

FILED

JUL 29 2025

DEPARTMENT OF REAL ESTATE

By B. dew

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:	)	DRE No. H-7237 SAC
	)	
KURT LAMONT GILBERTSON,	)	OAH No. 2024101114
	)	
Respondent.	)	

DECISION

The Proposed Decision dated June 11, 2025, 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 (the Department) 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 thirty (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.

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This Decision shall become effective at 12 o'clock noon on AUG 19 2025.

IT IS SO ORDERED

7/22/2025

Chika Sunquist
REAL ESTATE COMMISSIONER



By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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

In the Matter of the Accusation Against:

KURT LAMONT GILBERTSON, Respondent

Agency Case No. H-7237 SAC

OAH No. 2024101114

PROPOSED DECISION

Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 30, 2025, from Sacramento, California.

Megan Lee Olsen, Counsel, represented complainant Tricia D. Parkhurst, Supervising Special Investigator of the Department of Real Estate (Department), State of California.

Respondent Kurt Lamont Gilbertson appeared and represented himself.

Evidence was received on April 30, 2025. The record was held open for: (1) complainant to serve by mail on respondent Exhibits 4 and 8; (2) respondent to object to either exhibit; and (3) respondent to submit written argument. Respondent did not object to Exhibits 4 or 8 and submitted his argument by email. His argument

was admitted as Exhibit A. On May 13, 2025, the record closed and the matter submitted for decision.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 11, 1981, the Department issued respondent salesperson license no. 00805045. On April 26, 1990, the Department issued respondent broker license no. 00805045 (license). The license will expire on April 25, 2026, unless renewed.

2. On February 5, 2024, complainant, in her official capacity, signed and thereafter filed an Accusation seeking to discipline respondent's license based on his alleged failure to appropriately manage trust funds, execute broker-salesperson relationship agreements, and disclose his license number on solicitation materials. The Accusation alleges cause for discipline under Business and Professions Code sections 10140.6, subdivision (b)(1), 10145, 10176, subdivision (e), and 10177, subdivisions (d) and (g), and California Code of Regulations, title 10, sections 2726, 2831, 2831.1, 2831.2, and 2832.

Department Survey

3. In 2001, respondent focused his real estate practice on operating a property management business. In September 2022, Alex Beniakoff, a Special Investigator in the Department's Enforcement Section, conducted a routine broker-office survey of respondent's business and subsequently prepared a memorandum detailing his findings during the survey. Mr. Beniakoff testified at hearing consistent

with his memorandum. He described respondent as cooperative and honest during his inspection.

4. Mr. Beniakoff's inspection revealed that respondent did not maintain a broker-salesperson agreement between him and his son, Kyle Gilbertson (Kyle), who he employed as a salesperson. Mr. Beniakoff also discovered respondent did not have a trust account for client funds. Instead, respondent deposited money received on behalf of clients into his personal bank account. He explained he had been operating his business the same way for over 20 years and did not realize until recently reading the Broker Compliance Evaluation Manual that he was required to use a trust account. Respondent admitted to Mr. Beniakoff he commingled funds but tried to keep track of deposits and withdrawals.

Department Audit

5. In October 2022, the Department's Enforcement Section requested an audit of respondent's property management activities. The Department assigned Rana Tarazi, Auditor III, to perform the audit. At the conclusion of her audit, Ms. Tarazi prepared an audit report. She testified at hearing consistent with her report. Ms. Tarazi described respondent as cooperative and forthcoming during her audit.

6. The audit period was limited to January 1, 2022, through September 30, 2022. Ms. Tarazi examined bank signature cards, bank statements, owner's income sheets, deposit slips, and property management and lease agreements. She also interviewed respondent. Ms. Tarazi's audit revealed respondent failed to document and account for client funds but not that he embezzled any funds.

7. During the audit period, respondent managed 66 residential properties with 99 units, one storage complex with 14 units, two vacant lots, one business

complex with four units, and four mobile homes. Respondent's services included collecting rent, soliciting for tenants, advertising properties, making property tax and insurance payments, and handling repairs and maintenance. For his services, respondent charged between \$50 and \$150 per unit per month or six percent of collected rents per unit per month. Respondent collected approximately \$1.6 million on behalf of his clients (trust funds) annually. Respondent deposited the trust funds into one of two personal bank accounts, one with Chase Bank (Chase) and the other with Wells Fargo Bank (WF). Respondent did not designate either account as a trust fund account.

8. Ms. Tarazi attempted to reconcile the Chase and WF accounts but was unable to because respondent did not track his receipts and disbursements of trust funds in a "Control Record," as required by California Code of Regulations, title 10, section 2831. Respondent also did not maintain a "Separate Record" for each beneficiary to track the deposits for each client, as required by California Code of Regulations, title 10, section 2831.1. Because respondent did not maintain a Control Record or a Separate Record, he was unable to perform an account reconciliation of the deposits and disbursements for each beneficiary, as required by California Code of Regulations, title 10, section 2831.2.

9. During the audit period, respondent commingled trust funds with his personal funds by depositing trust funds into the Chase and WF accounts. Ms. Tarazi discovered respondent made deposits to, or disbursements from, both bank accounts, for personal or business expenses such as phone bills, auto loan payments, and an income tax payment and refund. Respondent admitted to Ms. Tarazi he commingled the funds.

10. During the audit period, respondent also failed to maintain a broker-salesperson agreement with Kyle and Shawn Shingler, another salesperson he employed. Respondent corrected this issue during the audit and now has agreements with each salesperson. During her audit, Ms. Tarazi discovered respondent failed to include his license number on his business cards. Respondent told Ms. Tarazi he will correct this issue.

Respondent's Evidence

11. Respondent testified. He became a real estate salesperson when he was 20 years old and joined his family business. In 1989, he took over the business, and in 2001, the business became primarily focused on property management. Within the last seven years, respondent hired Kyle and Mr. Shingler as salespersons under his property management business.

12. Respondent admits he "messed up the books." He acknowledges he did not have a dedicated trust account and did not keep a Control Record or Separate Records for each beneficiary. He also admits he did not reconcile the accounts and commingled his money with clients' money. Respondent explained he kept mental track of incoming and outgoing funds by timely collecting rents and payments and immediately disbursing them to his clients. Respondent further explained he had operated his business in this manner for over 20 years. He acknowledges he should have known to document deposits and disbursements for each client.

13. After the Department completed its audit and respondent learned what he was required to do, he immediately changed his operation of the business to comply with Department rules. He created a trust account for trust funds and no longer commingles funds. Respondent now uses AppFolio, a property management

software, to track trust funds. He has a separate ledger for each property and each tenant. Respondent issues owner statements every month. He maintains a Control Record and Separate Records and reconciles them every month.

14. Respondent has made sure his license number is indicated on client-facing materials, such as business cards. He explained he had broker-salesperson agreements for Kyle and Mr. Shingler, but they had been lost in 2018 during the Camp Fire, a natural disaster in Paradise, California, where respondent's business is. Respondent now has updated agreements on file for Kyle and Mr. Shingler.

15. Respondent admitted his wrongdoing. He explained his failure to comply with the Department's rules was not in bad faith but due to ignorance of those rules he should have known. Respondent believes that since 1981 he has served his community and clients well and that a lack of client complaints is a testament to his satisfactory service. Nevertheless, moving forward, if respondent has any questions relating to his real estate practice, he will consult the Department and conduct research to ensure he remains in compliance with the Department's rules.

Costs

16. The Department's audit costs are \$4,122, supported by a Certified Statement of Audit Costs. The Department incurred \$1,727.25 in investigation costs, supported by a Certified Statement of Investigation Costs, and \$2,763 in enforcement costs, supported by a Certified Statement of Costs by Megan Lee Olsen. The total costs incurred are \$8,612.25.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proving the grounds for discipline alleged in the Accusation by clear and convincing evidence to a reasonable certainty. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.) If complainant meets this burden, rehabilitation is akin to an affirmative defense; consequently, the burden of proof of establishing an affirmative defense is on respondent. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

Applicable Law

2. The Real Estate Commissioner may discipline a licensee for violating the rules and regulations relating to the practice of real estate. (Bus. & Prof. Code, § 10177, subd. (d).) These rules and regulations include a requirement for: (1) a licensee to disclose their name, license number, and responsible broker's identity on all solicitation materials intended to be the first point of contact with consumers and on purchase agreements; and (2) a broker to have a written broker-salesperson agreement with each of their salespersons. (Bus. & Prof. Code, § 10140.6, subd. (b)(1); Cal. Code Regs., tit. 10, § 2726.)

The rules and regulations also require a broker who accepts funds belonging to others, in connection with a real estate transaction, to: (1) keep a record of all trust funds received and disbursed; (2) deposit funds into a trust fund account maintained

by the broker; (3) keep a separate record for each beneficiary or transaction; and (4) at least once a month, balance all separate beneficiary or transaction records to reconcile with the record of all trust funds received and disbursed. (Bus. & Prof. Code, § 10145, subd. (a)(1); Cal. Code Regs., tit. 10, §§ 2726, 2831, 2831.1, 2831.2, & 2832.)

3. The Real Estate Commissioner may discipline a licensee for commingling with their own money or property the money or property of others that is received by the licensee. (Bus. & Prof. Code, § 10176, subd. (e).)

4. The Real Estate Commissioner may discipline a licensee for demonstrated negligence or incompetence in the practice of real estate. (Bus. & Prof. Code, § 10177, subd. (g).)

Causes for Discipline

5. It is undisputed that respondent failed to disclose his license number on his business cards. Thus, cause for discipline exists under Business and Professions Code section 10177, subdivision (d), in conjunction with section 10140.6, subdivision (b)(1).

6. It is undisputed that respondent failed to have a written broker-salesperson agreement with each of his two salespersons. Thus, cause for discipline exists under Business and Professions Code section 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2726.

7. It is undisputed that respondent failed to keep a record of all trust funds received and disbursed. Thus, cause for discipline exists under Business and Professions Code section 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2831.

8. It is undisputed that respondent failed to deposit all funds relating to clients' rental properties into a trust fund account. Thus, cause for discipline exists under Business and Professions Code section 10177, subdivision (d), in conjunction with section 10145, subdivision (a)(1), and California Code of Regulations, title 10, section 2832.

9. It is undisputed that respondent failed to keep a separate record for each beneficiary or transaction relating to clients' rental properties. Thus, cause for discipline exists under Business and Professions Code section 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2831.1.

10. It is undisputed that respondent failed to balance all separate beneficiary or transaction records to reconcile with the record of all trust funds he received and disbursed. Thus, cause for discipline exists under Business and Professions Code section 10177, subdivision (d), in conjunction with California Code of Regulations, title 10, section 2831.2.

11. It is undisputed that respondent commingled his own money with clients' money which was deposited into his bank accounts. Thus, cause for discipline exists under Business and Professions Code section 10176, subdivision (e).

12. A preponderance of the evidence shows that respondent demonstrated negligence or incompetence by commingling his own funds and client funds and by failing to: keep a record of all trust funds received and disbursed; disclose his license number on his business cards; have a written broker-salesperson agreement with each of his two salespersons; deposit all funds relating to clients' rental properties into a trust fund account; keep a separate record for each beneficiary or transaction relating to clients' rental properties; and balance all separate beneficiary or transaction records

to reconcile with the record of all trust funds received and disbursed. Thus, cause for discipline exists under Business and Professions Code section 10177, subdivision (g).

Appropriate Discipline

13. Once complainant proves cause to discipline respondent's license, the Commissioner must then select the appropriate discipline while considering whether respondent demonstrated rehabilitation. (Bus. & Prof. Code, § 482, subd. (b)(2).) Factors demonstrating rehabilitation include the time that has elapsed since the misconduct, whether respondent has corrected any deficient business practices, and whether respondent's attitude has changed from when he engaged in the misconduct.

14. Respondent's misconduct is serious and recent. He managed multiple properties, with multiple beneficiaries, and failed to appropriately document or account for the deposits and disbursements for each client. While respondent did not embezzle funds, documenting and accounting for trust funds are important fiduciary duties of a real estate licensee. They provide clients with transparency and accountability into how a licensee is managing money on their behalf, and they also assure the Department that a licensee is discharging their fiduciary duties in compliance with the law. Respondent's failure to create a dedicated trust account and to document and account for trust funds hindered the Department's efforts to ensure its licensees are practicing in a manner consistent with public protection.

15. However, respondent has corrected the issues the Department's audit identified. He has a dedicated trust account, keeps a Control Record and Separate Records for each beneficiary, reconciles the accounts monthly, and no longer commingles funds. He has also added his license number to client-facing materials

such as his business cards and has executed broker-salesperson agreements with his two salespersons.

16. To respondent's credit, he has no history of license discipline, and there is no evidence of client complaints against his practice. Respondent has been a licensee for over 44 years, and this is the first instance of administrative action. Respondent was cooperative and forthcoming during the Department's survey and audit and testified credibly that his failures to comply were not due to bad faith but to ignorance. To prevent recurrence of his misconduct, respondent plans to consult the Department and conduct research to ensure he maintains compliance moving forward.

17. The objective of license discipline is to protect the public, not punish a licensee. (See *Fahmy v. Medical Bd. of Cal.* (1995) 38 Cal.App.4th 810, 817.) When all the evidence is considered, respondent has demonstrated that with supervision, he can practice in a manner consistent with the public health, safety, and welfare. Consequently, a three-year period of monitoring through a restricted license would adequately protect the public.

Costs

18. The Department may request the ALJ to direct a respondent to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106.) Additionally, the Real Estate Commissioner shall charge a licensee for the costs of an audit if the licensee is found to have violated real estate laws. (*Id.* at § 10148, subd. (b).)

19. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case.

These factors are: (1) whether respondent was successful in getting charges dismissed or reducing the penalty; (2) whether respondent had a subjective good faith belief in the merits of his position; (3) whether respondent raised a colorable challenge to the proposed discipline; (4) whether respondent has the financial ability to make payments; and (5) whether the scope of the investigation was appropriate to the alleged misconduct. Here, the scope of the investigation was appropriate. Respondent did not present evidence of financial inability to pay. Finally, none of the other factors strongly suggest that cost reduction is warranted. When all the Zuckerman factors are considered, the full amount of costs sought should be awarded.

ORDER

All licenses and licensing rights of respondent Kurt Lamont Gilbertson 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 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 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.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Real Estate 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.

3. 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 three years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent 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 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.

5. Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Real Estate 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 accounting and handling

continuing education course within 120 days prior to the effective date of the Decision in this matter.

6. Pursuant to Business and Professions Code section 10106, respondent shall reimburse the Department the sum of \$4,490.25 for costs incurred investigating and enforcing this matter. Pursuant to Business and Professions Code section 10148, subdivision (b), respondent shall reimburse the Department the sum of \$4,122 for its audit costs incurred in the matter.

DATE: June 11, 2025



PATRICE DE GUZMAN HUBER

Administrative Law Judge

Office of Administrative Hearings