

FILED

MAY 24 2019

DEPARTMENT OF REAL ESTATE

By                     

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of:	)	DRE No. H-12301 SF
	)	
BHARAT SAHGAL,	)	OAH No. 2018120866
	)	
Respondent.	)	
_____	)	

DECISION

The Proposed Decision dated April 26, 2019, 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 Department 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 Department'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.

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

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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 JUN 14 2019

IT IS SO ORDERED May 24, 2019

DANIEL J. SANDRI  
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

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

In the Matter of the Accusation of:

BHARAT SAHGAL,

Respondent.

Case No. H-12301 SF

OAH No. 2018120866

**PROPOSED DECISION**

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California, heard this matter on March 28, 2019, in Oakland.

Real Estate Counsel Megan Lee Olsen represented Robin S. Tanner, Supervising Special Investigator of the State of California, Department of Real Estate (the department).

Respondent Bharat Sahgal appeared for the hearing; but, he was not otherwise represented.

On March 28, 2019, the parties submitted the matter for decision and the record closed.

**FACTUAL FINDINGS**

1. On September 19, 2014, the department first licensed respondent as a real estate salesperson and issued him license number S/01961402. Respondent renewed the license on September 19, 2018. He is presently licensed and has license rights as a real estate salesperson under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code. His real estate salesperson license will expire on September 18, 2022, unless renewed, surrendered, suspended, or revoked before that date.

2. On October 15, 2018, complainant Robin S. Tanner (complainant), in her official capacity as a supervising special investigator of the department, made the Accusation against respondent Bharat Sahgal (respondent). The department filed the Accusation against respondent on October 22, 2018.

Complainant seeks imposition of agency disciplinary action against respondent's real estate salesperson license on grounds that: (1) he willfully disregarded provisions of the Real Estate Laws; and, (2) his acts constituted negligence or incompetence as a department licensee. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter proceeded to hearing.

*Respondent's Acts Outside the Scope of Licensure as a Real Estate Salesperson*

3. By way of his real estate salesperson license, on approximately October 10, 2015, respondent gained employment with a real estate broker corporation called Real Estate eBroker, Inc. (eBroker), license number 01522411. Effective August 18, 2017, respondent's employment with eBroker terminated. Since mid-August 2017, respondent's real estate salesperson license has occupied a non-working status, which identified him as a "No Broker Affiliation" (NBA) licensee because he has not associated with any real estate broker.

4. At no time relevant to this matter was respondent ever licensed by the department as a real estate broker. And, at no time did respondent's former employing broker, eBroker, authorize him to conduct any activities in the residential real property management specialty practice.

*Complainant's Evidence against Respondent*

REAL PROPERTY OWNER: JEFF R

5. Jeff R<sup>1</sup> provided testimony at the hearing of this matter that was reliable, persuasive, and compelling. By way of the consistency and character of his testimony, his demeanor while testifying, his attitude towards the proceedings, and his objective and comprehensive capacity to have perceived the matters for which he provided testimonial evidence, Jeff R demonstrated that he was a credible<sup>2</sup> and trustworthy witness.

6. In approximately October 2016, Jeff R contacted respondent who was known to secure renters for residential real estate for Jeff R and his wife in the past. In approximately early October 2016, respondent agreed to provide real estate services on behalf of Jeff R related to finding a tenant for a house located at 107 Buena Ventura Street, San Pablo, California (the San Pablo property), and to assure the tenant signed a lease for rental of the San Pablo property.

7. Respondent located tenants, that is a married couple named Rene and Gloria O (the tenants), who sought a short-term lease while their house was being repaired following

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<sup>1</sup> Initials are used for the name of both homeowner and the tenants in order to assure their respective privacy.

<sup>2</sup> Government Code section 11425.50, subdivision (b), third sentence.

fire damage. The tenants signed a four-page "Agreement to Rent or Lease" so as to take possession of the San Pablo property; however, the agreement was never signed by Jeff R. Under the rental agreement a business having a name of "Temporary Housing, Inc." agreed to pay the monthly rent for the San Pablo property, while the tenants promised to deliver to the property owner, or his designee, money in the amount of \$2,000 as a security deposit.

On approximately October 12, 2016, upon signing the residential real property lease agreement, the tenants tendered cash as security deposit in the amount of \$2,000, which was to be delivered to Jeff R. Respondent collected \$2,000 in cash from the tenants, and although he did not give a receipt to the tenants on the Agreement to Rent or Lease, respondent placed his initials "B.S.," and wrote the word "CASH," near the printed phrase, "Owner . . . acknowledges receipt of [a] security deposit in the amount of \$2,000." One of the tenants placed "G.O." onto the lease agreement. But, respondent failed to deliver any portion of that money or a copy of the lease agreement to Jeff R.

8. On October 12, 2016, or shortly thereafter, respondent prepared, and duly mailed, to Jeff R, a document titled "Invoice" that bore the name "Bharat Sahgal," and that displayed an identifying title of "Invoice 006" (the invoice). The name of Jeff R was typed on the invoice immediately above the address for the San Pablo property. And, the invoice showed the following regarding "compensation" due the service provider for the provision of property management services:

Salesperson	Job	Payment Terms	Due Date
[respondent's name]	[address of San Pablo Property]	8% - per month	Upon Receipt.

Further, the invoice set out a "description" for the services to be performed by respondent as a property manager as: "Work Order [one to four] Month [;] Short Term Lease." And, the document set out respondent's name and his address<sup>3</sup>. The total amount specified in the invoice was \$292, for which the invoice instructed Jeff R to "[m]ake all checks payable to Bharat Sahgal." And, the document closed with message, "[t]hank you for your business."

The mid-October 2016 invoice represented respondent's fee or commission as charged to Jeff R for respondent's provision of services as the property manager for the San Pablo property.

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<sup>3</sup> The address typed on the invoice to which payment was to be mailed to respondent by the homeowner is identical to respondent's address of record as filed with the department.

9. After the taking the mid-October 2016 fee or commission of \$292, respondent demanded, and received, from Jeff R fees or commissions for the rental of the San Pablo property as follows:

Date of Issue	Check Number	Amount
November 4, 2016	0999007	\$226.64
November 10, 2016	0999009	\$115.87

10. Respondent failed to communicate with Jeff R. regarding the safe keeping of the \$2,000 security deposit as paid by the tenants for rental of the San Pablo property. But, respondent accepted as fees from Jeff R an aggregate amount of \$342.15. (At the hearing, Jeff R pointed out that respondent's invoice for \$292 may have been misplaced, and the owner acknowledged that respondent may not have been paid the amount shown on the invoice, dated October 12, 2016.)

11. On November 12, 2016, respondent sent an email message to Jeff R giving notice that he would no longer "be able to offer services" to the owner of the San Pablo property. Two days later, Jeff R acknowledged respondent's "resignation," but asked the real estate licensee to return his "owner's key" for the property and to transmit to the owner the security deposit as paid by the tenants.

On November 21, 2016, Jeff R requested that respondent return the San Pablo property's house key and tender to the owner the security deposit of \$2,000. In the reply by respondent, that real estate salesperson licensee stated that he had "been extremely busy and [had] not mailed [the deposit]. [He would] soon" pay to Jeff R the tenant's security deposit.

12. Upon surrendering the rental residential real estate's possession to Jeff R, the tenants sought refund of the \$2,000 security deposit less a reasonable amount for cleaning and repairs by the owner. (The tenants and Jeff R had never met before the date the tenants left the San Pablo property.)

On December 12, 2016, Jeff R sent respondent an email message informing him that the tenants were "vacating" the premises that day. Jeff R again wrote that he was waiting for the house key and the \$2,000 security deposit, which remained with respondent. Jeff R gave notice that unless respondent acted in a business-like manner that, as owner, he would "be forced to take other measures." Also, on December 12, 2016, in a reply email, respondent promised Jeff R he would send the tenants a check in an amount specified by Jeff R. Respondent breached his promise to Jeff R because he never tendered to that owner any portion of the tenant's security deposit.

