

AUG 15 2023

1 DEPARTMENT OF REAL ESTATE
2 By PJ dew3
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78 BEFORE THE DEPARTMENT OF REAL ESTATE
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10 * * *11 In the Matter of the Accusation of)
12 FORREST GEE,) No. H-12581 SF
13 Respondent.) OAH No. 2019071054
14)

15 STIPULATION AND AGREEMENT
16 AND
17 DECISION AFTER REJECTION18 The Department of Real Estate (Department) filed an Accusation against
19 FORREST GEE (Respondent), on April 28, 2022. Sarah Sandford-Smith, Administrative Law
20 Judge (ALJ), Office of Administrative hearings, State of California, heard this matter on March
21 7, 2023, in Sacramento, California. Oral and documentary evidence was received. The record
22 was closed and the matter was submitted for decision on March 7, 2023.

23 On April 4, 2023, the Proposed Decision of the ALJ was issued.

24 On May 9, 2023, the Real Estate Commissioner (Commissioner) rejected the
25 Proposed Decision of April 4, 2023.26 ///
27 ///

The parties wish to settle this matter without further proceedings.

IT IS HEREBY STIPULATED by and between FORREST GEE (Respondent), represented by Deb Graceffa, and the Complainant, acting by and through Megan Lee Olsen, Counsel for the Department of Real Estate (Department), as follows for the purpose of settling and disposing of the Accusation filed by Complainant.

6 1. It is understood by the parties that the Commissioner may adopt the Stipulation
7 and Agreement (Stipulation) as his Decision in this matter, thereby imposing the penalty and
8 sanctions on Respondent's real estate licenses and license rights as set forth in the "Decision and
9 Order". In the event the Commissioner in his discretion does not adopt the Stipulation, it shall be
10 void and of no effect; the Commissioner will review the transcript and the evidence in the case,
11 and will then issue his Decision after Rejection as his Decision in this matter.

12 2. The Order or any subsequent Order of the Commissioner made pursuant to
13 this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or
14 civil proceedings by the Department with respect to any matters which were not specifically
15 alleged to be cause for Accusation in this proceeding.

16 3. Respondent understands that by agreeing to this Stipulation, Respondent
17 agrees to pay, pursuant to Sections 10106 of the Business and Professions Code (Code), the cost
18 of the investigation, and enforcement which resulted in the determination that Respondent
19 committed the violations found in the Determination of Issues. The amount of said costs is
20 \$4,913.25.

21 4. Respondent understands that by agreeing to this Stipulation, Respondent
22 agrees to pay, pursuant to Sections 10148 of the Code, the cost of the audit which resulted in the
23 determination that Respondent committed the violations found in the Determination of Issues.
24 The amount of said costs is \$5,081.00.

DETERMINATION OF ISSUES

26 By reason of the foregoing stipulations, admissions and waivers, and solely for
27 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed

1 that the acts and/or omissions of Respondent, as described in the Accusation, constitute grounds
2 for the suspension or revocation of the licenses and license rights of Respondent under the
3 provisions of Sections 10176 (e), 10176 (g), 10177 (d) and 10177 (g), in conjunction with
4 Section 10145 of the Code, and Sections 2831 and 2832 of Title 10 of the California Code of
5 Regulations (Regulations).

6 ORDER

7 1. All real estate licenses and licensing rights of Respondent are revoked;
8 provided, however, a restricted real estate broker license shall issue subject to the requirements
9 of Section 10156.5 of the Code if within ninety (90) days of the effective date of the Order,
10 Respondent makes application therefore and pays to the Department the appropriate fee for said
11 license. The restricted license issued to Respondent shall be subject to all of the provisions of
12 Section 10156.7 of the Code and to the following limitations, conditions, and restrictions
13 imposed under authority of Section 10156.6 of said Code:

14 a. The restricted license issued to Respondent may be suspended prior to
15 hearing by order of the Commissioner in the event of Respondent's conviction or
16 plea of nolo contendere to a crime that is substantially related to Respondent's
17 fitness or capacity as a real estate licensee.

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

23 c. Respondent shall not be eligible to apply for the issuance of an unrestricted
24 real estate license nor the removal of any of the conditions, limitations, or
25 restrictions attaching to the restricted license until two (2) years have elapsed from
26 the effective date of this Stipulation.

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1 2. Respondent shall, within nine (9) months from the effective date of this Order,
2 present evidence satisfactory to the Commissioner that Respondent has, since the most recent
3 issuance of an original or renewal real estate license, taken and successfully completed the
4 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
5 of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order
6 the suspension of the restricted license until the Respondent presents such evidence. The
7 Commissioner shall afford Respondent the opportunity for a hearing pursuant to the
8 Administrative Procedure Act to present such evidence.

9 3. Pursuant to Sections 10106 and 10148 (b) of the Code, Respondent shall pay
10 the Department the reasonable investigation, enforcement and audit costs of \$9,994.25 no later
11 than one year after the issuance of the restricted broker license and according to a payment plan
12 approved by the Commissioner.

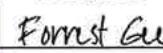
13 6/19/2023
14 DATED


MEGAN LEE OLSEN, Counsel
DEPARTMENT OF REAL ESTATE

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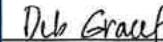
17 I have read the Stipulation and Agreement and Decision After Rejection, have
18 discussed it with my counsel, and its terms are understood by me and are agreeable and
19 acceptable to me. I willingly and voluntarily agree to enter into this Stipulation.

21 6/14/2023
22 DATED

DocuSigned by:

FORREST GEE
Respondent

24 I have reviewed the Stipulation and Agreement and Decision After Rejection as
25 to form and content and have advised my client accordingly.

26 6/14/2023
27 DATED

DocuSigned by:

DEB GRACE GAFFA
Attorney for Respondent

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DECISION AND ORDER

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The foregoing Stipulation and Agreement and Decision After Rejection is hereby
3 adopted by the Real Estate Commissioner as his Decision and Order.

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This Decision and Order shall become effective at 12 o'clock noon on

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SEP 05 2023

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IT IS SO ORDERED 8/14/23.

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DOUGLAS R. McCUALEY
REAL ESTATE COMMISSIONER

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MAY 16 2023

DEPARTMENT OF REAL ESTATE
By By daw

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) DRE No. H-12581 SF
FORREST GEE,)
Respondent.) OAH No. 2022120228

NOTICE

TO: FORREST GEE, Respondent, and his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 4, 2023, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 4, 2023, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein, which may include the transcript of the proceedings held on Tuesday, March 07, 2023, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Tuesday, March 07, 2023, at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for

1 good cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Sacramento Office of the Department of
4 Real Estate unless an extension of the time is granted for good cause shown.

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6 DATED: 5. 9. 23.

7 DOUGLAS R. McCUALEY
8 REAL ESTATE COMMISSIONER

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

In the Matter of the Accusation of:

FORREST GEE, Respondent.

Agency Case No. H-12581 SF

OAH No. 2022120228

PROPOSED DECISION

Administrative Law Judge Sarah Sandford-Smith, State of California, Office of Administrative Hearings, heard this matter on March 7, 2023, by videoconference.

Real Estate Counsel Megan Lee Olsen represented complainant Stephanie Yee, Supervising Special Investigator for the Department of Real Estate.

Respondent Forrest Gee represented himself and was present throughout the administrative hearing.

The record closed and the matter was submitted for decision on March 7, 2023.

FACTUAL FINDINGS

1. Respondent Forrest Gee is presently licensed under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate broker.

Respondent was first licensed as a broker on July 5, 1989. At the time of the hearing respondent's license was active and was scheduled to expire August 30, 2024.

2. On April 27, 2022, acting in her official capacity as Supervising Special Investigator for the Department of Real Estate (Department), complainant Stephanie Yee issued an accusation against respondent. The accusation alleges that respondent is subject to discipline for willful disregard of real estate laws and negligence and/or incompetence. Respondent filed a timely notice of defense, and this hearing followed.

Background and Investigation

3. On February 24, 2020, Nanette Gee, respondent's former stepmother, filed a complaint with the Department regarding respondent. In her complaint, N. Gee alleged that respondent refused to fulfill his professional duties as the former property manager for a rental property she owned, located on Birdsall Avenue in Oakland (Birdsall property). Specifically, N. Gee alleged that respondent refused to provide her with accounting information for the trust fund account associated with the Birdsall property, and refused to cooperate with another broker when N. Gee decided she would sell the Birdsall property. At hearing, N. Gee reiterated the statements she made in her complaint, and also testified that respondent was paid \$500 each month and collected the money from the onsite laundry machines as payment for his managing the Birdsall property.

4. After N. Gee filed her complaint with the Department, Karen Charlton, a Special Investigator employed by the Department, conducted an investigation into the allegations made by N. Gee.

5. As part of Charlton's investigation, she requested that N. Gee provide her with a written statement as well as additional documents. In the statement N. Gee

provided to Charlton, N. Gee asserted that she did not recall respondent telling her that he was going to use \$8,500 from the trust fund account to reimburse him for his payment of the property taxes on the Birdsall property, and that she was not aware of a disbursement of \$3,000 from the trust fund account to respondent. N. Gee also stated that respondent kept the security deposits of the Birdsall property tenants, which totaled \$7,729.52.

6. Charlton also requested a statement and documents from respondent, as part of her investigation. Respondent provided Charlton with a statement, dated December 18, 2021. In his written statement and at hearing, respondent indicated that he assisted his father, Hugh Gee, with the purchase of the Birdsall property and another property located in Emeryville.¹ H. Gee decided he would actively manage both properties and opened a joint checking account with respondent, so that respondent could help him manage the properties and have the ability to make rental deposits and withdrawals. Respondent and his father did not have a formal property management agreement, and respondent did not consider the joint checking account to be a trust account.

Respondent wrote that in January 2017, his father and N. Gee moved into the Emeryville property, and that he had a wheelchair ramp and chairlift installed at their request prior to their occupancy of the property. After H. Gee died in August 2018, respondent indicated that N. Gee requested respondent's assistance managing the Birdsall property. Respondent also noted that he reimbursed himself for his payment

¹ Respondent helped manage the Emeryville property, although that property was not part of the Department's investigation.

of the Birdsall property taxes and for the installation of the wheelchair ramp and chairlift. Respondent provided Charlton with copies of email correspondence between respondent and N. Gee to support his letter.

7. After reviewing the information she received from respondent and N. Gee, Charlton requested that an audit be performed pertaining to respondent's management of the Birdsall property.

Audit Findings

8. Na Lin is an auditor for the Department. As part of her job duties, Lin performs audits to determine whether licensees have handled trust accounts in accordance with the Real Estate Law and regulations. Lin conducted an audit of respondent's property management records relating to the Birdsall property in response to Charlton's audit request.

9. As part of her audit, Lin reviewed Wells Fargo Bank account information and transactions pertaining to the Birdsall property, rental deposits, lease agreements, invoices, a 2019 federal income tax statement, emails and other documents. Lin's audit was focused specifically on the period of time beginning January 1, 2019, through February 28, 2021.

10. At hearing, Lin testified that respondent was initially uncooperative with her audit and refused to provide necessary information, but that respondent provided her with the requested records after she served respondent with a subpoena. Lin also subpoenaed documents from Wells Fargo Bank to obtain the banking documents for the joint checking account respondent's father established for himself and respondent (Bank Account #1).

11. Based on her review of the records, Lin determined that respondent was engaged in property management of the Birdsall property because he found tenants, collected rents and maintained the property. Lin also determined that respondent received trust funds (funds belonging to a beneficiary that are managed by a trustee or licensed broker who is not the owner of those funds) in the course of managing the property. Lin explained that the rent deposits that respondent collected from the Birdsall property tenants were trust funds.

12. During her audit, Lin determined that Bank Account #1 was the only bank account respondent had for the trust funds received from the Birdsall property and that the account was set up to manage the Birdsall property as well as the property in Emeryville.

FAILURE TO MAINTAIN CONTROL RECORDS

13. The documents pertaining to Bank Account #1 that respondent provided to Lin were not complete, were not in chronological order, and did not cover the entire audit period. Respondent did not maintain a record of trust funds received and disbursed (control record) for Bank Account #1, and was thus unable to provide Lin with the control record. Moreover, the documents respondent provided to Lin did not contain a daily running balance for Bank Account #1.

14. Lin could not perform a bank reconciliation as part of her audit because respondent did not provide her with a complete control record and a daily running balance for Bank Account #1. Lin could not determine the trust fund accountability (the total trust funds that were supposed to be in Bank Account #1), or any trust fund discrepancy.

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BANK ACCOUNT NOT PROPERLY DESIGNATED AS TRUST ACCOUNT

15. The account documents for Bank Account #1 indicate that the title of the account was "Forrest Gee Hugh P. Gee." The account was not designated as a trust account with the name of respondent as the trustee.

COMMINGLING OF FUNDS

16. Based on banking records for Account #1 that respondent provided to Lin, Lin observed that there were account transactions that did not relate to the management of either the Birdsall or Emeryville properties. These transactions included payments from Account #1 to grocery stores and a special needs trust for Mike Gee. The transactions also included a payment to respondent pertaining to an account shortfall and a payment for a headstone for H. Gee.

17. The banking records for Account #1 also reflect seven deposits from Zelle (a mobile banking application), with the following descriptions: "dinner"; "John and Magdalena reunion"; "HS reunion for 2 people"; "front door lock repaired"; "Anastasia upcharge fee overpay"; and "for 585 9th Street #301 Lease."

SECRET OR UNDISCLOSED COMPENSATION

18. At hearing, Lin noted that respondent informed her that he took management fees for his management of the Birdsall property. She explained that the December 2019 bank account summary for Account #1 reflects a \$3,000 payment on December 30, 2019, to respondent, which is described as "Management Fee" in the summary.

19. The February 2020 bank account summary for Account #1 reflects a \$15,000 transfer to what is described as "Special Needs Trust for Everyday."

Respondent's handwritten notes on the summary indicate that the \$15,000 included "wheelchair ramp \$2,480 on 6/26/2020."

20. Respondent collected money from the laundry machines at the Birdsall property as compensation for his transportation, copying, and other expenses incurred in visiting and managing the Birdsall and Emeryville properties. Respondent did not provide N. Gee with an accounting of the money he collected from the laundry machines.

Additional Evidence

21. Respondent testified regarding the circumstances surrounding his management of the Birdsall property. He stated that he primarily managed the property for his father, and when his father passed away, he managed the property for his stepmother, N. Gee. Respondent credibly testified that he was not aware he needed to create a trust account to help his father and stepmother manage their properties.

22. Respondent stated that he used Account #1 for three purposes: to collect revenue and pay expenses for the Birdsall property; to collect revenue and pay expenses for the Emeryville property; and to make some disbursements, generally for groceries, to take care of his father's brother, who suffers from a mental illness. Respondent testified that the Zelle deposits into Account #1 were his personal funds that were mistakenly deposited into the account.

23. Respondent noted that he reimbursed himself \$3,000 from Account #1 on December 30, 2019, for the materials and labor to install the wheelchair ramp at the Emeryville property, and that he considered the \$3,000 to be a project management fee, not a property management fee. He testified that the notation on the February

2020 account summary, that the \$15,000 transfer was partially for the wheelchair ramp, was a mistake.

24. Respondent stated he did not receive any compensation for his assistance with managing the properties, other than approximately \$60 each month that he took from the laundry machines at the Birdsall property. Respondent denied receiving \$500 in monthly compensation, and the records for Account #1 do not reflect \$500 monthly payments to respondent.

25. Respondent stated that he provided N. Gee with financial information pertaining to the Birdsall property on the five occasions she requested such information. Respondent explained that once N. Gee hired another broker to help her sell the Birdsall property, he stopped providing any management assistance. Email correspondence demonstrates that respondent communicated with N. Gee regarding various questions she had pertaining to the Birdsall property financial information and also that respondent notified N. Gee that he reimbursed himself from Account #1 for payment of the Birdsall property taxes and for installing the wheelchair ramp.

26. Respondent disputes the Department's claim that he did not provide the Department with complete records.

27. Respondent has no previous license discipline.

Costs

28. In connection with the audit, investigation, and prosecution of this accusation, the Department has incurred expenses of \$9,994.25. These expenses reflect \$5,081 in audit costs, \$3,667.25 in investigation costs and \$1,246 for prosecution costs. The costs are supported by certifications that detail the task performed, the time spent

on each task, and the method of calculating the task, in compliance with the requirements of California Code of Regulations, title 1, section 1042. These costs are found to be reasonable pursuant to Business and Professions Code sections 10106 and 10148, subdivision (b).

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In an action seeking to impose discipline against the holder of a real estate license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.)

Relevant Statutory and Regulatory Authority

2. Business and Professions Code section 10131 sets forth what constitutes activities of a licensed real estate broker. Business and Professions Code section 10131, subdivision (b), states that a person who "leases or rents or offers to lease or rent, or places for rent, or solicits for prospective tenants, or negotiates the sale, purchase, or exchange of leases on real property . . . or collects rents from real property, or improvements thereon" for compensation or in expectation of compensation, is engaging in real estate broker activities.

3. Business and Professions Code section 10145 provides, in relevant parts:

(a)(1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall 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 or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

[¶] . . . [¶]

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

4. Business and Professions Code section 10176 provides, in part, that the commissioner may suspend or revoke the license of a real estate licensee who has commingled his or her money with the money or other property of others that is held by him or her, or who has taken a secret or undisclosed amount of compensation.

(Bus. & Prof. Code, § 10176, subds. (e) & (g).)

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5. Business and Professions Code section 10177 provides, in part, that the commissioner may suspend or revoke the license of a real estate licensee who has done any of the following:

[¶] . . . [¶]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1(commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

[¶] . . . [¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

6. California Code of Regulations, title 10, section 2831, states that every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. It further provides that the record, including all records maintained under an automated data processing system, shall set forth in chronological sequence specified information.

7. California Code of Regulations, title 10, section 2832, provides that compliance with Business and Professions Code section 10145 requires the broker place funds accepted on behalf of another into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the

holder of a license bearing such fictitious name, as trustee at a bank or other financial institution, no later than three business days following receipt of the funds.

Analysis

8. Respondent was engaged in the activities of a real estate broker, pursuant to Business and Professions Code section 10131, subdivision (b), because he found tenants, collected rents and maintained the Birdsall property, in exchange for compensation received from the laundry machines located on the Birdsall property. The evidence did not establish that respondent paid himself \$500 monthly as compensation for his management of the Birdsall property, or that he received compensation other than the revenue from the washing and drying machines. (Factual Findings 6, 11, 20-22, & 24.)

9. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831, to discipline respondent's license because he failed to maintain lawful trust fund records. (Factual Findings 13 & 14.)

10. Cause exists under Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832, to discipline respondent's license because he failed to properly designate a trust account for the Birdsall property and failed to properly handle trust funds pertaining to the Birdsall property. (Factual Finding 15.)

11. Cause exists under Business and Professions Code section 10176, subdivision (e), to discipline respondent's license because he commingled his personal funds with trust funds. (Factual Findings 16, 17 & 22.)

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12. Cause exists under Business and Professions Code section 10176, subdivision (g), to discipline respondent's license because he collected compensation from the laundry machines at the Birdsall property, without disclosing the amounts he took to N. Gee. (Factual Findings 18-20 & 24.) The evidence did not establish that respondent took monthly compensation in the amount of \$500 or that the disbursement of \$3,000 was compensation for his property management.

13. Cause exists under Business and Professions Code section 10177, subdivision (d), to discipline respondent's license because he willfully disregarded the Real Estate Law and regulations, as established by Legal Conclusions 8 through 12.

14. Cause exists under Business and Professions Code section 10177, subdivision (g), to discipline respondent's license because he demonstrated negligence or incompetence while engaging in broker activities, as established by Legal Conclusions 8 through 12.

Disposition

15. An administrative proceeding such as this is not meant to punish a licensee, but rather to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.)

16. In this case, complainant has established by clear and convincing evidence that respondent willfully disregarded the Real Estate Law and regulations, and was negligent or incompetent in his activities as a licensed real estate broker. Nevertheless, outright revocation of respondent's license is not warranted and would be unduly punitive in this case. Respondent should have known that he was acting as a broker in his handling of the Birdsall property, and therefore should have created a proper trust account for its management. It is also concerning that respondent took

money from the washing and drying machines at the Birdsall property without providing an accounting to his stepmother, the property's owner. However, the evidence did not establish that respondent was paying himself a monthly payment of \$500 to manage his stepmother's property or that respondent took any compensation other than the money from the washing and drying machines. Respondent's testimony that he was not aware he was acting as a broker for the Birdsall property was credible. Respondent's longstanding record as a licensee without any prior discipline is also a mitigating factor.

17. Based on the above, discipline in the form of a restricted broker license is warranted in the interests of public protection. Respondent shall also be required to make reports to the Department concerning his activities and engage in continuing education.

18. 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 28, the Department established by competent evidence that it has incurred \$4,913.25 in reasonable costs in connection with the investigation and enforcement of this matter.

19. Business and Professions Code section 10148, subdivision (b), authorizes the Department to recover its audit costs following a disciplinary hearing. As set forth in Factual Finding 28, the Department established by competent evidence that it has incurred \$5,081 in audit costs.

20. 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 agency must exercise its discretion to reduce or eliminate cost awards to ensure that it does not

deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. The court held that a licensing agency may not assess the full costs of investigation and prosecution when a licensee, who has committed some misconduct, has used the hearing process to obtain a dismissal of other charges or a reduction in the severity of the discipline imposed. (*Id.*, at p. 45.) The licensing agency must consider the licensee's "subjective good faith belief" in the merits of his or her position and whether the licensee has raised a "colorable challenge" to the proposed discipline. The agency must also consider whether the licensee will be "financially able to make later payments." Finally, the agency may not assess the full costs of investigation and enforcement when it has conducted a disproportionately large investigation to prove that the licensee engaged in "relatively innocuous misconduct." (*Ibid.*)

Consideration has been given to all the *Zuckerman* factors. No basis for a reduction of the costs in this case was established. Respondent should pay full cost recovery pursuant to Business and Professions Code sections 10106 and 10148.

ORDER

All licenses and licensing rights of respondent Forrest Gee under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department 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:

1. Prehearing Suspension

The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner (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.

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

2. Term of Restriction

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.

3. Continuing Education

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

respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

4. Reporting

Respondent shall report in writing to the Department of Real Estate as the Commissioner shall direct by this Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which respondent engaged during the period covered by the report.

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5. Costs

Pursuant to Business and Professions Code sections 10106 and 10148, subdivision (b), respondent shall pay the Department of Real Estate reasonable investigation, enforcement and audit costs of \$9,994.25 no later than one year after the issuance of the restricted broker license and according to a payment plan approved by the Commissioner.

DATE: 04/04/2023



SARAH SANDFORD-SMITH

Administrative Law Judge

Office of Administrative Hearings