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JUL 17 2023

DEPT. OF REAL ESTATE

By _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:

DAVID GENE HALE,

Respondent.

DRE No. H-42445 LA

OAH No. 2023020072

DECISION

The Proposed Decision dated June 14, 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 Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Page 5, first paragraph, "... he reduced the total funds in a banking account he set up for maintain trust moneys (B/A 1) to an amount at least \$7,329.45 less that the aggregate trust fund liability ..." shall be amended to "... he reduced the total funds in a bank account he set up for maintaining trust funds (B/A 1) to an amount at least \$7,329.45 less than the aggregate trust fund liability ..."

Page 5, paragraph (5)(iii), "Section 10145 also requires the broker to maintain accurate and complete separate record Regulation section 2831.1 provides specific instruction ..." shall be amended to "Section 10145 also requires the broker to maintain an accurate and complete separate record Regulation section 2831.1 provides specific instructions ..."

Page 6, paragraph below paragraph (5)(v), "... he allowed to unlicensed and unbonded persons to be authorized signatories ..." shall be amended to "... he allowed unlicensed and unbonded persons to be authorized signatories ..."

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Page 7, paragraph (5)(vii), "Section 10163 requires licenses to perform property management . . ." shall be amended to "Section 10163 requires licensees to perform property management . . ."

Page 8, paragraph (9)(iii), "Department auditors determined Respondent failed to maintain an accurate and complete separate record for each beneficiary or transaction for BA1 and did not provide separate record maintained for TA1" shall be amended to "Department auditors determined Respondent failed to maintain an accurate and complete separate record for each beneficiary or transaction for BA1 and did not provide separate records maintained for TA1."

Page 10, paragraph (9)(vii), ". . . particularly regarding making sure withdrawals from trust fund accounts without permission from the owners" shall be amended to ". . . particularly regarding making withdrawals from trust fund accounts without permission from the owners."

Page 14, paragraph 22, "Complaint introduced into evidence . . ." shall be amended to "Complainant introduced into evidence . . ."

Page 15, paragraph 5, ". . . and BA1 contained unidentified and or unaccounted for funds of \$2,419.58 as of February 26, 2022 . . ." shall be amended to ". . . and BA1 contained unidentified and or unaccounted for funds of \$2,419.58 as of February 28, 2022 . . ."

Page 15, paragraph 8, ". . . in violation of section 10159.5 and Regulation 2731.10 . . ." shall be amended to ". . . in violation of section 10159.5 and Regulation 2731 . . ."

Pages 16-17, paragraph 11, ". . . as long as the agency bringing the disciplinary charge to exercise discretion to reduce or eliminate cost awards in a manner that did not discourage licensees facing disciplinary charges from exercising their right to a hearing and the opportunity to present potentially defenses or mitigation or rehabilitation evidence" shall be amended to ". . . as long as the agency bringing the disciplinary charge exercises discretion to reduce or eliminate cost awards in a manner that will ensure that the legal authority permitting cost recovery does not deter licensees facing disciplinary charges from exercising their right to a hearing and the opportunity to present potentially meritorious defenses or mitigation or rehabilitation evidence."

Page 17, paragraph 12, "Nonetheless, revocation of Respondent's license likely impact his financial situation" shall be amended to "Nonetheless, revocation of Respondent's license will likely impact his financial situation."

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.


As determined in the Proposed Decision dated June 14, 2023, the Department has incurred reasonable investigation, enforcement, and audit costs totaling \$9,037.15. These costs are payable to the Department by Respondent upon reapplying for any license or before the filing of a petition for reinstatement pursuant to Government Code Section 11522.

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 Aug. 7, 2023.

IT IS SO ORDERED 7.12.23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation

Against:

DAVID GENE HALE,

Respondent.

Agency Case No. H-42445-LA

OAH No. 2023020072

PROPOSED DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter on May 17, 2023, by videoconference.

Department Counsel Laurence D. Haveson represented Complainant Veronica Kilpatrick (Complainant), acting in her official capacity as a Department Supervising Special Investigator, Department of Real Estate (Department). Respondent David Gene Hale (Respondent) represented himself and was present throughout the hearing.

