

FILED

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

JUN 13 2018

BUREAU OF REAL ESTATE
By B. Nicholas

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| In the Matter of the Accusation of |) | CalBRE No. H-12043 SF |
| ANNE ELIZABETH OLIVA, |) | OAH No. 2017120166 |
| Respondent. |) | |

DECISION

The Proposed Decision dated May 8, 2018, 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, but the right to a restricted salesperson license is granted to Respondent.

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 JUL 05 2018

IT IS SO ORDERED June 12, 2018

WAYNE S. BELL
REAL ESTATE COMMISSIONER

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

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ANNE ELIZABETH OLIVA,

Respondent.

Case No. H-12043 SF

OAH No. 2017120166

PROPOSED DECISION

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on April 9-10, 2018, in Oakland, California.

Jason D. Lazark, Real Estate Counsel, represented complainant Robin S. Tanner.

Mary E. Work, Attorney at Law, represented respondent Anne Elizabeth Oliva, who was present throughout the hearing.

The matter was submitted on April 10, 2018.

FACTUAL FINDINGS

1. Respondent Anne Elizabeth Oliva is licensed and has licensing rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code)¹ with the Bureau of Real Estate (Bureau). Her real estate broker license (number 00980260) will expire on February 8, 2020, unless renewed.

2. Complainant Robin S. Tanner, acting in her official capacity as a Supervising Special Investigator with the Bureau, filed an Accusation against respondent alleging several violations of the Real Estate Law. Specifically, as a result of the findings of an audit, the Bureau alleged that respondent: allowed a bank account with trust funds to have shortages on two separate occasions without the prior written consent of each owner of the trust funds; committed fraud or dishonesty against the beneficiaries of the trust funds; failed to properly designate a bank account as a trust account; failed to perform monthly reconciliations for the balances of separate beneficiary records with the control records for the bank account with

¹ All statutory references are to the Business and Professions Code, unless otherwise noted.

trust funds; conducted real estate activities under a fictitious business name without first registering that name with the Bureau; and commingled personal funds with trust funds.

3. On September 11, 2017, the Bureau issued an Order to Desist and Refrain ordering respondent to immediately desist and refrain from performing any acts for which a real estate broker license is required and from conducting real estate activities using the fictitious business name "Marshall Realty," without first registering the name with the Bureau pursuant to section 10159.5 and California Code of Regulations title 10, section 2731. A licensee shall not use a fictitious name to conduct real estate activity unless the licensee is the holder of a license bearing the fictitious name filed with an application to the Bureau. (§ 10159.5; Cal. Code Regs., tit. 10, § 2731, subd. (a).) On September 14, 2017, the fictitious business name, Marshall Realty, was added to respondent's broker license.

Background

4. In 1959, respondent's father, Robert Alfred Marshall, founded Marshall Realty to provide real estate resale and property management services. Respondent was licensed as a real estate salesperson in 1988, and worked for her father. She obtained a broker's license in February 2004. She inherited the real estate business after her father's untimely death in 2012, and continued to operate under the fictitious business name Marshall Realty. Respondent has 24 real estate salespersons registered with the Bureau working under her broker's license. She manages 278 properties for 210 property owners and collects monthly trust funds of approximately \$1 million.

5. On January 22, 2016, the Bureau received an anonymous complaint alleging that Berta Tovar, a broker-affiliate working under respondent's license, made improper arrangements with contractors to inflate the costs of repairs and maintenance of managed properties and pocketed the excess funds. Sam Cacas, special investigator with the Bureau, investigated the complaint. On September 14, 2016, Cacas interviewed Tovar and respondent. During the interview, Cacas advised respondent that, according to the Bureau's records, Marshall Realty was not registered under her broker's license. Respondent stated that she would correct the error. Ultimately, Cacas found no violations of the law by Tovar; however, he recommended an audit of respondent's real estate records.

The Audit

6. On September 14, 2016, Cecilia Yan, auditor with the Bureau, conducted an audit of respondent's real estate records for the period of January 1, 2015 through August 31, 2016 (audit period). Yan found that within the audit period, respondent accepted or received trust funds in connection with property management on behalf of owners and deposited those funds into a First National Bank of Northern California bank account (Bank Account #1), under the name of "Anne E. Oliva DBA Marshall Realty." Respondent was the sole signatory on Bank Account #1. Respondent periodically made disbursements of these trust funds to property owners and payments to vendors incurred for maintenance of the properties. This account was not specifically designated as a real estate trust or trustee

account in respondent's name. Respondent also maintained another bank account at First National Bank of Northern California for the business activities of Marshall Realty (Bank Account #2 or business account).

7. For Bureau compliance, a monthly reconciliation report must list all beneficiaries and all balances plus broker's funds, and these lists and balances must match the control record (or general ledger) and adjusted bank balance. Yan found that no monthly reconciliations had been conducted. Yan also found shortages caused by negative property account balances, including respondent's broker's fund account that was labeled "office." Yan found that the shortages were related to several transactions from Bank Account #1 to Bank Account #2 as follows: July 21, 2015, respondent made a phone transfer in the amount of \$35,000; September 18, 2015, respondent made a phone transfer in the amount of \$17,000; March 25, 2016, respondent made a phone transfer in the amount of \$18,000; and May 4, 2016, respondent made a phone transfer in the amount of \$42,000. Respondent did not obtain written consent from the property owners prior to the trust fund disbursements from Bank Account #1 into Bank Account #2. These transfers reduced the balance of trust funds to an amount less than the aggregate trust fund liability of the broker to all owners of the trust funds. Yan determined that, on August 30, 2016, respondent deposited broker's funds in the amount of \$112,700 into Bank Account #1 to cover the total amount of the shortages. Yan issued an audit report on October 26, 2016.

8. At hearing, respondent conceded to the following violations of the Real Estate Law as outlined in the audit report:

(a) On July 31, 2016, respondent permitted the balance of trust funds in Bank Account #1 to contain a shortage of \$118,334.58, without the prior written consent of each owner of the trust funds, in violation of section 10145 and California Code of Regulations title 10, section 2832.1 (handling of trust funds).

(b) On August 31, 2016, respondent permitted the balance of funds in Bank Account #1 to contain a shortage of \$285.03, without the prior written consent of each owner of the funds, in violation of section 10145 and California Code of Regulations, title 10, section 2832.1.

(c) Respondent caused four disbursements totaling \$112,000, from Bank Account #1 into Bank Account #2 in order to bring Bank Account #2 positive on four separate occasions, which constituted fraud or dishonesty against the beneficiaries of the trust funds in Bank Account #1 in violation of section 10176, subdivision (i) (fraud).

(d) Respondent failed to designate Bank Account #1 as a trust account in respondent's name in violation of section 10145, and California Code of Regulations, title 10, section 2832 (trust fund handling).

(e) Respondent failed to reconcile, at least once a month, the balance of all separate beneficiary or transactions records with the balance of the control records for Bank Account #1, in violation of section 10145, and California Code of Regulations, title 10, section 2831.2 (trust account reconciliation).²

(f) Respondent conducted real estate activities using the fictitious business name "Marshall Realty" without first registering that name with the Bureau, in violation of section 10159.5 and California Code of Regulations, title 10, section 2731 (registering fictitious business name).

(g) Respondent commingled trust funds with her own money in violation of section 10176, subdivision (e), and California Code of Regulations, title 10, section 2835 (commingling).

Respondent's Evidence

9. Respondent provided an explanation for her failure to file the fictitious business name Marshall Realty under her broker's license. Initially, she applied in 2012, and informed the Bureau that she and her brother had always worked for their father; but the Bureau rejected her application because her brother, whose last name is Marshall, worked under her license as a salesperson. The Real Estate Commissioner may refuse to issue a license bearing a fictitious name to a broker if the fictitious name includes the name of a real estate salesperson. (Cal. Code Regs., tit. 10, § 2731, subd. (c)(3).) Respondent directed her attorney to seek reconsideration with the Bureau and believed that the matter had been taken care of. She was surprised to learn that Marshall Realty was not under her license during the interview with Cacas in September 2016. However, respondent continued to engage in the practice of real estate as Marshall Realty between September 2016 and September 2017. On September 14, 2017, the Bureau accepted respondent's application, after her brother and nephew (whose last name is also Marshall) were no longer affiliated with Marshall Realty.

10. Regarding respondent's failure to conduct the monthly reconciliations, respondent explained that she relied on Tovar to perform the bookkeeping duties for the property management services, as Tovar had done for her father. It was not until after the audit that respondent learned that Tovar had deficiencies in her knowledge of the required monthly reconciliations. Respondent stated that she now closely supervises Tovar and reviews all of the reports. Also, Bank Account #1 was designated as a trust account on September 30, 2016.

11. Respondent took responsibility for her conduct and admitted that she had been careless and made mistakes when she authorized the four transfers of trust funds into the business account. She stated that when she was contacted by the bank tellers, she did not

² At hearing, the Accusation was amended, with no objection, to strike paragraph 7(e), and renumber the remaining paragraphs as 7(e), 7(f), and 7(g). Also, page 4, lines 23-24 were stricken, and changed to correspond with new paragraphs 7(e), 7(f), and 7(g).

specifically identify which account to transfer the money out of to cover the overdraft and she had no understanding of which account the money was coming out of. She has five bank accounts and only inquired that she had sufficient funds to cover the overdraft. She did not specifically instruct the bank tellers to transfer money from Account #1. Respondent knew that she had more than sufficient funds in at least one of her five accounts to cover the overdraft. However, she acknowledged that she was aware that the operating account was in the negative when she made the transfers.

12. Respondent attributed her carelessness, in part, to her preoccupation with her adult son's rehabilitation. When she was contacted by the bank manager about the overdrafts, she was either in Texas or Southern California visiting her son in treatment. Her carelessness was not intentional; she was distracted and under stress, and not paying attention to her duties in an optimal manner. Respondent reiterated that there were no allegations of misappropriation of client funds. She described the impact of having her license revoked as she is responsible for her household and costs of her son's treatment. Respondent also attributed her distractions to her time consuming service in civic capacities. She is a former president of the San Mateo County Association of Realtors; she was on the City Council and was the former Mayor of the City of Millbrae; she was appointed by the San Mateo Board of Supervisors to Heart Housing Board of Directors, she was on the Sheriff's Athletic League Board, and her office sponsored Coats for Kids.

13. Respondent has corrected each audit violation and changed her practices to be in compliance with the law. She has arranged with the bank that there can be no telephone transfers of funds from the trust account. She has taken courses in trust fund handling, ethics, risk management, and office management and supervision. She has reviewed the Bureau's power point presentation on trust fund handling and risk management tips. She has obtained assistance from professionals in the industry. She has curtailed her extracurricular activities and no longer sits on any realtor boards. Despite respondent's persuasive explanations and acknowledgement of her lack of preparedness in being thrust into a management role after the death of her father, respondent's responsibility for the trust fund accountability and recordkeeping is not excused.

14. Hilda Delgado has been the branch manager of First National Bank of Northern California, Millbrae branch, for over six years and in the banking industry over 35 years. She has known respondent over 25 years. Delgado states that respondent is honest, reliable, has a good reputation and is well known in the community.

At hearing, Delgado described her practice of contacting a bank customer when his or her account is about to go into overdraft status and informing the customer that a deposit of funds is required. Delgado will have one of her tellers perform the actual transaction. The teller will inform the customer if an account has sufficient funds to cover the overdraft. The amount to be transferred from one account to another account is determined by the customer. Delgado confirmed that she called respondent whenever Bank Account #2 was going into overdraft status, and one of her tellers completed the transfers from Bank Account #1.

15. Berta Tovar has been licensed since 1977, and became a broker-associate in the early 1990's. She has always worked at Marshall Realty. She took over the property management responsibilities in 1985, and prepares the monthly statements for the owners and balances the control records. She only had on-the-job training from the previous bookkeeper. When respondent took over the business, Tovar continued overseeing the property management services. In 2012, respondent purchased the software, AppFolio, for the property management services. Tovar learned the AppFolio program by trial and error. She did not run separate reports or perform trust account reconciliation prior to the audit.

16. At hearing, Tovar stated that she first became aware of the transfer from Bank Account #1 to Bank Account #2 on September 18, 2015, when she attempted to reconcile the bank statement. Tovar mentioned the transfer to respondent who said that she "would not have done that." Tovar called the bank manager who verified that respondent had indeed made the phone transfer. Respondent told Tovar that she was going to check it out with the bank and take care of it. Tovar concluded that to balance the bank statement, the transfers could be reflected as a line item in the office account; however, the line item placed the office account in negative status. When Tovar discovered the second transfer, in October 2015, Tovar again inquired of respondent. Respondent said that she would go to the bank and resolve it "because it did not seem right." After the third and fourth transfers, Tovar received the same response from respondent.

17. When the audit was scheduled, Tovar told respondent that she needed to resolve the negative balance in the office account and reminded respondent about the four transfers from Bank Account #1 to Bank Account #2. Tovar also contacted their certified public accountant Bruce Wright, who informed respondent and Tovar that the four transfers had to be rectified and advised respondent to deposit the amount of the transfers into Bank Account #1. At the commencement of the audit, the four transfers were disclosed to the auditor and it was explained that the money had been replaced in Bank Account #1. Since the audit, Tovar has changed her practices regarding property management accountability and she has learned more about AppFolio from a consultant.

18. Manijeh Khazrai, real estate consultant and retired senior auditor with the Bureau, served as respondent's expert witness. Khazrai conducted an audit of respondent's handling of the trust funds. Khazrai agreed with Yan's audit findings, with two exceptions: (1) she believes that there was a small calculation discrepancy in the cutoff date of August 31, 2016, and (2) she believes that the issues that were corrected should have been mentioned in the audit report. Khazrai reviewed respondent's four other bank accounts and determined that there were available funds in those accounts from July 2015 to September 2016 to cover each transfer from Bank Account #1. Khazrai also performed an audit of respondent's records after September 2016, and found respondent to be in compliance with no discrepancies. To ensure continued compliance, Tovar sends the monthly reconciliation reports to Khazrai for review.

19. Respondent provided several letters of support:

a. Raymond Scarabosio, Jackson Group Property Management, Inc., writes that he has great professional respect for respondent, and urges the Bureau to allow respondent to continue to serve as a broker.

b. Respondent manages properties for Francisco Madrigal, who has the utmost trust in respondent and her team. Madrigal writes that respondent is willing to work hard and make things right and he urges the Bureau to allow respondent to continue to serve as a broker.

c. Dennis Pantano is a real estate broker and close friend who has known respondent over a decade. Pantano is aware of the issues involving respondent's son and that she visits her son often. According to Pantano, respondent has "been the rock of the family for her mother after her father's unexpected death." Pantano describes respondent as caring, compassionate, an honest friend, and a professional who puts her family first and generously dedicates her time in the community with her civic activities.

d. Vince Malta, National Association of Realtors First Vice-President, has known respondent over 12 years. They worked together for the California Association of Realtors advancing consumer rights. Malta urges the Bureau to allow respondent to continue to serve as broker.

e. Wayne J. Lee, Council Member, City of Millbrae, has known respondent over eight years. Lee praises her character and describes respondent as compassionate, kind, having integrity, and an honest person who gives her best for the community, friends, and family. According to Lee, respondent has helped many homeless families who have lost their homes due to fire or financial distress and she is a "human being who is color blind."

f. Gina Papan, Mayor, City of Millbrae, has known respondent for decades. According to Papan, they both followed in their fathers' footsteps from realtors to elected officials. Papan writes that respondent takes on important issues, solves problems, and makes a difference for those in need with her high level of professionalism and ability to motivate people. Respondent has an unwavering dedication to serving her community.

g. Jim Ruane, former Mayor of City of San Bruno, is a friend and respondent has managed his properties for more than 10 years and they raised their children together. They have worked on numerous fundraisers and shared in many community events. According to Ruane, respondent has worked hard to maintain and improve the successful business her father founded. She also volunteers at her church. Ruane describes respondent as an outstanding businessperson and highly respected community leader who works hard for her clients and treats each client with care and professional ethics.

h. George Corey, Attorney, has known respondent for decades as he was very good friends with her father. Corey is very proud of respondent as she has followed in her father's footsteps by demonstrating great care for her clients, agents, and community. Respondent worked hard to handle the transition when she unexpectedly took over the business.

i. Amanda Wenisch is a former client of respondent who represented the Wenisches with the purchase of their first home. According to Wenisch, respondent understood their needs, and was helpful, patient, hardworking and experienced. Respondent exhibited a strong work ethic, and was conscientious and dedicated. Wenisch urges the Bureau to allow respondent to continue to serve as a broker.

j. California State Senator Jerry Hill has known respondent and her family for years and has observed her follow in her father's footsteps. Senator Hill administered the oath of office when respondent assumed office of president of the San Mateo County Association of Realtors. He writes that respondent does a good job of representing her constituents as a council member, and notes that she serves on the SFO Airport/Community Roundtable and San Mateo County Association of Governments' Airport Land Use Committee.

k. Respondent provided a letter from a therapist who has been treating respondent since October 2017, with mindfulness therapy to help manage and reduce stress. The therapist stated that the treatment has improved respondent's daily functioning in her personal life and in the workplace by way of increased self-awareness and sense of well-being, leading to better concentration and task completion.

20. Complainant contends that respondent's actions were fraudulent and dishonest because when Tovar told her about the transfers from Bank Account #1, respondent did not take care of it as she said she would until the audit was initiated by the Bureau. Also, complainant noted a discrepancy in respondent's testimony that she first heard about the transfers when the accountant told her, and she changed her testimony to state that she first heard about the transfers when Tovar told her. Therefore, according to complainant, respondent cannot be trusted to serve in a fiduciary capacity.

Despite the discrepancies, respondent was credible in her testimony that her actions were the result of negligence and she did not intentionally commingle trust funds with broker's funds. It is important to note that respondent did not initiate the transactions with the bank and each time she was out of town preoccupied with her son's recovery. Fraud was not established.

Costs

21. The Bureau certifies that it incurred enforcement costs in the amount of \$2,305.10, and investigation costs in the amount of \$2,505, for a total of \$4,810.10. Complainant's costs are found to be reasonable.

22. Complainant also requests reimbursement of the Bureau's audit costs in the amount of \$3,944.97. These costs are found to be reasonable.

23. Respondent did not object to the calculation of costs.

LEGAL CONCLUSIONS

1. Complainant has the burden of proof to show by clear and convincing evidence to a reasonable certainty that respondent's license should be suspended or revoked. (See *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. 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 . . ." (§ 10177, subd. (d)); demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license (§ 10177, subd. (g)); commingled with his or her own money the money of others which is received and held by him or her (§ 10176, subd. (e)); or engaged in any other conduct which constitutes fraud or dishonest dealing (§ 10176, subd. (i)).

Trust Fund Violations

3. Section 10145 provides for the handling of trust funds. A real estate broker who accepts funds belonging to others in connection with a real estate transaction must 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. All funds deposited by the broker in a trust fund account must be maintained there until disbursed by the broker in accordance with the instructions from the person entitled to the funds. (§ 10145, subd. (a).)

4. Compliance with section 10145 requires that the real estate broker place trust funds into a trust fund account in the name of the broker or the broker's fictitious business name (Cal. Code Regs., tit. 10, § 2832); that the balance of all separate beneficiary or transaction records must be reconciled with the records of all trust funds at least once a month (Cal. Code Regs., tit. 10, § 2831.2); that the real estate broker obtain the written consent of every principal who is an owner of the funds in the account prior to disbursement if it 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 (Cal. Code Regs., tit. 10, § 2832.1); and prohibits commingling of trust funds with broker funds (Cal. Code Regs., tit. 10, § 2835).

5. Cause exists to suspend or revoke respondent's real estate broker license for trust fund violations, pursuant to section 10145, and California Code of Regulations, title 10, sections 2831.2, 2832, and 2832.1, in conjunction with section 10177, subdivision (d), as set forth in Factual Findings 6 through 8 and Legal Conclusions 2 through 4.

Fraud or Dishonest Dealing

6. Cause was not established to suspend or revoke respondent's real estate broker license for fraud or dishonest dealing, pursuant to section 10176, subdivision (i), as set forth in Factual Finding 20 and Legal Conclusion 2.

7. However, cause exists to suspend or revoke respondent's real estate broker license for negligence, pursuant to section 10145, and California Code of Regulations, title 10, section 2832.1, in conjunction with section 10177, subdivisions (d) and (g), as set forth in Factual Findings 6 through 8 and 20 and Legal Conclusions 2 through 4.

Monthly Trust Funds Reconciliation

8. Cause exists to suspend or revoke respondent's real estate broker license for failing to perform monthly records reconciliation, pursuant to section 10145 and California Code of Regulations, title 10, section 2831.2, in conjunction with section 10177, subdivision (d), as set forth in Factual Findings 6 through 8 and Legal Conclusions 2 through 4.

Conducting Real Estate Activities Without Registering Fictitious Business Name

9. A licensee shall not use a fictitious name to conduct real estate activity unless the licensee is the holder of a license bearing the fictitious name filed with an application to the Bureau. (§ 10159.5; Cal. Code Regs., tit. 10, § 2731, subd. (a).)

