

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

AUG 22 2023

DEPT. OF REAL ESTATE

By- [REDACTED]

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In the Matter of the Accusation of:)	DRE No. H-41910 LA
S.D.S. REALTY & PROPERTY)	OAH No. 2022030660
MANAGEMENT and EDDY XAVIER)	
SANDOVAL, individually and as designated)	
officer of S.D.S. Realty & Property)	
Management,)	
<u>Respondents.</u>)	

DECISION

The Proposed Decision dated June 19, 2023, 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.

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This Decision shall become effective at 12 o'clock noon on 9/11/2023.

IT IS SO ORDERED 8.11.23.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



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

In the Matter of the First Amended Accusation Against:

**S.D.S. REALTY & PROPERTY MANAGEMENT and EDDY
XAVIER SANDOVAL, Individually and as Designated Officer
of S.D.S. REALTY & PROPERTY MANAGEMENT, Respondents**

Agency Case No. H-41910 LA

OAH No. 2022030660

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 24, 2023.

Steven Chu, Staff Counsel, represented complainant Veronica Kilpatrick, Supervising Special Investigator, Department of Real Estate, State of California (department).

Eddy Xavier Sandoval represented himself and respondent S.D.S. Realty & Property Management (SDS).

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on May 24, 2023.

SUMMARY

Complainant seeks to discipline SDS's and Mr. Sandoval's licenses to practice real estate based on violations of the Real Estate Law (Bus. & Prof. Code, § 10000 et seq.) and related regulations arising out of the handling of client trust funds. Cause exists to discipline both licenses. However, Mr. Sandoval acknowledged responsibility, expressed remorse, and the violations were not willful or deliberate, but rather arose out of negligent handling of the client trust account. No clients were harmed and Mr. Sandoval learned from his mistake. A public reproof is appropriate for both SDS and Mr. Sandoval.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 21, 2015, the department issued a real estate salesperson license to Mr. Sandoval. Mr. Sandoval was associated with the same responsible broker for four years (Rene Cuauhtemoc). On February 20, 2019, the association was changed to a different responsible broker (Marco Vidal). Less than a month later, on March 19, 2019, respondent discontinued his affiliation with Mr. Vidal. On that same date, the

department issued to Mr. Sandoval Real Estate Broker License Number B/01980777. There is no history of discipline against Mr. Sandoval's salesperson or broker licenses.¹

2. On June 26, 2019, the department issued Corporate Real Estate Broker License Number C/02094558 to SDS. Mr. Sandoval was added to the corporate license as the designated officer. The corporate license has been in full force and effect at all times relevant to this matter. There is no history of discipline against the license.

3. On August 31, 2022, complainant, in her official capacity, signed the first amended accusation seeking to discipline SDS's corporate real estate broker license and Mr. Sandoval's broker license relating to Mr. Sandoval's maintenance and handling of funds in a client trust account held on behalf of SDS clients. As to SDS, the first amended accusation alleged SDS: allowed the balance to drop to an amount less than the aggregate trust fund liabilities; failed to maintain a complete and accurate general ledger of all client trust funds received and disbursed; failed to maintain a complete and accurate record of all client trust funds received and disbursed for each separate beneficiary; failed to designate the bank account holding SDS client funds as a client trust account and failed to name SDS as a trustee on the account; failed to perform monthly reconciliations of all separate records in the client trust account; and commingled its own money with client funds.

¹ This first amended accusation pertains solely to Mr. Sandoval's broker license and SDS's corporate broker license. The salesperson license is mentioned solely for purposes of background.

4. As to Mr. Sandoval, the first amended accusation alleged Mr. Sandoval failed to ensure compliance with Real Estate Law by SDS in its handling of client trust funds, resulting in the above-referenced violations by SDS.

5. SDS and Mr. Sandoval filed a timely notice of defense; this hearing followed.

Evidence Presented by Complainant

6. The following factual findings are based on the testimony of Mandeep Sidhu, a General Auditor II for the department, and documents received as evidence that included bank records and a detailed audit report.

7. Mr. Sidhu has been an auditor for the department since approximately 2016. He conducted an audit of SDS's client trust account for the period of June 1, 2019, through February 29, 2020. The audit was limited to SDS's property management activities. During the audit period, SDS managed 91 properties for 61 different owners. SDS screens and places tenants, collects and deposits rents, and makes disbursements. SDS collects a flat property management fee for each property, ranging from \$60 to \$99 per month, and a flat leasing fee ranging from \$500 to \$975.

8. During the audit period, SDS collected approximately \$732,645 in rents and security deposits. All funds collected from tenants were deposited into a checking account at Wells Fargo Bank (trust account). The account was not designated as a trust account naming SDS as the trustee, even though the funds being held were held on behalf of SDS's clients. Rather, the trust account named SDS as the owner of the account, and Mr. Sandoval (along with two other individuals identified as SDS's Chief Operating Officer and Chief Financial Officer) as signatories on the account.

9. Mr. Sidhu's audit revealed that, as of February 29, 2020, there was a shortage in the trust account of \$2,694.46. He reviewed the funds in the account attributable to each property owner to ascertain how much money was supposed to be in the trust account for each property owner. Three properties had negative account balances in the amounts of \$138.89, \$504.82, and \$2,031.65, for a total of \$2,675.36. Bank charges in the amount of \$19.10 were also incurred, contributing to the total negative balance. No records indicated any owner of the trust funds for the three properties gave written consent to SDS to reduce the balance of funds in the trust account to less than the existing aggregate trust fund liabilities. Monies contained in trust accounts are held in trust for each client, so having a negative balance in connection with any client property constitutes a violation of real estate law.

10. SDS did not maintain a separate general ledger of trust funds collected and disbursed for each client property, as required by real estate law. When Mr. Sidhu reconciled each separate client account, he located \$4,103.68 in funds that were identified as belonging to SDS and \$124.49 that he could not connect to any client. This constitutes a violation of real estate law.

11. A control record is a record of daily funds received and disbursed from the trust account. The bank records showed that there were disbursements made from the trust account that were not recorded in the control record. Also, given that there were no separate records for each client, SDS was culpable for not performing an accurate trust account reconciliation by comparing the balances of all separate records for each client to the control record.

12. SDS receives a commission for transactions as specified in each individual contract with clients. A broker is allowed to keep up to \$200 of broker funds in the account but all other funds that belong to the broker are required to be removed from

the trust account within 25 days of deposit. When Mr. Sidhu reconstructed all separate accounts for each client and SDS, he found that SDS received \$4,103.68 in commissions during the audit period but \$288.89 of those commissions were left in the trust account longer than 25 days. This constitutes commingling and is prohibited by real estate law.

13. Given all the above violations, Mr. Sidhu concluded that Mr. Sandoval, in his capacity as designated officer for SDS and the broker in charge, did not exercise proper supervision and control of the activities conducted on behalf of SDS.

14. Mr. Sidhu discussed the violations with Mr. Sandoval on May 29, 2020, telephonically and by e-mail. Following the audit, Mr. Sandoval deleted the other two signatories on SDS's trust account and left himself as the sole signatory. He also made some other changes to SDS that were not the subject of this matter. On June 1 and 2, 2020, Mr. Sandoval, on behalf of SDS, also cured the trust fund shortages by making deposits into the trust account in the amounts of \$2,675.36 (relating to the negative property balances) and \$19.10 (relating to the bank charges).

Mr. Sandoval's Testimony

15. Mr. Sandoval is 31 years old and has been in real estate for 11 years. He started as a salesperson and then became a broker in 2019. He is the president and Chief Executive Officer of SDS and has a few employees. Mr. Sandoval believed that the reason he was audited was because of an anonymous complaint made by his former boss, who is now a competitor. Mr. Sandoval believed his former boss was upset because when Mr. Sandoval left his employ, many clients came with him.

Mr. Sandoval said SDS would like to fix any mistakes that were made. He explained that he only had his broker license for a short time before the audit and did

not know all the different rules and regulations pertaining to client trust accounts. This process has been a "blessing in disguise" because it has helped him learn those rules. Mr. Sandoval knew the records were not accurate because of the software he was using. He said that he was unfamiliar with the software required for electronic recordkeeping so the inaccurate inputting of data likely resulted in the shortage.

Mr. Sandoval did not know he needed to maintain a separate ledger for each client. He did not commingle funds in the sense that he did not use any client funds for personal purposes, but he was not aware he needed to withdraw SDS funds within 25 days. Mr. Sandoval said he used to keep funds in the account longer than that because he liked to have the money there to pay clients when they asked; sometimes clients can be demanding and want money before checks cleared so that money allowed him to "front" them what was owed. He has never been on bad terms with any client.

Mr. Sandoval initially did not agree that he failed to supervise SDS in the maintenance of the client trust account, as alleged in the first amended accusation. However, after Mr. Sidhu explained that, as the CEO and responsible broker, Mr. Sandoval was responsible for ensuring compliance with laws, Mr. Sandoval appeared to understand the basis for the allegation.

After talking to Mr. Sidhu, Mr. Sandoval deposited the necessary funds to make up the shortage in the trust account. He has learned from his mistakes and is open to any classes or any remedial training the department might have.

Costs of Audit, Investigation, and Enforcement

16. Complainant submitted a "Certified Statement of Audit Costs" showing Mr. Sidhu and two supervising auditors spent 235.5 hours, at rates of \$59 per hour and

\$89 per hour, respectively, conducting and reviewing the audit, as well as minimal travel connected with the audit, resulting in total costs of \$13,736.50.

17. Complainant submitted a "Certified Statement of Investigation Costs" showing a special investigator and supervising special investigator spent five hours total for various tasks performed, at rates of \$79 per hour and \$97 per hour, respectively, for a total of \$410.30.

18. Complainant submitted a "Declaration of Enforcement Costs" showing that counsel spent 52.75 hours on various tasks in preparation for hearing and incurred costs of \$4,694.75 for those services, based on a pay rate of \$89 per hour.

19. The total costs of audit, investigation and enforcement are \$18,841.55. These costs are reasonable pursuant to Business and Professions Code sections 10106 and 10148.

LEGAL CONCLUSIONS

Applicable Law

1. A "real estate broker" is one who, on behalf of others, "leases or rents or offers to lease or rent, or places for rent, . . . or solicits for prospective tenants, . . . or collects rents from real property, or improvements thereon, . . . " in exchange for payment or the expectation of payment. (Bus. & Prof. Code, § 10131, subd. (b).)

2. A real estate broker "shall exercise reasonable supervision over the activities" of real estate salespersons in its employ. (Cal. Code Regs., tit. 10, § 2725.)

3. Business and Professions Code section 10145, provides:

(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.

(2) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of that broker, or in the case of a corporate broker, only upon the signature of an officer through whom the corporation is licensed pursuant to Section 10158 or 10211, or one, or more, of the following persons if specifically authorized in writing by the individual broker or officer:

(A) A real estate salesperson licensed to the broker.

(B) Another broker acting pursuant to a written agreement with the individual broker that conforms to the requirements of this part and any regulations promulgated pursuant to this part.

(C) An unlicensed employee of the individual broker, if the broker has fidelity bond or insurance coverage equal to at

least the maximum amount of the trust funds to which the unlicensed employee has access at any time. For purposes of this section, bonds or insurance providing coverage shall protect the broker from intentional wrongful acts committed by an employee of that business, including theft, dishonest acts, or forgery. Bonds and insurance providing coverage may be written with a deductible of up to 5 percent of the coverage amount. For bonds and insurance with a deductible, the employing broker shall have evidence of financial responsibility that is sufficient to protect members of the public against a loss subject to the deductible amount.

Evidence of financial responsibility shall include one or more of the following:

[11] . . . [11]

(b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate salesperson who accepts trust funds from others on behalf of the broker under whom he or she is

licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

[11] . . . [11]

(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 10159.2, subdivision (a), provides:

The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

5. Business and Professions Code section 10176 provides:

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:

[¶] . . . [¶]

(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

6. Business and Professions Code section 10177, provides:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock 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 the officer, director, or person is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of that licensee's 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.

7. California Code of Regulations, title 10, section 2725, states that a broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes the establishment of policies, rules, procedures, and systems to review, oversee, inspect and manage, among other things, the handling of client trust funds.

8. 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.

9. California Code of Regulations, title 10, section 2831.1, provides:

(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.

(2) Amount of deposit.

(3) Date of each related disbursement.

(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

10. California Code of Regulations, title 10, section 2831.2, provides:

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

11. California Code of Regulations, title 10, section 2832, provides:

(a) Compliance with Section 10145 of the Code requires that the broker place 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 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 not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

(b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds.

(c) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if

(1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and

(2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.

(d) In these circumstances if the offeror's check was held by the broker in accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and offeree expressly so provide in writing, not later than three business days following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.

(e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required shall place all 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 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 not later than the next business day following receipt of the funds by the broker or by the broker's salesperson.

12. California Code of Regulations, title 10, section 2832.1, provides:

The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

13. Business and Professions Code Section 495, provides:

Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licensee or certificate holder thereof, for any act that would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproof, public reproof and suspension, or public reproof and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or, in the case of a licensee or certificate holder under the jurisdiction of the State Department of Health Services, in accordance with Section 100171 of the Health and Safety Code.

Burden and Standard of Proof

14. Complainant has the burden of proving each ground for discipline alleged in the first amended accusation, and must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Department of Motor Vehicles* (1983) 33

Cal.3d 552, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"]; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212 [the standard of proof applicable to proceedings for the discipline of a real estate license is clear and convincing evidence to a reasonable certainty].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

Evaluation

CAUSE EXISTS TO IMPOSE DISCIPLINE

15. Clear and convincing evidence established that SDS violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.1. SDS permitted the balance of trust funds in the account to fall below the aggregate trust fund liabilities during the audit period. As of February 29, 2020, there was a shortage in the trust account of \$2,694.46 pertaining to three properties SDS managed for its clients.

16. Clear and convincing evidence established that SDS violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831. SDS did not maintain a complete and accurate control record or general ledger of all trust funds received and disbursed, as revealed by the audit.

17. Clear and convincing evidence established that SDS violated Business and Professions Code section 10145 and California Code of Regulations, title 10,

section 2831.1. SDS did not maintain a complete and accurate separate record of all trust funds received and disbursed for each beneficiary in connection with SDS's broker activities, as revealed by the audit.

18. Clear and convincing evidence established that SDS violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832. SDS maintained a bank account at Wells Fargo that it used to conduct broker activities and maintain client funds, but SDS did not designate the account as a client trust account, nor did SDS designate itself as trustee.

19. Clear and convincing evidence established that SDS violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.2. SDS did not perform and maintain a monthly reconciliation of all the separate records with the control record of all trust funds received and disbursed because SDS did not hold separate records for each client.

20. Clear and convincing evidence established that SDS violated Business and Professions Code sections 10145 and 10176, subdivision (e), as well as California Code of Regulations, title 10, section 2835. Mr. Sidhu reconstructed all separate accounts for each SDS client and the audit established that SDS received \$4,103.68 in commissions during the audit period, but \$288.89 of those commissions were left in the trust account longer than 25 days. This constitutes commingling of funds.

21. Clear and convincing evidence established that Mr. Sandoval violated Business and Professions Code sections 10159.2 and California Code of Regulations, title 10, section 2725. Although not intentional, Mr. Sandoval, as the owner and designated officer of SDS, failed to ensure SDS was in compliance with real estate law

with regard to how SDS maintained the client trust account and handled client funds, based on the established violations noted above.

22. Based on the above-referenced violations, SDS's license is subject to discipline pursuant to Business and Professions Code sections 10176, subdivision (e), and 10177, subdivision (g). SDS's handling of its client trust account was negligent, and SDS commingled its own funds with client funds, as evidenced by the violations found during the audit period. SDS's license is not subject to discipline pursuant to Business and Professions Code section 10177, subdivision (d), because the evidence did not establish the violations were willful.

23. Based on the above-referenced violations, Mr. Sandoval's license is subject to discipline pursuant to Business and Professions Code sections 10177, subdivisions (g), and (h). Mr. Sandoval was responsible for the actions of SDS given that he is the owner and responsible officer of SDS. In that capacity, by allowing SDS to negligently manage its client trust account and client funds, Mr. Sandoval did not exercise adequate control and supervision over SDS activities. However, given that Mr. Sandoval, admittedly, was not aware of certain requirements (like the necessity to maintain separate ledgers for each client) and did not intentionally engage in any of the violations, cause does not exist to impose discipline against his broker license pursuant to Business and Professions Code section 10177, subdivision (d).

A PUBLIC REPROVAL IS APPROPRIATE

24. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable, or incompetent practitioners. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Small v.*

Smith (1971) 16 Cal.App.3d 450, 457.) Mr. Sandoval, in his capacity as an officer for SDS, is not a dishonest, immoral, disreputable, or incompetent practitioner. Rather, he was negligent in his handling of the client trust account at issue in this matter. He admitted he was not aware of certain laws and regulations, and took steps following the audit to address the issues discovered by Mr. Sidhu. Neither Mr. Sandoval nor SDS has ever been subject to license discipline and no clients were harmed. Mr. Sandoval was sincere, contrite, and remorseful regarding what occurred. Under the circumstances of this case, a public reproof is appropriate.

Costs

25. Complainant requested costs pursuant to Business and Professions Code section 10106 and 10148 in the total amount of \$18,841.55, which encompasses costs of investigation, enforcement, and audit. The costs are reasonable.

26. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 10106. Those factors include: 1) the licensee's success in getting the charges dismissed or reduced; 2) the licensee's subjective good faith belief in the merits of his or her position; 3) whether the licensee raised a colorable challenge to the proposed discipline; 4) the licensee's financial ability to pay, and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman, supra*, at p. 45.)

27. Although the costs of \$18,841.55 were supported by the submitted certifications and were reasonable, respondents were successful in getting some of the allegations dismissed, had a subjective good faith belief in the merits of their position,

and raised a colorable challenge to the allegations. Therefore, a reduction in costs by half is appropriate. SDS and Mr. Sandoval shall be jointly and severally liable for paying complainant's costs in the total sum of \$9,420.78, and may do so pursuant to a payment plan, if requested.


ORDER

1. Broker License Number 01980777, issued to respondent Eddy Javier Sandoval, is hereby publicly reprovod. This decision shall serve as the public reproval.

2. Corporate Broker License Number 02094558, issued to respondent S.D.S. Realty & Property Management, is hereby publicly reprovod. This decision shall serve as the public reproval.

3. Respondents are jointly and severally liable for costs in the amount of \$9,420.78. These costs may be paid to the department pursuant to a payment plan approved by the department or its designee, if respondents so request.

DATE: June 19, 2023



KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

