ID 00688242. Beginning on July 14, 2014, Henning was also authorized to do business under the fictitious business names "Professional Property Management" and "Professional Property Management Services." Henning's broker license will expire on April 10, 2026, unless renewed.

2. On July 22, 2014, the Department issued PPMS corporate real estate broker License ID 01960901. Henning is PPMS's 100-percent shareholder, Chief Executive Officer (CEO), President, and designated broker officer responsible for the licensed activities of PPMS's employees and agents. PPMS's corporate real estate broker license expired on July 21, 2022.

ACCUSATION

3. On December 28, 2022, complainant, in her official capacity, signed and later filed an Accusation against Henning and PPMS. The Accusation alleges cause for discipline based on a Department audit that discovered unauthorized shortages in PPMS's two trust accounts maintained for its property management activities.

4. Respondents timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of

the State of California, pursuant to Government Code section 11500 et seq. This hearing followed.

PPMS's Property Management Activities and Trust Accounts

5. From July 1, 2020, through June 30, 2021, PPMS conducted property management services for approximately 153 residential properties with 158 units and one apartment complex with 10 units for 106 owners. PPMS's property management services included screening tenants, collecting security deposits, collecting rents, and paying expenses. For such services, PPMS charged management fees from owners.

6. While acting as a broker and managing the above-mentioned properties, PPMS received funds in trust (trust funds) from or on behalf of owners and tenants, and from time to time made disbursements of such trust funds. During the relevant period, PPMS collected approximately \$4.5 million in trust funds a year. The trust funds received were deposited in two trust fund accounts:

(a) Trust Fund Account No. 1 – Central Valley Community Bank, Account No. ending in 5771. Deposits consisted of rent and owner contributions. Disbursements consisted of owner proceeds, security deposit disposition, repairs and maintenance payments, and management fees.

(b) Trust Fund Account No. 2 – Central Valley Community Bank, Account No. ending in 5836. Deposits consisted of security deposit payments. Disbursements consisted of security deposit disposition at move out to Trust Account No. 1.

The Department's Audit

7. In 2021, the Department decided to conduct a routine audit of PPMS's trust accounts for the period of July 1, 2020, through June 30, 2021 (Audit No. SC 20-

0102 (PM)). Rana Tarazi (Tarazi), a Department auditor, performed the audit. Tarazi obtained an associate degree in financial accounting and auditing from American River College in 2005. She has been a Department auditor for approximately 16 years and conducts about two to three audits per month. She has previously testified at an administrative hearing approximately 10 to 15 times.

8. Tarazi conducted the audit from July through November 2021. To conduct the audit, Tarazi obtained all trust fund records from Henning, whom she also interviewed on several occasions via telephone and Microsoft Teams. Throughout the audit, Henning was cooperative and timely provided Tarazi with complete and reliable records. Upon the conclusion of her audit, Tarazi drafted an audit report dated February 11, 2022, and testified consistent with that report at hearing.

9. Tarazi prepared a bank reconciliation for Trust Fund Account No. 1 as of April 30, 2021. The adjusted bank balance was calculated by using the ending bank balance per the bank statement provided plus deposits in transit minus outstanding checks as identified from the record of trust funds received and disbursed. The adjusted bank balance was then compared to the corresponding sum of all the separate records for each account beneficiary.

As of April 30, 2021, Trust Fund Account No. 1 had a shortage of \$5,916.48. Tarazi determined that the shortage was caused by the following: (a) negative balances in property/owners' accounts in the amount of \$3,095.59; and (b) funds received and not deposited in Trust Fund Account No. 1 in the amounts of \$619.42 and \$1,000. The cause of the remaining shortage of \$1,201.47 was unidentified. Tarazi found no evidence that the owners of the trust funds had provided written consent to allow PPMS to reduce the balance of funds in Trust Account No. 1 to an amount less than the existing aggregate trust fund liabilities.

10. Tarazi also prepared a bank reconciliation for Trust Fund Account No. 2 as of April 30, 2021. The adjusted bank balance was calculated by using the ending bank balance per the bank statement provided plus deposits in transit minus outstanding checks as identified from the record of trust funds received and disbursed. The adjusted bank balance was then compared to the corresponding sum of all the separate records for each account beneficiary.

As of April 30, 2021, Trust Fund Account No. 2 had a shortage of \$60,395. Tarazi determined that \$8,632.83 of the shortage was caused by negative balances in property/owners' accounts. The cause of the remaining shortage of \$51,762.17 was unidentified. Tarazi found no evidence that owners of the trust funds had provided written consent to allow PPMS to reduce the balance of the funds in Trust Fund Account No. 2 to an amount less than the existing aggregate trust fund liabilities.

11. Tarazi testified that she could not explain the unidentified shortages. It could be the result of many things, including prior accounting errors made outside of the audit period. The concern with a trust fund shortage is that the trust fund account has insufficient funds to pay all amounts owed to beneficiaries if necessary. Without written consent of all beneficiaries, such a shortage thus violates applicable law. Nevertheless, Tarazi found no evidence that Henning or PPMS was trying to hide anything. Henning was very cooperative and greatly assisted Tarazi in attempting to trace funds.

Respondents' Evidence

12. Henning has a long career in the real estate industry. She started out working as a real estate salesperson and began performing property management services around 1980. She eventually obtained a residential management professional

degree from the National Association of Residential Property Managers (NARPM), which involved completing numerous property management classes and providing professional references. She also served on NARPM's board from 1994 to 2021. She was board president in 2003.

13. In May 2006, she first bought a partial ownership interest in PPMS and later became its sole owner. PPMS presently has two employees: one licensed property manager (Henning's daughter) and one unlicensed employee who performs maintenance work. Henning oversees PPMS's general operations and handles all finances, accounting, and trust fund account recordkeeping. At the time of hearing, PPMS continued to manage approximately 162 properties with the same two trust fund accounts at issue.

14. Henning agrees with Tarazi's findings as to Trust Fund Account No. 1. Henning discovered that she had inadvertently taken some management fees when she should not have. She has restored the shortage to Trust Fund Account No. 1, performed a new reconciliation. Now, everything balances.

15. As to Trust Fund Account No. 2, Henning agrees with Tarazi's findings as to the negative balances in some property/owners' accounts. However, Henning questions the remaining shortage of \$51,762.17 given the odd, large number. She does not dispute that Tarazi accurately analyzed the documents for the relevant period. Instead, she believes that an accounting error must have been made at some point prior to the audit period. For example, such an error could have occurred when PPMS converted to the new App Folio software in April 2010.

16. Since Tarazi's audit, Henning has personally been "working the books and attempting to follow the money on every single property." She has also been

corresponding with App Folio to see if it is able to assist. It is a labor-intensive process, and she has not located a discrepancy thus far. If her efforts remain unsuccessful, she intends to hire a certified public accountant (CPA) to further trace the issue.

17. Henning assures the Department that any mistake on her part was inadvertent and unintentional. She is a good and ethical person and will do whatever it takes to make it right. To prevent a future recurrence, Henning now reviews statements at least monthly and has her licensed employee perform a second review to catch any mistakes. Henning strongly values respondents' licenses and is willing to comply with any restrictions the Department deems appropriate to retain them.

18. At hearing, Henning was surprised to discover that PPMS's corporate real estate broker license had expired on July 21, 2022. She vowed to take immediate steps to renew it following hearing.

Costs

19. Complainant seeks an award of its audit costs in the amount of \$4,064. The audit costs are supported by a Certified Statement of Audit Costs dated January 9, 2023. Complainant also seeks an award of its investigation costs in the amount of \$698.50. The investigation costs are supported by a Certified Statement of Investigation Costs dated January 13, 2023. Additionally, complainant seeks an award of its enforcement costs in the amount of \$2,856. The enforcement costs are supported by a Certified Statement of Costs dated May 25, 2023.

20. The foregoing certified statements are accompanied by documents describing the general tasks performed, the time spent on each task, the hourly rate(s), and the method of calculating the costs. Given the issues in this case, the requested costs are reasonable.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving by clear and convincing evidence that respondents' licenses should be disciplined. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) "Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

Cause for Discipline

2. Under Business and Professions Code section 10177:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[¶] ... [¶]

(d) Willfully disregarded or violated this part or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of this part and Chapter 1 (commencing with Section 11000) of Part 2.

[¶] ... [¶]

(g) Demonstrated negligence or incompetence in performing an act for which the officer, director, or person is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of that licensee's salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

[¶] ... [¶]

(Bus. & Prof. Code, § 10177, subds. (d), (g), & (h).)

3. "A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with

instructions from the person entitled to the funds." (Bus. & Prof. Code, § 10145, subd. (a)(1).) "The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds." (Cal. Code Regs., tit. 10, § 2832.1.)

4. "The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required." (Bus. & Prof. Code, § 10159.2, subd. (a).)

5. Complainant established by clear and convincing evidence that both Trust Fund Account No. 1 and Trust Fund Account No. 2 had shortages for which there were no written consents from all the beneficiaries in violation of Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.1. Given the negligent management of the accounts, resulting in violations of applicable law, cause exists to discipline respondents' licenses pursuant to Business and Professions Code section 10177, subdivisions (d) and (g).

6. Complainant also established by clear and convincing evidence that Henning, as PPMS's designated broker officer, failed to exercise reasonable supervision and control over PPMS's licensed activities resulting in the above-mentioned trust fund account shortages. This violated Business and Professions Code section 10159.2. Thus, cause also exists to discipline Henning's license pursuant to Business and Professions Code section 10177, subdivisions (d), (g), and (h).

Appropriate Discipline

7. "It shall be the principal responsibility of the commissioner to enforce all laws in this part and Chapter 1 (commencing with Section 11000) of Part 2 in a manner that achieves the maximum protection for the buyers of real property and those persons dealing with real estate licensees." (Bus. & Prof. Code, § 10050, subd. (b).) Complainant established each of the alleged causes for discipline by clear and convincing evidence. They raise concerns regarding respondents' competency in performing property management duties, especially given the large shortage for Trust Fund Account No. 2.

8. That said, there is no evidence of intentional misconduct or deceit. To the contrary, the Department's auditor noted that respondents fully cooperated with the audit and promptly provided reliable documents. Additionally, respondent has already corrected the shortage for Trust Fund Account No. 1. She continues to trace funds for Trust Fund Account No. 2 and is willing to engage a CPA to assist her. Moreover, she has implemented monthly statement reviews, with a second review by a licensed employee, to prevent future errors.

9. Consequently, issuance of restricted licenses in lieu of outright license revocation is the appropriate discipline. Indeed, complainant also recommends that level of discipline, which is sufficient to protect the public interest.

Costs

10. "The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of

the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145." (Bus. & Prof. Code, § 10148, subd. (b).) Here, as discussed above, complainant established by clear and convincing evidence that respondents violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.1. As such, the Commissioner may recover the audit costs of \$4,064, which are reasonable given the issues in the audit.

11. "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." (Bus. & Prof. Code, § 10106, subd. (a).) Here, complainant established cause for discipline by clear and convincing evidence. As such, the Commissioner may recover investigation costs of \$698.50 and enforcement costs of \$2,856, which are reasonable given the issues in the case.

12. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether costs should be assessed or reduced in the particular circumstances of each case. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of their position, whether the licensee has raised a colorable challenge to the proposed discipline, the licensee's financial ability to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

13. Here, the scope of the audit and investigation was appropriate. Although respondents acted in good faith and were cooperative, they were not successful in getting any charges dismissed or reduced. Nor did they raise a colorable challenge to

complainant's proposed discipline. Finally, respondents declined to offer evidence regarding any financial inability to pay. Thus, it is appropriate to award the full amount of costs.

ORDER

All licenses and licensing rights of respondents Professional Property Management Services and Deborah Leah Henning under the Real Estate Law are revoked; provided, however, restricted real estate broker licenses (a restricted corporate real estate broker license for Professional Property Management Services and a restricted individual real estate broker license for Deborah Leah Henning) shall be issued to respondents pursuant to Section 10156.5 of the Business and Professions Code 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 licenses issued to respondents shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted licenses issued to respondents may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondents' conviction or plea of nolo contendere to a crime which is substantially related to respondents' fitness or capacity as a real estate licensee.

2. 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 licenses.

3. Respondents 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.

4. Respondents shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondents have, 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 respondents fail to satisfy this condition, the Commissioner may order the suspension of the restricted licenses until respondents present such evidence. The Commissioner shall afford respondents the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondents shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted licenses are in effect such information concerning respondents' activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondents and periodic summaries of salient information concerning each real estate transaction in which respondents engaged during the period covered by the report.

6. Pursuant to Section 10148 of the Business and Professions Code, respondents shall pay the Commissioner's reasonable cost for: (a) the audit which led to this disciplinary action; and (b) a subsequent audit to determine if respondents have corrected the trust fund violation(s) alleged in the Accusation and found in this decision. In calculating the amount of the Commissioner's reasonable costs, 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. Respondents shall pay such costs within 60 days of receiving 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 licenses issued to respondents 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 respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondents enter 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.

7. Respondents shall, prior to and as a condition of the issuance of the restricted licenses, 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 respondents have 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.

8. Consistent with the foregoing, and as a condition of respondents' restricted licenses, respondents shall jointly and severally pay the Commissioner audit costs of \$4,064; investigation costs of \$698.50; and enforcement costs of \$2,856, for a total of \$7,618.50. Such costs may be paid pursuant to two-year payment plan approved by the Commissioner, but shall be paid in full before an application for an unrestricted license is made. Additionally, such costs do not include the costs of any subsequent audit contemplated by Condition No. 6.

DATE: June 7, 2023

Wim van Rooyen

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings