

FILED

MAY 23 2025

DEPT. OF REAL ESTATE

By -

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

DECISION AFTER REJECTION

20 This matter came on for hearing before Administrative Law Judge Nana Chin
21 (“ALJ Chin”) of the Office of Administrative Hearings, Los Angeles via teleconference, on
22 September 25 and 26, 2024. Steve Chu, Counsel, represented the Complainant, Jason Parson,
23 Supervising Special Investigator (“Complainant”) for the California Department of Real Estate
24 (“Department”). Respondent Kevin Isamy Hirai (“Hirai”) appeared by telephone and was
25 represented himself and Bella Vista Property Management Incorporated (collectively

1 "Respondents"). Testimony and documents were admitted into evidence and the matter was
2 submitted for decision on September 26, 2023.

3 On or about October 28, 2024, ALJ Chin issued a Proposed Decision.

4 On or about December 17, 2024, Respondents were served with notice of my
5 determination not to adopt the Proposed Decision of ALJ Chin along with a copy of said
6 Proposed Decision pursuant to California Government Code section 11517(c). Respondents
7 were notified that the case would be decided by me upon the record, the transcript of
8 proceedings held on September 25 and 26, 2024, and upon any written arguments offered by
9 Respondents and Complainant.

10 On or about April 10, 2025, Complainant filed Complainant's argument after
11 rejection, and served a copy on Respondents. Respondents did not file a written argument.

12 I have given careful consideration to the record in this case, including, but not
13 limited to, the transcript of the proceedings of September 25 and 26, 2024 and the exhibits
14 admitted at hearing. I have also considered the written arguments submitted by Complainant.

15 The following shall constitute the Decision of the Real Estate Commissioner in
16 this proceeding.

17

18

FACTUAL FINDINGS

19

The Proposed Decision's Factual Findings are hereby adopted.

20

21

LEGAL CONCLUSIONS

22

The Proposed Decision's Legal Conclusions are hereby adopted.

23 ///

24 ///

25 ///

26 ///

27

ORDER

2 All licenses and licensing rights of Respondents Bella Vista Property
3 Management Incorporated and Kevin Isamu Hirai under the Real Estate Law are revoked;
4 provided, however, restricted real estate broker licenses (a restricted corporate real estate broker
5 license for Bella Vista Property Management Incorporated and restricted individual real estate
6 broker license for Kevin Isamu Hirai) shall be issued to Respondents pursuant to Section
7 10156.5 of the Business and Professions Code if Respondents make application therefor and pay
8 to the Department of Real Estate the appropriate fee for the restricted licenses within ninety (90)
9 days from the effective date of this Decision. The restricted licenses issued to Respondents shall
10 be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and
11 to the following limitations, conditions and restrictions imposed under authority of Section
12 10156.6 of that Code:

1 the Respondent Kevin Isamu Hirai presents such evidence. The Commissioner shall afford
2 Respondent Kevin Isamu Hirai the opportunity for a hearing pursuant to the Administrative
3 Procedure Act to present such evidence.

4 Pursuant to California Business and Professions Code section 10106, Respondents
5 shall jointly and severally pay toward the Commissioner's costs of investigation and enforcement
6 in the amount of \$2,820.00 within ninety (90) days from the effective date of this Decision.
7 Ninety (90) days after the effective date of this Decision, all licenses and licensing rights of
8 Respondents shall be indefinitely suspended unless and until Respondents pays the sum of
9 \$2,820.00 toward the Commissioner's reasonable cost for investigation and enforcement. Said
10 payment shall be in the form of a cashier's check made payable to the Department of Real Estate,
11 and delivered to the Department of Real Estate, Flag Section at 651 Bannon St., Ste. 504,
12 Sacramento, CA 95811 no later than ninety (90) days after the effective date of this Decision.

13 Pursuant to California Business and Professions Code section 10148, Respondents
14 shall pay the Commissioner's reasonable cost for: (a) the audit which led to this disciplinary
15 action in the amount of \$8,035.00 and (b) a subsequent audit to determine if Respondents have
16 corrected the trust fund violation(s) found in the Legal Conclusions in an amount no greater than
17 \$10,043.75. In calculating the amount of the Commissioner's reasonable cost, the Commissioner
18 may use the estimated average hourly salary for all persons performing audits of real estate
19 brokers, and shall include an allocation for travel time to and from the auditor's place of work.
20 Respondents shall pay such cost within sixty (60) days of receiving an invoice from the
21 Commissioner detailing the activities performed during the audit and the amount of time spent
22 performing those activities. The Commissioner may suspend the restricted licenses issued to
23 Respondents pending a hearing held in accordance with Section 11500, et seq., of the
24 Government Code, if payment is not timely made as provided for herein, or as provided for in a
25 subsequent agreement between the Respondents and the Commissioner. The suspension shall
26 remain in effect until payment is made in full or until Respondents enter into an agreement

1 satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise
2 is adopted following a hearing held pursuant to this condition.

3 Pursuant to California Business and Professions Code section 10148, Respondents
4 shall jointly and severally pay the Commissioner's audit costs in the amount of \$8,035.00 and a
5 subsequent audit in an amount no greater than \$10,043.75 to determine if Respondents have
6 corrected the trust fund violations found in this Decision adopting the Proposed Decision. In
7 calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
8 estimated average hourly salary for all persons performing audits of real estate brokers and shall
9 include an allocation for travel time to and from the auditor's place of work. Respondents shall
10 pay the cost of the original audit and subsequent audit within sixty (60) days of the mailing of the
11 respective invoice detailing the activities performed during the audit and the amount of time
12 spent performing those activities. Respondents' real estate licenses shall automatically be
13 suspended until payment is made in full, or until a decision providing otherwise is adopted
14 following a hearing held pursuant to this condition.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27

Respondent Kevin Isamu Hirai shall, prior to and as a condition of the issuance of a restricted license to Kevin Isamu Hirai, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that Respondent Kevin Isamu Hirai has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

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

JUN 12 2025

IT IS SO ORDERED

5/19/2025

CHIKA SUNQUIST
REAL ESTATE COMMISSIONER

10 of 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
FILED

DEC 17 2024

DEPT. OF REAL ESTATE

By [REDACTED]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
BELLA VISTA PROPERTY MANAGEMENT) DRE No. H-42778 LA
INCORPORATED, and KEVIN ISANU HIRAI,)
Individually and as designated officer of) OAH No. 2024040001
Bella Vista Property Management Incorporated,

Respondents.

NOTICE

TO: BELLA VISTA PROPERTY MANAGEMENT INCORPORATED, Respondent, and , his
Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated
October 28, 2024, of the Administrative Law Judge is not adopted as the Decision of the Real
Estate Commissioner. A copy of the Proposed Decision dated October 28, 2024, is attached hereto
for your information.

In accordance with Section 11517(c) of the Government Code of the State of
California, the disposition of this case will be determined by me after consideration of the record
herein, which may include the transcript of the proceedings held on Thursday, September 26, 2024,
and any written argument hereafter submitted on behalf of respondent and complainant.

///

1 Written argument of respondent to be considered by me must be submitted within 15
2 days after receipt of the transcript of the proceedings of Thursday, September 26, 2024, at the Los
3 Angeles office of the Department of Real Estate unless an extension of the time is granted for good
4 cause shown.

5 Written argument of complainant to be considered by me must be submitted within
6 15 days after receipt of the argument of respondent at the Los Angeles Office of the Department of
7 Real Estate unless an extension of the time is granted for good cause shown.

8
9
10 DATED: 12/10/2024.

11 CHIKA SUNQUIST
12 REAL ESTATE COMMISSIONER
13
14

15 By: Marcus L. McCarther
16 Chief Deputy Real Estate Commissioner
17
18
19
20
21
22
23
24
25
26
27

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

In the Matter of the Accusation of:

BELLA VISTA PROPERTY MANAGEMENT INCORPORATED

and

**KEVIN ISAMU HIRAI, individually and as designated officer
of Bella Vista Property Management Incorporated,
Respondents.**

Agency Case No. H-42778 LA

OAH No. 2024040001

PROPOSED DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 25 and 26, 2024.

Jason Parson, Supervising Special Investigator, (Complainant) was represented by Steven Chu, Counsel for the Department of Real Estate (Department).

Kevin Isamu Hirai (Respondent Hirai) appeared by telephone and represented himself and Bella Vista Property Management Incorporated (collectively, Respondents).

Testimony and documents were admitted into evidence and the matter was submitted for decision on September 26, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 24, 2011, Bella Vista Property Management Incorporated (Bella Vista) was licensed by the Department as a corporate real estate broker. Kenneth E. Hirai was Bella Vista's designated officer at the time of its inception. On October 25, 2021, Respondent Hirai, Mr. Hirai's son, who is currently both Bella Vista's president and sole shareholder, became Bella Vista's new designated officer.

2. On March 5, 2009, the Department issued Respondent Hirai a broker license. The license expired on March 11, 2024, and has not been renewed. (The Department retains jurisdiction over the expired license pursuant to Business and Professions Code section 10103.)

3. On December 14, 2023, Complainant filed an Accusation in his official capacity seeking to discipline Respondents' licenses. As cause to discipline Bella Vista's license, the Accusation alleges Bella Vista violated the Real Estate Law (§ 10000 et seq.) and related regulations in the management of client trust funds and failed to have a designated officer from March 4, 2020, until October 24, 2021. As cause to discipline Respondent Hirai's license, the Accusation alleges that Respondent Hirai failed to ensure Bella Vista's compliance with Real Estate Law.