On April 5, 2017, in response to several demands by Jeff R for receipt of the money representing the tenants' security deposit, respondent sent the owner an email that read in part, "I don't have any funds for you. Please do not contact me anymore."

13. Because respondent failed, or refused, to reimburse to the tenants the security deposit, Jeff R paid tenants from his personal funds the amount of \$1,925. Due to respondent's failure or refusal to return the security deposit, Jeff R was injured by respondent's acts and omissions regarding the subject real estate licensee's acts as a property manager that resulted in the misappropriation of the security deposit paid in cash by the tenants for the San Pablo property.

14. Respondent has been wholly unreasonable in failing to make restitution to Jeff R of sum of \$2,000.

15. On May 30, 2017, Jeff R filed with the department a "Licensing/Subdivider Complaint" which was received by the department on June 7, 2017. Jeff R has filed a civil action in the Small Claims Court of the Superior Court for Contra Costa County, which involved that homeowner incurring expenses including court filing fees. (On the morning of the hearing in this matter, respondent was served at the Oakland State Building with the civil complaint and summons to appear as a defendant in the law suit brought by Jeff R.)

REAL ESTATE BROKER VYGANDAS ANTHONY RAZHAS

16. Mr. Vygandas Anthony Razhas (Mr. Razhas) offered testimony at the hearing through an Affidavit, which was properly presented and received into evidence in accordance with Government Code section 11514.

17. Mr. Razhas is the designated officer for the corporate real estate broker known as eBroker. He declared, under penalty of perjury, and established the following:

- a. On October 8, 2015, respondent and eBroker entered into an Independent Contractor Agreement (ICA) wherein respondent was identified as "Associate-Licensee" and eBroker is named as "Broker." The ICA prescribed under a heading titled "Broker and Associate-Licensee Relationship," among other things: "Associate-Licensee must, and agrees to, *obtain written approval from Broker to perform any other business activities*, other than the listing and sale of real estate, such as . . . property management . . . ."
- b. Effective August 18, 2017, because of his non-reporting to eBroker of his functions as a real estate salesperson, and because of his unauthorized real estate activity, eBroker terminated respondent's independent contractor relationship with the corporate real estate broker.

(Emphasis added.)

*Matters in Mitigation and Respondent's Background*

18. Respondent appears to be a mature and intelligent person.

19. In 2009 or 2010, respondent moved from Los Angeles to the Oakland, California area. He "did schooling in Boston." And, sometime in his past he was a professional soccer player in England. Respondent has "been around the World." And, he proclaims having a "good upbringing."

20. On September 19, 2014, that is one day after gaining licensure as a real estate salesperson, Harbor Bay Realty, Inc. (Harbor Bay) employed respondent. That corporate real estate broker assigned respondent to the company's property management unit. And, through that broker respondent met Jeff R, who hired Harbor Bay and respondent to provide property management services for other residential real estate parcels.

After August 18, 2017, when his "employment discontinued" with Harbor Bay Realty, and then he became an independent contractor associated with eBroker, respondent continued to have contact with Jeff R. Without eBroker gaining any knowledge about communication between respondent and Jeff R, for respondent, for a monetary fee; to locate tenants, prepare a lease agreement, procure the signatures of the tenants, present the tenants with house keys, and collect from the tenants a security deposit, he set out to perform property management services for Jeff R.

Respondent unpersuasively asserts that his relationship with Jeff R regarding the San Pablo property was fostered in order for him to "get the listing" to sell that residential real estate, rather than to pursue activities as an unauthorized property management agent. His contention, however, was not unbelievable. He was not compelling when he testified that he took the commissions payments from Jeff R as he secured tenants for the San Pablo property.

21. Respondent is married, and he is the father of a four-year-old child and a four-month-old child.

*Matters that Negatively Impact Upon Respondent's Progress towards Rehabilitation*

22. Respondent made certain claims at the hearing of this matter that suggest that he is not a wholly truthful and candid person. At the hearing of this matter, respondent unpersuasively portrayed the circumstances that underpinned his acts and omissions as merely errors. Respondent unbelievably avers that the matter proven by evidence offered by complainant are matters to be "settled" between he and the department so that he can "keep [his] license."

Respondent was wholly untruthful when he testified that the basic underpinning of any unlawful act on his part should be construed only as simple "errors," rather than fraudulent misconduct or deceitful artifice intended to harm either Jeff R, the real estate



profession, or the people of the State of California. He was not believed when he claimed that he "naively" signed the ICA with eBroker and he was not aware of his contractual obligation to the corporate broker to only engage in "listing" and "selling" real estate and that any activity, such a property management services, required the express approval of managers with the eBroker corporate structure before he pursued property management functions. And, respondent was not credible when he claimed that he has no present recollection regarding the disposition of the \$2,000 in cash he received from the tenants because he simply cannot remember whether or not he gave the money to Jeff R.

23. At the hearing, respondent expressed insubstantial regret or sincere contrition for the emotional stress and financial loss sustained by Jeff R due to respondent's refusal to pay to that owner the sum of \$2,000 that constituted a security deposit made by tenants to the San Pablo property.

#### *Costs of Investigation and Prosecution*

24. Through a declaration dated December 6, 2018, Supervising Special Investigator II Tanner established that before the commencement of the hearing in this matter complainant incurred costs of investigation for the accusation against respondent in an amount of \$1,174. And, through a declaration, dated April 18, 2017, Real Estate Counsel II Megan Lee Olsen established that the costs of prosecution for the accusation against respondent is an amount of \$890.

#### *Factors Affecting the Commissioner's Recovery of Costs*

25. In determining the reasonableness of costs, an analysis under the guidance of an important appellate court decision<sup>4</sup> is helpful.

Respondent did not advance meritorious defenses in the exercise of his rights to a hearing in this matter.

Respondent cannot be seen, under the facts set out above, to have committed slight or inconsequential misconduct; but rather the offenses by respondent in causing a financial injury to owner Jeff R are serious acts of unprofessional conduct that constitute unlicensed activity because his salespersons license absent actual oversight by a real estate broker, which manifests as willful disregard of the Real Estate Laws. And, respondent's acts reflected adversely upon the real estate profession's real estate salespersons and real estate brokers in that his acts that injured Jeff R reflects negligence and incompetence of a licensee.

The hearing did not result in respondent obtaining dismissal of charges, or the elimination of the bases alleged, in support of the imposition discipline as sought by

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<sup>4</sup> *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

complainant. Rather, at the hearing of this matter, respondent gave testimony that was distorted, untrue and intentionally rendered to mislead the trier of fact.

Respondent offered no competent, corroborating documentary evidence establishing that he is impaired by current dire financial condition. Nor did respondent offer any objective documentary evidence that his expenses are exceeded by his income in a way that he cannot pay for the department's incurred costs. At the hearing, respondent testified that he is employed in a position at Oracle Arena in Oakland, California. Above all, respondent did not present records or reports by a certified public accountant or other reliable documents that shows he is financially unable to pay the costs incurred by the department in the investigation and prosecution of this matter.

26. Respondent is obligated to pay the department the reasonable and appropriate costs of \$2,064.

#### *Dispositive Factual Findings*

27. In his business dealings with tenants of the rental residential real estate property controlled by Jeff R, within the meaning of Business and Professions Code section 10131, subdivision (b)<sup>5</sup>, respondent engaged in the business of, acted in the capacity of, or assumed to act as a real estate broker within the State of California. As to Jeff R, who was a member of the general public, respondent demonstrated or engaged in the operation and conduct of a property management business whereby for compensation or in expectation of compensation, respondent leased or rented, offered to lease or rent, and collected rent from tenants.

28. Respondent's acts and omissions as set out in Factual Findings 5 through 17 constituted unlawful conduct that established respondent's unlicensed activity in violation of the Real Estate Laws. By his unlawful conduct, respondent engaged upon the willful disregard of the Real Estate Laws.

29. By his unlawful conduct as described in Factual Findings 5 through 17, respondent's acts and omissions constituted negligence and incompetence in that he breached multiple legal directions that establish standards expected of real estate licensees.

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<sup>5</sup> Business and Professions Code section 10131 establishes that "[a] real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others . . . . (b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities."

30. Respondent has an obligation to pay the department \$2,064, as that agency's recovery of reasonable and appropriate costs of investigation and enforcement.

## LEGAL CONCLUSIONS

### *Standard of Proof*

1. Proof by "clear and convincing evidence" is the standard of proof to be applied to facts in dispute under the Accusation from which disciplinary action may result against the license and licensing rights held by respondent. (*The Grubb Company, Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1503-1504.)

Although administrative adjudication does not involve juries, a sound definition for the "clear and convincing evidence" standard of proof concept is set out in the Judicial Council of California Civil Jury Instructions (CACI), section 201. That section in CACI defines "clear and convincing evidence" as evidence that is "more likely true." And the CACI section proclaims that clear and convincing proof requires a higher burden of proof for which the party must persuade the trier of fact that it is "*highly probable that the fact is true.*" (CACI No. 201 (2014 edition.) (Emphasis added.) Moreover, approximately 120 years ago, the California Supreme Court enunciated a view of the clear and convincing evidence standard. In *Sheehan v. Sullivan* (1899) 126 Cal. 189, 193, the supreme court prescribed a spectrum of formulations in framing the concept of "clear and convincing" evidence, which is sometimes expanded to "clear and convincing evidence to a reasonable certainty." The state supreme court noted "clear and convincing evidence" may be expressed as such proof that:

Must be clear, satisfactory, and convincing; 'clear and satisfactory;' 'clear and convincing;' 'very satisfactory;' 'strong and convincing;' 'clear, unequivocal, and convincing;' 'clear, explicit, and unequivocal;' '*so clear as to leave no substantial doubt;*' '*sufficiently strong to command the unhesitating assent of every reasonable mind.*' (*Sheehan v. Sullivan, supra*, 126 Cal. 189, 193; cf. *In re Angelia P.* (1981) 28Cal.3d 908, 919)

(Emphasis added.)

After an examination of the evidence in light of the controlling standard of proof, the Factual Findings and Order, herein, are established to rest upon clear and convincing evidence to a reasonable certainty. Such proof establishes respondent's unprofessional and unlawful acts and omissions in the matters recorded herein that support complainant's allegations as contained in the Accusation in this matter.

Business and Professions Code section 10132 provides, "[a]real estate salesperson within the meaning of this part is a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6." (Emphasis added.)

In this matter, Business and Professions Code section 10131 is relevant regarding the limitations on respondent's acts as a real estate salesperson who must operate as a department licensee under the ambit of a real estate broker defined activities. Code section 10131 provides that "[a] real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others . . . (b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities." Subdivision (b) of Code section 10131 pertains to the provision of property management activities by a licensed real estate broker, who can delegate to a licensed salesperson to the ability to engage in property management activity.

Because respondent has not been issued a real estate broker's license, he was required to perform real estate professional's services under the license of his employing real estate broker. The employing broker, eBroker, never authorized respondent to pursue the licensed activity permitted under Code section 10131, subdivision (b).

#### *Causes for Disciplinary Action*

##### *UNLICENSED ACTIVITY*

2. Business and Professions Code section 10130 provides, in pertinent part, that "[i]f it is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department, or to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state without having obtained a license endorsement."

##### *WILLFUL DISREGARD OF REAL ESTATE LAW*

3. Business and Professions Code section 10177, subdivision (d), sets forth "[t]he commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has "[w]illfully disregarded or violated the Real Estate Law . . . ."

## NEGLIGENCE/INCOMPETENCE OF A REAL ESTATE LICENSEE

4. Business and Professions Code section 10177, subdivision (g), sets forth “[t]he commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has “[d]emonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.”

### *Substantial Relationship Between the Functions, Duties and Responsibilities of Respondent's Unlawful Conduct and the Department's Basis for Decision against Respondent's Real Estate Salesperson License as well as Other Factors Justifying Revocation of Licensure*

5. Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real state licensee. If a licensee's offense reflects unfavorably on his or her honesty, it may be said to be substantially related to his qualifications. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) The real estate profession has, over a period of years, excluded unfit persons and as a result thereof an appreciable amount of public trust and confidence has been built up. The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license. (*Id.* at pp. 177–178.) On multiple levels respondent deviated from the standards expected of a competent licensee as set out in Factual Findings 6 through 17, 22, 23, and 27 through 29.

6. The department has developed 15 criteria to be used for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee. (Cal. Code Regs., tit. 10, § 2912.) These criteria attempt to gauge whether the licensee has changed so that a repeat of his unprofessional and unlawful activity is unlikely. And very important to this matter is that the evidence does not establish respondent has had a change in attitude or altered disposition and character that led him to commit acts of unlawful activities as described above. “Of the many criteria, arguably the most important in predicting future conduct is subdivision [(m) of California Code of Regulations, title 10, section 2912, namely]: ‘Change in attitude from that which existed at the time of [the commission of the criminal acts in question] . . . .’” (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

Respondent's progress towards rehabilitation is impaired by his refusal to accept full and unequivocal responsibility for his past unlicensed activity, which reflects both a willful disregard of the Real Estate Laws as well as the negligence/incompetence of respondent as a licensed real estate salesperson. And, respondent's failure to accept personal responsibility is shown through his system of attempting to ignore the seriousness of his offenses.

7. Moreover, too little time has elapsed since respondent's unlawful activity so as to enable the department to consider respondent's full rehabilitation. Because of the recent

date of respondent's unlawful activities, an insufficient span of time has elapsed for the department to reasonably determine that respondent has been rehabilitated from his past unethical, negligent, and incompetent unprofessional conduct.

8. Respondent's testimony at the hearing of this matter indicates that he has a disposition to shade facts in his favor and to not tell the full truth about his past unprofessional conduct. At this time, respondent does not appreciate the obligation to be completely honest with the department and to make full disclosure about errors he committed in the past regardless of the embarrassment he may now experience.

9. By clear and convincing evidence, cause exists for disciplinary action against the license issued to respondent under Business and Professions Code section 10130, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of the matters set forth in Factual Findings 6 through 17, and Legal Conclusions 1 through 8. Respondent willfully disregarded the Real Estate Laws.

10. By clear and convincing evidence, cause exists for disciplinary action against the license issued to respondent under Business and Professions Code section 10130, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of the matters set forth in Factual Findings 6 through 17 and Legal Conclusions 1 through 8. Respondent's acts and omissions that injured Jeff R when respondent engaged in unlicensed activity as a property manager constituted negligence and incompetence.

11. *In re Menna* (1995) 11 Cal.4th 975, 991, established that rehabilitation may be determined, in part, by demonstrating sustained lawful conduct over an extended period of time. An insufficient amount of time has passed since respondent's unprofessional conduct of retaining a security deposit for rental real estate property so as to demand that he has reformed his practices so as not to take money that belongs to a real property owner.

#### *Ultimate Determination*

12. It would not be in the public interest to allow respondent to continue to hold a real estate salesperson license.

#### *Cost Recovery*

13. Pursuant to Business and Professions Code section 10106, the department may recover reasonable costs of the investigation and enforcement of a case. The department incurred \$2,064 in total costs of investigation and enforcement of this matter. The costs of enforcement are supported by bureau personnel's declarations that describe the general tasks performed, the time spent on each task, and the method of calculating the costs.

In *Zuckerman v. State Board of Chiropractic Examiners supra*, 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. Respondent did not establish a basis to

reduce or eliminate the costs in this matter as set forth in Factual Findings 25 and 26. In the absence of evidence to the contrary, these costs are found to be reasonable and appropriate.

### ORDER

1. The license (number S/01961402) and all licensing rights of Bharat Sahgal are revoked.

2. Respondent shall pay the Department of Real Estate the amount of \$2,064, as reimbursement for the costs of investigation and enforcement of this matter, within 30 days of the effective date of the decision. Respondent may pay these costs according to a payment plan approved by the department or its designee.

DATED: April 26, 2019

DocuSigned by:



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PERRY O. JOHNSON

Administrative Law Judge

Office of Administrative Hearings