10. Cause exists to suspend or revoke respondent's real estate broker license, for failing to register her fictitious business name with the Bureau, pursuant to section 10159.5, and California Code of Regulations, title 10, section 2731, subdivision (a), in conjunction with section 10177, subdivision (d), as set forth in Factual Findings 4 through 8 and Legal Conclusion 9.

Commingling of Trust Funds

11. Cause exists to suspend or revoke respondent's real estate broker license for commingling of trust funds with broker funds, pursuant to section 10176, subdivision (e), and California Code of Regulations, title 10, section 2835, as set forth in Factual Findings 6 through 8 and 50, and Legal Conclusions 2 through 4.

Disciplinary Considerations

12. Cause for license discipline having been established, the issue is the level of discipline to impose. The purpose of license discipline is not to punish the licensee, but to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.). The audit revealed several violations of the laws that govern the handling, accounting, and disbursements of trust funds. Some of these requirements are of a minor, technical nature, but they are nonetheless important. These requirements are in place for the protection of the public, and uniform compliance by all licensees is necessary for the Bureau to regulate the business of real estate in California.

Respondent admitted to the audit violations and corrected the deficits to her practices to ensure that her business complies with the Real Estate Law. Also, no clients were harmed and there was no misappropriation of trust funds. Most of her conduct is attributed primarily to negligence. Respondent has had a long real estate career. It is troubling that she continued to conduct real estate transactions knowing that she was not in compliance with the law regarding her fictitious business name. Furthermore, she took no action to address the issue of the trust funds until the Bureau was involved. Her negligence, coupled with her irresponsibility, reflect a flagrant disregard for the legal standards of a real estate licensee. This raises concern about respondent's ability to fulfill the duties of a real estate professional without the supervision of a real estate broker. Although it would be against the public interest to allow respondent to keep her real estate broker license at this time, outright revocation is not warranted under the circumstances. It would not be against the public interest to grant respondent a restricted real estate salesperson license, under appropriate terms and conditions. These terms and conditions shall be in force for three years.

Costs

13. Section 10106 provides that a respondent may be ordered to pay the Bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The Bureau's certification of the actual costs constitutes prima facie evidence of the reasonable costs of investigation and enforcement. As set forth in Finding 21, it was established that complainant has incurred \$4,810.10, in actual costs for the investigation and enforcement of this matter.

14. The case of *Zuckerman v. Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth certain standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Applying the *Zuckerman* factors, the evidence does not support reducing the Bureau's reasonable costs of investigation and enforcement.

15. Pursuant to section 10148, subdivision (b), the Real Estate Commissioner is entitled to charge a real estate broker for the cost of any audit, if the Real Estate Commissioner has found, in a final decision following a disciplinary hearing, that the broker has violated section 10145 or a regulation of the Real Estate Commissioner interpreting section 10145. As set forth in Legal Conclusions 2 through 5, 7, and 8, respondent violated section 10145 and the regulations interpreting section 10145. As set forth in Factual Finding 22, complainant has established that the Bureau has incurred reasonable audit costs in the amount of \$3,944.97.

ORDER

All licenses and licensing rights of respondent Anne Elizabeth Oliva under the Real Estate Law, are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5, if respondent makes application therefore 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 the provisions of Business and Professions Code section 10156.7, and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Real Estate 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.
3. 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 three years have elapsed from the effective date of this Decision.
4. 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 which shall certify:

(a) That the employing broker has read the Decision of the Real Estate Commissioner which granted the right to a restricted license; and

(b) 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.

5. No later than sixty (60) days from the effective date of this Decision, respondent shall send a copy of the Decision to each current property management client and obtain written confirmation of receipt of a copy of this Decision from each client.
6. No later than sixty (60) days from the effective date of this Decision, respondent shall submit proof satisfactory to the Real Estate Commissioner that she has taken and successfully completed the continuing education course on trust fund accounting and handling as specified in Business and Professions Code section 10170.5, subdivision (a). Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within sixty (60) days prior to the effective date of the Decision in this matter.
7. Respondent shall pay the Bureau's costs associated with its investigation and enforcement pursuant to Business and Professions Code section 10106, in the amount of \$4,810.10, within six months of the effective date of this Decision.
8. Respondent shall pay the cost of the audit in the amount of \$3,944.97, within six months of the effective date of this Decision.

DATED: May 8, 2018

DocuSigned by:
Regina Brown
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REGINA BROWN
Administrative Law Judge
Office of Administrative Hearings