

FILED

June 3, 2014

BUREAU OF REAL ESTATE

*L. Jones*

By \_\_\_\_\_

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

BRAD LYLE DUNCAN,

Respondent.

No. H-11585 SF

OAH No. 2013110889

NOTICE

TO: BRAD LYLE DUNCAN, Respondent and DELPHINE S. ADAMS, his counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 10, 2014, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 10, 2014, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on March 11, 2014, and any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of March 11, 2014, at the Sacramento

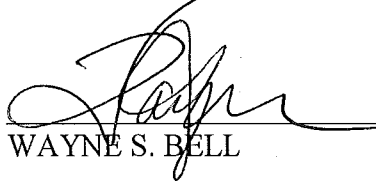
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1 office of the Bureau of Real Estate unless an extension of the time is granted for good cause  
2 shown.

3 Written argument of Complainant to be considered by me must be submitted  
4 within 15 days after receipt of the argument of Respondent at the Sacramento office of the  
5 Bureau of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: MAY 19, 2014

7 REAL ESTATE COMMISSIONER

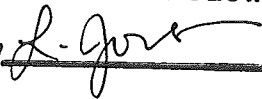
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**FILED**

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

MAY 27 2014

BUREAU OF REAL ESTATE

By 

In the Matter of the Accusation of:

BRAD LYLE DUNCAN,

Respondent.

No. H-11585 SF

OAH No. 2013110889

**PROPOSED DECISION**

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California (OAH), heard this matter on March 11, 2014, in Oakland, California.

Counsel Richard K. Uno represented complainant Robin S. Tanner.

Attorney Delphine S. Adams of Dickenson, Peatman and Fogarty, 50 Old Courthouse Square, Santa Rosa, California, represented respondent Brad L. Duncan, who was present for the proceeding.

On March 11, 2014, the parties submitted the matter for decision and the record closed.

**FACTUAL FINDINGS**

1. On September 10, 2013, Robin S. Tanner (complainant), a Deputy Real Estate Commissioner of the State of California, Bureau of Real Estate (the bureau), Department of Consumer Affairs (the department), in her official capacity, made the Accusation against respondent Brad L. Duncan (respondent).

*License History*

2. Respondent is presently licensed as a real estate broker and he has license rights under the Real Estate Law (Part 1 of Division 4, section 10000, et seq., of the California Business and Professions Code).

On December 14, 2005, the Real Estate Commissioner issued respondent a real estate salesperson license. On April 21, 2009, a real estate broker license (license number

62111  
B01486500) was issued to respondent, and upon the license's initial expiration it was renewed on April 20, 2013.

The real estate broker license issued to respondent is renewed to April 20, 2017, unless revoked, surrendered or otherwise cancelled before that date.

3. Respondent has used no less than five fictitious business names as a real estate broker licensee.

On or before January 1, 2010, respondent made use of the fictitious business names or DBAs (doing business as) of DW Commercial and Pacific Properties. The DBAs were initially operated out of main office premises at 1515 Griffin Way, Rohnert Park, California.

The main office was changed to 101 Golf Course Drive, Rohnert Park, California, on or about January 11, 2010. The licenses for the main office, as well as the branch office at Golf Course Drive, Rohnert Park, California, were cancelled on approximately May 2, 2011.

On February 26, 2010, respondent added DBAs of Madison Stone, Madison Stone Property Management and Madison Stone Investments.

On August 30, 2010, respondent added a licensed branch office at 131-A Stony Circle, Santa Rosa, California. On September 21, 2012, the Stony Circle, Santa Rosa branch office license was cancelled.

On January 28, 2011, respondent added a licensed branch office at 18351 Beach Boulevard, Huntington Beach, California. On May 2, 2011, the Beach Boulevard, Huntington Beach branch office license was cancelled.

On April 27, 2011, respondent added a licensed branch office at 6040 Commerce Boulevard, Rohnert Park, California. The Commerce Boulevard, Rohnert Park address became respondent's licensed main office on approximately May 2, 2011. The department's records for respondent's mailing address were changed to the Commerce Boulevard, Rohnert Park address on September 9, 2011.

On May 2, 2011 respondent added a licensed branch office at 223 Chicago Avenue, Huntington Beach, California. On September 21, 2012, the Chicago Avenue, Huntington Beach branch office license was cancelled.

On March 11, 2013, respondent's DBAs were cancelled for Madison Stone, Madison Stone Property Management and Madison Stone Investments.

Also, on March 11, 2013, respondent's mailing address was changed to 1021 Serpentine Drive South, Saint Petersburg, Florida 33075. Respondent's main office remained at 6040 Commerce Boulevard, Rohnert Park, California.

On April 25, 2013, respondent's mailing address was changed to 6040 Commerce Boulevard, Rohnert Park, California.

On August 12, 2013, respondent's DBA was cancelled for Pacific Properties.

Respondent is licensed as real estate broker/officer of Rodunc Real Estate, Inc. (Rodunc) for the period of June 10, 2013, to June 9, 2017. Rodunc is a corporation in which respondent is the sole shareholder, the only director and the holder of the corporate offices of president, secretary and treasurer.

#### *Nature of Respondent's Business Pursuits*

4. During various periods of time pertinent to the following matters, respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California, within the meaning of Business and Professions Code section 10131, subdivision (b). Through his acts as a real estate broker, respondent engaged in real estate property management that entailed the collection of funding belonging to consumers. More particularly, on behalf of others, for compensation or in expectation of compensation, respondent leased or rented or offered to lease or rent, and he solicited for prospective tenants of rental real property units or improvements thereon, and collected rents from real property or improvements thereon.

Respondent's various real estate property management divisions charged a monthly management fee of between four percent and seven percent of collected rents. Respondent's agents and employees collected, on average, approximately \$350,000 in rental receipts each month.

#### *Auditor's Findings and Conclusions*

5. Over the course of several weeks beginning on September 10, 2012, and ending on November 5, 2012, the bureau's auditor Robert Leonard (Auditor Leonard), performed, on an intermittent basis, an accounting examination of the bank statements, canceled checks, real estate licenses, accounting records, schedule of unpaid bank charges, broker-salesperson relationship agreements, and other real estate property management files and records.

Auditor Leonard commenced the audit examination of records at respondent's main office located at 6040 Commerce Boulevard, Suite 108, in Rohnert Park, California. His analytical work was concluded in the bureau's office in Oakland.

Auditor Leonard selected the time span of January 1, 2011, through August 12, 2012, as the period for which he examined the bank account records and other real estate broker office records of respondent. The auditor's examination was to ascertain whether trust funds under respondent's control had been handled and accounted for in accordance with the California Real Estate Law and the Commissioner's Regulations.

6. From the audit examination, Auditor Leonard's examination did not focus in detail upon respondent's mortgage loan brokerage<sup>1</sup> business operations. Rather, the audit of respondent's real estate broker's operations examined respondent's residential real estate resale and property management activities during the audit period.

7. Auditor Leonard found that respondent, while acting as a real estate broker with a specialization or business focus in income-generating real estate property management, accepted or received funds in trust from or on behalf of property owners, tenants, lessees and others in connection with property management activities. Respondent deposited or caused to be deposited those funds collected or received as a property management office into a bank account maintained by respondent.

Respondent maintained forty-five bank accounts during the period that was subject to the audit. Two of the bank accounts were reviewed by Auditor Leonard for purposes of the bureau's audit.

The two bank accounts, which were examined by Auditor Leonard, are identified as:

(a) Bank Account No. 1 was located at JP Morgan Chase Bank, N.A., with an address of P.O. Box 659754, San Antonio, Texas 78265. The account was designated as "Bradley L. Duncan DBA Pacific Properties.

(b) Bank Account No. 2 was located at Wells Fargo Bank, N.A., P.O. Box 6995, Portland, Oregon 97228. The account was designated as "Craig M. Enyart DBA Madison Stone Property [Management] Casa Linda Apts."

8. On November 5, 2012, Auditor Leonard issued an Audit Report, which was reviewed by bureau Team Supervisor Michael J. Rivera and reviewed and approved by bureau Supervising Auditor Thomas Cameron. The 12-page Audit Report, which contained sections titled: "Audit Scope," "Background," and "Findings," which included subparts titled "List of Bank Accounts," "Discussions of Issues," and "Conclusions," was reasonable and sound.

9. At the hearing of this matter, complainant established the nature, purpose and range of the respondent's bank accounts, which were used by respondent in conducting property management services. Complainant established that all of the accounts were subject to regulation by the Real Estate Law and the Commissioner's Regulations.

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<sup>1</sup> Auditor Leonard did learn from respondent that respondent's mortgage loan activities were conducted under the fictitious business name DW Commercial. During the first eight months of 2010, respondent informed Auditor Leonard that the real estate broker had closed eight commercial loan transactions, which reflected a principal aggregate of nearly \$9 million.

And the evidence established that through the course of performing activities as a real estate broker engaged in property management services, which relates to the collection and disbursements of trust funds, respondent violated the Real Estate Laws as set forth below in Factual Findings 10 through 15.

*Unlawful Acts of Respondent*

FIRST CAUSE FOR DISCIPLINE: RESPONDENT'S MALFEASANCE WITH HANDLING  
RECEIVED AND DISBURSED FUNDS HELD IN TRUST ON BEHALF OF CONSUMERS

*LACK OF CONTROL RECORD*

10. Respondent failed to maintain a record of all trust funds received and disbursed for Bank Account No. One and Bank Account No. Two.

The failure to possess control records produced irregularities and "mismatches" that prompted Auditor Leonard to conclude that respondent's records reflected grave inaccuracies for the financial records pertaining to the real property managed by respondent.

These omissions violated California Code of Regulations, title 10, section 2831.

*FAILURE TO MAINTAIN PROPER BENEFICIARY RECORDS*

11. Respondent failed to maintain proper beneficiary records for Bank Account No. One and Bank Account No. Two. The accounting records maintained by respondent were determined by Auditor Leonard to be inadequate and inaccurate. Certain reports by respondent did not correctly reflect trust funds that beneficiaries were entitled to according to the entries in the records for a particular period.

These omissions violated California Code of Regulations, title 10, section 2831.1.

*FAILURE TO PERFORM MONTHLY RECONCILIATIONS*

12. Respondent failed to maintain records for Bank Account No. One and Bank Account No. Two so that the subject real estate broker was unable to perform required monthly reconciliation processes, which compared the balance of the control record to the total balances in accounts for the beneficiary owners.

These omissions violated California Code of Regulations, title 10, section 2831.2.

*NON-DESIGNATED TRUST ACCOUNTS*

13. Respondent failed to designate the real estate broker's bank accounts, which were identified as Bank Account No. One and Bank Account No. Two, as noted above, as trust accounts within the meaning of the Real Estate Law.

Bank Account No. One was a multiple beneficiary account, which was used for deposits and disbursements related to the management of approximately 81 residential properties held by 59 distinct owners.

Bank Account No. Two was used for deposits and disbursements related to the management of a single-24 unit apartment building as owned by a single person. But the respondent failed to maintain a "Record of All Trust Funds Received and Disbursed."

Respondent was not named as trustee on the subject bank accounts.

These omissions violated California Code of Regulations, title 10, section 2832.

*WRITTEN CONSENT OF FUND OWNERS REGARDING TRUST FUND NEGATIVE BALANCE*

14. As of August 31, 2012, Bank Account No. One reflected a trust fund shortage of negative \$4,201.82. The trust fund shortage was due to negative balances in three beneficiary accounts amounting to \$2,005.33, and respondent's unpaid bank fees which amount to \$2,196.38.

Respondent's records showed no communication to the owners of the funds regarding the negative balances in respondent's records.

Respondent failed to obtain written consent from every owner of money held in trust with regard to permission from those owners to allow the balance of Bank Account No. 1, which held money in trust, to fall to an amount less than respondent's existing aggregate trust fund liability to all owners of the funds.

These omissions violated California Code of Regulations, title 10, section 2832.1.

*TRUST FUND ACCOUNTABILITY AND BALANCES*

15. Respondent failed to maintain adequate trust records. There was a deficiency that resulted in Auditor Leonard being unable to conduct a reconciliation of the adjusted bank balance relative to the accountability for Bank Account No. One and Bank Account No. Two. The accountability of respondent's bank records could not be determined due to the lack of adequate separate records for each beneficiary or transaction (beneficiary records) as of the date of the completion date for the bureau's audit of respondent's records.



These omissions violated Business and Professions Code section 10145.

SECOND CAUSE FOR DISCIPLINE: RESPONDENT'S MAINTAINING THE EMPLOYMENT OF AN UNLICENSED INDIVIDUAL AND RESPONDENT'S POOR SUPERVISION OF THE UNLICENSED INDIVIDUAL AND OTHERS

*SPECIAL INVESTIGATOR TERRENCE PATTERSON*

16. Bureau Special Investigator Terrence Patterson (Special Investigator) offered persuasive and credible testimonial evidence at the hearing of this matter.

17. After the bureau had received multiple complaints regarding the operations at respondent's real estate broker office, Special Investigator Patterson commenced an investigation into the personnel at respondent's real estate broker's office in Rohnert Park. During his investigation, Special Investigator Patterson detected the following matters:

a. On January 20, 2004, Mr. Oscar Manual Rodriguez-Lopez (Mr. Rodriguez) was licensed as a real estate salesperson. Effective July 19, 2010, in Case No. H-5253 SAC, the license issued to Mr. Rodriguez was revoked. The revocation of license was grounded upon Mr. Rodriguez's commission of a crime that was substantially related to the qualifications, functions and duties of a real estate licensee.

b. Effective December 16, 2013, the Real Estate Commissioner issued an Order Denying Reinstatement of License pertaining to a petition filed by Mr. Rodriguez. The denial of licensure reinstatement was grounded, in substantial part, upon Mr. Rodriguez having failed to meet the bureau's regulations that prescribe rehabilitation criteria, including his failure to pay court ordered restitution to his crime victim in an amount of \$3,700, and Mr. Rodriguez's failure to pay fines and fees owed to the superior court in an amount of \$1,200.

c. In light of the July 2010 revocation of Mr. Rodriguez's real estate salesperson license, respondent and Mr. Rodriguez signed on July 22, 2010, a document titled, "Unlicensed Assistances [*sic*] Duties: Policy and Procedure; Madison Stone [and] Pacific Properties." Special Investigator Patterson was reasonable in rendering an expert witness opinion that the document signed by Mr. Rodriguez and respondent was indefinite, vague and subject to a distorted interpretation allowing the unlicensed person to engage in the provision of services that can only be performed by bureau licensees.

d. Special Investigator Patterson's investigation detected a correspondence, dated September 25, 2012, which was signed by Mr. Rodriguez. In the September 2012 letter, Mr. Rodriguez wrote, among other things: "I am sending you [prospective client] information on myself, head of Pacific Properties Management division and my business partners [respondent] and John Boss, residential and commercial [licensed real estate] brokers." [¶ . . . ¶] Our management fee . . . will be 5.5% of total rents collected per month on a [one] year management agreement. Having been a property manager in Sonoma County

for over 12 years, I can . . . say we have extensive knowledge of the neighborhood that your property is located in . . . [¶ . . . ¶] Please feel free to contact me . . . if you have any questions or concerns . . . or visit our website . . .” Special Investigator Patterson provided vivid testimony regarding the bureau’s condemnation of the content of the September 2012 letter that showed Mr. Rodriguez as respondent’s authorized “head of Pacific Properties Management division.”

e. Special Investigator Patterson offered compelling testimony regarding the unlicensed activity by Mr. Rodriguez in his dealings with respondent’s property management company client, “Mrs. Lisa G”<sup>2</sup> and her husband, with regard to respondent’s unlicensed employee having actively engaged in property management duties during and after October 2012, when Mr. Rodriguez did not possess a real estate professional’s license.

f. On June 27, 2013, Special Investigator Patterson interviewed Mr. Rodriguez in the Bureau’s Oakland District Office. Among other things, Mr. Rodriguez said that “he did not know that he could not complete management agreements or leases . . . . [Mr. Rodriguez] further stated that . . . he did not know that he could not manage properties . . . .”

g. Special Investigator Patterson expressed at the hearing of this matter the inference reached by his analysis from all the facts amassed during the course of his investigation. The bureau’s investigator’s analysis resulted in a determination that respondent knew or should have known that Mr. Rodriguez was engaged in unlawful acts as an unlicensed real estate agent while performing services on behalf of, and in the name of, respondent’s DBAs, including Pacific Properties.

*AUDITOR LEONARD AND THE UNLAWFUL ACTS OF RESPONDENT’S UNLICENSED  
EMPLOYEE MR. RODRIGUEZ*

18. During his audit of respondent’s real estate broker office’s records, Auditor Leonard learned that respondent’s property management activities, with regard to the time period covered by the audit examination, was conducted by respondent using the fictitious business name Pacific Properties and Madison Stone Property Management.

And Auditor Leonard detected that the operations of Pacific Properties were operated in property management activities by respondent’s broker-associate, Mr. John Boss, and Mr. Oscar M. Rodriguez (Mr. Rodriguez). (As set out above, Pacific Properties managed 81 rental property units, which were associated with 59 distinct owners.)

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<sup>2</sup> The initial “G” is used in this Decision to protect the privacy of the consumer who was subpoenaed as a reluctant witness to this proceeding.

*OTHER MATTERS REGARDING UNLAWFUL ACTIVITIES OF RESPONDENT'S  
EMPLOYEE*

19. Mrs. Lisa G was issued a subpoena to appear at the hearing of this matter. By her demeanor while testifying, by her clear, unhesitating presentation of evidence and by her solemn attitude towards the controversy involving respondent's property management business activities, Mrs. G was shown to be a credible<sup>3</sup> and trustworthy witness.

20. During October 2011, Mrs. G and her husband hired respondent's DBA known as Pacific Properties to act as the property manager for rental real estate owned by the couple. Mrs. G's rental properties are located on Santa Cruz Way and Civic Center Drive in Rohnert Park, California.

On October 14, 2011, Mrs. G's husband signed a Management Agreement with respondent's DBA Pacific Properties with regard to the management of both rental properties on Santa Cruz Way and Civic Center Drive. Respondent's designated "Property Manager/Business Development" employee or agent in the transaction was Mr. Rodriguez, who signed the Management Agreement on October 14, 2011. On the subject Management Agreement, Mr. Rodriguez affixed his initials to paragraphs that bound respondent to "Mediation of Disputes" and "Arbitration of Disputes."

During mid-October 2011, as well as on dates thereafter, Mrs. G. interacted with Mr. Rodriguez in his capacity as respondent's agent or employee in the property management division of the broker's business.

21. Mrs. G described the services performed by Mr. Rodriguez while he acted as the designed property manager for respondent's DBA Pacific Properties. Mr. Rodriguez located, interviewed and placed tenants into the rental units owned by Mrs. G. Mr. Rodriguez also collected rents and attended to necessary repairs to the rental property owned by Mrs. G and her husband.

22. Mrs. G has never had any contact with respondent although his DBA Pacific Properties continues to act as the real estate property management company of the rental units owned by Mrs. G and her husband.

23. Because there had been the revocation of his real estate salesperson license in mid-July 2010, Mr. Rodriguez was engaged in unlawful acts of an unlicensed person when he interacted and performed services for Mrs. G and her husband regarding their rental property units on Santa Cruz Way and Civic Center Drive.

24. On October 19, 2011, on behalf of respondent's DBA Pacific Properties, Mr. Rodriguez entered into a Residential Lease-Rental Agreement with a prospective tenant for the Santa Cruz Way rental property. Mr. Rodriguez issued the tenant named "Villas" a

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<sup>3</sup> Government Code section 11425.50, subdivision (b), third sentence.

Deposit Receipt document with regard to the Santa Cruz Way rental unit. Onto the document, Mr. Rodriguez signed his name above "Pacific Properties," and he set out his email address of Oscar@Pacific PropertiesCA.com. The documents belonged to respondent's real estate broker's office.

Also on October 19, 2011, on behalf of respondent's DBA Pacific Properties, Mr. Rodriguez entered into a Residential Lease-Rental Agreement with a prospective tenant for the Civic Center Drive rental property. Mr. Rodriguez presented the tenant named "Finlaw" with a Deposit Receipt document with regard to the Civic Center Drive rental unit. Onto the document, Mr. Rodriguez signed his name above "Pacific Properties," and he set out his email address of Oscar@Pacific PropertiesCA.com. The documents belonged to respondent's real estate broker's office.

25. During Auditor Leonard's examination of respondent's bank actions, he learned that Mr. Rodriguez, respondent's unlicensed employee, for whom respondent failed to procure fidelity bond insurance coverage, was authorized to make withdrawals from Bank Account No. One. That bank account was used to hold funds held in trust for others.

#### *RESPONDENT'S UNLAWFUL HIRING AND SUPERVISION OF AN UNLICENSED PERSON*

26. During his audit of respondent's records, Auditor Leonard detected that respondent had failed to exercise reasonable supervision over trust fund handling by personnel in respondent's real estate broker office for Bank Account No. Two, which was used to hold trust funds. First, respondent was not found to be an authorized signer on Bank Account No. Two. And respondent was not an authorized signer on any of the approximately 42 other subset accounts under the fictitious business name of Madison Stone, which were used to hold trust funds. These instances of neglect showed respondent had inadequate supervision of office personnel.

27. Special Investigator Patterson offered detailed, comprehensive and credible testimony regarding the acts and omissions on respondent's part that reflected the subject real estate broker's breach of the duty of supervision of the unlicensed acts of Mr. Rodriguez, who had provided property management services to the public when the real estate salesperson license issued to Mr. Rodriguez had been revoked.

#### *Matters in Mitigation*

28. After the bureau's audit, respondent found that it was not efficient for the real estate broker to conduct property management activities under two DBAs. Hence, the business operations and assets of Madison Stone were merged into Pacific Properties.

29. From January 2011 to December 2011, Dave Domantas was the managing broker. Mr. Domantas, who died in March 2012, was the broker who had been tasked to oversee the activities of Mr. Rodriguez. Respondent relied on Mr. Domantas in the oversight of the real estate broker's office.

30. Between the date that he was first licensed as a real estate broker and the period of the bureau's audit examination, approximately three years, six months had elapsed. From the date he became a real estate salesperson until the time of the audit, about seven years had passed. Over the span of years of his licensure, respondent has not previously been the subject of disciplinary action by the bureau.

31. Complainant offered no competent evidence to show that respondent unreasonably or unlawfully used trust fund money for his personal or business use.

32. Complainant did not demonstrate that respondent has been convicted, or charged with, a crime substantially related to the qualifications, functions and duties of a real estate licensee.

33. Complainant did not establish that respondent ever engaged in theft, fraud, and embezzlement in conducting operations as a real estate property management company.

34. Respondent has not been determined to have engaged in commingling of funds in conducting business as a property management real estate broker's office.

Respondent has not committed acts or participated in omissions that led to loss of money of property owners, who were clients of respondent's real estate property management business.

35. Complainant did not show that respondent caused a lien to be attached to any trust account maintained under the name of the real estate broker/property management business.

36. Complainant offered no evidence that respondent has made any misrepresentations directly to any real property owner or tenant of rental property managed by respondent. No property owner was shown by complainant to have made a complaint to bureau personnel about the business operations of respondent in his individual capacity.

37. Complainant provided no evidence that any property management clients or trust account beneficiaries suffered any financial harm by respondent's irregular business practices.

#### *Matters in Rehabilitation*

38. Respondent proclaimed at the hearing that he learned a great deal of valuable lessons by way of the bureau's audit and the subsequent disciplinary action against his license.

39. Since the bureau's audit, respondent has changed many operating procedures that were found lacking or unlawful by the audit. He has changed banks and has created trust accounts for each property owner and has a set of discreet records for each income producing

real estate parcel managed by his office. Respondent hired a Compliance Consultant, Ms. Pam Strickland, to review the details of respondent's trust accounts. Also respondent has hired "experts," such as Ms. Renee Burke, to review all of the documents used in his property management business. Also, Ms. Burke has embarked upon the work of installing at respondent's real estate broker's office, current, state-of-the-art computer programs, which are used in the property management industry. Also respondent has had the broker's office's financial statements reviewed by an accountant on a monthly basis. And respondent has hired a new office general manager, John William Boss, who is a licensed real estate broker, to administer the detailed activities of the subject real estate broker's office's property management functions and obligations.

### *Matters in Aggravation*

40. During his audit of respondent's real estate broker's records, Auditor Leonard detected that respondent had failed to exercise reasonable supervision over trust fund handling in Bank Account No. Two, which was used to hold trust funds. First, respondent was not found to be an authorized signer on Bank Account No. Two. And respondent was not an authorized signer on any of the approximately 42 other subset accounts under the fictitious business name of Madison Stone, which were used to hold trust funds. Because he was not an authorized signer on the accounts, respondent could not exercise reasonable supervision over the accounts. (Respondent argued at the hearing that for the time that Auditor Leonard examined Bank Account No. Two, that respondent had remote access to review the account by way of the Internet by way of a password access. But this explanation was untenable in that no documentary proof of such remote access capability could be verified through the examination executed by the bureau's auditor.)

41. Auditor Leonard detected that a real estate license identification number was not depicted or set out on the business cards respectively given to the bureau's auditor by respondent and the broker-associate, Mr. John Boss.

42. Respondent is misguided in his testimony at the hearing that the allegations in the Accusation are "mere deficiencies" or "infractions" that cannot support the administrative action sought by complainant through the Accusation.

43. Respondent's wrongful acts and omissions did not constitute "simple mistakes" or inconsequential errors. Rather, respondent's unlawful conduct constituted substantial departures from the standards expected of a licensed real estate broker, who is engaged in property management activities.

44. Respondent was not persuasive when he asserted at the hearing that the Accusation against his license was filed upon him "so long after" completion of the bureau's on-site audit examination at the real estate broker's main office. Respondent was not credible when he claimed in his testimony that he was "taken off guard," and somehow he was harmed by the passage of time until the bureau commenced the disciplinary action against his license. Respondent did not offer substantial evidence that the passage of one

year, from the end of the audit examination until the service upon him of the Accusation in this matter, operated as an unreasonable delay or that he was disadvantaged or prejudiced by the passage of time before complainant's commencement of this disciplinary action.

45. During the time of the audit of respondent's property management service business, respondent did not comprehend the clear meaning, rational construction and definitive dictate of the regulations that implement the State of California's trust fund laws that fall within the Real Estate Law.

46. Respondent was not credible when he testified at the hearing that he engaged in proper supervision of the activities of Mr. Rodriguez when that unlicensed individual performed acts and delivered services to consumers as a property management official within, or from, respondent's real estate broker's office.

47. Respondent was not believable when he asserted at the hearing of this matter that when Mr. Rodriguez engaged in the unlicensed, unlawful activities, which were detected by Special Investigator Patterson, that Mr. Rodriguez was acting outside the scope and authority of his employment with respondent's real estate broker's office.

48. During most of the year from January 2011 until the end of 2011, respondent lived and worked primarily in Southern California. On average, respondent came into the main office of the real estate broker operation in Sonoma County between five to seven business days per month. Respondent was not believable when he advanced at the hearing of this matter that he was able to effectively supervise, monitor and control the activities of personnel, who functioned or worked at the office that was associated with the real estate broker license issued to respondent, despite the subject real estate broker being present in the broker's main office for less than eight days per month.

49. Respondent did not terminate the employment of Mr. Rodriguez, an unlicensed person, until mid-February 2014, or approximately one month before the commencement of the hearing in this matter.

50. Respondent knew, or should have known, about the unlawful acts of Mr. Rodriguez after the Real Estate Commissioner revoked the real estate salesperson license that had been issued to Mr. Rodriguez.

## LEGAL CONCLUSIONS

### *The Standard of Proof*

1. The standard of proof in an administrative disciplinary action that seeks the suspension or revocation of a real estate professional's license is "clear and convincing evidence to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.)

“Clear and convincing evidence” means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered. Clear and convincing evidence is a higher standard of proof than proof by a preponderance of the evidence. Clear and convincing evidence requires a finding of high probability for the propositions advanced in an Accusation against a targeted licensee. It must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th 700.)

Complainant established by clear and convincing evidence the factual basis for the legal conclusions, below, upon which disciplinary action is imposed upon respondent.

*Statutory and Regulatory Authority - Violations of the Real Estate Law and Commissioner's Regulations Regarding Bank Account and Handling of Money Held in Trust for Consumers*

2. Business and Professions Code section 10177, subdivision (d), establishes that the Real Estate Commissioner may suspend or revoke the license of a real estate licensee “who has . . . [w]illfully 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. . . .” (Emphasis added.)

The concept of “willful” is given broad meaning in the realm of administrative licensure disciplinary proceedings. “Willful” does not imply a malicious intent to do wrong or a consciousness for malfeasance on the part of a licensee to violate a rule, statute or standard of due care. The term “ ‘willful’ . . . does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done was done or omitted intentionally. It amounts to nothing more than this: That the person knows what he is doing, intends to do what he is doing, and is a free agent . . . .” (*Suman v. BMW of North America, Inc.* (1994) 23 Cal.App.4th 1, 12; (See also: *Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 713; *Milner v. Fox* (1980) 102 Cal.App.3d 567, 573-575 fn. 9; and *Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639.)

3. California Code of Regulations, title 10, section 2831, establishes:

(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

(1) Date trust funds received.

(2) From whom trust funds received.



(3) Amount received.

(4) With respect to funds deposited in an account, date of said deposit.

(5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.

(6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.

(7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

(d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.

[¶] . . . [¶]

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d), as that section interacts with California Code of Regulations, title 10, section 2831, by reason of the matters set forth in Factual Findings 5 through 10. Respondent willfully violated the Real Estate Laws regarding trust fund records to be maintained.

4. California Code of Regulations, title 10, section 2831.1, provides:

(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.

(2) Amount of deposit.

(3) Date of each related disbursement.

(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d), as that section interacts with California Code of Regulations, title 10, section 2831.1, by reason of the matters set forth in Factual Findings 5 through 9 and 11. Respondent willfully violated the Real Estate Laws regarding separate records for each beneficiary or transaction.

5. California Code of Regulations, title 10, section 2831.2, sets forth:

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d) as that section interacts with California Code of Regulations, title 10, section 2831.2, by reason of the matters set forth in Factual Findings 5 through 9 and 12. Respondent willfully violated the Real Estate Laws regarding Trust Account Reconciliation.

6. California Code of Regulations, title 10, section 2832, subdivision (a), provides:

Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d), as that section interacts with California Code of Regulations, title 10, section 2832, subdivision (a), by reason of the matters set forth in Factual Findings 5 through 9 and 13. Respondent willfully violated the Real Estate Laws regarding trust fund handling.

7. California Code of Regulations, title 10, section 2832.1, states:

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.

Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (d), as that section interacts with California Code of Regulations, title 10, section 2832.1, subdivision (a), by reason of the matters set forth in Factual Findings 5 through 9 and 14. Respondent willfully violated the Real Estate Laws regarding trust fund handling for multiple beneficiaries.

*Negligence or Incompetence of Real Estate Licensee*

8. Business and Professions Code section 10177, subdivision (g), sets forth that the Real Estate Commissioner may suspend or revoke the license of a real estate licensee “who has . . . [d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.”

The term “incompetence” generally indicates an absence of qualification, ability, or fitness to perform a prescribed duty or function. It is distinguishable from negligence in that one may be competent or capable of performing a given duty but negligent in performing that duty, and a single act of negligence may be attributable to remissness rather than incompetence. However, a single act of misconduct may be sufficient to reveal a general lack of ability to perform licensed duties. (*Kneal v. Board of Medical Quality Assurance* (1986) 189 Cal.App3d 1040, 1054-1056.) And, the technical term “incompetence” is a relative one generally used in a variety of factual contexts to indicate an absence of qualification, ability or fitness to perform a prescribed duty or function. It is commonly defined to mean a general lack of present ability to perform a given duty as distinguished from inability to perform such duty as a result of mere neglect or omission. (*Pollack v. Kinder* (1978) 85 Cal.App.3d 833, 837-838.)

Negligence is the omission to do something that a reasonable person, guided by those usual considerations that ordinarily regulate the affairs of licensed professionals in the industry, would do, or the doing of something that a reasonable and prudent professional licensee would not do. (adapted from, Black’s Law Dictionary, (Revised Fourth ed., 1968) p. 1184.)

9. Business and Professions Code section 10145, in part, sets forth:

(a) (1) 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.

[¶] . . . [¶]

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

10. Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (g), as that section interacts with Code section 10145, by reason of the matters set forth in Factual Finding 5 through 9 and 15. By his negligence acts or omissions, or his incompetence, respondent, through his agents or employees, engaged in unlawful trust fund handling.

*Second Cause for Discipline – Employing An Unlicensed Individual to Engage in Unlawful Acts, Violation of Real Estate Law and Negligence or Incompetence in Supervision*

11. Business and Professions Code section 10137, in part, sets forth:

It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him or her, or to employ or compensate, directly or indirectly, any licensee for engaging in any activity for which a mortgage loan originator license endorsement is required, if that licensee does not hold a mortgage loan originator license endorsement; provided, however, that a licensed real estate broker may pay a commission to a broker of another state.

No real estate salesperson shall be employed by or accept compensation from any person other than the broker under whom he or she is at the time licensed.

It is unlawful for any licensed real estate salesperson to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he or she is at the time licensed.

[¶] . . . [¶]

Cause exists for disciplinary action against the license issued to respondent under Business and Professions Code section 10137, in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the Factual Findings 17 through 25 and 27. Respondent willfully and unlawfully employed Oscar Rodriguez, who was an unlicensed real estate salesperson. Respondent failed to supervise the acts requiring a real estate license, including Mr. Rodriguez's act of signing leases with tenants and signing a property management contract with owners of rental real property. When Mr. Rodriguez

engaged in the unlawful acts, respondent knew or should have known that the unlicensed employee's conduct was unlawful. Respondent willfully violated the Real Estate Laws regarding employment and supervision of an unlicensed individual, who was permitted to engage in acts for which a real estate license was required.

### *Discussion*

11. Complainant established by clear and convincing evidence respondent's commissions and omissions of grave violations of the Real Estate Law. Respondent's unlawful conduct included:

- The bank accounts were not properly designated as trust accounts. (When those bank accounts were the places into which respondent's real estate broker's office deposited funds that belonged to consumers who sought professional property management service.)
- For the limited period of time that was the focus of the audit examination, the bureau's auditor detected monetary shortages in the accounts, which under the Real Estate Law were trust accounts.
- Respondent failed to maintain adequate control records of the money received and disbursed, in trust, through the property management division of the real estate broker's operations. And, respondent failed to maintain proper beneficiary records. Because of the deficiency, or insufficiency, of the two distinct sets of records, the bureau's auditor could not effect a reconciliation of the records pertaining to the trust accounts.
- Respondent retained an unlicensed employee, Mr. Rodriguez, and allowed him to remain a signatory on a trust account after the Real Estate Commissioner had revoked his license as a real estate salesperson during mid-July 2010.

In mitigation, after the detection of his real estate broker's office's violations of law, respondent pursued remedial measures. He hired a Trust Account Consultant, Ms. Renee Burke, to embark upon creating updated computerized accounting systems so as to avoid the unlawful conduct regarding the trust account deficiencies. Further respondent has retained a Complainant Specialist, Ms. Pam Strickland, who focuses upon property management operations. And, in early 2014, respondent severed his business ties and employment relations with the unlicensed employee, Mr. Rodriguez.

As a real estate broker, respondent is obligated by law to know and to adhere to the Real Estate Law and the bureau's regulations, which implement the statute. The bureau's auditor detected several areas of neglect, error and omission regarding trust fund handling and other irregularities in respondent's activities as a real estate broker engaged in property management services. Because there exists no record of either consumer complaints against respondent's acts or omissions, or financial harm to owners of trust funds, for the unlawful

conduct regarding the unlawful acts and omissions pertaining to the trust fund bank accounts, the evidence does not warrant immediate licensure revocation or a long-term suspension of respondent's license as a real estate broker. If only trust fund offenses in the first instance were the end of this matter, a 45-day suspension could be the adequate remedy for complainant's Accusation.

The Accusation, however, in this matter goes beyond the usual case involving an audit of a real estate broker's operation. This matter involves respondent's lack of adequate and reasonable supervision of the real estate broker's operations so that a person, whose real estate salesperson license had been revoked, was empowered, as an unlicensed individual, to pursue and engage upon activities for which a real estate license is required. There is no doubt that respondent hired an unlicensed individual, and that the individual engaged in unlawful acts, namely performing services as a licensed real estate professional.

In addition, respondent, who had been licensed as a real estate broker for a relatively short term of years, was overextended in properly attending to functions and duties of a real estate broker. Over a short span of time from approximately August 30 2010 until September 21, 2012, respondent opened at least four separate offices in the State of California from Huntington Beach, Orange County to Rohnert Park/Santa Rosa, Sonoma County. And after he closed during September 2012 several branch offices in California, respondent lived in the State of Florida in Saint Petersburg during early 2013.

And during the period of time for which the audit examination focused, respondent was present at the main real estate broker's office in Sonoma County only five to seven days each month. Because of his limited time in the main office in Sonoma County and the matter that he appears to have been greatly overextended, respondent failed to monitor the activities of the unlicensed individual, Mr. Rodriguez, who performed acts as a real estate licensee engaged in property management activities.

#### *Cost Recovery*

12. Business and Professions Code section 10148, subdivision (b), prescribes:

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 [s]ection 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 [s]ection 10145.

Many of respondent's violations fall within the meaning of the law applicable to the obligation of real estate licensees in "handling of trust funds" as set out under Business and Professions Code section 10145, and the regulations and rules that interpret Business and Professions Code section 10145.

Although subdivision (d) of section 10148 of the Business and Professions Code sets forth that, "[i]n determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly costs for all persons performing audits of real estate brokers," the evidence offered at the hearing by the bureau's auditor, Mr. Leonard, as well as Special Investigator Patterson and the representations made by complainant's counsel, establish the reasonable costs of the audit and investigation was more fairly and accurately calculated. The recoverable costs in this matter include the value of Auditor Leonard and at least two bureau supervising auditors, the value of the time of Special Investigator Patterson and a supervising special investigator and the value of the time of the prosecuting bureau counsel. Hence, the recoverable costs, which respondent is responsible to pay to the department on behalf of the bureau, amount to \$8,367.11.

#### *Measure of Discipline*

13. The purpose of an administrative adjudication proceeding that contemplates the revocation or suspension of a professional or occupational license is not to punish the individual. The purpose of the agency action that results from the administrative adjudication proceeding is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance, supra*, 135 Cal.App.3d 583.)

The driving objectives of the bureau are to maintain high standards among its licensee and preserve the respect and confidence of the public. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

The bureau's institution of disciplinary action through an accusation is "to protect the public not only from conniving real estate [licensee], but also from the uninformed, negligent, or unknowledgeable [real estate licensee] . . . ." (*Handeland v. Department of Real Estate* (1995) 58 Cal.App.3d 513, 518.) The bureau does not expect respondent to maintain a level of supervision of an unlicensed person, amounting to, as respondent ridicules, "24/7" oversight. Rather, the bureau demands that a licensed real estate broker must be diligent so as to reasonably and prudently monitor the activities of unlicensed, as well as licensed personnel associated with the real estate broker's office(s).

#### *Matters in Mitigation, Rehabilitation and Aggravation*

14. The matters in mitigation and matters in rehabilitation, as set forth in Factual Findings 28 through 39, were considered in making the Order below.



And, the matters in aggravation, as described in Factual Findings 40 through 50, were weighed in making the Order below.

*Ultimate Determination*

15. Despite complainant's strenuous presentation that seeks outright revocation of respondent's real estate broker license, because of the lack of evidence of financial loss to consumers along with respondent's efforts towards rehabilitation since the completion of the audit examination, a stay of revocation is justified for a term of four years so that respondent can demonstrate reformation from his past unlawful practices, acts and omissions. Of great importance to the retention of the restricted real estate broker license, and the eventually restoration of an unrestricted real estate broker license, is respondent's full cooperation with the bureau's personnel as well as respondent's real estate broker's operations passing prospective audit examinations of the records and bank accounts related to the subject real estate broker.

ORDER

1. All licenses and licensing rights of respondent Brad Lyle Duncan under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to him pursuant to Code section 10156.5 if he makes application therefore 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 him shall be subject to all of the provisions of Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Code section 10156.6:

a. The restricted license issued to Brad Lyle Duncan may be suspended prior to hearing by order of the Real Estate Commissioner in the event of his conviction or plea of nolo contendere to a crime that is substantially related to his fitness or capacity as a real estate licensee.

b. The restricted license issued to Brad Lyle Duncan may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the commissioner that he has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

c. Brad Lyle Duncan 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 four years have elapsed from the effective date of this decision.

d. Brad Lyle Duncan shall, within nine months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that he

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 he fails to satisfy this condition, the commissioner may order the suspension of the restricted license until the he presents such evidence. The commissioner shall afford him the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

2. Respondent Brad Lyle Duncan shall report in writing to the Bureau of Real Estate as the Real Estate Commissioner may direct while the restricted license is in effect. These reports may include information concerning respondent's activities for which a real estate license is required, including but not be limited to periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which respondent engaged during the period covered by the report.

3. Pursuant to Code section 10148, respondent Brad Lyle Duncan shall pay to the Department of Consumer Affairs, on behalf of the bureau, the Real Estate Commissioner's reasonable costs of past audit, investigation and enforcement in the amount of 8,367.11. Payment of the department's costs in a lump sum would impose a hardship on respondent and therefore the parties are directed to confer and agree upon a reasonable periodic payment plan.

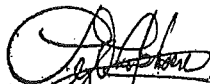
4. Additionally, respondent Brad Lyle Duncan shall pay for the reasonable cost for any subsequent audits to determine if the subject real estate broker has corrected the trust fund violations found in decision, should the bureau decide to conduct such an audit. In calculating the amount of the bureau's reasonable costs, the bureau may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such costs within 60 days of receiving an invoice from the bureau detailing the activities performed during the audit and the amount of time spent performing those activities. The Real Estate Commissioner may suspend the restricted licenses issued to respondent Duncan pending a hearing held in accordance with Government Code section 11500 if payment is not timely made as required, or as provided for in a subsequent agreement between respondent and the bureau. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the bureau to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

5. Respondent Brad Lyle Duncan shall, within one hundred twenty (120) days of the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent Duncan has taken and successfully completed an education course and examination on the topics of: (i) trust fund handling by real estate licensees, and (ii) ethics for licensed real estate professional. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the license until the respondent presents such

Not Adopted  
evidence. Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence on meeting this term and condition.

6. Upon successful completion of the four-year term of restricted real estate broker status, respondent's real estate broker license shall be fully restored.

DATED: April 10, 2014



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PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

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