

**FILED**

FEB 21 2013

DEPARTMENT OF REAL ESTATE

By *L. First*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	DRE No. H-11229 SF
	)	OAH No. 2012010514
MANZAR DOKHT AZARI,	)	
	)	
Respondent.	)	
_____	)	

ORDER DENYING RECONSIDERATION

On December 31, 2012, a Decision was rendered in the above-entitled matter. The Decision is to become effective on January 22, 2013, and was stayed by separate Order to February 21, 2013.

On January 18, 2013, Respondent petitioned for reconsideration of the Decision of December 31, 2012.

I have given due consideration to the petition of Respondent for reconsideration. I find no good cause to reconsider the Decision of December 31, 2012, and reconsideration is hereby denied. Therefore, the Decision of the Real Estate Commissioner of December 31, 2012, shall become effective at 12 o'clock noon on February 21, 2013.

IT IS SO ORDERED 2-21-13

Real Estate Commissioner



By THOMAS L. POOL  
Assistant Commissioner

**FILED**

JAN 18 2013

DEPARTMENT OF REAL ESTATE

By *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-11229 SF
MANZAR DOKHT AZARI,	)	OAH No. 2012010514
Respondent.	)	

**ORDER STAYING EFFECTIVE DATE**

On December 31, 2012, a Decision was rendered in the above-entitled matter to become effective on January 22, 2013.

On January 18, 2013, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision of December 31, 2012.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of December 31, 2012, shall become effective at 12 o'clock noon on February 21, 2013.

DATED: 1/18/2013

Real Estate Commissioner

*[Signature]*  
By: Wayne S. Bell  
Chief Legal Officer

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**

JAN 02 2013

DEPARTMENT OF REAL ESTATE  
By *[Signature]*

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In the Matter of the Accusation of )  
 )  
 MANZAR DOKHT AZARI, )  
 )  
 Respondent. )

No. H-11229 SF  
OAH No. 2012010514

DECISION

The Proposed Decision dated November 13, 2012, 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)(c) of the Government Code, the following corrections are made:

On page 7, the last sentence of paragraph number 5 of the Proposed Decision should be amended to read:

"Separate cause for license discipline under Business and Professions Code section 10176, subdivision (a), by reason of the matters set forth in Findings 14 and 16."

On page 7, the last sentence of paragraph number 6 of the Proposed Decision should be amended to read:

"Separate cause for license discipline under Business and Professions Code section 10176, subdivision (e), by reason of the matters set forth in Findings 14 and 16."

This Decision shall become effective at 12 o'clock noon on JAN 22 2013.

IT IS SO ORDERED 12/31/2012  
Real Estate Commissioner

*[Signature]*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MANZAR DOKHT AZARI,

Respondent.

Case No. H-11229 SF

OAH No. 2012010514

**PROPOSED DECISION**

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on September 5 and October 11, 2012, in Oakland, California.

Real Estate Counsel Annette E. Ferrante represented complainant E. J. Haberer II, a Deputy Real Estate Commissioner.

Respondent Manzar Dokht Azari was present and represented herself.

The record was closed and the matter was submitted for decision on October 11, 2012.

**FACTUAL FINDINGS**

*Background*

1. Respondent Manzar Dokht Azari is presently licensed by the Department of Real Estate under the Real Estate Law (Bus. & Prof. Code, div. 4, pt. 1) as a real estate broker.
2. At all times relevant to this proceeding, respondent had registered with the Department the fictitious business names of "Azari Property Management" and "The Azari Group."
3. All all times relevant to this proceeding, respondent advised the Department that she conducted her business at 595 Market Street, Suite 1350, San Francisco, California, and did not have any branch offices.

4. At all times relevant, respondent was engaged in the business of being a real estate broker within the meaning of Business and Professions Code section 10131, subdivisions (a) and (b). Among other things, respondent received funds in trust from or on behalf of owners, tenants and others in connection with the rental or lease of residential property for compensation, and from time to time respondent disbursed the funds she held in trust.

5. At all times relevant to this proceeding, John P. Evangelatos did not hold a real estate license. Evangelatos is respondent's husband.

6. From April 25, 2011, and intermittently through May 13, 2011, the department conducted an audit of respondent's office located at 595 Market Street, Suite 1350, San Francisco, California. The audit period was from January 1, 2010, through March 31, 2011.

7. During the audit period, respondent conducted both property management and resale activities. She had nine licensed salespersons in her business. Respondent managed 148 residential properties for 148 different property owners. Some of these properties were located within San Francisco, and were subject to the requirements of the San Francisco Residential Rent Stabilization and Arbitration Board with respect to the payment of interest on security deposits. With respect to the rental properties she managed, respondent collected rents and paid expenses for compensation. The total annual rent collected from tenants for the audit period was approximately \$3.06 million.

*First Cause of Action: Department Audit Findings*

8. During the audit period, respondent accepted or received funds in trust on behalf of owners, tenants and others in connection with the residential properties she managed. The trust funds were deposited into two bank accounts, Bank Account # 1 and Bank Account #2 maintained by respondent at Bank of America, 33 New Montgomery Street, San Francisco. During the audit period, respondent made disbursements of the trust funds.

Bank Account #1<sup>1</sup> was entitled "Azari Property Management." Respondent was its only signatory on the account, and only her signature was required. This was the account in which security deposits for San Francisco properties were placed.

Bank Account #2<sup>2</sup> was entitled "The Azari Group Real Estate, Inc." This account had two signatories, respondent and Evangelatos. The account required only one of their signatures. This was the account in which security deposits for non-San Francisco properties were placed.

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<sup>1</sup> The account number of Bank Account #1 ended in 43754.

<sup>2</sup> The account number of Bank Account #2 ended in 73105.

9. As established through the audit, respondent failed to comply with the following provisions of the Real Estate Law in connection with her licensed activities:

a. She permitted the balance of funds in Bank Account #1 as of March 31, 2011, to be reduced to an amount which was approximately \$488,317.90 less than the aggregate liability of the account to the owners of the funds, without the prior consent of each owner of the funds as required by Business and Professions Code section 10145 and section 2832.1 of title 10 of the California Code of Regulations<sup>3</sup>.

b. She failed to maintain separate beneficiary records for each beneficiary of Bank Account # 1 and Bank Account #2 as required by section 2831.1 of the regulations.

c. She failed to reconcile the control record with the separate beneficiary records on a monthly basis as required by section 2831.2 of the regulations.

d. She failed to designate Bank Account # 1 and Bank Account #2 as a trust accounts under the name of respondent as trustee as required by section 2832 of the regulations.

e. She permitted Evangelatos, who is unlicensed, to be a signatory on Bank Account #2 without maintaining the fidelity bond required by section 2834 of the regulations.

f. She permitted trust funds held in Bank Account #1 to be commingled with her own money in violation of section 2835 of the regulations and Business and Professions Code section 10176, subdivision (e).

g. She permitted the advertising of branch office locations without first securing a real estate license for those locations in violation of section 2715 of the regulations and Business and Professions Code section 10163.

*Second Cause of Action: Misappropriation of Client Funds*

10. Pursuant to section 49 of Chapter 49 of the San Francisco Administrative Code, San Francisco landlords are required to pay tenants simple interest earned on security deposits held by landlords for one year or more. The tenant is to be given the unpaid accrued interest annually, either in the form of a direct payment or as a credit against the tenant's rent. The interest rate for interest payments is set each year by the Residential Rent Stabilization and Arbitration Board (Rent Board).

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<sup>3</sup> All regulatory references are to the Regulations of the Real Estate Commissioner, which are found in title 10 of the California Code of Regulations.

11. Respondent and her landlord clients entered into property management agreement with respect the handling of tenant security deposits. Under the terms of the agreements, respondent was to receive tenant security deposits, deposit the security deposits into a trust account, and make required disbursements from the account, including the payment of interest earned on the security deposit.

12. On behalf of her landlord clients, respondent entered into lease agreements with their tenants in which she agreed to collect security deposits from the tenants and to deposit them into a trust account.

13. The security deposits collected from the tenants constituted trust funds which were subject to the Commissioner's rules and regulations governing the handling of trust funds. In addition, respondent is a fiduciary of her property management clients. She owed a duty of good faith and loyalty to her clients in the handling of these funds.

14. The department's audit determined that during the audit period respondent had transferred money from the trust account designated for the security deposits into at least four non-trust bank accounts. Respondent concedes that withdrawals were used to purchase a condominium in Southern California and to invest in a stock portfolio she maintained in a joint tenancy TD Ameritrade Account she held with her husband. Respondent did this without disclosing her actions to the beneficiaries, and without obtaining the written consent of all beneficiaries. Respondent did not designate either the real property or the stock portfolio as holding trust funds or being held for the benefit of beneficiaries. Neither the real property nor the stock was insured by FDIC.

15. As established by the audit, respondent failed to comply with the following provisions of the Real Estate Law with respect to the handling of the security deposit funds she held in trust:

a. Respondent failed to maintain the trust funds in accordance with the requirements of Business and Professions Code section 10145.

b. Respondent failed to comply with the requirements of section 2830.1 of the regulations pertaining to maintaining interest-bearing trust accounts.

c. Respondent failed to maintain separate beneficiary records for each transaction as required by section 2831.1 of the regulations.

d. Respondent failed to obtain the written consent of each beneficiary prior to a disbursement which reduced the balance of funds to an amount less than the existing trust fund liability in violation of section 2832.1 of the regulations.

e. Respondent commingled the trust funds in violation of section 2835 of the regulations and Business and Professions Code section 10176, subdivision (e).

16. In removing the security deposits from the trust account without the prior knowledge or written consent of the beneficiaries and using the trust funds to make investments in her own name, respondent put the beneficiaries' funds at risk of loss. By removing the trust funds from the trust fund account, commingling them with her accounts, and making investments of the funds in her own name, respondent's conduct constituted misappropriation and conversion of client trust funds. Respondent's conduct was willful, it was deceptive regarding the true owner of the funds, and constituted a breach of her fiduciary duties.

*Third Cause of Action: (Failure to Supervise)*

17. In permitting the violations set forth in Finding 9 to take place, respondent failed to exercise reasonable supervision and control over the employees and salespersons in her company.

*Respondent's Evidence*

18. Respondent has an undergraduate degree in Accounting and a master's degree in Business Administration from University of California, Los Angeles. She has an extensive background in accounting and finance. In 2006 she left the corporate world she had been working in, and started her own real estate company from her living room. She started with 20 properties to manage, and grew the company to its current multi-million dollar size.

19. Respondent testified that she invested the security deposits in order to comply with what she understood to be the requirements of the San Francisco Administrative Code pertaining to security deposits. She believed she was required to invest the security deposits in order to be able to pay the simple interest due to the tenants at the rate set by the Rent Board. She wanted to keep the money "safe" so she invested it in safe stocks, and she purchased a condo in foreclosure, which she felt she could sell at any time without losing money. Her plan was to rent the condominium and use the rental payments for interest on the security deposits. If she needed money to return security deposits, she would take money from operating accounts to cover that obligation.

20. Respondent begrudgingly accepts that she made a mistake in the handling of the security deposits, but this is the only audit finding that she accepts. She attributes her conduct to an attempt to follow the requirements of the San Francisco Administrative Code pertaining to security deposits, based on advice she received from a Rent Board employee and a Real Estate Association hotline. At the same time, respondent admits to knowing the Commissioner's requirements for handling trust funds, which are clearly at odds with her conduct.

21. Respondent has changed her business practices with respect to handling security deposits on San Francisco properties she manages. Respondent followed the recommendation of the department's investigator and returned the security deposits to the



landlords so that they are the ones responsible for complying with the requirements of the ordinance. With respect to those who do not want to calculate the interest due to their tenants, she now provides that service for an additional fee.

22. Respondent changed the names and the signatory cards for the two Bank America trust accounts; although she says she now just uses one trust account, Bank Account #2, for all properties. She removed the security deposit money from the TD Ameritrade Account and put it back into a trust account. She sold the condo and put the money back into a trust account. Respondent has changed her accounting system from Quick Books to Professional Property Management System. She is maintaining separate beneficiary records, and she is performing monthly reconciliations.

23. With respect to office locations, respondent has always maintained an office in Suite #1375, the suite next door to the business address she provided to the department of 595 Market Street, Suite 1350, San Francisco. She maintains that she completed a form to include Suite #1375 as an office location, but this is not reflected in department records.

With respect to advertising other office locations, respondent maintains that this was a problem caused by agents outside of San Francisco using their home addresses with clients. Respondent states that she did not know she needed to register these addresses with the department. She also states that she has instructed her salespersons to stop advertising their home addresses as office locations.

24. Effective May 10, 2010, respondent's business changed from a sole proprietorship to a corporation. She and her husband are now salaried employees of the corporation.

25. Respondent is adamant that she is an honest businessperson, and that she did not "cheat anyone." She is "a wealthy woman," and did not use the security deposits for her own benefit. She believes that these proceedings should be dismissed, and asserts that she has suffered irreparable business harm from the "false accusation" and "slandorous findings" of the department's audit.

## LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence.

### *First Cause of Action (Audit Violations)*

2. Pursuant to Business and Professions Code section 10177, subdivision (d), the Commissioner may suspend or revoke a real estate license if the licensee has "[w]ilfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the

commissioner for the administration and enforcement of the Real Estate Law.”<sup>4</sup> Cause for license discipline under this section exists by reason of respondent’s violations of California Code of Regulations, title 10, sections 2831.1, 2831.2, 2832, 2834, 2835, and 2715, and respondent’s violations of Business and Professions Code sections 10145, 10176, subdivision (e), and 10163, as set forth in Finding 9.

