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BUREAU OF REAL ESTATE

By L. Aust

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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|------------------------------------|---|--------------------|
| In the Matter of the Accusation of | ) |                    |
|                                    | ) | No. H-11659 SF     |
| A B PROPERTY MANAGEMENT, INC. and  | ) |                    |
| THOMAS DALE BRAMMEL,               | ) | OAH No. 2014030947 |
|                                    | ) |                    |
| Respondents.                       | ) |                    |
| _____                              | ) |                    |

DECISION

The Proposed Decision dated October 8, 2014, 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.

This Decision shall become effective at 12 o'clock noon on DEC 01 2014  
IT IS SO ORDERED 11/7/2014

REAL ESTATE COMMISSIONER

  
\_\_\_\_\_  
WAYNE S. BELL

BEFORE THE  
BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

A B PROPERTY MANAGEMENT, INC.  
AND THOMAS DALE BRAMMEL,<sup>1</sup>

Respondent.

Case No. H-11659

OAH No. 2014030947

**PROPOSED DECISION**

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, State of California, heard this matter on July 21, 2014, in Oakland, California.

Truly Sughrue, Counsel, Bureau of Real Estate, represented Complainant Robin S. Tanner, a Deputy Real Estate Commissioner.

Respondent Thomas Dale Brammel was present and represented himself. Respondent A B Property Management, Inc. was represented by Thomas Dale Brammel, its designated officer-broker.

The record closed and the matter was submitted on July 21, 2014.

**FACTUAL FINDINGS**

1. Complainant Robin S. Tanner filed the Accusation in her official capacity as a Deputy Real Estate Commissioner for the Bureau of Real Estate, State of California (Bureau).
2. Respondents Thomas Dale Brammel and A B Property Management, Inc. (ABPM) are presently licensed and/or have license rights under the Real Estate Law. At all

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<sup>1</sup> Respondent's name was spelled incorrectly in the Accusation. The Accusation was amended at hearing to correct this error.

times relevant to the events set forth below, respondent Thomas Dale Brammel was licensed as a real estate broker. His broker license was originally issued on May 17, 2005, and will expire on May 16, 2017, unless renewed.

At all times relevant to the events set forth below, respondent ABPM was licensed as a real estate broker corporation. ABPM received a corporation license on September 18, 1972. As of June 19, 2009, Brammel<sup>2</sup> was also licensed as the designated officer-broker of ABPM. The corporation and designated officer-broker licenses will expire on October 1, 2017, unless renewed.<sup>3</sup>

3. As a designated officer-broker, Brammel was responsible for supervising the activities of the officers, agents, real estate licensees and employees of ABPM for which a license is required.<sup>4</sup>

4. Respondents engaged in the business of, and acted in the capacity of, a real estate broker within the meaning of Business and Professions Code<sup>5</sup> section 10131, subdivision (b), wherein ABPM and Brammel operated a property management business in which respondents leased or rented and offered to lease or rent, and solicited listings of rentals and prospective tenants, and collected rents from real property, on behalf of others, for compensation or expectation of compensation.

5. Between October 10 and December 3, 2013, Bureau auditor Jayendra P. Barbhaiya conducted an investigatory audit of ABPM's records for the period between October 1, 2012, and September 30, 2013. The purpose of the audit was to determine whether ABPM had properly handled trust funds and otherwise complied with real estate laws. Barbhaiya testified at hearing, and his testimony and audit report established the facts set forth Factual Findings 6 through 19, and 21.

6. At the time of the audit, respondents received trust funds in connection with leasing, renting and collecting rents on real property, and thereafter, disbursed such trust funds. Respondents managed 174 residences with 205 units and two apartment complexes

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<sup>2</sup> As used herein, Bramell refers to respondent Bramell. His wife Nancy W. Bramell, is referred to as Nancy Bramell.

<sup>3</sup> As used herein, the acts or omissions of ABPM refer to the acts or omissions committed by ABPM's officers, directors, employees, agents and real estate licensees in furtherance of ABPM's business and within the scope of their corporate authority and employment.

<sup>4</sup> Business and Professions Code section 10159.2.

<sup>5</sup> All further references are to the Business and Professions Code, unless otherwise indicated.

with 97 units. ABPM collected rents from tenants, on behalf of the owners, in the amount of about \$550,000 per month. ABPM charged management fees of five to 10 percent of collected rents.

*First alleged cause for discipline: trust fund and related violations*

7. ABPM's books were managed by bookkeeper Karen Simon-Jaynes. Nancy Brammel, a licensed real estate salesperson, managed ABPM's day-to-day operations.

8. ABPM maintained three bank accounts at Tri-Valley Bank to deposit and hold real estate trust funds from rent and security deposits that were collected from tenants. The main trust fund account that was used for deposits and disbursements related to the management of properties, and the account at issue herein, is trust account number 1 (trust account).<sup>6</sup>

9. As of September 30, 2013, respondents caused, allowed, or permitted the balance in the trust account to be reduced to an amount that was \$364,271 less than the aggregate liability of the trust account to its owners. At least \$259,137 of the shortage was traced to the likely embezzlement of trust fund money by Simon-Jaynes. Simon-Jaynes could not be questioned about the missing funds because she committed suicide on November 13, 2013. About \$1,000 of the shortage was due to negative balances in four property accounts. The reasons for the remaining shortage of about \$104,000 could not be identified. There was no evidence that either Brammel or Nancy Brammel knew about the shortfall in the trust account prior to the time that it was discovered by Barbhaiya, or that either of them acted dishonestly in relation to the trust account.

10. On December 30, 2013, Brammel deposited \$364,431 from his own funds to cover the shortfall in the trust account.

11. Respondents failed to deposit rent checks from tenants of the Oaks Apartments into the trust account within three business days following receipt of such funds.

12. Respondents caused, permitted or allowed the possible withdrawal of funds in the trust account by people who were unlicensed and not otherwise covered by a fidelity bond. The signatories on the trust account were Brammel, Nancy Brammel, Simon-Jaynes, and T.J. Brammel, the son of Brammel. (Brammel made his son a signatory in the event that he or Nancy Brammel was unavailable to disperse funds due to an emergency.) Neither Simon-Jaynes nor T.J. Brammel were licensed by the Bureau. Additionally, they were not covered by a fidelity bond.

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<sup>6</sup> Trust fund account number two was a transitory account used to pay tax withholding from rents collected for owners who were not California residents. Trust fund number three was used for a single property owner.

13. Respondents failed to maintain a written control record of all funds received by and disbursed from the trust account.

14. Respondents failed to reconcile the balance of separate beneficiary or transaction records with the control record of the trust funds received and disbursed at least once each month.

15. Respondents employed Nancy Brammel to perform activities requiring a real estate salesperson license but did not have a written broker-salesperson relationship agreement with her.

16. Respondents failed to disclose ABPM's corporate license identification number on its website.

17. Respondents permitted or caused the disbursement of trust funds to contractors and vendors who repaired properties for the property owners. Respondents charged the accounts of the property owners an amount in excess of the actual cost of the services provided the vendors and contractors. Respondents failed to properly disclose the "mark-ups" to the owners and did not obtain their consent to the mark-ups. Respondents kept the profits from the mark-ups, which amounted to \$5,883.

There was no evidence that Brammel either agreed to or generated the mark-ups. The mark-ups were charged by Simon-Jaynes. In the 30 years that Brammel worked in property management he never engaged in this practice. After the auditor reported the mark-ups to Brammel, all mark-ups were immediately credited back to the accounts of the property owners.

*Second alleged cause for discipline: operating property management business while ABPM's license was expired*

18. ABPM's license expired on June 18, 2013, and was not renewed until October 1, 2013.<sup>7</sup> ABPM willfully permitted or disregarded the real estate law by allowing ABPM to engage in the business of property management while ABPM's license was expired.

*Third alleged cause for discipline: failure to supervise and control licensed activities of ABPM*

19. The acts of ABPM set forth in Factual Findings 7-9 and 11-18 demonstrate a failure on the part of Brammel, as designated broker-officer of ABPM, to exercise reasonable supervision and control over the licensed activities of ABPM.

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<sup>7</sup> The Accusation incorrectly stated the time period during which ABPM's license was expired. This error was corrected at hearing. Complainant also amended paragraph 16 of the Accusation to allege that APBM conducted activities such as soliciting tenants, negotiating rental agreements and collecting rents during the time that its license was expired.

### *Evidence of rehabilitation and mitigation*

20. Brammel has been in the property management business for about 30 years. In 2005, he received his broker's license. He has been diligent in the management of his business, and he has not previously been charged with any misconduct.

21. Barbhaiya discussed his audit findings with Brammel on November 15, 2013. Brammel cooperated with Barbhaiya and took immediate action to rectify the problems identified by Barbhaiya: He entered into a written broker-salesperson agreement Nancy Brammel, and he included ABPM's license on ABPM's website. Brammel also removed unlicensed signatories from the trust account and obtained proper fidelity bond coverage for Simon-Jaynes. Brammel has new accounting systems in place to streamline accounting procedures, and he keeps close watch over the accounting process with Nancy Brammel.

22. The evidence failed to establish that Brammel stole money from the trust account. Brammel acknowledges that he failed to properly manage and supervise the work of Simon-Jaynes. Brammel obtained a home equity line of credit and exhausted his savings in order to repay the \$364,431 owed to the trust account.

23. Simon-Jaynes was in charge of payment to the contractors and vendors for services provided to property owners. Brammel was not aware that Simon-Jaynes was marking up the price of repairs that were charged to the property owners' accounts.

24. Brammel is genuinely sorry for his misconduct. He agrees that he failed to properly manage ABPM. Brammel realizes that he became "lax" in his management of Simon-Jaynes, who he had known for 30 years. Additionally, in mitigation, during the period at issue, Nancy Brammel's mother was suffering from dementia. As a result, both Brammel and Nancy Brammel were distracted from their work.

25. Brammel testified with credibility and candor regarding his misconduct and the steps he has taken to insure that it will not happen again.

### *Costs of conducting audit, investigation and enforcement*

26. Audit Costs: The Bureau's total cost of conducting the audit was \$12,362.25.

27. Investigation and Enforcement Costs: The Bureau has incurred costs in the amount of \$3,708.55 in its investigation and enforcement of this matter. The costs include the following items: \$1,194.30 in investigation costs and \$2,514.25 in Real Estate Counsel costs.

28. In the absence of evidence to the contrary, these costs are found to be reasonable.

## LEGAL CONCLUSIONS

### *First cause for discipline: trust fund violations*

1. Respondents' conduct of allowing the balance of the trust funds to be reduced by \$364,271.34 less than the aggregate liability to all owners of such funds constitutes cause for discipline pursuant to section 10145 and California Code of Regulations, title 10, section 2832.1, as those sections interact with section 10177, subdivision (d). (Factual Finding 9.)
2. Respondents' failure to deposit collected trust funds into a trust account within three business days of receipt of such funds constitutes cause for discipline pursuant to section 10145 and California Code of Regulations, title 10, section 2832, as those sections interact with section 10177, subdivision (d). (Factual Finding 11.)
3. Respondents' conduct of allowing a person who was not licensed by the Bureau and not covered by a fidelity bond to withdraw trust funds constitutes cause for discipline pursuant to California Code of Regulations, title 10, section 2834, as that section interacts with section 10177, subdivision (d). (Factual Finding 12.)
4. Respondents' failure to properly maintain a written control record of all trust funds received and dispersed constitutes cause for discipline pursuant to California Code of Regulations, title 10, section 2831, as that section interacts with section 10177, subdivision (d). (Factual Finding 13.)
5. Respondents' failure to properly maintain records of trust account reconciliations constitutes cause for discipline pursuant to California Code of Regulations, title 10, section 2831.2, as that section interacts with section 10177, subdivision (d). (Factual Finding 14.)
6. Respondents' employment of real estate salesperson Nancy Brammel to perform licensed activities without a written agreement in conformance with the requirements contained in California Code of Regulations, title 10, section 2726, constitutes cause for discipline pursuant to the regulation cited above, as it interacts with section 10177, subdivision (d). (Factual Finding 15.)
7. Respondents' failure to disclose ABPM's corporate broker license identification number on its website constitutes cause for discipline pursuant to section 10140.6, subdivision (b), and California Code of Regulations, title 10, section 2773, as those sections interact with section 10177, subdivision (d). (Factual Finding 16.)
8. Respondents' act of taking secret profits in connection with work performed by contractors at properties managed by respondents constitutes cause for discipline pursuant to section 10176, subdivision (g). It was not established that respondents' conduct involved

fraud or dishonesty. Accordingly, cause for discipline does not exist pursuant to section 10176, subdivision (i). (Factual Finding 17.)

*Second cause for discipline: operating property management business while ABPM's license was expired*

9. Respondents violated section 10130 by allowing ABPM to engage in the business of property management between June 18, and September 30, 2013, when its license was expired. Respondents' operation of the property management business during this time period constitutes cause for discipline pursuant to section 10130, as those sections interact with section 10177, subdivisions (d) and (g). (Factual Finding 18.)

*Third cause of action: failure to supervise and control licensed activities of ABPM*

10. Brammel's failure to exercise reasonable supervision over the acts of ABPM in such a manner that the above-described violations of statutes and regulations occurred, constitutes a failure on the part of Brammel to exercise reasonable supervision and control over the licensed activities of ABPM, in violation of section 10159.2. This conduct constitutes cause for discipline pursuant to section 10177, subdivisions (g) and (h), and section 10159.2, as that section interacts with section 10177, subdivision (d). (Factual Finding 19.)

#### *Disciplinary considerations*

11. In determining the appropriate discipline, the central question is whether Brammel is substantially rehabilitated from his misconduct. The criteria used by the Bureau in evaluating a licensee's rehabilitation are set forth in California Code of Regulations, title 10, section 2912. The paramount concern is not whether a licensee has satisfied every criterion, but whether a licensee is rehabilitated to the extent that he can be trusted to discharge his duties as a real estate broker in a manner consistent with public safety.

Based upon the matters set forth in Factual Findings 20 through 25, it is determined that while Brammel committed serious misconduct, he established sufficient rehabilitation to allow him to retain his broker license and act as the designated officer-broker of ABPM on a restricted basis. Among the factors considered in making this determination are as follows: Brammel takes full responsibility for his misconduct, which stemmed from his failure to properly supervise the operation of ABPM, rather than a desire to circumvent real estate laws for personal gain. Brammel was unaware of the shortfall in the trust fund until the time of the audit, and the evidence failed to demonstrate that he committed acts of dishonesty in relation to the trust account. He was, however, negligent in supervising Simon-Jaynes, who was thought to have stolen the missing trust funds. When Brammel learned of the theft of trust funds, he paid the amount of the shortfall from his personal funds. He realizes that he was lax in his supervision of Simon-Jaynes, in part, because he had known her for 30 years. Additionally, his ability to properly attend to the operations



of ABPM at the time of the misconduct was hampered because he was preoccupied with the illness of his mother-in-law. Following his misconduct Brammel took significant steps to ensure that such mistakes do not occur in the future. Finally, Brammel has been engaged in property management for 30 years without any prior discipline. Against this background, it is extremely unlikely that respondent will engage in misconduct in the future. Accordingly, it is determined that public safety will not be imperiled if respondent continues to hold his license as a real estate broker as the designated officer-broker of ABPM on a restricted basis.

#### *Cost recovery*

12. Audit Costs: Section 10148, subdivision (b), provides that the Bureau "shall charge a real estate broker for the cost of any audit" if the Commissioner finds, in a final decision, that the licensee has violated section 10145, or any regulation interpreting that section. Based upon the matters set forth in Factual Finding 26, cause exists to require respondent to pay for the actual audit costs in the amount of \$12,362.25.

13. Investigation and Enforcement Costs: Section 10106 provides that a licensee found to have violated licensing laws may be ordered to pay the Bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In determining the extent of cost recovery, the following factors have been considered: whether respondents succeeded in getting the charges dismissed or the severity of discipline reduced, whether respondents presented a "colorable challenge" to the proposed discipline, whether respondents possessed a "subjective good faith belief" in the merits of his position, and whether respondents are financially able to pay such costs. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Additionally, under *Zuckerman*, the entire amount of enforcement costs should not be assessed when to do so would penalize an individual who has committed some misconduct, but who has used the hearing process to reduce the severity of the discipline imposed. (*Ibid.*)

In the instant case, Brammel used the hearing process to submit evidence demonstrating that revocation of his license is not warranted. Brammel also presented evidence that any substantial award of costs will constitute a financial hardship. For these reasons, it is determined that cause exists to reduce the Bureau's cost recovery to the sum of \$2,708.55. This represents a reduction of \$1,000 from the amount requested by complainant. (Factual Finding 27.)

#### ORDERS

1. All licenses and licensing rights of respondent Thomas Dale Brammel under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application thereof and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this

Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

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

c. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

d. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

e. Respondent shall pay to the Bureau of Real Estate costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106 in the amount of \$2,708.55.

Respondents Thomas Dale Brammel and A B Property Management, Inc. are jointly and severally liable for payment of costs under this section.

f. Pursuant to Section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable cost for:

a) the audit which led to this disciplinary action, in the amount of \$12,362.25, and, b) a subsequent audit to determine if respondent has corrected the trust fund violations found in Legal Conclusions 1-5 of the Proposed Decision. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500 et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

Respondents Thomas Dale Brammel and A B Property Management, Inc. are jointly and severally liable for payment of costs under this section.

g. Respondent shall, prior to and as a condition of the issuance the restricted license, 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 continuation education course within 120 days prior to the effective date of the Decision in this matter.

2. All licenses and licensing rights of respondent A B Property Management, Inc. under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application thereof and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

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

c. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

d. Respondent shall pay to the Bureau of Real Estate costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106 in the amount of \$2,708.55.

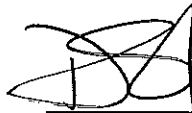
Respondents Thomas Dale Brammel and A B Property Management, Inc. are jointly and severally liable for payment of costs under this section.

e. Pursuant to Section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable cost for:  
a) the audit which led to this disciplinary action, in the amount of \$12,362.25, and, b) a subsequent audit to determine if respondent has corrected the trust fund violations found in Legal Conclusions 1-5 of the Proposed Decision. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500 et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between respondent and the Commissioner. The suspension shall remain in effect until payment

is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

Respondents Thomas Dale Brammel and A B Property Management, Inc. are jointly and severally liable for payment of costs under this section.

DATED: October 8, 2014

A handwritten signature in black ink, appearing to be 'DS' with a stylized flourish.

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DIANE SCHNEIDER  
Administrative Law Judge  
Office of Administrative Hearings