Testimony and documentary evidence was presented at the hearing. The record closed, and the matter was submitted on the hearing day.

Protective Order

Complainant requested a protective order sealing Exhibits 5 through 31 (corresponding to pages A73 to A1483 in the record) because these records, constituting over 1400 pages of financial records and bank statements, contain sensitive private information including social security numbers, bank account numbers, and other personal information and the voluminousness of the records makes it impracticable to completely redact the information. Respondent did not oppose the request.

Complainant's request is granted. A protective order is issued concurrent with the issuance of this Proposed Decision placing the exhibits identified above under seal following their use in the preparation of the Proposed Decision. These exhibits shall remain under seal and shall not be opened, except by order of the Department, OAH, or a reviewing court. A reviewing court, parties to this matter, their attorneys, or a government agency decision maker or designee under Government Code section 11517 may review the documents subject to this order, provided that such documents are protected from release to the public.

SUMMARY

The Department seeks to discipline Respondent's broker license for multiple statutory and regulatory violations arising from his property management operations, including shortfalls in trust funds held in bank accounts he controlled. This disciplinary action is Respondent's second within the past four years. The prior disciplinary action arose from similar and, in some instances, the same violations as the current one.

Complainant established by clear and convincing evidence that the violations alleged to have been committed by Respondent occurred.

Respondent testified in a candid and forthright way, expressing remorse and accountability. He could not, however, demonstrate that he would not make the same mistakes in the future. Although Respondent offered to voluntarily avoid undertaking property management duties in the future, Complainant countered that the Department is not authorized or equipped to monitor such limitations on a licensee. Under these circumstances, Respondent's license must be revoked in order to protect public safety.

Complainant has also requested recoupment of expenses incurred for its audit, investigation, and enforcement action from Respondent. While the costs are reasonable, in the interests of equity, Respondent will only be liable to pay them if and when his license is reinstated.

FACTUAL FINDINGS

Jurisdictional Issues

1. From March 15, 1976 to March 13, 1977, Respondent was a licensed real estate salesperson. On March 14, 1977, the Department issued to him a real estate broker license, DRE License Number ID 00551090.

2. On November 26, 2020, Respondent's real estate broker license was revoked and he was granted a restricted real estate broker's license after the Department brought disciplinary charges against him and an administrative hearing was held.

3. On November 15, 2022, Complainant signed an Accusation alleging additional charges against Respondent. Respondent timely filed a notice of defense and this hearing ensued.

First Disciplinary Case

4. The disciplinary charges resulting in Respondent incurring a restricted license stemmed from his actions while operating a property management company. In that capacity, Respondent solicited prospective tenants, prepared, and executed leasing agreements, and collected rents. Respondent also collected and distributed funds maintained in a trust fund. The trust fund bank account, referred to as "B/A 1" in the records of the first administrative action, was at the Bank of Hemet under the name, Hemet San Jacinto Valley Property Managers. 'Hemet San Jacinto Valley Property Managers' is a fictitious name that the Department has not licensed.

5. An administrative hearing was held before an OAH ALJ after which the ALJ found Respondent in violation of several statutory and regulatory requirements as follows:

(i) Business and Professions Code section (section) 10145, subdivision (a)(1) provides when brokers deposit funds into trust accounts, the funds shall remain there "until disbursed by the broker in accordance with instructions from the person entitled to the funds." California Code of Regulations, title 10, Regulation (Regulation) section 2832.1 provides "[t]he 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 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 fund."

Respondent violated section 10145 in conjunction with Regulation section 2832.1 because he reduced the total funds in a banking account he set up for maintain trust moneys (B/A 1) to an amount at least \$7,329.45 less that the aggregate trust fund liability without the owners' prior written permission.

(ii) In maintaining trust funds pursuant to section 10145, Regulation section 2831 requires the broker to maintain a record of all trust funds in a chronological sequence in columnar form and including certain enumerated information set out in the regulation and including the date the funds were received, the amount, from whom the funds were received, where the funds were received, any check number, and the daily balance of the account.

Respondent violated section 10145 in conjunction with Regulation section 2831 because he failed to maintain accurate and complete control records, a columnar record in chronological order of all trusts funds received, deposited into and disbursed from B/A 1.

(iii) Section 10145 also requires the broker to maintain accurate and complete separate record for each beneficiary or transaction. Regulation section 2831.1 provides specific instruction for maintaining the separate record, including listing specific information such as date and amounts of deposits, any check numbers, any accrued interest, and a running balance for each account.

Respondent violated section 10145 in conjunction with Regulation section 2831.1 because he failed to maintain accurate and separate records for each of the trust's beneficiaries or failed to maintain such records for each transaction.

(iv) Section 10145 requires trust fund accounts to be designated in the licensee's name as trustee. Regulation section 2832, subdivision (a) provides that compliance with

section 10145 "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."

Respondent violated section 10145 in conjunction with Regulation section 2832 because he designated B/A 1 in the name of Hemet San Jacinto Property Managers rather than in his own name.

(v) Section 10145 prohibits unlicensed and unbonded persons to be authorized signatories for, or make withdrawals from, a trust fund. Regulation section 2834 enumerates persons authorized to make withdrawals from a broker's trust fund and include the broker, a salesperson licensed to the broker, another broker who has entered into a contract with the broker holding the trust fund, or the broker's unlicensed employee as long as the employee has fidelity bond coverage at least equal to the maximum amount of trust funds to which the employee has access.

Respondent violated section 10145 in conjunction with Regulation section 2834 because he allowed to unlicensed and unbonded persons to be authorized signatories for, and make withdrawals from, B/A 1.

(vi) Section 10159.5 in conjunction with Regulation section 2731 requires licensees to only use fictitious names issued by the Department when using the fictitious name in the course of licensed activity.

Respondent violated section 10159.5 in conjunction with Regulation section 2731 because he used the DBA 'Hemet San Jacinto Valley Property Managers,' which was not licensed by the Department.

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(vii) Section 10163 requires licenses to perform property management from a location registered with the Department. Respondent violated section 10163 because he performed property management activities from 2290 East Florida Street in Hemet, California without registering this address with the Department.

(viii) Code sections 10159.2 and 10177, subdivision (h) require licensees to exercise reasonable control and supervision over the real estate activities of their licensed employees. Regulation section 2725 provides that such reasonable control and supervision includes establishing policies, rules, and procedures to ensure these employees comply with the applicable law.

Respondent violated these statutes and regulation because he did not properly supervise the employees in his property management business.

6. Effective November 26, 2020, the Department adopted the ALJ's proposed decision. In adopting the proposed decision, the Department adopted the findings of the ALJ that Respondent violated the Real Estate Law as set out in Factual Finding 5 (i) –(viii) above.

Department Follow-Up Audit

7. On June 27, 2022, the Department completed a follow-up audit of Respondent's property management business. The purpose of the audit was to determine whether Respondent had corrected the business practices resulting in the charges and findings of the first disciplinary case. It covered the time period November 26, 2020 to February 28, 2022 and was limited to reviewing Respondent's property management activities (audit period).

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8. Respondent maintained two multiple-beneficiary bank accounts during the audit period: TA1, which was for handling security deposits collected from tenants and was held at the Bank of Hemet under the account name, H-SJVPM Inc. Trust Account; and BA1, which was for handling rent receipts and disbursements and was also held at the Bank of Hemet under the account name, H-SJVPM Inc. Department auditors reviewed the two accounts' records to determine whether Respondent had complied with statutory and regulatory requirements.

9. During the follow-up audit, Department auditors found the following issues.

(i) TA1's balance reflected a shortage of \$5,596.67 and BA1's balance reflected a shortage of \$5,186.97 and \$2,419.58 in unidentified or unaccounted for funds. Respondent could not produce evidence that the account owners had given their permission to reduce the fund balances by the shortfall amounts. (Exh. 5., pp. A73-75, Exh. 15.) Based on these finding, which Respondent does not dispute, he violated section 10145 and Regulation 2831.1. These violations are the same type as had been established in the first disciplinary action as set out in Factual Finding 5 (i).

(ii) Records for TA1 and BA1 did not reflect correct dates of receipt of funds and did not reflect an accurate running balance. (Exh 5., pp. A75-76) Based on these findings, which Respondent did not dispute, Respondent violated section 10145, subdivision (a) and Regulation section 2831.

(iii) Department auditors determined Respondent failed to maintain an accurate and complete separate record for each beneficiary or transaction for BA1 and did not provide separate record maintained for TA1. (Exh. 5, p. A77, Exh. 19.) BA1 contained unidentified or unaccounted for funds of at least \$2,419.58 as of February 28, 2022, in

violation of section 10145 and Regulation section 2831. (Exh. 20.) Respondent does not dispute these audit findings.

(iv) Department auditors determined Respondent did not maintain accurate monthly reconciliations where the balance of each beneficiary's separate record or each transaction is compared with the balance of all trust funds received and disbursed, known as the control records. (Exh. 5, p. A77.) Based on these findings, which Respondent does not dispute, he violated section 10145 and Regulation section 2831.2. These violations are the same type established in the first disciplinary action as set out in Factual Finding 5 (iii).

(v) Department auditors examined BA1's bank signature card dated March 1, 2020 and determined BA1 was not designated in either Respondent's name or in any licensed fictitious business name he holds. (Exh. 5, p. A77, Exh. 8.) Respondent's failure to designate BA1 in his name or any licensed fictitious business name he holds, which he does not dispute, is a violation of Section 10145 and Regulation section 2832. This violation is the same type established in the first disciplinary action as set out in Factual Finding 5(iv).

(vi) Department auditors found Respondent used the unlicensed fictitious business names H-SJVPM Inc, Hemet-San Jacinto Valley Property Managers and Hemet San Jacinto Valley Property Managers to conduct property management activities. (Exh. 5, p. A77.) This finding, which Respondent does not dispute, is a violation of section 10159.5 and Regulation 2731. This violation is of the same type established in the first disciplinary action as set out in Factual Finding (vi).

(vii) Department auditors found Respondent did not exercise adequate supervision and control over the real estate activities conducted by his employees by

establishing policies, rules, procedures, and systems to review, oversee, inspect, and manage transactions requiring a real estate license in violation of Regulation section 2725. Respondent denied this finding, maintaining that he trained and specifically instructed his employees to abide by the applicable laws and rules, particularly regarding making sure withdrawals from trust fund accounts without permission from the owners. Complainant's evidence to the contrary is limited to the auditor's observations that the number of other violations are not consistent with an operation staffed with well supervised employees. (See Exh. 5, p. A77.)

Respondent's Testimony

10. Respondent testified at the hearing. As noted in Factual Findings 9 (i) through (vii), except for the seventh finding regarding supervising his employees, Respondent did not deny the Department's follow-up audit findings. However, Respondent maintained there were and remain exigent circumstances which conspired to prevent him from correcting his business practices and avoiding the violations. Respondent described these circumstances as follows:

11. Though Respondent has long been working in the real estate industry, he never managed property until shortly before the first audit leading to the initial disciplinary action. Respondent took over a property management business as a favor to a family friend and immediately had difficulties as he was not familiar with the requirements and also experienced "miscommunications" with the business owner.

12. Respondent further maintained he suffered health problems necessitating lengthy hospital stays during much of the relevant time period and his absences overlapped with long-term employees with the property management company leaving abruptly before he could learn from them. Respondent attempted to

ameliorate the situation by hiring his own accountant to work on the property management system. She told him, however, without certain records and information, she could not help him and he was unable to obtain what she needed.

13. Respondent believes his problems were exacerbated by the use of the software he chose to use, Rent Manager, which could not produce certain reports, particularly the 'separate record' reports allowing for tracking the individual deposits and expenses of each of the beneficiaries.

14. Respondent testified in a candid and open way about his shortcomings though he stressed he did all he could to properly instruct and supervise his employees, particularly with respect to ensuring payments for or from a tenant were credited to the proper beneficiary and trust funds were not removed without an owner's permission.

15. When Respondent was asked whether he could provide some assurance to the Department he would not continue to make the same mistakes which led to the two disciplinary matters brought against him, Respondent stated he recognizes he may not be able to master the requirements of property management accounting but, within his "wheelhouse" of transacting real estate purchases, he has practiced for over 47 years without incurring any disciplinary action. On the contrary, according to Respondent, he enjoys an exceptional reputation for honesty, integrity, and skill. He also stated he has the highest respect for the Department, its mandate, and the real estate industry. To that end, he is active in trade organizations and is a leader in his local real estate professionals' community.

16. Respondent introduced several letters of support corroborating his representations: Terry Ryan, a fellow realtor described him as "honest in his dealings,

levelheaded in decision making, loyal to his family and his profession, and a strong friend and support person for anyone who needed either." (Exh. A.) Mr. Ryan's letter does not reflect knowledge of the matters raised by the disciplinary actions the Department has brought against Respondent. Another broker, Randy Thompson, wrote "[Respondent] is an invaluable asset to any organization, and I am confident that he will continue to make significant contributions to the real estate industry. While I am not aware of the specific details of the investigation you mentioned, I have worked closely with [Respondent] and can attest to his professionalism and dedication." (Exh. C.)

17. Respondent further maintained that, because he recognizes his deficiencies as a property manager, he has already taken steps to shut down the property management business he had been operating and stop working in that part of the profession altogether. According to Respondent, half the properties, numbering approximately one hundred, have been transferred for management by another property management office, 21st Century Property Managers. The other half have been returned to their owners to be self-managed. Respondent introduced a letter from 21st Century Property Managers Managing Partner and Broker Officer of Century City Troy Dodgion corroborating that this office is now managing many of the properties previously serviced by Respondent. Mr. Dodgion also noted Respondent has been particularly helpful and diligent in assisting the Century 21 office taking over the work. (See Exh. D.)

18. Respondent maintained he kept the business open as long as he did because he needed to make arrangements for the many clients utilizing it and for the tenants who needed a place to send their rent payments and retrieve their deposits when they moved. Respondent continues to keep the accounts open even though

there no longer are clients to service because he wants to assure any errant payments sent there by mistake can be retrieved.

Parties' Arguments

19. Respondent argued that, in light of his long and, outside of the issues arising from his foray into property management, unblemished career, he should be allowed to continue to practice real estate with the express restriction that he no longer engage in property management. Indeed, Respondent is prepared to enter into an agreement with the Department forbidding him to engage in any property management-related properties. He also noted he shut down the property management business rather than risk further violations and potential harm to its clients or their tenants.

20. Complainant's counsel argued the Department does not have the authority or enforcement resources to limit a licensee's rights in the way Respondent has offered. Moreover, he pointed out the deficiencies raised by the Department audits and disciplinary cases involve responsibilities relevant to many real estate transactions beyond property management, particularly the use of trust accounts and the process of maintaining and accounting for trust funds.

Costs

21. Code section 10106 provides that in any order issued in resolution of a Department disciplinary proceeding, the Department may request recoupment of its investigation and enforcement costs. Under Code section 10148, subdivision (b), the Department shall charge a real estate broker the cost of an audit in disciplinary actions establishing any violation of Code section 10145, as does this case.

22. Complaint introduced into evidence certifications of investigation and enforcement costs of \$404.15 and \$1872, respectively and audit costs of \$6,761, a total of \$9,037.15.

23. These costs are deemed reasonable for the complexity and scope of the matter.

LEGAL CONCLUSIONS

General Provisions

1. The Real Estate Commissioner "has full power to regulate and control the issuance and regulation of all [Department-issued] licenses." (§ 10071.) "Protection of the public shall be the highest priority for the [Department] 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.)

2. As the party initiating the charges, Complainant bears the burden of proof. (Evid. Code, § 500.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

Causes for Discipline

3. Clear and convincing evidence established Respondent violated section 10145 in conjunction with Regulation section 2831.1 by causing shortages and negative balances in the bank accounts he used for property management operations without owners' permission as set out in Factual Findings 9 (i).

4. Clear and convincing evidence established Respondent did not maintain complete and accurate records of all trust funds received and disbursed in bank accounts TA1 and BA1 in violation of section 10145, subdivision (a) and Regulation section 2831 as set out in Factual Finding 9 (ii). Specifically, the records did not reflect correct dates of receipt or a running daily balance.

5. Clear and convincing evidence established Respondent failed to maintain separate record for each beneficiary or transaction for TA1 or BA1 and BA1 contained unidentified and or unaccounted for funds of \$2,419.58 as of February 26, 2022 in violation of section 10145 in conjunction with Regulation section 2831.1 as set out in Factual Finding 9 (iii).

6. Clear and convincing evidence established Respondent did not maintain accurate monthly reconciliations of each beneficiary's separate record or each transaction compared with the balance of all trust funds received and disbursed, in violation of section 10145 and Regulation section 2831.2 as set out in Factual Finding 9 (iv).

7. Clear and convincing evidence established BA1 was not designated in either Respondent's name or in any licensed fictitious business name he holds in violation of Section 10145 and Regulation section 2832 as set out in Factual Finding 9 (v).

8. Clear and convincing evidence established Respondent used the unlicensed fictitious business names H-SJVPM Inc, Hemet-San Jacinto Valley Property Managers and Hemet San Jacinto Valley Property Managers to conduct property management activities in violation of section 10159.5 and Regulation 2731.10 as set out in Factual Finding 9 (vi).

9. Complainant presented insufficient evidence to establish Respondent failed to adequately supervise his employees in violation of Regulation 2725. Complainant essentially inferred this conclusion based on the number and variety of other violations established through the Department audit. Respondent, however, denies this and nothing in the record affirmatively establishes that what violations occurred were the result of Respondent's own actions or omissions.

Disposition

10. Respondent was an exceptionally credible witness and his representations about his reputation in, and dedication to, the real estate industry are credited. Nonetheless, the number of mistakes he made, the fact that many of them are an exact repeat of ones for which he was already subject to disciplinary and corrective action, as well as the ubiquitous use of trust accounts within the real estate industry make it impossible to overlook these continuing deficiencies. In being granted a restricted license after the first disciplinary action, Respondent has already been afforded the opportunity to learn from his mistakes and establish to the Department that he can competently meet its requirements. As that intermediate step has failed to achieve the desired results, there is no other option than to revoke his license at this time.

Cost Reimbursement

11. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court held that a regulation similar to the legal authority permitting cost recovery in the instant case did not violate due process as long as the agency bringing the disciplinary charge to exercise discretion to reduce or eliminate cost awards in a manner that did not discourage licensees facing disciplinary charges

from exercising their right to a hearing and the opportunity to present potentially defenses or mitigation or rehabilitation evidence. To that end, the *Zuckerman* court set out five factors to consider in deciding whether to reduce or eliminate costs: whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a "subjective" good faith belief in the merits of his or her position; whether the licensee raised a "colorable challenge" to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct.

12. Applying the *Zuckerman* factors here, Respondent has used the hearing process to obtain dismissal of one of the charges, it is not possible to discern Respondent's subjective mindset though nothing in his testimony indicated insincerity, he did not present any colorable challenges to the proposed discipline, and he did not present any evidence regarding his financial situation. Additionally, the costs requested by Complainant are deemed reasonable. Nonetheless, revocation of Respondent's license likely impact his financial situation. Section 10148, subdivision (b) mandates recoupment of audit costs from real estate brokers, which Respondent will no longer be once his license is revoked. Under these circumstances, consideration of the equities requires that the costs be due only if and when Respondent's broker's license is reinstated or the Department issues him a new license.

ORDER

1. All licenses and licensing rights issued by the Department and held by Respondent David Gene Hale are revoked.

2. Respondent shall pay the Department costs of \$9,037.15 pursuant to a payment plan approved by the Department should Respondent successfully apply for reinstatement of his license or for a new license.

DATE: 06/14/2023

Deena R. Ghaly
Deena R. Ghaly (Jun 14, 2023 10:08 PDT)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings