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FEB 14 2018

BUREAU OF REAL ESTATE

By B. Nicholas

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	CalBRE No. H-11965 SF
	)	
THE AZARI GROUP REAL ESTATE, INC.,	)	OAH No. 2017020321
and MARIO ANTONIO BANUELOS	)	
Respondents.	)	
	)	

ORDER DENYING RECONSIDERATION

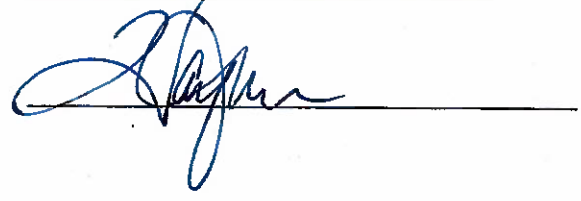
On December 21, 2017, a Decision was rendered in the above-entitled matter. The Decision was to become effective on January 17, 2018, and was stayed by separate Order to February 16, 2018.

On January 2, 2018, Respondents petitioned for reconsideration of the Decision of December 21, 2017.

I have given due consideration to the petition of Respondents. I find no good cause to reconsider the Decision of December 21, 2017, and reconsideration is hereby denied.

IT IS SO ORDERED 2/14/2018

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



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BUREAU OF REAL ESTATE

By B. Nicholas

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	CalBRE NO. H-11965 SF
THE AZARI GROUP REAL ESTATE, INC., and	)	OAH NO. 2017020321
MARIO ANTONIO BANUELOS	)	
Respondent(s).	)	

ORDER STAYING EFFECTIVE DATE

On December 21, 2017, a Decision was rendered in the above-entitled matter to become effective January 17, 2018.

IT IS HEREBY ORDERED that the effective date of December 21, 2017, is stayed for a period of 30 days to allow Respondents to file a petition for reconsideration.

The Decision of December 21, 2017, shall become effective at 12 o' clock noon on February 16, 2018.

DATED: 1/4/18

WAYNE S. BELL  
REAL ESTATE COMMISSIONER

By: Daniel J. Sandri  
DANIEL J. SANDRI  
Chief Deputy Commissioner

**FILED**

BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

DEC 27 2017

BUREAU OF REAL ESTATE  
By B. Nicholas

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In the Matter of the Accusation of	)	CalBRE No. H-11965 SF
THE AZARI GROUP REAL ESTATE, INC.,	)	OAH No. 2017020321
and MARIO ANTONIO BANUELOS	)	
Respondent.	)	

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DECISION

The Proposed Decision dated November 16, 2017, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code Section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

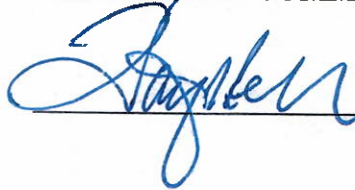
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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on JAN 17 2018.

IT IS SO ORDERED 12/21/2017

WAYNE S. BELL  
REAL ESTATE COMMISSIONER



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BEFORE THE  
BUREAU OF REAL ESTATE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

THE AZARI GROUP REAL ESTATE,  
INC.,

and

MARIO ANTONIO BANUELOS,

Respondents.

Case No. H-11965 SF

OAH No. 2017020321

**PROPOSED DECISION**

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on October 16 and 17, 2017, in Oakland, California.

Counsel for the Bureau of Real Estate Jason D. Lazark represented complainant Heather Nishimura, in her official capacity as Supervising Special Investigator for the Bureau of Real Estate.

Attorney Seth Morris represented respondent The Azari Group Real Estate, Inc.

Attorney Doron Weinberg represented respondent Mario Antonio Banuelos, who was present for the hearing.

The matter was submitted on October 17, 2017.

**FACTUAL FINDINGS**

1. Respondent The Azari Group Real Estate, Inc. (TAG), is a property management firm holding a corporate real estate broker's license. Respondent Mario Antonio Banuelos served between March 2014 and August 2014 as TAG's Designated Officer.

