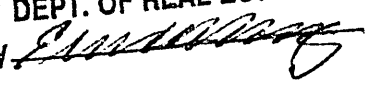


FILED

DEC 13 2021

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE  
By 

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In the Matter of the Accusation of:	}	DRE No. H-41840 LA
FAITH ELIZABETH KOBY,	}	OAH No. 2021030426
Respondent.	}	

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DECISION

The Proposed Decision dated October 5, 2021, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on 1/12/2022.

IT IS SO ORDERED 12.8.21

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

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

**FAITH ELIZABETH KOBY, Respondent**

**DRE Case No. H41840 LA**

**OAH No. 2021030426**

**PROPOSED DECISION**

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on September 21, 2021.

Lisette Garcia, Counsel, appeared for Veronica Kilpatrick (complainant), Supervising Special Investigator for the Department of Real Estate (Department).

Faith Elizabeth Koby (respondent) was not present at the hearing, and no appearances were made on her behalf.

Complainant submitted testimony and documentary evidence. At the hearing, the ALJ granted Complainant's Request for Protective Order Sealing Confidential Records. The ALJ thereby issued a protective order sealing the entirety of Exhibit 22, which contained respondent's personal financial information. The record was closed and the matter was submitted for decision on September 21, 2021.

## **SUMMARY**

Complainant alleges respondent's real estate broker license is subject to discipline because she committed regulatory and audit violations and engaged in fraud and dishonest dealing in her roles as a dual broker and escrow agent in a real estate property transaction. Respondent did not appear at the hearing and offered no defense to complainant's charges. Complainant proved by clear and convincing evidence that respondent conducted business under unapproved fictitious names, failed to return funds entrusted to her, and commingled trust funds with her personal funds. Considering the severity of respondent's misconduct and the absence of any mitigation or rehabilitation evidence, revocation of respondent's license and licensing rights is warranted.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Complainant filed the Accusation, dated November 20, 2020, in her official capacity.
2. Respondent filed a Notice of Defense, dated January 20, 2021, requesting a hearing on the Accusation. Accompanying the Notice of Defense was a pleading by respondent alleging defenses against the charges in the Accusation.
3. On March 8, 2021, respondent wrote to complainant's counsel that she would not participate in the hearing. Respondent stated she was 85 years old and her husband had recently died. She also noted she could not afford representation and was not physically able to travel to defend the case. Respondent further wrote, "At this

point in time, I am not going to be conducting any real estate business.” (Ex. 1, p. 40.) In an email sent on September 20, 2021, respondent confirmed she would not take part in the hearing scheduled for the following day. (*Id.*, at p. 71.)

## **Relevant Facts**

4. On February 19, 1982, the Department issued real estate broker license number 00429339 to respondent. The license expired on February 18, 1986. The Department reissued the license on February 5, 1993. The license was scheduled to expire on February 4, 2021; it was unclear from the record whether respondent has renewed it. As part of her license, the Department approved respondent’s use of the fictitious business name “Koby Financial Services.” The Department has not approved respondent’s use of any other fictitious business name.

5. The Department received two separate complaints against respondent concerning a property located at 402 E. Ramsey Street in Banning, California (Ramsey property). The first, received by the Department on October 22, 2019, was filed by M.O.,<sup>1</sup> a co-trustee of the O. Family Trust (Trust), which owned the Ramsey property and who, along with his brother, had engaged respondent to sell the property. (Ex. 4.) The second, received by the Department on November 8, 2019, was filed by E.S., one of the buyers of the Ramsey property. (Ex. 8.)

6. In response to the complaints, the Department assigned Special Investigator Sara Knapton to investigate respondent’s activities pertaining to the

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<sup>1</sup> The names of the parties involved in the purchase and sale of the Ramsey property are identified by their initials to protect their privacy.

Ramsey property and Department auditor David Quek to audit respondent's financial records. Both Special Investigator Knaption and auditor Quek testified at the hearing. Respondent did not supply all the records sought as part of the investigation or the audit and offered no exhibits for the hearing. The Department's investigation and audit findings are therefore based on an incomplete record of what occurred in connection with the Ramsey property and respondent's general accounting practices.

7. At the hearing, M.O. and A.L. testified as to their experiences with respondent in connection with the Ramsey property and supplied almost all the transaction documents and pertinent correspondence. M.O. was the Trust's principal contact with respondent. A.L. is the son-in-law of E.S. and M.S., who attempted to purchase the Ramsey property, and he acted on their behalf in their dealings with respondent and interactions with the Department. The testimony of M.O. and A.L. was credible.

