

7/08

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 04 2021
DEPT. OF REAL ESTATE
By *[Signature]*

In the Matter of the Accusation of:

FREEMAN PROPERTY MANAGEMENT, INC., and

HELAINÉ BETH CAMPBELL

) DRE No. H-41586 LA

) OAH No. 2020020900

Respondents.

DECISION

The Proposed Decision dated December 08, 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.

This Decision shall become effective at 12 o'clock noon on 3/6/2021

IT IS SO ORDERED 1.28.21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

[Signature: Douglas R. McCauley]

7125

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order against: } DRE No. H-41627 LA
ALEJANDRO A. HARTE, } OAH No. 2020040548
Respondent. }

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This Decision shall become effective at 12 o'clock noon on 3/6/2021.

IT IS SO ORDERED 1.2.8.21

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

[Signature]

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

In the Matter of the Accusation Against:

FREEMAN PROPERTY MANAGEMENT, INC.

**HELAINÉ BETH CAMPBELL, individually and as designated
officer of Freeman Property Management, Inc.,**

Respondents.

Agency Case No. H-41586 LA

OAH No. 2020020900

and

In the Matter of the Order to Desist and Refrain to:

ALEJANDRO A. HARTE,

Respondent.

Agency Case No. H-41627 LA

OAH No. 2020040548

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on August 6 and 7, 2020, and on October 15, 2020.

Lisette Garcia, Staff Attorney, Department of Real Estate (Department), represented complainant Veronica Kilpatrick, Supervising Special Investigator for the Department. Stephen F. Lopez, Attorney at Law, represented respondents Freeman Property Management, Inc. (FPM), Helaine Beth Campbell (Campbell), individually and as the designated officer for FPM, and Alejandro A. Harte (Harte) (collectively respondents).

Testimony and documents were received in evidence. The parties' joint motion for an order sealing the documentary evidence to protect private and confidential information was granted pursuant to Government Code section 11425.20 and California Code of Regulations, title 1, section 1030.

Pursuant to an October 15, 2020 Post-Hearing Order, the record remained open for each party's submission of closing briefs. *Complainant's Closing Argument*, dated October 22, 2020, is marked for identification as Exhibit 15. *Respondents' Closing Statement*, dated October 30, 2020, is marked for identification as Exhibit TT. *Complainant's Rebuttal to Respondents' Closing Argument*, dated November 5, 2020, is marked for identification as Exhibit 16.

The record closed and the matter was submitted for decision on November 6, 2020.

SUMMARY

In these consolidated matters, complainant alleges respondents' violation of the provisions of the Real Estate Law prohibiting unlicensed activities, misrepresentations, non-delivery of agreements, falsification of records, and inadequate supervision. The credible, competent evidence established almost none of the allegations. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order reproofing FPM and Campbell, and vacating the Order to Desist and Refrain issued to Harte.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 1, 2003, the Department issued real estate broker license number 01121743 to Campbell. The broker license, which expires on November 30, 2023, unless renewed or revoked, has no history of prior discipline.
2. On March 30, 2011, the Department issued real estate corporation license number C/01897343 to FPM with Peter Waldo Freeman (Peter Freeman) as its designated officer. After the cancellation of Peter Freeman's designation, on April 13, 2011, Campbell was added as FPM's designated officer. The corporate license has no history of prior discipline.
3. On March 29, 2019, real estate corporation license number C/01897343 issued to FPM expired. Campbell's designation also expired. Pursuant to Business and Professions Code section 10201, FPM has renewal rights. Consequently, pursuant to

Business and Professions Code section 10103, the Department retains jurisdiction over FPM.

4. On January 28, 2020, complainant, acting in an official capacity, brought the Accusation against FPM and Campbell.

5. On February 13, 2020, FPM and Campbell filed a Notice of Defense on Accusation to present a defense or matters in mitigation or extenuation to the allegations in the Accusation.

6. The Department has never issued a license to Harte in any capacity.

7. Pursuant to Business and Professions Code section 10086, on March 2, 2020, Acting Real Estate Commissioner Sandra Knau, in her official capacity, issued Desist and Refrain Order number H-41627 LA, which directs Harte to desist and refrain from acting in the capacity of a real estate broker within the meaning of Business and Professions Code section 10131, subdivision (b).

8. On March 13, 2020, Harte acknowledged receipt of the Desist and Refrain Order.

9. All jurisdictional requirements are satisfied.

Operations of Freeman Property Management Inc.

10. In 2001, Harte rented a house from Peter Freeman and at the end of the lease term returned the house to Peter Freeman in an improved condition. Thereafter, Peter Freeman hired Harte, who has a background in architecture and construction, to conduct property inspections and to provide handyman services. Over an unspecified period, Harte "acquired a position" in FPM and became its president.

11. In 2017, Harte wholly owned FPM. FPM employed Harte to inspect, service, and repair properties in its management portfolio. Harte spent most of his time in the field. Currently, in addition to his sole ownership of FPM, Harte holds several corporate titles in the company: president, chief executive officer, chief financial officer, and secretary.

12. In 2017, Campbell and an employee named Adriana staffed FPM's office. Adriana answered the phone and triaged inquiries pertaining to lease agreements, which she forwarded to Campbell, and requests for service or repairs, which she "took care of," according to Campbell's testimony. Adriana also read and sorted emails sent to FPM's general email address. Campbell either responded as required by the emails or authorized Adriana to do so.

13. As the broker of record for FPM, Campbell's responsibilities include advertising or listing available rental properties, soliciting and quoting rental prices, negotiating property management and rental agreements, vetting prospective tenants' background and creditworthiness, collecting security deposits and monthly rental payments, managing and overseeing trust agreements and accounts, and supervising company employees and day-to-day operations to ensure compliance with applicable statutes and regulations.

14. Property owners seeking management services from FPM receive a new owner packet consisting of a *Freeman Property Management, Inc, Mission Statement* and a *New Owner Check List*, which solicits information about the property's characteristics, the owner's preference for tenants with or without pets, and preferred process for dispersing monthly rental income proceeds. Campbell typically interviews the property owner. Information obtained from the checklist and interview is used to prepare several California Association of Realtors (C.A.R.) standardized forms, including

a Property Management Agreement, Disclosure Regarding Real Estate Agency Relationship, and Keysafe/Lockbox Addendum and Tenant Permission to Access Property. FPM does a title check to confirm ownership of record. FPM also confirms the desired rental amount against other rental units of comparable size, features, and location. FPM makes arrangements to inspect and photographs the property. The photographs serve as a record of the property's pre-rental condition, and they are incorporated with other information FPM uses for listing the property for lease.

15. Persons seeking to lease property in FPM's portfolio complete an application, which requests information pertaining to residential history, employment, and income. FPM obtains information about the applicant's criminal background and credit history, which are presented to the property owner for consideration and decision whether to lease the property to the applicant.

16. FPM maintains files for each of its clients. Files typically contain the documents obtained or executed in connection with a property management agreement as well as any associated rental agreement and tenant's underlying rental application with background and credit information. FPM maintains one trust account into which receipts collected on behalf of all its clients are deposited and from which monies are disbursed. For each of its clients, FPM provides a separate accounting of receipts and disbursements.

The Management Agreement for the Lincoln Avenue Property

17. Terry Allen (Allen) and his spouse were Peter Freeman's clients from a prior property management transaction in the 1990s. Harte and Campbell had no prior relationship with them. They own real property located at 24660 Lincoln Avenue, Murrieta, California (the Lincoln Avenue property).

18. In March 2017, Allen telephoned FPM's office. He spoke with Adriana about listing the Lincoln Avenue property for leasing through FPM. Adriana communicated the matter to Campbell, who in turn instructed Adriana to email the company's new owner packet to Allen, and Adriana did so on March 23, 2017. Allen completed, signed, and dated the new owner packet documents on March 31, 2017. He returned them by email to Adriana on April 1, 2017.

19. Campbell used the information Allen provided to obtain comparable rental data for the Lincoln Avenue property, conduct a title check to confirm Allen and his spouse were the owners of record, and prepare the C.A.R. standardized forms set forth in Factual Finding 14. Campbell determined the Lincoln Avenue property could rent for \$2,500 per month.

20. Harte called Allen and arranged a meeting date and time to inspect the Lincoln Avenue property. Harte took the comparable rental data with him to the meeting, which Allen, his spouse, and their son attended. Harte gave Allen a business card bearing the FPM logo and "DRE# 01897343" below the words "Freeman Property Management, Inc." The business card identifies Harte as FPM's president. Allen acknowledged at the administrative hearing Harte never told him that he (Harte) was a licensed broker or real estate agent. Harte also gave Allen a business card for "Home & Business Construction," identified as "A division of ZT Construction State License # 631678," with Harte's name.

21. Harte inspected the property to determine what, if any, repairs would be required to prepare it for listing. Harte testified, "The house looked great. I walked around the house and suggested cleaning the carpet. . . . He showed me the swimming pool and equipment." Harte informed Allen that, based on the area, the property could rent for \$2,500. Harte additionally informed Allen "what [FPM] would

do" but he did not show any documents to or discuss any management agreement with Allen. According to Allen's testimony, Harte "presented himself as someone knowing what he was doing."

22. The C.A.R. forms Campbell prepared require placing tenant security deposits and other receipts collected for the property owner in an FPM trust account separate from any personal account. The C.A.R. forms disclose Harte is the owner of FPM and Home and Business Construction, an entity through which FPM discharges its obligations. The C.A.R. forms disclose FPM's six percent management fee. The C.A.R. forms additionally disclose the following order of disbursements of funds held in FPM's trust account: first, FPM's compensation in the form of a six percent management fee; next, operating expenses payable from the property owner's funds held by FPM; then, reserves and security deposits held by FPM; and finally, the balance to the property owner.

23. Campbell signed the C.A.R. standardized form management agreement she prepared, dated it April 3, 2017, and mailed it to Allen for his signature. At the administrative hearing, Allen denied receiving a copy of that document with Campbell's signature in the mail from FPM. Allen's denial is not credible considering his acceptance of and benefit from FPM services, including the collection rent receipts from the Lincoln Avenue property tenancy that were disbursed to him.

24. When Harte returned to the Lincoln Avenue property for a second meeting with Allen, he observed that his suggestions for preparing the property for listing were implemented. Harte photographed the property and installed a lockbox. Allen turned over the keys to the Lincoln Avenue property to Harte.

25. FPM created a file for the following documents: the new owner packet documents (i.e. mission statement and checklist) Allen signed on March 31, 2017, the comparable data for the Lincoln Avenue property, the confirmation of Allen and his spouse's ownership of the Lincoln Avenue property, and a copy of the April 3, 2017 management agreement bearing only Campbell's signature.

26. At the administrative hearing, Campbell explained she first learned a copy of the April 3, 2017 management agreement bearing Allen's signature was not in the FPM file when, in 2019, she received correspondence from Allen's attorney in connection with a Small Claims court matter. (See Factual Finding 46.) Campbell explained, "I don't know if we got it back from Allen. It was never returned. I have no idea they never received it. They never called to say they never received it. For 10 months FPM managed the property, took in rent and paid the gardener, the pool person, and them. They never claimed there was no management agreement."

The Lincoln Avenue Property Tenancy

27. Harte was repairing the sprinklers at the Lincoln Avenue property when LK saw his parked truck with FPM insignia at the property. LK approached and informed Harte she was looking for a house. Harte instructed LK to call FPM, and she did so. According to Campbell's testimony, "Some information was collected by [Harte]." Her testimony did not specify the nature of the collected information. Campbell "took the paperwork" and ran a background check on LK, including calling her previous landlord. The landlord told Campbell, "Great tenant. No issue with her." Campbell explained, "I actually ran [LK's] credit report. It was not a great credit report." LK's credit report reflected delinquencies, a foreclosed mortgage, and a FICO score in the low 400s.

28. Harte read LK's credit report over the phone to Allen because, as Campbell testified, she "was on another appointment at the time." The parties dispute the full substance of the telephone communication between Harte and Allen. Harte claims making no recommendation to Allen about LK. Allen claims asking Harte whether LK was able to pay, and Harte answered yes citing her employment and alimony payments.

29. Allen approved LK as a tenant telling Harte that he (Allen) was going to give her the chance to live in the house. Allen approved LK as a tenant on March 31, 2017, the same day on which he completed his new owner packet documents. As Campbell explained at the administrative hearing, the Lincoln Avenue property was rented before Allen's completed paperwork for any property management agreement was submitted to FPM. "They (Allen and his spouse) called. We had a tenant looking at the same time. I told the tenant we were waiting for paperwork to come in, but she can look at the property. I showed the property in March and Allen retained [FPM] within the same month."

30. Campbell prepared a C.A.R. standardized form Month-to-Month Rental Agreement for the Lincoln Avenue property in which Allen and his spouse are identified as "Landlord" and LK is identified as "Tenant". Paragraph 13 of the rental agreement states, "Unless otherwise provided in California Civil Code § 54.2, no animal or pet shall be kept on or about the Premises without Landlord's prior written consent, except as agreed to in the attached Pet Addendum (C.A.R. Form PET.)" (Exh. M.) No pet addendum was attached to the rental agreement. According to Campbell's testimony, she would have obtained Allen's permission, prepared and attached a pet addendum, and obtained an additional \$500 from LK had she known LK had a dog. Campbell did

not know whether LK had any dogs or whether any dogs resided with LK at the Lincoln Avenue property before LK vacated the premises on April 30, 2018.

31. On April 20, 2017, LK went to FPM offices and she gave Campbell two cashiers' checks to cover the security deposit and rent prorated for the period April 20 through April 30, 2017. Campbell presented LK with the rental agreement, which LK initialed and signed without any question about or mention of pets, including dogs, at the premises. Campbell signed on behalf of Allen and his spouse as "agent for owner". At the administrative hearing, Allen claimed he did not grant Campbell permission to sign the Lincoln Avenue property rental agreement on his behalf. Allen received a copy of the Lincoln Avenue property rental agreement; however, the evidence offered at the administrative hearing did not clearly establish when. Allen's testimony regarding when he requested the rental agreement was contradictory. Allen testified, on one hand, he requested a copy of the rental agreement shortly after the Lincoln Avenue property was leased but, on the other hand, he made no such request before April 2018.

32. LK occupied the Lincoln Avenue property on April 20, 2017. LK paid rent each month without incident until December 2017. LK's rent check for December 2017 was late, and when received and negotiated by FPM it was returned for insufficient funds. Campbell prepared a December 14, 2017 Three Day Notice to Perform Conditions and/or Covenants or Quit (Three Day Notice), which Harte posted on the door at the Lincoln Avenue property.

33. LK was late paying the January 2018 rent. Consequently, on January 10, 2018, Harte delivered and posted a Three Day Notice addressed to LK at the Lincoln Avenue property. On January 11, 2018, Allen called the FPM office inquiring about the rent he had not yet received. Adriana informed him LK's December rent check was

returned for insufficient funds, which caused a shortage or negative trust account balance. Allen did not instruct FPM to start any legal processes to remove LK from the premises. The January rent check was returned for insufficient funds on January 31, 2018.

34. The returned December rent check caused a shortage in the FPM trust account into which receipts collected for Allen are deposited. By the time FPM became aware of the trust account shortage, funds were already disbursed for FPM's six percent management fee, for expenses associated with the Lincoln Avenue property's upkeep, and to Allen. Consequently, LK's security deposit was applied to cover the trust account shortage. Campbell used a C.A.R. standardized form addendum, which she signed for Allen and his spouse as "agent for owner" to amend the Lincoln Property rental agreement accordingly:

As of 1/31/2018 we are no longer in possession of your security deposit. The owner was paid prior to your check being returned NSF and does not want to return the funds. On your move out please ask the owner for any monies that may be owed on your account. We can no longer accept checks on your account. Please make all future payments in the form of cashier check, money order or cash." (Exh. Z.)

LK acknowledged the addendum with her signature dated February 1, 2018, and personally returned it to Campbell at FPM. Campbell did not deliver a copy of the addendum to Allen or his spouse.

35. LK was late making payments for the February 2018, March 2018, and April 2018 rents. On February 7, 2018, March 7, 2018, and April 10, 21018, Harte

delivered and posted a Three Day Notice addressed to LK at the Lincoln Avenue property.

36. LK communicated with Harte. She informed him her job was paying her half of her regular wages and she was waiting for a \$24,900 payment her ex-spouse owed her. LK made five partial payments in increments of \$1,000, a portion of which was used to replenish funds disbursed from FPM's trust account. Campbell testified, "We had to build back up the security deposit."

37. Adriana discussed the negative trust account balance with Allen. Adriana told Allen that LK was trying to catch up with weekly incremental payments of \$1,000. Allen approved an extension of time for LK to make her rent payments current. At the administrative hearing, Campbell acknowledged the failure to prepare an addendum memorializing the arrangement for incremental payments. She explained, "It was not a permanent remedy. It was a temporary situation."

38. Notwithstanding the trust account shortage, FPM continued to collect its monthly six percent management fee associated with the Lincoln Avenue property for January, February, March, and April 2018.

39. Allen subsequently decided he no longer wanted to wait for LK to catch up on her rent payments. Campbell issued an April 10, 2018 Notice of Termination of Tenancy, effective May 10, 2018, which she signed as "agent for owner".

40. FPM followed up with an April 18, 2018 Notice of Inspection informing LK the premises would be inspected on April 20, 2018. An inspection did not occur until after LK vacated the Lincoln Avenue property on April 30, 2018.

41. Harte, who inspected the vacated premises, explained, "They completely trashed the house, Oh my god. I was in shock." Dog urine stained the carpets. The dishwasher was missing. Trash was strewn throughout the premises. Harte, with two guys' assistance, cleaned and repaired the property. Home & Business Construction, Harte's company, billed FPM \$600 for trash removal from the Lincoln Avenue property. Home & Business Construction provided FPM with invoices estimating \$1,050 for the cost of purchase and installation of a new dishwasher and \$550 for the purchase of garage and ceiling fan remote controls, light bulbs, air conditioner filter, and oil removal from the property' driveway. The evidence did not establish whether Allen paid FPM or Home & Business Construction for costs associated with cleaning and repairing the Lincoln Avenue property after LK vacated the premises.

42. On May 12, 2018, Allen took possession of the Lincoln Avenue property. The interior walls required painting. The tile flooring and carpeting required additional cleaning. An awning had to be replaced. Actual and estimated costs associated with the painting, additional cleaning, and repairs totaled \$5,350.70.

June 27, 2018 Complaint to the Department

43. On July 3, 2018, the Department received a June 27, 2018 Licensing/Subdivider Complaint from Allen and his spouse requesting an investigation of FPM, Campbell, and Harte's conduct in connection with the management of the Lincoln Avenue property.

44. The Department investigator requested and Campbell, acting on behalf of FPM, produced documents, records, notices, and communications in connection with the Lincoln Avenue property management agreement and tenancy.

45. At the administrative hearing, no credible, competent evidence established the documents, records, notices, and communications were altered, knowingly or otherwise.

January 4, 2019 Small Claims Judgment

46. On January 4, 2019, in *Allen vs. Freeman Property Management* (Super. Ct. Riverside, 2019, No. SWS1801279), the Small Claims court entered judgment against FPM, Campbell, and Harte in the amount of \$4,865 plus cost of \$194.85 for damages associated with the Lincoln Avenue property.

Costs of Investigation and Enforcement

47. The Department incurred costs of investigation and prosecution totaling \$4,647.45. These costs are reasonable pursuant to Business and Professions Code section 10106.

48. None of the parties presented evidence of respondents' financial ability to pay a cost award.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. Complainant bears the burden of proving by clear and convincing evidence to a reasonable certainty that a respondent engaged in conduct warranting suspension or revocation of his or her real estate license. (See *The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.)

2. Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333]).

Applicable Statutory Provisions

3. Business and Professions Code section 10130 specifies real estate activities for which a license is required.

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.

4. Business and Professions Code section 10131 defines a real estate broker.

A real estate broker . . . is a person who, for 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.

5. Business and Professions Code section 10137 prohibits real estate brokers from retaining or compensating unlicensed persons to engage in licensed activities.

It is unlawful for any licensed real estate broker to retain, compensate, directly or indirectly, any person performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the responsible broker retaining or compensating him or her[.]

6. Business and Professions Code section 10142 governs the delivery of agreements.

When a licensee prepares or has prepared an agreement authorizing or retaining that licensee to perform any of the acts for which he or she is required to hold a license, or when that licensee secures the signature of any person to any contract pertaining to those services or transactions, he or she shall deliver a copy of the agreement to the person signing it as soon as reasonably practicable after the time the signature is obtained. The copy may be provided electronically in transactions pursuant to provisions of the Uniform Electronic Transactions Act (Title 2.5 (commencing

with Section 1633.1) of Part 2 of Division 3 of the Civil Code), where the parties have agreed to conduct the transaction by electronic means.

7. Business and Professions Code section 10148 governs a real estate broker's duty to retain records and the penalties for unlawful destruction of records.

(a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature. This subdivision shall not be construed to require a licensed real estate broker to retain electronic messages of an ephemeral nature, as described in subdivision (d) of Section 1624 of the Civil Code. [¶] . . . [¶]

(e) The bureau (*sic*) may suspend or revoke the license of any real estate broker, real estate salesperson, or

corporation licensed as a real estate broker, if the real estate broker, real estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books, papers, writings, documents, or tangible objects that are required to be maintained by this section or that have been sought in connection with an investigation, audit, or examination of a real estate licensee by the commissioner.

8. Business and Professions Code section 10157 limits a license authorizing real estate activities to the person granted licensure.

No real estate license gives authority to do any act specified in [the Real Estate Law] to any person, other than the person to whom the license is issued.

9. Business and Professions Code section 10176 authorizes investigations and enumerates grounds for disciplinary action as follows:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or

attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

10. Business and Professions Code section 10177 enumerates further grounds for disciplinary action as follows:

The commissioner may suspend or revoke the license of a real estate licensee . . . or may suspend or revoke the license of a corporation . . . if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock who has done any of the following[:] [¶] . . . [¶]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 100000) 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.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee,

failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. [¶]

(j) Engaged in any other conduct, whether of the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing.

Discussion

ALLEGATIONS REGARDING UNLICENSED ACTIVITIES

11. The established facts are that Allen initiated contact with FPM to list the Lincoln Avenue property for rent. Campbell directed staff to email Allen a new owner packet, which he completed and from which Campbell culled information pertinent for her preparation of a management agreement and the listing of his Lincoln Avenue property. (Factual Finding 18.) Almost concurrent with Campbell's preparation of the management agreement, LK saw Harte working at the Lincoln Avenue property and informed him about her need for housing. Harte referred LK to FPM. LK called FPM's office and Campbell obtained information from LK that facilitated Campbell's search of LK's background and credit history. (Factual Finding 27.) While Harte read the content of the credit report Campbell obtained for LK to Allen, the evidence is inconclusive whether Harte recommended any specific course of action to Allen. (Factual Finding 28.) Ultimately, it was Allen who approved LK's tenancy. (Factual Finding 29.) Allen and LK communicated about the state of LK's finances; nonetheless, Campbell actively managed the collection of rents from LK for the Lincoln Avenue property, including preparing and directing the issuance of multiple Three Day Notices to LK and

accepting incremental payments for rent from LK towards reestablishing FPM's trust account. (Factual Findings 32 through 37.)

12. Complainant failed to establish by clear and convincing evidence Harte engaged in unlicensed activities in violation of Business and Professions Code sections 10130, 10131, subdivision (b), and 10137 as alleged in paragraph 26 of the Accusation.

ALLEGATIONS REGARDING SUBSTANTIAL MISREPRESENTATIONS

13. The established facts are that after Allen initiated contact with FPM to list the Lincoln Avenue property for rent, Harte called Allen to schedule an inspection of the property. At the time of the inspection, Harte disclosed his relationship with FPM by giving his business cards to Allen. One card clearly identifies Harte as president of FPM and nothing more. The other card discloses Harte's affiliation with Home & Business Construction, which provides services including property inspections. (Factual Finding 20.) Campbell mailed C.A.R. standardized form management agreement and agency agreements with her name, signature, and license number clearly identifying her as FPM's property manager to Allen. The C.A.R. forms additionally discloses Harte's ownership of FPM and FPM's performance of its management duties through Home and Business Construction. (Factual Findings 22 and 23.) These are not facts from which it is reasonably inferred that Harte was a licensed real estate broker or agent. These are not facts supporting a conclusion of substantial misrepresentation. LK's previous delinquencies and mortgage foreclosure documented in the credit report Campbell obtained for LK were disclosed in their entirety to Allen. The credible evidence does not support a conclusion LK's credit problems or history were misrepresented to Allen. (Factual Findings 28 and 29.) There was no substantial misrepresentation in connection with any pet addendum because no such addendum was prepared or attached to LK's Month-to-Month Rental Agreement. LK said nothing

to Campbell when she signed the rental agreement that alerted or should have reasonably alerted Campbell about dogs residing with LK at the Lincoln Avenue property. (Factual Finding 31.)

14. Complainant failed to establish by clear and convincing evidence that FPM, Campbell, and Harte's conduct, acts, or omissions involved making substantial misrepresentations to Allen and his spouse in violation of Business and Professions Code section 10176, subdivision (a), as alleged in paragraph 27 of the Accusation.

ALLEGATIONS REGARDING FAILURE TO DELIVER AGREEMENTS

15. The established facts are that Campbell mailed a copy of the C.A.R. standardized form management agreement to Allen for his signature. (Factual Finding 23.) FPM, however, was not diligent obtaining and retaining for its file a fully executed management agreement bearing both Campbell and Allen's signatures. (Factual Finding 26.) FPM therefore had no copy of a fully executed Lincoln Avenue property management agreement to deliver to Allen. FPM failed to deliver a copy of the January 31, 2018 addendum to the Lincoln Avenue property rental agreement to Allen. (Factual Finding 34.) No addendum was prepared to memorialize LK's incremental rent payments. Consequently, there was no addendum regarding the incremental rent payments for FPM to deliver to Allen. (Factual Finding 37.)

16. Complainant established by clear and convincing evidence FPM violated Business and Professions Code section 10142 as alleged in paragraph 28 of the Accusation.

ALLEGATIONS REGARDING FALSIFIED DOCUMENTS

17. At the administrative hearing, no credible, competent evidence was offered to establish documents were knowingly falsified, altered, or backdated. (Factual Finding 43 through 45.)

18. Complainant failed to establish by clear and convincing evidence FPM, Campbell, or Harte caused a violation of Business and Professions Code section 10148, subdivision (e), as alleged in paragraph 28 of the Accusation.

ALLEGATIONS REGARDING FAILURE TO EXERCISE SUPERVISION AND CONTROL

19. The established facts are that Campbell was lax ensuring absolute compliance with the statutory provisions governing the delivery of agreements. (Legal Conclusions 15 and 16.)

20. Complainant established by clear and convincing evidence Campbell, as FPM's designee, violated Business and Professions Code section 10177, subdivision (h), in that Campbell did not exercise reasonable supervision and control of FPM's activities in connection with the statutory requirements governing the delivery of agreements.

Level of Discipline for FPM and Campbell as its Designed Officer

21. The proven allegations in the Accusation are limited. Specially, Campbell's supervision of FPM did not ensure delivery of copies of the fully executed management and rental agreements for the Lincoln Avenue property to Allen as required by the Real Estate Law. (Legal Conclusions 15 and 16; 19 and 20.) In mitigation, the evidence offered at the hearing suggests nothing other than an aberrational occurrence. FPM has no history of prior violation or discipline. Campbell

has been a licensed real estate professional for one and a half decades. She has spent more than one decade as FPM's designee without any regulatory incident or complaint. (Factual Findings 1 and 2.) Under all the circumstances of this case, public reproof of FPM and Campbell in her designee capacity is consistent with public protection and maintenance of the integrity and high standards of real estate professionals. (See generally *Harrington v. Department of Real Estate* (1989) 214 Cal. App.3d 394 [in an unrelated context discussing the standards of the real estate profession].)

Order to Desist and Refrain Issued to Harte

22. Cause does not exist pursuant to Business and Professions Code section 10086 to order Harte to desist and refrain from engaging in the business of, acting in the capacity of, advertising, or assuming to act, as a real estate broker in the State of California within the meaning of Business and Professions Code section 10131, subdivision (b), by reason of Legal Conclusions 11 through 14.

Cost Award

23. Business and Professions Code section 10106 authorizes recovery of the Department's prehearing investigation and enforcement costs.

24. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Department must exercise its discretion to reduce or eliminate cost so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Department] must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the

severity of the discipline imposed." (*Ibid.*) The Department, in imposing costs in such situations, 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 defense. The Department must also consider the licensee's ability to make payment.

25. Based on the credible, competent evidence offered at the hearing only a small fraction of the overall allegations in the Accusation were established by clear and convincing evidence. (Legal Conclusions 11 through 20.) In such situations, *Zuckerman* does not support a cost award.

26. The Department shall not recover its costs of investigation and prosecution in agency case numbers H-41586 LA and H-41627 LA.

ORDER

1. In agency case number H-41586 LA, a public reproof is hereby issued against Freeman Property Management Inc.

2. In agency case number H-41586 LA, a public reproof is hereby issued against Helaine Beth Campbell, as designated officer for Freeman Property Management, Inc.

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3. In agency case number H-41627 LA, the Order to Desist and Refrain issued to Alejandro A. Harte is vacated.

DATE: Dec 8, 2020

Jennifer M. Russell
Jennifer M. Russell (Dec 8, 2020 17:00 PST)

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings