

BEFORE THE DEPARTMENT OF REAL ESTATE

FILED

STATE OF CALIFORNIA

DEC 31 2020

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DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of:

ORCE NAUMOVSKI,

Respondent.

DRE No. H-12448 SF

OAH No. 2020050379

By [Signature]

DECISION

The Proposed Decision dated October 8, 2020 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.

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 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

JAN 21 2021

This Decision shall become effective at 12 o'clock noon on \_\_\_\_\_.

IT IS SO ORDERED 11.19.20

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

[Signature]

**BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**In the Matter of the Accusation of:**

**ORCE NAUMOVSKI, Respondent**

**Agency Case No. H-12448 SF**

**OAH No. 2020050379**

**PROPOSED DECISION**

Administrative Law Judge Linda Pollack, State of California, Office of Administrative Hearings, heard this matter by video conference on September 14, 2020.

Counsel Jason D. Lazark represented complainant Robin S. Tanner, Supervising Special Investigator, with the Department of Real Estate.

Respondent Orce Naumovski was present and represented himself.

The matter was submitted for decision on September 14, 2020.

**FACTUAL FINDINGS**

1. On January 17, 2006, the Department of Real Estate (Department) issued Orce Naumovski (respondent) a real estate salesperson license.

2. As of January 17, 2014, respondent owned and conducted a property management business under the fictitious business name "Alpha Property Management & Real Estate Company, while employed by responsible broker Patrick D. Ferris. This affiliation discontinued as of October 2, 2015.

3. On October 2, 2015, the Department issued respondent a real estate broker license. Respondent renewed his broker license, and it is now set to expire on October 1, 2023. Respondent's broker's license was active at all times relevant to this proceeding.

4. On March 18, 2020, Robin S. Tanner (complainant) filed the accusation in her official capacity as Supervising Special Investigator of the Department. The accusation alleges that respondent is subject to discipline based on violations discovered during an audit of respondent's business records. Respondent filed a notice of defense, and this hearing followed.

5. Respondent, under his own broker's license, manages "35 one-to-four family residences with 46 units and three apartment complexes with 16 units for 26 owners." Respondent accepts funds from or on behalf of tenants and owners (trust funds) in connection with renting real property and makes disbursements of those funds. Total monthly rents received are approximately \$137,000.

### **2016 Stipulation and Agreement**

6. On June 30, 2016, the Department audited the business's records and filed an accusation against respondent and Ferris, while respondent still worked under Ferris's broker license. There were a variety of violations, including two of the same violations alleged in the current accusation, namely those set forth in Factual Finding 9 (b) and (d).

7. Respondent entered into a "Stipulation and Agreement in Settlement and Order" (Stipulation) with the Department, effective March 2, 2017. The terms of the stipulation included that respondent's sales license was suspended for 120 days, with 45 days of the suspension stayed upon the condition that respondent petition the Department and pay a monetary penalty. The remaining 75 days of the suspension were stayed for two years, requiring respondent to pass the Professional Responsibility Examination, and successfully complete a continuing education course on trust fund accounting. Respondent had to pay costs of investigation and enforcement and future costs of an audit, not to exceed \$5,810.75.

8. When Ferris retired, respondent continued the property management business under his own broker's license. Respondent completed the conditions required in the 2017 stipulation, and, by its own terms, it expired.

### **2018 Audit**

9. Pursuant to the stipulation, a follow-up audit was conducted in 2018, by Jayendra Barbhaiya, an auditor employed by the Department. Barbhaiya examined respondent's property management records for the period of March 1, 2016, through September 30, 2018. The audit found that there was a shortage of \$1,793.05 and that \$1,299.86 of the shortage could not be identified. After searching for the source of the shortage, respondent eventually deposited that amount of his own funds into the trust account on December 14, 2018. The summary of the audit report indicated that respondent:

- a) caused or permitted the balance of funds in the trust account to be reduced to an amount which, as of September 30, 2018, was approximately \$1,793.05 less than the aggregate liability of the trust

account. Respondent did not have the written consent of each owner of such funds, for this reduction;

- b) failed to maintain an accurate record of all trust funds received and disbursed (control record). The control record was inaccurate due to various discrepancies regarding the recording of rent check amounts received and deposited. Also, some incorrect journal entries were recorded on the control record;
- c) failed to maintain accurate separate records for each beneficiary or property of funds accepted or received in the trust account. The separate records were inaccurate due to various discrepancies regarding the recording of rent checks amount received and deposited. Also, some incorrect journal entries were recorded on the separate records;
- d) failed to accurately reconcile, at least once a month, the balance of all separate beneficiary or transaction records with the balance of the record of all funds received and disbursed for the trust account.

### **Respondent's Evidence**

10. Respondent does not dispute the findings of the audit. Respondent understands that the Department works to protect the public. He is working to correct his business practices. He is committed to 100% accuracy and full compliance with Department regulations.

11. Prior to respondent's ownership of the business, the owner did all bookkeeping by hand, without a property management software program. Respondent feels that the unreconciled amount of approximately \$1,793, may have

been carried over for years. He tried to track down the source of this error, however he was not successful; it is difficult because the business processes over \$5,000,000 annually.

12. When respondent took over the business under his own broker's license, respondent had not been trained in accounting. Two people help him with the accounting - a bookkeeper and a consultant. However, errors still occurred. He understands that these two individuals do not possess the skills necessary for the job, and in June or July 2020, respondent hired a professional accountant. He also recently purchased and installed a new bookkeeping software program, specifically designed for property management, as recommended by Barbhaiya.

13. Respondent understands he is responsible for the costs of this audit, investigation and enforcement, and, if allowed to maintain a restricted license, would be responsible for reasonable future audit costs.

### **Costs**

14. The Department incurred \$290.50 in investigation costs. These costs are supported by a certification that describes the tasks performed, time spent on each task, and method of calculating the cost, in compliance with California Code of Regulations, title 1, section 1042. The Department also incurred \$1,539.70 in prosecution costs. These costs are supported by a declaration that describe the tasks performed, time spent on each task, and method of calculating the cost, in compliance with California Code of Regulations, title 1, section 1042. The total costs of this matter are \$1,830.20 and are found to be reasonable.

## LEGAL CONCLUSIONS

1. The burden of proof is on the Department to show cause for discipline, by clear and convincing evidence. (Evid. Code, § 500; *Small v. Smith* (1971) 16 Cal.App.3d 450.) The burden is on respondent to show mitigation and rehabilitation, by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

### Causes for Discipline

2. Business and Professions Code section 10145, describes the obligations of a real estate broker who accepts trust funds belonging to others.

3. Business and Professions Code section 10177, subdivision (d), authorizes the Commissioner to suspend or revoke the license of a real estate licensee who has willfully disregarded or violated the Real Estate Law, or the rules and regulations for administration and enforcement of the Real Estate Law. Business and Professions Code section 10177, subdivision (g), authorizes the Commissioner to suspend or revoke the license of a real estate licensee who has demonstrated negligence or incompetence in performing an act for which he or she is required to perform as a licensee.

4. In order to be compliant with Business and Professions Code section 10145, and California Code of Regulations, title 10, section 2832.1, the broker must obtain the written consent of every principal who is an owner of the funds in the account, prior to each disbursement, if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds. As set forth in Factual Findings 9 and 10, respondent's trust account was not in compliance as there was a shortage of \$1,793. Accordingly, cause exists to impose discipline pursuant to Business and Professions

Code sections 10145, and 10177, subdivisions (d) and (g), in conjunction with California Code of Regulations, title 10, section 2832.1.

5. A real estate broker must maintain an accurate written control record for a trust account, meaning a record of all trust funds deposited into and disbursed from the trust account. (Cal. Code Regs., tit. 10, § 2831.) As set forth in Factual Findings 9 and 10, respondent failed to keep an accurate written control record for the trust account. Accordingly, cause exists to impose discipline pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), in conjunction with California Code of Regulations, title 10, section 2831.

6. A broker must maintain accurate separate records for each beneficiary or transaction. (Cal. Code Regs., tit. 10, § 2831.1.) As set forth in Factual Findings 9 and 10, respondent failed to maintain accurate separate records, for each beneficiary or property, of trust funds accepted or received in the trust account. Accordingly, cause exists to impose discipline pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), in conjunction with California Code of Regulations, title 10, section 2831.1.

7. A broker must reconcile the balance of all separate beneficiary or transaction records with the written control record of all trust funds received and disbursed, on at least a monthly basis. (Cal. Code Regs., tit. 10, § 2831.2.) As set forth in Factual Findings 9 and 10, respondent failed to comply with this requirement. Accordingly, cause exists to impose discipline pursuant to Business and Professions Code sections 10145 and 10177, subdivisions (d) and (g), and in conjunction with California Code of Regulations, title 10, section 2831.2.

## **Level of Discipline**

8. The purpose of administrative proceedings regarding professional licenses is not to punish the applicant or licensee, but to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.) Having found cause for discipline in this matter, the issue is what level of discipline is required to protect the public.

9. There is no evidence that clients were harmed or suffered monetary loss as a result of respondent's violations. Respondent is committed to 100% accuracy in his bookkeeping because he understands the need for protecting his client's funds. (Factual Finding 10.) He recognizes that his employee and consultant do not have the necessary skills required for this goal and thus, he recently hired a professional accountant. He also recently purchased and implemented a property management software system. (Factual Finding 12.) He took these steps to correct his business practices, and he is committed to correcting all areas of noncompliance.

10. In light of the steps respondent has taken to ensure compliance with the regulations, it is determined that allowing respondent to keep his broker's license, but impose some discipline, with terms and conditions that include a future audit, is not inconsistent with protection of the public.

## **Costs**

11. Business and Professions Code section 10106, authorizes the Department to recover its reasonable costs of investigation and enforcement in disciplinary proceedings. As set forth in Factual Finding 14, it was established that complainant has reasonably incurred \$1,830.20 to investigate and enforce this matter.

12. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth standards for determining whether costs should be assessed in the particular circumstances of each case, 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 or her 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. None of these considerations support a reduction in the Department's cost recovery in this case.

### **ORDER**

1. All licenses and licensing rights of respondent are suspended for two years from the effective date of this Decision; provided, however, that the suspension shall be stayed for two years upon the following terms and conditions:

A. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.

B. Respondent shall, as a condition of the stay order, submit proof, satisfactory to the Commissioner, of having taken and successfully completed the continuing education course on trust fund accounting and handling 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 no later than 120 days

following the effective date of this Decision or provided good cause to the Department for any inability to do so.

C. Respondent shall pay the cost of investigation and enforcement of the case in the amount of \$1,830.20, on a schedule acceptable to the Department.

D. Pursuant to Section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable cost for a subsequent audit to determine if respondent has corrected the trust fund violation(s) found in Legal Conclusions 4 through 7. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be issued, the stay imposed herein shall become permanent.

E. The Commissioner may, in his discretion, vacate and set aside the stay order if respondent fails to comply with any provision of this Order. The vacation and the set aside of the stay shall remain in effect until respondents comply with the Order or enter into an agreement satisfactory to the Commissioner.

F. Should no order vacating the stay be issued within two years of the effective date of this decision, the stay imposed herein shall become permanent.

DATE: October 8, 2020

DocuSigned by:  
*Linda Pollack*  
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LINDA POLLACK

Administrative Law Judge

Office of Administrative Hearings