### **THE TRANSACTION AT ISSUE**

8. On October 17, 2016, M.O. and his brother, on behalf of the Trust, entered into a listing agreement with respondent to sell the Ramsey property. (Ex. 5, p. 3.) The listing agreement identified respondent as "Faith Koby doing business as Koby Financial." The listing period was from October 17, 2016, to October 15, 2017, and the listing price was \$350,000. The agreement provided respondent would receive a commission of eight percent of the listing price plus a \$500 bonus.

9. Because respondent believed the Trust needed special documents to sell the Ramsey property, she referred M.O. to Sergio Torres, doing business as Torres Financial Services (Torres). In a letter to M.O., respondent described Torres as "our man in charge of trusts." (Ex. 5, p. 13.) Torres is not licensed by the Department. M.O. paid

Torres \$2,500 for the documents. M.O. testified Torres incorrectly prepared the documents by including the wrong names and addresses of the more than 17 trust beneficiaries as well as making other mistakes. Because of the number of errors, M.O. refused to allow Torres to perform any further work on the trust documents.

10. After M.O. agreed to engage respondent as the selling broker, respondent requested M.O. pay extra fees to ensure the signatures to the trust and deed documents were complete and correct (\$135 per person) and another \$325 to record the deed. (Ex. 4, p. 5.) On October 21, 2016, M.O. paid \$325 for the recording; on November 3 and 4, 2016, he paid a total of \$1,485 for the signatures. (*Id.*, at pp. 7–9.) On December 24, 2017, respondent requested an additional \$2,000 from M.O. to “cover the recordings.” Respondent stated she would give M.O. the county receipt and refund any overage. (*Id.*, at p. 25.) M.O. did not pay the additional monies. After M.O. expressed his unhappiness regarding Torres’s work to respondent, respondent refused to reach out to Torres on M.O.’s behalf. Instead, respondent offered to do the “rest of [the work] for \$1885” to be paid out of escrow. (*Ibid.*)

11. On April 26, 2018, respondent and M.O., on the Trust’s behalf, signed another listing agreement to sell the Ramsey property. Respondent identified herself as “Faith Koby/aka Koby Financial” in this listing agreement. (Ex. 4, p. 29.) The listing period was from April 26, 2018, through April 25, 2019, and the listing price was \$285,000. Respondent’s commission rate was unchanged. In an addendum dated October 6, 2018, M.O. agreed to extend the listing agreement with respondent from October 6, 2018, to October 5, 2019.

12. In March 2019, respondent provided M.O. with a Residential Purchase Agreement (purchase agreement) from E.S. and M.S. The purchase agreement, dated March 13, 2019, listed a purchase price of \$160,000 for the Ramsey property with a

\$5,000 deposit. (Ex. 4, p. 35.) The purchase price was to be paid in cash. On the purchase agreement, respondent identified the seller's brokerage firm as "Koby Ranch" and the buyers' brokerage firm as "Koby Real Estate." For the deposit, E.S. and M.S. provided respondent with a \$5,000 check, dated March 13, 2019, made payable to "Koby Real Estate." Respondent acted as the agent for both the seller and the buyers in the transaction.

13. M.O. did not accept the March 13 offer by M.S. and E.S. M.O. testified he authorized a counteroffer to the offer. There is no evidence that respondent submitted any written counteroffer to the March 13 offer on M.O.'s behalf.

14. Sometime thereafter, respondent provided M.O. with a copy of a different purchase agreement from E.S. and M.S. (Ex. 8, p.6.) The second purchase agreement, dated March 22, 2019, offered \$170,000 for the Ramsey property with a \$5,000 deposit. On this agreement, respondent identified both the seller's and buyers' brokerage firm as "Koby Real Estate." The agreement provided that payment of the purchase price would be in cash at the close of escrow and would be deposited with the escrow holder pursuant to escrow instructions. (*Ibid.*)

15. Under the terms of the March 22 agreement, if either party fails to execute mutual instructions to cancel escrow, one party may make a written demand to the escrow holder for the return of the deposit. The escrow holder then must promptly deliver notice of the demand to the other party. If the other party does not object to the demand within ten days of such notice, the escrow holder is required to disburse the deposit to the party making the demand. (Ex. 8, p. 11.) The agreement also provides that if the buyer defaults on the purchase agreement, the seller has the right to retain no more than three percent of the purchase price, and any excess is to be returned to the buyers.



16. Although E.S. and M.S. were listed as buyers on the March 22 agreement, there was no evidence that either they or M.O. signed or initialed the agreement, including the liquidated damages clause relating to a buyer's breach of contract. Nor had M.O. or the buyers signed the accompanying real estate disclosure forms. Neither M.O. nor the buyers had copies of any agreements containing both parties' signatures.

17. Notwithstanding the absence of a signed agreement, both M.O. and A.L. agreed that the purchase price for the Ramsey property was \$170,000. Receipts signed by respondent show that in connection with the \$170,000 purchase, the buyers paid respondent \$2,000 in cash on March 22, 2019, \$3,000 in cash on March 30, 2019, and \$9,000 and \$10,000 by separate checks on April 17, 2019, totaling \$24,000. The record was unclear whether respondent had ever cashed the \$5,000 check, dated March 13, 2019, which had been provided by E.S. and M.S. as a deposit for the first purchase agreement. If she had, E.S. and M.S. gave respondent a total of \$29,000 toward the purchase of the Ramsey property.<sup>2</sup>

18. At some point after payment of the April 17, 2019 checks, E.S. and M.S., along with A.L., became frustrated with respondent's failure to return their calls or respond to their messages. They also became suspicious of respondent's requests for cash deposits. A.L. informed respondent E.S. and M.S. wanted to cancel the sale. On August 22, 2019, respondent sent the buyers a cancellation request and asked that they sign and return it to her. (Ex. 15, p. 4.) In the letter, respondent stated the seller of

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<sup>2</sup> At the hearing, A.L. testified that E.S. and M.S. had given \$33,000 to respondent toward the purchase of the Ramsey property. The documentation supplied by E.S. and M.S. to the Department showed that the buyers only paid respondent \$24,000 plus the \$5,000 deposit.

the Ramsey property had the right to retain three percent of the agreed-upon sales price. (*Ibid.*) E.S. and M.S., however, refused to sign the cancellation agreement because they no longer trusted respondent.

19. On September 10, 2019, respondent wrote to M.O. that cancellation of the sale would be complete as of October 1, 2019. (Ex. 5, p. 27.) On October 1, 2019, M.O. wrote to respondent complaining he had yet to receive the three percent of the purchase price he believed he was entitled to as damages for the buyers' cancellation of the sale. On October 4, 2019, respondent wrote to E.S. and M.S. informing them they would receive their refund checks within 10 days. (Ex. 15, p. 5.)

20. On October 7, 2019, respondent submitted an invoice to M.O. for document preparation and recording totaling \$425. (Ex. 4, p. 51.) The invoice included costs totaling \$6,595 for preparing 24 deeds (now charged at \$225 each instead of the \$135 initially quoted), \$850 for revising the Trust documents originally prepared by Torres, and other charges. From those costs, respondent deducted the \$1,480 previously paid by M.O., although M.O. had paid her \$1,810 (see Factual Finding 10) and a \$5,100 credit from escrow, apparently based on the three percent cancellation fee owed to the seller. M.O. did not pay the invoice.

21. On November 1, 2019, respondent refunded \$2,000 to E.S. and M.S.; on January 2, 2020, respondent refunded another \$3,000 to E.S. and M.S. Both refunds were paid by check. Respondent has not made any further refund payments to the buyers. Respondent has also not paid the \$5,100 allegedly due M.O. because of the buyers' cancellation.

22. E.S. and M.S. filed a civil lawsuit against respondent for the unpaid funds. According to A.L.'s testimony, E.S. and M.S. were recently awarded a judgment for \$28,000, which remains unpaid.

23. M.O. testified that after the termination of his listing agreement with respondent, he listed the Ramsey property with another broker. According to M.O., the new broker sold the property within 45 days from the listing date; respondent had the listing for three years.

### **RESPONDENT'S ESCROW ACTIVITIES**

24. As the escrow agent for the Ramsey property transaction, respondent provided E.S. and M.S. with Supplemental Sale Escrow Instructions (escrow instructions) that were dated April 29, 2019. (Ex. 5, p. 26.) The escrow instructions identified the agent as "Koby Financial Escrow." The escrow instructions noted that E.S. and M.S. had deposited \$24,000 into escrow for the purchase of the Ramsey property; the escrow instructions failed to note the buyers had earlier deposited \$5,000 toward the property. The escrow instructions also referred to an agreement dated March 24, 2019, and a counteroffer dated March 28, 2019; however, neither M.O. nor the buyers reported receiving any such documents. Neither the escrow instructions nor any escrow documents provided by M.O. or A.L. disclosed that respondent had an interest as a stockholder, officer, or partner of Koby Financial Escrow or was the owner of the company. The escrow instructions were not initialed or signed by M.O.

25. Respondent is not licensed as an escrow agent by the California Department of Financial Protection and Innovation. She presumably acted as an escrow agent under the exemption set forth in California Financial Code section 17006, subdivision (a)(4), for real estate brokers performing escrows incidental to a real estate

transaction where the broker was a party and performing acts for which a real estate license is required.

26. Except for the two refund payments totaling \$5,000 paid to E.S. and M.S. in November 2019 and January 2020, respondent has made no disbursements from the Ramsey property escrow. In a letter to the Department in response to a subpoena duces tecum served by Special Investigator Knapton, respondent stated she stopped disbursing the escrow funds because E.S. and M.S. refused to sign the cancellation documents or withdraw the lawsuit against her. (Ex. 14.) However, respondent had already agreed to refund the buyers' monies despite their refusal to sign any instructions (Factual Findings 19 & 21), and the escrow instructions did not require any cancellation agreement before the return of deposited funds (Factual Finding 15).

27. The Department initiated an audit examination of the books and records of respondent's broker escrow activities for the period from January 1, 2019, through February 29, 2020. The Department made repeated requests for records from respondent and to meet with her. However, respondent failed to supply the requested records or meet for the audit examination. Respondent indicated that many of the documents pertaining to the transaction were destroyed in a fire on April 4, 2019. (Ex. 15.) She also indicated she was suffering from medical issues that prevented her from attending any examination. (Ex. 22, p. 64.) Respondent did not request a telephone or video interview instead of an in-person examination. Consequently, the Department's audit examination was limited to a review of the Department's licensing records, documents accompanying the seller's and buyers' complaints, and subpoenaed records for respondent's bank account obtained from Bank of America. The Department was unable to determine from these documents whether respondent

maintained any designated trust account for real estate activities during the audit period.

28. According to the subpoenaed bank records, respondent maintained a bank account in the name of "Faith E. Koby Sole Prop DBA Koby Financial Services" at Bank of America (BA account). Although the BA account held trust funds in connection with respondent's broker escrow activities, it was not designated as a trust account; nor was respondent or her fictitious business name designated as trustee for the account. Respondent opened the account on April 3, 2015, and the balance per the February 29, 2020 bank statement was \$2,732.49. The bank statements reflect that the \$9,000 check paid by the buyers was deposited into the BA account on April 22, 2019, and respondent paid a \$2,000 refund to them from the BA account on November 1, 2019. (Ex. 16, pp. 30, 40; Ex. 21, p. 192.) These funds were commingled with respondent's general funds, which were used to pay for respondent's personal expenses, including payments to Home Depot, Rite-Aid, and Smart and Final. (Ex. 16, pp. 34–35.)

## **Costs**

29. A certified statement of investigation costs reflects that the Department incurred a total of \$3,156.80 in costs to investigate this matter. (Ex. 18.) A declaration of enforcement costs states that the Department's costs in prosecuting this matter totaled \$4,800, reflecting 50 hours of attorney time at \$96 per hour. (Ex. 19.) Complainant also submitted a Certified Statement of Audit Costs indicating that the cost of the audit conducted in connection with the Accusation was \$1,959.50. (Ex. 20.) These costs are reasonable.

## LEGAL CONCLUSIONS

1. Complainant bears the burden of proving by clear and convincing evidence to a reasonable certainty that respondent has engaged in conduct warranting suspension or revocation of her real estate license. (See *The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457; see also *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) 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].)

2. Under Business and Professions Code<sup>3</sup> section 10071, the real estate commissioner (commissioner) "has full power to regulate and control the issuance and revocation, both temporary and permanent, of all licenses to be issued . . . ." "Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (§ 10050.1.)

3. Pursuant to section 10103, the lapsing of a license by operation of law or by order or decision of the Department, or the voluntary surrender of a license by a licensee, shall not deprive the Department of the opportunity to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render

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<sup>3</sup> All future statutory references are to the Business and Professions Code unless otherwise stated.

a decision disciplining the license. Accordingly, the Department is entitled to discipline respondent's license even if she has failed to renew it.

4. Under section 10177, the commissioner may suspend or revoke the license of a real estate licensee if the licensee has willfully disregarded or violated the Real Estate Law (subdivision (d)); demonstrated negligence or incompetence in performing an act for which she is required to hold a license (subdivision (g)); or engaged in conduct that constitutes fraud or dishonest dealing (subdivision (j)); see also § 1076, subd. (i)). The term "willfully" means "'a purpose or willingness to commit the act.'" (*Acco Engineered Systems, Inc. v. Contractors' State License Bd.* (2018) 30 Cal.App.5th 80, 92–94 (citations omitted).) An act can be done willfully even if the licensee has no intent to violate the law, injure another, or acquire any advantage. (*Ibid.*)

### **Cause for Discipline**

5. A broker may only use a fictitious business name approved by the Department. (§ 10159.5; Cal. Code Regs., tit. 10 (CCR), § 2731.) Complainant established by clear and convincing evidence that respondent used unlicensed fictitious business names to engage in activities requiring a real estate license in violation of section 10159.5 and CCR section 2731. The only fictitious name the Department approved respondent to use was Koby Financial Services. Nonetheless, respondent used the following fictitious names: "Koby Financial," "Koby Real Estate," "Koby Ranch," and "Koby Financial Escrow." (Factual Findings 4, 8, 11, 12, & 14.) Respondent's use of these unapproved names was willful, negligent, and incompetent. Cause therefore exists to discipline respondent's real estate broker license and all other licensing rights under section 10177, subdivisions (d) and (g).

6. Section 10176, subdivision (i), provides that the Department may discipline a real estate license for any conduct that constitutes fraud or dishonest dealing. Complainant established by clear and convincing evidence that respondent engaged in fraud and dishonest dealing. As set forth in Factual Findings 10 through 21 and 26, respondent billed M.O. for unnecessary charges and failed to return monies to M.O. and the buyers after the sale was canceled, despite promises to do so. The buyers' filing of a lawsuit did not excuse respondent from returning their funds. Cause therefore exists to discipline respondent's real estate broker license and all other licensing rights under sections 10176, subdivision (i), and 10177, subdivision (j).

### **AUDIT VIOLATIONS**

7. Section 10145, subdivision (a), requires a real estate broker who accepts funds belonging to others in connection with a real estate transaction to deposit all those funds not immediately placed into a neutral escrow depository or the hands of the broker's principal into a trust fund account maintained by the broker in a bank. Those trust funds are to be maintained in that account until disbursed by the broker in accordance with instructions from the person entitled to the funds. (CCR, § 2950.) Failure to comply with regulations governing broker-handled escrow accounts is a ground for disciplinary action. (CCR, § 2950.)

8. Complainant established by clear and convincing evidence that respondent failed to deposit and maintain the funds provided by the buyers in a trust fund account maintained at a bank, failed to maintain proper books and records in connection with such account, and failed to disburse the trust funds to the buyers after the transaction was canceled in violation of section 10145, subdivision (a), and CCR section 2950. (Factual Findings 21, 26, & 28.) Respondent's letter to the Department makes clear that her refusal to disburse the funds was willful and incompetent. (Factual



Finding 26.) Cause therefore exists to discipline respondent's real estate broker license and all other licensing rights under section 10177, subdivisions (d) and (g).

9. A real estate broker acting as an escrow agent must deposit funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository, or into a trust fund account in the name of the broker, or a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee. (§ 10145; CCR, §§ 2832, 2951.) Commingling the broker's own money with money the broker accepts on another's behalf is a ground for license discipline. (§ 10176, subd. (e).)

10. Complainant established by clear and convincing evidence that respondent commingled monies she received in trust from E.S. and M.S. with her personal funds in violation of sections 10145 and 10176, subdivision (e), and CCR sections 2832 and 2951. (Factual Finding 28.) Respondent's commingling was willful, negligent, and incompetent. Cause therefore exists to discipline respondent's real estate broker license and other licensing rights under sections 10176, subdivision (e) and 10177, subdivisions (d) and (g).

11. Complainant established by clear and convincing evidence that respondent used the BA account to deposit trust funds in connection with her broker escrow activities for the Ramsey property transaction. (Factual Finding 28.) The BA account was not designated as a trust account nor was the account held by respondent or "Koby Financial Services" as its trustee in violation of section 10145 and CCR sections 2832 and 2951. Respondent's use of an improperly designated account without a properly named trustee was willful, negligent, and incompetent. Cause therefore exists to discipline respondent's real estate broker license and all other licensing rights under section 10177, subdivisions (d) and (g).

12. Complainant established by clear and convincing evidence that respondent used the unlicensed fictitious business name "Koby Financial Escrow" for the broker-handled escrow of the Ramsey property in violation of section 10159.5 and CCR section 2731. (Factual Finding 24.) Respondent's use of an unapproved name was willful, negligent, and incompetent. Cause therefore exists to discipline respondent's real estate broker license and all other licensing rights under section 10177, subdivisions (d) and (g).

13. A real estate broker acting as an escrow agent is required to advise all parties in writing if she knows that a licensee acting as such in the transaction has any interest as a stockholder, officer, partner, or owner of the agency holding the escrow. (CCR, § 2950, subd. (h).) Complainant established by clear and convincing evidence that respondent failed to disclose to the seller and the buyers of the Ramsey property her ownership interest in Koby Financial Escrow in violation of CCR section 2950, subdivision (h). (Factual Finding 24.) Respondent's failure to disclose her ownership interest was willful, negligent, and incompetent. Cause therefore exists to discipline respondent's real estate broker license and all other licensing rights under section 10177, subdivisions (d) and (g).

14. A licensed real estate broker is required to retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by her or obtained by her in connection with any transactions for which a real estate broker is required. (§ 10148.) A licensed real estate broker is also required to maintain books, records, and accounts in accordance with accepted principles of accounting and good business practice. (CCR, § 2950, subd. (d).)

15. Complainant established by clear and convincing evidence that respondent failed to maintain or provide any records relating to her broker escrow

activities during the audit period in violation of section 10148 and CCR section 2950, subdivision (d). Despite numerous opportunities to do so, respondent failed to provide the requested records. (Factual Finding 27.) Respondent's claim in a letter to the Department that a fire destroyed her records on April 4, 2019, is unsubstantiated. In addition, the audit request encompassed documents created after the fire. Respondent's refusal to cooperate with the Department was willful. Cause therefore exists to discipline respondent's real estate broker license and all other licensing rights under section 10177, subdivision (d).

## **Disposition**

16. Cause for license discipline having been established, the issue remaining is the appropriate disciplinary action. "The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) The Department's disciplinary procedures are intended to protect the public from not only "conniving real estate [salespersons]" but also salespersons who are "uninformed, negligent, or unknowledgeable." (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518.)

17. Respondent's conduct reflects dishonesty, fraud, negligence, and incompetence, and she is therefore unworthy of acting as a fiduciary in connection with real estate transactions. (Factual Findings 4–28; Legal Conclusions 4–15.) Respondent has failed to cooperate with the Department. Her paperwork documenting the Ramsey property transaction was deficient. She failed to maintain communication with her clients. Her request for additional payments from M.O. to cover recording fees and signatures was of questionable merit. Respondent remains in possession of funds entrusted to her by E.S. and M.S. despite promising to refund their

deposits and the cancellation of the Ramsey property sale. She also may owe a percentage of the Ramsey property listing price to M.O. In addition, respondent failed to exercise due care as an escrow agent by commingling the buyers' funds with her personal funds. Respondent offered no evidence of mitigation or rehabilitation. Revocation of respondent's real estate broker license and licensing rights is therefore warranted to protect the public.

## **Costs**

18. The Department requests reimbursement of \$7,956.80 in investigation and enforcement costs. (Factual Finding 29.) These costs are proportional to the proven violations. Respondent therefore shall be ordered to pay \$7,956.80 as a condition precedent to reinstatement of her license.

19. Section 10148, subdivision (b), provides that the commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found in a final decision following a disciplinary hearing that the broker has violated section 10145 or a regulation or rule of the commissioner interpreting the section. Respondent has been found to have violated section 10145 and all applicable regulations. (Legal Conclusions 8–13.) Respondent therefore shall also be ordered to pay \$1,959.50 in audit costs as a condition precedent to reinstatement of her license.

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## ORDER

1. All licenses and licensing rights of respondent Faith Elizabeth Koby under the Real Estate Law are revoked.

2. As a condition precedent to any reinstatement of her license under the Real Estate Law, respondent Faith Elizabeth Koby shall pay the Department's investigation and enforcement costs of \$7,956.80 and audit costs of \$1,959.50 at such time and in such manner as the Department may direct.

DATE: 10/05/2021



CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings