

FILED

MAY 14 2013

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By B. Contreras

* * *

In the Matter of the Accusation of

PAMELA DOLORES TAEUFFER,

Respondent.

No. H-11450 SF

OAH No. 2012100396

DECISION

The Proposed Decision dated April 4, 2013, 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 to the Proposed Decision:

Legal Conclusion, Page 6, following the second paragraph, of the Proposed Decision, the paragraph numbers are amended from "7." and "8." consecutively to paragraph numbers "9." and "10." consecutively.

Legal Conclusion, Page 6, paragraph 10 is amended to state in part from:

"10. Nevertheless, respondent's case raises concerns. Real estate salespersons are fiduciaries that should be...", and to state in part to:

"10. Nevertheless, respondent's case raises concerns. Real estate brokers are fiduciaries that should be..."

This Decision shall become effective at 12 o'clock noon
on JUN 13 2013.

IT IS SO ORDERED

May 13, 2013

REAL ESTATE COMMISSIONER



By: Jeffrey Mason
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PAMELA DOLORES TAEUFFER,

Respondent.

DRE No. H-11450 SF

OAH No. 2012100396

PROPOSED DECISION

Administrative Law Judge Paul Slavit, Office of Administrative Hearings, State of California, heard this matter on March 12, 2013, in Oakland, California.

John W. Barron, Real Estate Counsel, represented complainant Robin S. Tanner, Deputy Real Estate Commissioner of the State of California.

Pamela Dolores Taeuffer represented herself.

The matter was submitted on March 12, 2013.

FACTUAL FINDINGS

1. Complainant Robin S. Tanner, Deputy Real Estate Commissioner, filed this accusation in her official capacity.

2. Respondent currently is licensed by the Department of Real Estate (department) as a real estate broker. The license was issued on May 28, 2013, and will expire on May 27, 2013, unless renewed.

The Accusation

3. The department received a complaint from one of respondent's clients, concerning the handling of a rental property. In response, it conducted an audit of respondent's property management business. The audit process included an investigation of respondent's license status and business operations, an initial and one follow-up interview with respondent, and review of select bank records and working documents for the property management business.

Respondent conducts real property management, tenant placement, and vacation rental management as a broker. At the time of the audit, she had 44 properties, consisting of

64 rental units under her management. In addition, she managed 25 vacation rental properties. Based on the audit, the department found violations involving lack of proper licensure; inadequate broker-agent relationship with an employed agent and failure to report employment of the licensed salesperson to the department; and issues with client trust accounts, including how they were established, and how funds were accounted for.

Licensure

4. As a licensed real estate broker, respondent is authorized to operate individually and under the fictitious business name Healdsburg Property Management. On October 15, 2009, respondent incorporated her business under the name Healdsburg Property Management, Inc. However, she never undertook to license the new corporation under her broker's license. By engaging in property management activities under her corporate name, respondent was conducting business without proper licensure.

Broker-Agent Relationship With Belinda Uribe

5. On March 2, 2010, the corporation Healdsburg Property Management, Inc. entered into a broker-salesman contract with a licensed salesperson, Belinda Uribe. Because the corporation was not licensed, the broker-salesperson agreement did not comply with department's legal requirements. In addition, neither respondent as the licensed broker, nor the corporation reported the employment to the department as required.

The Bank Accounts

6. In connection with her property management activities, respondent maintained two bank accounts. One account (bank account no. 1) was used for deposits and disbursements related to respondent's property management and tenant placement activities. The second account (bank account no. 2) holds security deposits.

7. The department's audit covered the period January 1, 2010, through August 31, 2011. The auditor reviewed bank records and supporting documents such as beneficiary or transaction records, control records of trust funds received and disbursed, deposit slips, receipt books, and property management files. The review was conducted on a sample basis, as distinct from a review of all records of all clients for the full audit period. The audit revealed several problems with the accounts and respondent's accounting of client funds.

a. Both bank accounts were established in the name of Healdsburg Property Management, Inc. As noted, the corporation was not licensed. Since client trust funds must be held in the name of a qualified broker, these accounts were not properly established. Bank statements for the accounts state "Healdsburg Property Management, Inc. Client Trust Fund," but the underlying account agreements do not state that they are trust accounts.

b. Respondent failed to maintain adequate separate records for each client and/or transaction involving the client's security deposits. While there were separate files for each

client, the records could not establish which client's security deposit was being held in which account. After reconciling the accounts, the audit showed that the balances in bank account no. 2 were correct. However, the reconciliation of bank account no. 1 revealed that there was \$19,208.93 in unidentified or unaccounted for funds, and that total funds in that account were \$3,305.73 less than the aggregate trust liability for that account.

The existence of the unaccounted for funds raises issues of commingling trust and non-trust funds. In addition, when a shortage exists, the broker is required to obtain the written consent of each client whose funds are held in trust; but no such consents were obtained.

c. Respondent's trust records were not reconciled monthly on a consistent basis, as required. Security deposit records were maintained, but were inadequate to identify in which account the deposits were held. In addition, there were no separate records of receipt and disposition of trust funds in bank account no. 1, resulting in the \$19,208.93 of unaccounted or unidentified funds in that account. Finally, respondent also failed to maintain adequate and separate records of receipt and disbursement for vacation rental properties under her management.

Respondent's Evidence

8. With specific reference to the audit of her business bank accounts and records, respondent noted that the department's auditor did not meet with her personally to review the books and records. Respondent's first interview with the auditor occurred before he had reviewed the accounts and records of the business. The final interview was conducted on the telephone. As a result, respondent did not have an opportunity to determine if the auditor misunderstood any of her business records, or to clarify or explain any problems the auditor might have seen.

9. Bank account no. 1 originally was a general business account, and held both general funds and security deposits. It was sometime later that respondent separated security deposits into account no. 2. Because account no. 1 historically was a general account, it still contained monies related to respondent's vacation rental business. The account received funds from American Express, which processed payments from some of the vacation renters. In addition, respondent kept a small balance of her own business funds in account no. 1, in the form of earned commissions, so that there always would be a balance in the account.

10. Respondent now understands that monies related to the vacation rental portion of her business must be held separately from client trust funds related to her property management business to avoid commingling. She now holds vacation rental funds in a separate account.

11. Respondent states that control records of property management clients and accounts are maintained in a software program. Each client has a separate file in the

program that shows all transactions, income and disbursements. As such, respondent is puzzled by the audit's finding that client records were inadequate.

12. With reference to her corporation, respondent testified that she believed that the attorney who incorporated the business also would complete the transfer of the real estate broker's license to the corporation. However, that was not the case. Respondent, supported by a letter in evidence from her attorney, explained that the failure to properly license the corporation was a misunderstanding between her and the attorney concerning who was tasked to do that. Respondent has not yet filed an application to license to corporation, believing that she should maintain the status quo pending the outcome of this accusation proceeding. However, she plans to do so.

13. Respondent testified that she prepared the forms to report the employment of Uribe as a salesperson. However, the department has no record of notification by respondent, and respondent was unable to produce copies of those documents at the time of the hearing, or establish that notification was sent.

Even though Uribe's employment was not reported, and the corporation was not properly licensed, respondent supervised Uribe appropriately as a salesperson.

14. Respondent asserts that at the time of the audit, the various problems in her office were exacerbated by certain family and personal problems (including illness and the death of a relative), and the disruptive actions of three disgruntled employees. Each factor was a distraction from the operation of her property management office. However, those problems now have been resolved, such that she feels she can properly address the issues raised by the audit. In addition, respondent has reduced the size of her office, so that she now works only with the assistance of her husband and family, but without third party employees. She feels that she can better control office operations this way.

15. Respondent states that she is working to complete reconciliation of her bank records. As noted, she now keeps vacation rental funds in a separate account. However, in most other respects respondent has not taken any corrective action in response to the audit. She feels that she should await the outcome of this proceeding, and take appropriate action thereafter.

Costs

16. In connection with the investigation and prosecution of this accusation, the department submitted certification of costs for investigation in the sum of \$868, enforcement/attorneys' fees in the sum of \$774.30, and the audit in the sum of \$7,138.35, for a total of \$8,780.65. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the respondent has been successful at the hearing in getting charges reduced or dismissed; respondent's subjective good faith belief in the merits of her position; whether the respondent has raised a colorable challenge to the proposed discipline;

the financial ability to pay the cost award; and whether the scope of the investigation was appropriate to the alleged conduct of the respondent.

17. No evidence was offered to dispute the reasonableness of the fees requested. Respondent has reduced the size of her business, and seems to have a limited income at this time. However, the proposed decision will not disrupt her business or her ability to earn fees and commissions. As such, costs of \$8,780.65 are deemed reasonable, and will be awarded without reduction.

LEGAL CONCLUSION

1. Pursuant to Business and Professions Code section 10177, subdivision (d), the Commissioner may suspend or revoke the license of a real estate licensee if the licensee has willfully disregarded or violated the real estate law or the corresponding rules and regulations of the commissioner. In addition, pursuant to section 10177, subdivision (g), Commissioner may suspend or revoke the license if a real estate licensee has demonstrated negligence or incompetence in performing an act for which a license is required.

2. By reason of the matters set forth in Findings 3, 6, and 7, respondent violated title 10, California Code of Regulations, section 2831, by failing to keep trust funds in separate account, and keep and maintain accurate records of receipts and disbursement of trust funds

3. By reason of the matters set forth in Findings 3, 6, and 7, respondent violated title 10, California Code of Regulations, section 2831.1 by failing to keep separate and accurate records for each client-beneficiary and each transaction.

4. By reason of the matters set forth in Finding 7, respondent violated title 10, California Code of Regulations, section 2831.2, by failing to perform the reconciliation of trust accounts on at least a monthly basis.

5. By reason of the matters set forth in Finding 7, respondent violated title 10, California Code of Regulations, section 2832, because respondent failed to obtain permission from her clients when the total balance in account no.1 fell below the aggregate liability for all client funds in the account.

6. By reason of the matters set forth in Finding 4, respondent violated Business and Professions Code section 10130 (only a licensed real estate broker, or one operating under a broker's license, may conduct property management). Respondent operated her corporation as a property management business without licensure.

7. By reason of the matters set forth in Finding 5, respondent violated Business and Professions Code section 10161.8, subdivision (a) (broker shall notify commissioner in writing at time of employing a real estate salesman), and title 10, California Code of

Regulations, section 2726 (requirements for broker-salesperson agreement) in that respondent hired licensed salesperson Uribe without notifying the commissioner, and the employment agreement with Uribe was under the name of respondent's unlicensed corporation

8. In title 10, California Code of Regulations, section 2912, the department has established criteria to be considered when evaluating an applicant's rehabilitation from the acts or crime that form the basis for discipline. In this instance, respondent has not committed a crime. However, certain of the criteria are pertinent. They include restitution to any affected person; stability of respondent's family life and fulfillment of familial responsibilities; correction of business practices resulting in injury to others or with the potential to cause such injury; and a change in attitude from that which existed at the time of the conduct in question as evidenced by the testimony of applicant.

7. In this case, little more than a year has passed since respondent received the results of the audit of her property management business. She has taken some steps to rectify the problems noted in the audit, such as undertaking to complete reconciliation of her client trust accounts, and reducing the size of her office to allow her better control and attention to office operations. It is noteworthy that while there are inaccuracies in respondent's trust account records, there is no evidence of harm or losses resulting from her actions. Respondent's family life appears stable; and she has the support of her husband and family in operating the business at this time. Respondent seems dedicated to focusing on her business, and correcting the problems that led to the audit and this disciplinary proceeding.

8. Nevertheless, respondent's case raises concerns. Real estate salespersons are fiduciaries that should be honest, act with the highest level of integrity, and be aware of and follow applicable law. In this instance, respondent operated her corporation as an unlicensed property management business for two years. She has not been as proactive as might be expected in addressing the issues raised in the audit, in that she has delayed some corrective measures while she awaits the outcome of this proceeding. On the other hand, all evidence and testimony indicate that respondent generally has acted honestly and in good faith while conducting her business both before and after the subject audit.

As such, it is determined that the public interest will be protected by a period of suspension and probation.

ORDER

Pamela Dolores Taeuffer's real estate broker's license is suspended for a period of 30 days from the effective date of this decision; provided, however, that the 30-day suspension shall be stayed for two years upon the following terms and conditions:

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

2. If a final subsequent determination is made, after hearing or upon stipulation,
that cause for disciplinary action occurred during the term of the suspension and stay, the
Commissioner may vacate and set aside the stay order including any further stay imposed
pursuant to Section 10175.2. Should no order vacating the stay be made pursuant to this
condition or any other condition below, the stay imposed herein shall become permanent.

3. Should the Commissioner determine that a subsequent audit is necessary to
determine if respondent has corrected the trust fund violations on which this disciplinary
action is based, or that respondent is otherwise in compliance with the law pertaining to trust
funds, respondent shall cooperate with the Commissioner in any subsequent audit.

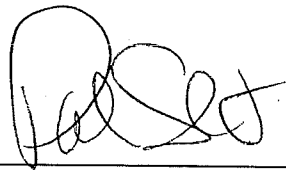
4. Respondent immediately shall apply for and obtain licensure for Healdsburg
Property Management, Inc.

5. Respondent shall complete reconciliation of all trust accounts and client
financial records as noted in the audit report. She shall submit proof satisfactory to the
Commissioner of the completion of the reconciliations within 60 days of the effective date of
the decision in this matter.

6. Respondent shall 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.

7. Respondent shall pay the department the sum of \$8,780.65 for reasonable costs
of the underlying audit, investigation and prosecution.

DATED: April 4, 2013



PAUL J. SLAVIT
Administrative Law Judge
Office of Administrative Hearings