2. In May 2016, Robin S. Tanner, acting in her official capacity as a Supervising Special Investigator for the Board, filed an accusation against TAG and Banuelos. Complainant Heather Nishimura, also acting in her official capacity as a Supervising Special Investigator, filed a first amended accusation in June 2017. The first amended accusation seeks discipline against TAG's and Banuelos's licenses, for mismanaging client trust funds and for permitting unlicensed individuals to perform services requiring licensure.

3. Both TAG and Banuelos requested a hearing.

### *Relevant License Histories*

4. The Bureau licensed Manzar Dohkt Azari as a real estate salesperson effective December 2, 2004, and as a broker (License No. B/01461947) effective March 6, 2006. Azari has worked steadily in the real estate business since obtaining her salesperson license.

5. The Bureau licensed Banuelos as a real estate salesperson effective January 13, 2006, and as a broker (License No. B/01518863) effective February 27, 2009. Banuelos has worked steadily in the real estate business since obtaining his salesperson license.

6. The Bureau licensed respondent TAG as a real estate broker (License No. C/01900469) effective September 7, 2011. The Bureau authorized TAG to do business as "Azari Property Management" effective November 1, 2011. Azari served as TAG's Designated Officer between September 7, 2011, and February 21, 2013.

7. Effective February 21, 2013, the Bureau revoked Azari's License No. B/01461947. The Bureau took this action after an audit revealed that Azari had mismanaged client trust funds by investing them in ways that violated relevant laws and regulations and by failing to maintain accurate records for each client whose funds she held in trust. In addition, the Bureau found in revoking Azari's license that she had failed to exercise adequate supervision over both licensed and unlicensed persons who worked for her. The errors and omissions resulting in revocation of License No. B/01461947 had occurred before September 7, 2011.

8. The Bureau recognized David Nicolas Albanese as TAG's Designated Officer effective March 14, 2013.

9. The Bureau cancelled its recognition of Albanese and recognized Mamdooh B. Shokouhi as TAG's Designated Officer effective September 5, 2013.

10. The Bureau cancelled its recognition of Shokouhi and recognized Banuelos as TAG's Designated Officer effective March 18, 2014.

11. The Bureau cancelled its recognition of Banuelos as TAG's Designated Officer effective August 13, 2014, but reinstated this recognition-effective August 29, 2014.

12. The Bureau cancelled its recognition of Banuelos and recognized Erick Francisco Catalan as TAG's Designated Officer effective October 17, 2014.

13. The Bureau cancelled its recognition of Catalan and recognized Daniel Boone Coffman as TAG's Designated Officer effective July 6, 2015.

14. The Bureau cancelled its recognition of Coffman and recognized Hamid Sigaroudinia as TAG's Designated Officer effective March 21, 2016.

#### *Azari's Management of TAG*

15. TAG filed initial Articles of Incorporation with the Secretary of State in May 2010. Azari, either alone or in combination with her husband, always has held the majority of TAG's shares.

16. After losing her personal broker's license in February 2013, Azari made no significant changes to her role with TAG. She remains the chief business decision-maker for the corporation and acts as the ultimate supervisor of both its accounting staff and its real estate salespeople.

17. The evidence did not establish that any of TAG's Designated Officers since March 2013, aside from Banuelos, has played any meaningful role in TAG's business. The evidence also did not establish that any person TAG has reported to the Bureau as a Designated Officer since March 2013 actually has been a corporate officer of TAG.

18. In February 2014, Banuelos answered an employment advertisement by TAG. Although the advertisement itself was not in evidence, the evidence did establish that Banuelos and Azari discussed the possibility that Banuelos would become TAG's Designated Officer if TAG hired him. Banuelos wanted to work for TAG, but he did not want to serve as TAG's Designated Officer because he had no prior experience in property management.

19. Banuelos accepted a position as TAG's Vice President of Operations in late February 2014, upon Azari's representation that Shokouhi would continue as TAG's Designated Officer for at least six months after Banuelos joined TAG.

20. Banuelos moved from Southern California to Northern California to take the job with TAG. He was eager for personal reasons to make this move, and Azari knew that he was. On Banuelos's first day at TAG, Azari informed him that Shokouhi would not continue as TAG's Designated Officer, and that Banuelos would need to assume this role to keep the company in operation. He agreed.

21. Banuelos performed a wide variety of duties as TAG's Vice President of Operations, including supervising and mentoring licensed real estate salespersons. On financial matters, however, he deferred entirely to Azari. Furthermore, although Banuelos

participated in firm management, he did not suggest or direct any changes in firm organization, or in licensed or unlicensed employees' duties.

### *Client Trust Fund Management*

22. Beginning in July 2014, Bureau General Auditor III Susie Hsueh conducted an audit of TAG's books and records for the period between January 1, 2013, and September 12, 2014. The chief purpose of her audit was to examine whether TAG had handled and accounted for client trust funds in accordance with applicable laws and regulations.

23. For the period covered by her audit, Hsueh examined records for two TAG bank accounts. One was titled as TAG's client trust account; the other was a general business account for TAG.

24. When Hsueh examined TAG's records, only Banuelos had signature authority for the TAG client trust account. Azari and TAG's Chief Operating Officer, Eugenia Mantzoros, had signature authority for the TAG general business account.

25. Both the client trust account and the general business account permitted electronic access, not only to review account records but also to make electronic deposits and disbursements. TAG's accounting manager, Ievgeniia Filchenko, knew the credentials for electronic access to both accounts. Filchenko used these credentials to access both accounts for transactions that Azari directed and approved. She did not limit transactions in the TAG client trust account to transactions Banuelos had approved.

### RECORDS REGARDING MAINTENANCE RESERVES

26. TAG provided routine property maintenance services to its clients. During the period covered by Hsueh's audit, TAG incurred expenses for maintenance and repairs to clients' rental units and paid those expenses from TAG's general business account. TAG reimbursed itself for such expenses from the affected clients' rental revenues. Hsueh reported no concerns about the manner in which TAG assigned maintenance expenses to clients or reimbursed itself from clients' rent revenues for those maintenance expenses, and no concerns about the documentation supporting these transactions.

27. During the period covered by Hsueh's audit, TAG's property management agreements with most of TAG's clients required each client to keep \$250 per managed unit on deposit with TAG as a maintenance reserve, from which the client authorized TAG to make minor maintenance expenses without express approval for each transaction. Although TAG held these funds, a client's maintenance reserve was the client's money, earmarked for paying client expenses if and when they occurred. If a client who kept a maintenance reserve with TAG had terminated its business relationship with TAG without incurring any maintenance expenses for the client's rental housing units, TAG would have owed the entire maintenance reserve to the client.



28. Until April 28, 2014, TAG kept these client maintenance reserves in its client trust account. On that date, however, Azari instructed Filchenko to move all client maintenance reserves, which then totaled \$43,250, from the client trust account to the TAG general business account. Azari did not consult Banuelos before giving Filchenko this instruction; and although Banuelos received Azari's email to Filchenko instructing the transfer, Banuelos did not intervene to question or to veto Azari's instruction.

29. Filchenko moved the funds as Azari directed. After moving these funds, TAG continued to indicate on each affected client's individual account record at the close of each month that the client held a \$250 maintenance reserve. The evidence did not establish that TAG made any change in the manner in which it assigned maintenance expenses to individual clients, or in the manner in which it used clients' rent revenues to replenish their maintenance reserves. The only material change in TAG's financial recordkeeping practice resulting from the maintenance reserves transfer on April 28, 2014, was that these maintenance reserves were in the TAG general business account rather than in the TAG client trust account.

30. The transfer of \$43,250 in client maintenance reserves from the TAG client trust account to the TAG general business account caused TAG to commingle TAG's own funds with funds TAG held in trust for clients.

31. After putting its clients' maintenance reserves in its general business account, TAG did not modify its bookkeeping or reporting practices with respect to its general business account. For example, TAG did not ask its bank to retitle the general business account as a client trust account. TAG did not begin keeping individual client beneficiary records with respect to the general business account, and it did not reconcile such records against the general business account every month. As it had before the transfer, TAG continued to reconcile its clients' individual accounts every month to reflect each client's revenues and expenses; but these records did not reflect that some of its clients' trust funds were in the client trust account while other funds were in the general business account as maintenance reserves.

32. The transfer of \$43,250 in client maintenance reserves from the TAG client trust account to the TAG general business account caused the total balance in the TAG client trust account to fall short of the total amount of client funds TAG's accounting records showed that TAG held in trust for clients.

33. At the close of business on April 30, 2014, TAG's accounting records showed that TAG held a total of \$209,927.91 in trust on that date for all clients. At the close of business on that same date, TAG's client trust account and TAG's general business account together held only \$200,890.42.

34. At the close of business on June 30, 2014, TAG's accounting records showed that TAG held a total of \$220,447.39 in trust on that date for all clients. At the close of

business on that same date, TAG's client trust account and TAG's general business account together held only \$199,467.19.

35. On a date not established by the evidence, TAG refunded its clients' maintenance reserves to them. TAG no longer keeps maintenance reserves for its clients.

#### OTHER TRUST FUND BOOKKEEPING ISSUES

36. On April 30, 2014, the ending balance in the TAG client trust account was \$43,059.96 less than the total amount of client funds TAG's accounting records showed that TAG held in trust on that date for clients. This shortage was less than \$43,250 (representing the maintenance reserves TAG had moved to its general business account) because the TAG client trust account also held \$190.04 on that date that TAG had not identified as belonging to any client.

37. On June 30, 2014, the ending balance in the TAG client trust account was \$42,989.42 less than the total amount of client funds TAG's accounting records showed that TAG held in trust on that date for clients. This shortage was less than \$43,250 (representing the maintenance reserves TAG had moved to its general business account) because the TAG client trust account also held \$260.58 on that date that TAG had not identified as belonging to any client.

38. On September 12, 2014, TAG transferred \$40,739.49 from its general business account into its client trust account. After this transfer, the ending balance in the TAG client trust account remained \$1,400 less than the total amount of client funds TAG's accounting records showed that TAG held in trust on that date for all clients.

39. The evidence did not establish that any TAG client ever has agreed that TAG may use funds TAG holds in trust for that client to cover, even temporarily, a shortfall in a different client's obligations to TAG.

40. On May 2, 2014, TAG received \$6,450.40 from a new tenant in an apartment TAG managed. TAG deposited these funds in its client trust account. TAG's ledger for this tenant shows that \$2,052.40 of this payment was for the first month's rent, and that the remaining \$4,398 was for a security deposit. As of June 4, 2014, however, TAG's client record for the owner of this apartment showed only that TAG had received \$2,052.40 in rent for this unit on the client's behalf. The evidence did not establish whether TAG ever paid the security deposit over to the client; if TAG retained the security deposit in trust for the client, the evidence did not establish whether TAG ever corrected the client's record to reflect that TAG held the tenant's \$4,398 security deposit in trust.

### *Unlicensed Marketing and Administrative Assistance*

41. Mantzoros is a licensed real estate salesperson. Mark Bush, TAG's Vice President for Business Development, is also a licensed real estate salesperson. While Banuelos worked for TAG, both Mantzoros and Bush as well as Banuelos marketed TAG's services to property owners and negotiated agreements with new clients.

42. The evidence did not establish that any other officer, associate, or employee negotiated property management agreement terms for TAG during the period covered by Hsueh's audit. The evidence did establish that between April 9, 2013, and July 15, 2014, people who did not hold any Bureau licenses executed, on TAG's behalf, at least seven agreements between TAG and its property management clients. Each of these agreements names Azari Property Management, not any natural person, as the manager for the client's real property.

43. During the period covered by Hsueh's audit, several other licensed real estate salespersons also worked with TAG. These salespersons marketed TAG clients' property for rent and executed leases on TAG clients' behalf for that property.

44. During the period covered by Hsueh's audit, TAG's real estate salespersons received assistance from unlicensed persons including Denise Kilker, James Quintero, and Mark Machado. These assistants' roles, as described in their written employment agreements, would have given them opportunities to interact directly with prospective tenants, although the written agreements strictly forbade discussing rental terms. The evidence did not establish exactly what duties these unlicensed assistants did and did not perform, however. In particular, the evidence did not establish that any of them ever negotiated with a prospective tenant on a TAG client's behalf, or executed a lease on a TAG client's behalf.

### *Absence of a Designated Officer*

45. Without informing anyone at TAG in advance, Banuelos submitted a letter to the Bureau dated July 31, 2014, asking the Bureau immediately to cancel its recognition of him as TAG's Designated Officer. When Azari learned that Banuelos had left TAG with no Designated Officer, she begged him to return to the role until she could recruit a replacement. He agreed.

46. Before asking the Bureau to cancel its recognition of him as TAG's Designated Officer, Banuelos took no steps to suspend or disable transactions in TAG's client trust account. The evidence did not establish the date when anyone else at TAG learned that TAG had no Designated Officer, but did establish that between that date and the date the Bureau reinstated Banuelos, no one at TAG took any steps to suspend or disable transactions in TAG's client trust account.

47. Many of TAG's clients' tenants pay their rent electronically, and some have automated this process. During the period between the date the Bureau cancelled its recognition of Banuelos as TAG's Designated Officer and the date the Bureau reinstated this recognition, tenants submitted more than \$31,000 in rent payments to TAG.

#### *Additional Evidence*

48. Banuelos's sister, Jacqueline Banuelos, testified to support him. Jacqueline Banuelos also is a licensed real estate broker, and she and her brother worked together for several years early in his career. They socialize frequently, often discussing their work. She knew when Banuelos went to work for TAG that he had little or no experience in property management, and did not learn until later that he had served as TAG's Designated Officer. Jacqueline Banuelos views her brother as a competent real estate professional with high integrity.

49. James Nunemacher also testified on Banuelos's behalf. Nunemacher is a licensed real estate broker who is the Chief Executive Officer of Vanguard Properties, a general brokerage in the Bay Area. Banuelos has worked for Vanguard Properties since leaving TAG in late 2014. Nunemacher has complete confidence in Banuelos's competence and honesty and would like to keep Banuelos on his sales team.

50. Azari's testimony was inconsistent, self-serving, and at times frankly dishonest. She testified, for example, that she had asked Banuelos's opinion before directing Filchenko to transfer TAG's clients' maintenance reserves from TAG's client trust account to TAG's general business account; the evidence overall established that she did not.

51. Azari's testimony confirmed that she controls TAG and takes great pride in her business. It also confirmed that she either does not understand or refuses to acknowledge why the Bureau revoked her real estate broker's license, and why Hsueh raised concerns about transferring TAG's clients' maintenance reserves from TAG's client trust account to TAG's general business account.

52. TAG's current Designated Officer did not testify. No evidence established this person's experience, or described his or her professional relationship with Azari or other TAG shareholders and officers. Moreover, no evidence established this person's duties at TAG, if any, beyond a Designated Officer's statutory responsibilities.

#### *Costs*

53. The Bureau has incurred \$8,214.82 in expense for the audit conducted in this matter. The Bureau's claim for these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042. The audit cost is reasonable.

54. The Bureau also has incurred \$2,794.60 in attorneys' fees for this matter. The Bureau's claim for these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042. The attorneys' fees are reasonable.

## LEGAL CONCLUSIONS

1. The Bureau may suspend or revoke a real estate broker's license only if clear and convincing evidence proves the facts supporting discipline. The factual findings above reflect this standard.

### *Causes for Discipline Against TAG*

2. A real estate broker must maintain all client trust funds in a designated client trust account. (Bus. & Prof. Code, § 10145, subd. (a)(1).) The client trust account may include funds from multiple clients, but its balance must never fall below the broker's existing aggregate trust fund liability to all owners of the funds unless all such owners have consented in writing. (Cal. Code Regs., tit. 10, § 2832.1.) Under subdivisions (d) and (g) of Business and Professions Code section 10177, the matters stated in Findings 32, 33, 34, 38, and 39 constitute cause for discipline against TAG's corporate real estate broker's license.

3. A real estate broker must maintain client trust funds in a distinct bank account, titled in the name of the broker as trustee for its clients. (Cal. Code Regs., tit. 10, § 2832.) Under subdivisions (d) and (g) of Business and Professions Code section 10177, the matters stated in Findings 29 and 31 constitute cause for discipline against TAG's corporate real estate broker's license.

4. A real estate broker must never commingle client trust funds with the broker's own funds by depositing client trust funds in a bank account that also contains the broker's own funds and that the broker has not designated as a client trust account. (Cal. Code Regs., tit. 10, § 2835.) Violation of this regulation is cause to suspend or revoke a real estate broker's license. (Bus. & Prof. Code, § 10176, subd. (e).) The matters stated in Findings 29 and 30 constitute cause for discipline against TAG's corporate real estate broker's license.

5. A real estate broker must maintain records showing all receipts to and disbursements from its client trust account, and relating each receipt and disbursement to a specific client. (Bus. & Prof. Code, § 10145, subd. (g); Cal. Code Regs., tit. 10, §§ 2831, 2831.1.) Violation of these requirements is cause for discipline against TAG's corporate real estate broker's license. (Bus. & Prof. Code, § 10177, subds. (d), (g).)

a. With respect to the bank account TAG designated as its client trust account, the matters stated in Findings 29, 36, 37, and 40 constitute cause for discipline against TAG's corporate real estate broker's license.

b. With respect to the bank account TAG designated as its general business account, the matters stated in Findings 29 and 31 constitute cause for discipline against TAG's corporate real estate broker's license.

6. A real estate broker must reconcile its client trust account at least monthly. (Cal. Code Regs., tit. 10, § 2831.2.) With respect to the bank account TAG designated as its general business account, the matters stated in Findings 29 and 31 constitute cause for discipline against TAG's corporate real estate broker's license.

7. A corporate real estate broker may designate one of the corporation's officers as the corporation's broker. (Bus. & Prof. Code, § 10211.) The corporation may not act as a real estate broker if it does not have such a person in office. (Cal. Code Regs., tit. 10, § 2740.) Collecting rent for a client is an activity requiring licensure as a real estate broker. (Bus. & Prof. Code, § 10131, subd. (b).) Under subdivisions (d) and (g) of Business and Professions Code section 10177, the matters stated in Findings 45 through 47 constitute cause for discipline against TAG's corporate real estate broker's license.

8. A real estate broker may not employ unlicensed persons to perform functions requiring a real estate license, and doing so is cause to suspend or revoke the broker's license. (Bus. & Prof. Code, §§ 10130, 10131, 10137.)

a. Complainant alleged that TAG violated this requirement by using unlicensed persons to market its clients' residential rental property to prospective tenants. Marketing another person's residential rental property to prospective tenants is an activity requiring licensure as a real estate broker. (Bus. & Prof. Code, § 10131, subd. (b).) As stated in Findings 43 and 44, however, the evidence did not establish that unlicensed persons performed these duties for TAG. Complainant did not show cause for discipline on this basis against TAG's corporate real estate broker's license.

b. Complainant also alleged that TAG violated this requirement when unlicensed persons acting on TAG's behalf signed agreements between TAG and clients for whom TAG would manage rental property. A corporation must hold a real estate broker's license to negotiate tenant leases on its clients' behalf, but executing contract documents for the corporation itself is not an activity that requires licensure as a real estate broker. The matters stated in Findings 41 and 42 do not constitute cause for discipline against TAG's corporate real estate broker's license.

#### *Causes for Discipline Against Banuelos*

9. A real estate broker who serves as the broker for a corporate real estate licensee must exercise reasonable supervision over the corporation's activities, to prevent violations of the laws and regulations governing licensed activity. (Bus. & Prof. Code § 10159.2, subd. (a); Cal. Code Regs., tit. 10, § 2725.) Failure to exercise this responsibility is cause for discipline against the individual broker's license. (Bus. & Prof. Code § 10177,

subds. (d), (g), (h).) The matters stated in Findings 10 through 12 and in Legal Conclusions 2 through 6 constitute cause for discipline against Banuelos's real estate broker's license.

### *Disciplinary Considerations*

10. As stated in Findings 16, 17, 50, and 51, Azari treated revocation of her personal real estate broker's license as a minor nuisance. As TAG's owner and chief decision-maker, and as stated in Findings 8 through 14 and 17, she hired a succession of figureheads to serve as TAG's Designated Officers, conferring on none of them the authority a Designated Officer would have needed to fulfill his or her statutory responsibilities. Azari bears the ultimate responsibility for the business decisions that resulted in the errors and omissions constituting cause for discipline against TAG's corporate real estate broker's license.

11. No evidence demonstrated any efforts by Azari, or anyone else at TAG, to correct the organizational failures that have allowed Azari to continue operating TAG without meaningful supervision by any licensed real estate broker. Revocation of TAG's corporate real estate broker's license is necessary to protect the public.

12. Banuelos himself made a grave misjudgment by agreeing to serve as TAG's Designated Officer. The circumstances under which he agreed to do so, as summarized in Findings 18 through 20 and 45, explain, but do not excuse, this decision. Limiting him to the duties of a real estate salesperson, with requirements to complete continuing education relating to professional responsibility and trust fund accounting, will allow the Bureau to monitor Banuelos's professional practice to prevent repetition of similar errors.

### *Costs*

13. If the Bureau, after a hearing, imposes discipline on a real estate broker for errors and omissions revealed by an audit, the broker shall reimburse the Bureau for the reasonable audit costs. (Bus. & Prof. Code, § 10148, subd. (b).) In this matter, as stated in Finding 53, the Bureau's reasonable audit costs total \$8,214.82.

14. A licensee found to have committed a violation of the licensing act may be required to pay the Bureau the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 10106.) The Bureau's request for reimbursement for \$2,794.60 in costs in this case is justified, and as set forth in Finding 54 is reasonable.

15. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board or bureau must exercise its discretion to reduce or eliminate cost awards to ensure that the board or bureau does not deter licensees with potentially meritorious claims from exercising their administrative hearing rights. The court held that a licensing board requesting reimbursement for costs relating to a hearing must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable

challenge” to the proposed discipline. (*Id.*, at p. 45.) The board also must consider whether the licensee will be “financially able to make later payments.” (*Ibid.*) Lastly, the board may not assess full costs of investigation and enforcement when it has conducted a “disproportionately large investigation.” (*Ibid.*)

16. These matters have been considered, as have the relative contributions by TAG and Banuelos to the errors and omissions that constitute cause for disciplinary action against them. The total reimbursable costs in this matter are \$11,009.42. Assessment against Banuelos of 10 percent of the total costs (\$1,100.94), and against TAG of 90 percent (\$9,908.48), reasonably apportions those costs between them.

#### ORDER.

1. All licenses and licensing rights of respondent The Azari Real Estate Group, Inc., under the Real Estate Law are revoked.
2. Respondent The Azari Real Estate Group, Inc., shall reimburse the Bureau \$9,908.48 toward its reasonable investigation and prosecution costs within 30 days following the Bureau’s final decision in this matter.
3. All licenses and licensing rights of respondent Mario Antonio Banuelos under the Real Estate Law are revoked; provided, however, that a restricted real estate salesperson license shall be issued to respondent Banuelos pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor 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 nor 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 submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Bureau of Real Estate which shall certify:
- (1) that the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
  - (2) that the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
- E. Respondent shall, prior to and as a condition of the issuance of 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 continuing education course within 120 days prior to the effective date of the Decision in this matter.
- F. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.
- G. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

4. Respondent Banuelos shall reimburse the Bureau \$1,100.94 toward its reasonable investigation and prosecution costs within 30 days following the Bureau's final decision in this matter.

DATED: November 16, 2017

DocuSigned by:  
*Juliet E. Cox*  
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**JULIET E. COX**  
Administrative Law Judge  
Office of Administrative Hearings