3. Pursuant to Business and Professions Code section 10148, subdivision (b), the Commissioner may charge a real estate broker for the cost of any audit if the Commissioner finds in a decision following a disciplinary proceeding held in accordance with the requirements of the Administrative Procedure Act (Gov. Code, § 11500 et seq.) that the broker has violated Business and Professions Code section 10145 or any rule of the Commissioner interpreting section 10145. By reason of the matters set forth in Finding 9, and Legal Conclusion 2, cause exists to charge respondent for the costs of the department’s audit pursuant to Business and Professions Code section 10148, subdivision (b).

*Second Cause of Action (Misappropriation of Client Funds)*

4. As set forth above, pursuant to Business and Professions Code section 10177, subdivision (d), the Commissioner may suspend or revoke a license for a willful violation of the Real Estate Law. Respondent’s violations of California Code of Regulations, title 10, sections 2830.1, 2831.1, 2832.1, and 2835, and respondent’s violations of Business and Professions Code sections 10145 and 10176, subdivision (e), as set forth in Findings 14 and 15, provide cause for license discipline under Business and Professions Code section 10177, subdivision (d).

5. Pursuant to Business and Professions Code section 10176, subdivision (a), the Commissioner may suspend or revoke a real estate license of a license holder who has made any substantial misrepresentation. Respondent made a substantial misrepresentation regarding the owners of the trust funds when she purchased securities and real property in her own name with the funds she held in trust. Separate cause for license discipline under Business and Professions Code section 10176, subdivision (e), by reason of the matters set forth in Findings 14 and 16.

6. Pursuant to Business and Professions Code section 10176, subdivision (e), the Commissioner may suspend or revoke a real estate license of a license holder who has commingled his or her own money or property with money or property of others which is received and held by him or her. Separate cause for license discipline under Business and Professions Code section 10177, subdivision (e), by reason of the matters set forth in Findings 14 and 16.

7. Pursuant to Business and Professions Code sections 10176, subdivision (i), and 10177, subdivision (j), the Commissioner may suspend or revoke a real estate license of a license holder who has committed any conduct which constitutes dishonest dealing. Separate

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<sup>4</sup> The Real Estate Law is found at Business and Professions Code section 10000 et seq.

cause for license discipline under Business and Professions Code sections 10176, subdivision (i), and 10177, subdivision (j), by reason of the matters set forth in Findings 14 and 16.

8. The evidence does not support a determination that cause for license discipline exists pursuant to Business and Professions Code section 10176, subdivisions (b) or (c), or Business and Professions Code section 10177, subdivision (o), as alleged in the accusation.

*Third Cause of Action (Failure to Supervise)*

9. Pursuant to Business and Professions Code section 10177, subdivision (h), and California Code of Regulations title 10, section 2725, a real estate broker is required to exercise reasonable supervision and control over all employees and salespersons. Pursuant to Business and Professions Code section 10177, subdivision (d) and (h), the Commissioner may suspend or revoke the license of a broker licensee who fails to exercise reasonable supervision. By reason of the matters set forth in Finding 17, respondent failed to exercise reasonable supervision of the conduct of her employees and salespersons to allow the acts or omissions set forth in Finding 9, to occur. Cause for license discipline therefore exists pursuant to Business and Professions Code section 10177, subdivisions (d) and (h).

*Level of Discipline*

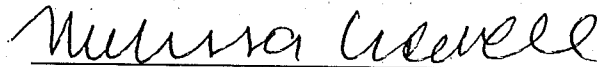
10. The Commissioner is charged with the responsibility of monitoring the activities of its licensees to ensure compliance with applicable rules and regulations. In order to ensure the public's protection, the Commissioner must be satisfied that licensees are willing and able to conduct their business within the bounds of the Real Estate Law, and that they exercise reasonable diligence and accuracy in doing so. Respondent is a well-educated broker with a background in accounting and finance. It is particularly troubling that, against this background, that she committed so many different trust fund violations, the most egregious of which involved misappropriating trust funds and placing them in risky investments in her own name. Respondent's posture is to deny any real wrongdoing and to attack the department's audit findings as slanderous. With taking this posture, respondent has not provided the Commissioner with any basis to have confidence that she will exercise better judgment in the future. On this record, the only discipline consistent with public protection is license revocation.

ORDER

1. All licenses and licensing rights of respondent Manzar Dokht Azari under the Real Estate Law are revoked by reason of Legal Conclusions 2 through 7, and 9, jointly and for each of them.

2. Pursuant to Business and Professions Code section 10148, respondent shall pay the Commissioner's reasonable cost for the audit which led to this disciplinary action.

DATED: November 13, 2012



MELISSA G. CROWELL  
Administrative Law Judge  
Office of Administrative Hearings