4. Respondents timely filed a Notice of Defense. All jurisdictional requirements are met.

Bella Vista

5. At all times relevant to the charges in the Accusation, Bella Vista engaged in property management activities, collecting rent and security deposits, and providing for repairs and maintenance of rental properties, for which Bella Vista charged a property management fee ranging from five to six percent of the monthly collected rents.

Operation without a Designated Officer

6. On a date not established by the record, the Department received a consumer complaint that Bella Vista had renewed its property management contract with Centinela Ocean View Homeowners Association, a property in Los Angeles, on August 1, 2021, without having a designated officer.

7. Mandeep Sidhu, an auditor employed by the Department, was assigned to conduct an audit of Bella Vista. Before the audit, Mr. Sidhu sent Respondent Hirai an email asking him for information about Bella Vista, including information about Bella Vista's designated officer.

8. Respondent Hirai responded on September 29, 2022, stating, "The Broker of record for Bella Vista, Kenneth Hirai[,] passed away at the beginning of the COVID-19 pandemic in March of 2020 at which point we started to look for a replacement. Because of the challenging environment at the beginning of the pandemic, Bella Vista was not able to locate a replacement and since I am a broker that [sic] was acting as

the responsible broker in the interim, I decided to register as the Broker the Record for Bella Vista later in 2021." (Exh. 4, p. A133.)

9. During the hearing, Respondent Hirai admitted that, after his father passed away on March 3, 2020, Bella Vista continued to engage in property management activities through its office manager. Respondent Hirai acknowledged that, during this period, Bella Vista's was not properly managed, resulting in the loss of many of its accounts.

10. Respondent Hirai explained that finding a good broker who is willing to take on the liability associated with being a designated officer is always difficult. It was particularly difficult for Respondent Hirai to find a designated officer for Bella Vista because his father passed away during the COVID pandemic and Respondent Hirai could not have in person meetings with prospective brokers. Respondent Hirai ultimately decided to assume the role of designated officer because Bella Vista had been his father's company.

11. From March 4, 2020, until October 24, 2021, Bella Vista continued to perform acts which require a real estate license without a designated officer in violation of California Code of Regulations, title 10, section 2740. (Further regulatory references are to title 10 of the California Code of Regulations.) In addition, Bella Vista did not file an application for a new designated officer with the Department before midnight of the 10th business day of Mr. Hirai's passing in violation of Business and Professions Code section 10158.

12. Respondent Hirai had not used his broker license for several years and has not renewed the license due, in part, to the pending Accusation. (As an officer of Bella Vista, a corporate licensee, Respondent may act as a real estate broker on Bella

Vista's behalf without a separate license. (Bus. & Prof. Code, § 10211; see also Bus. & Prof. Code, § 10159 [the designated officer on a corporate real estate broker license "need not be a licensed real estate broker"].) According to Respondent Hirai, if Bella Vista is allowed to retain its license, Respondent Hirai will continue to act as Bella Vista's designated officer.

Audit

13. An audit of Bella Vista was conducted from October 18, 2022 until February 22, 2023 for the period between March 3, 2020 to January 31, 2023 (Audit Period). After reviewing and sampling Bella Vista's property management files, bank statements, cancelled checks, deposit slips, receipts, invoices, control records, separate records, reconciliation of records and property management agreements, Mr. Sidhu found the deficiencies that are set forth in below.

TRUST FUND ACCOUNTS

14. During the Audit Period, Bella Vista managed approximately 26 properties with 82 units for 25 property owners. The trust funds Bella Vista received were maintained in 15 different bank accounts at Pacific Western Bank.

15. The first Trust Account was designated the "Bella Vista Property Management Incorporated, Master Trust Account" (Master Trust Account) and held trust funds for multiple property owners. (Exh. 4, p. A189.) The other accounts were specifically designated for one client.

16. One of those accounts included an account that was not designated as a trust account and was in the name of "82nd St Development Psh 2 Lp" (Bank Account) instead of Bella Vista's name as required by Regulation 2832. (Exh. 4, p. A511.)

17. The Bank Account had two signers, Respondent Hirai and John Maceri. (Exh. 4, p. A511.) Though Mr. Maceri is not a Department licensee, Bella Vista did not have a fidelity bond or insurance coverage for the amount of trust funds to which Mr. Maceri had access to in violation of Regulation 2834.

18. According to Respondent Hirai, this is the only account where Respondent Hirai permitted a non-licensee to be added as a signer. Bella Vista was the interim property manager for the People Concern, a non-profit agency that addresses issues of homelessness, when it did not have its infrastructure in place. The People Concern asked Bella Vista to add Mr. Maceri, the chief executive officer of the agency, as a signer to the Bank Account so that they could record their transactions and make payments using Bella Vista's software. Respondent Hirai had not known of the bond or insurance coverage requirement, added Mr. Maceri as a signor on the Bank Account. Since the audit, the People Concern has taken over their own property management.

TRUST FUND SHORTAGE

19. As of January 31, 2023, there was a shortage in the Master Trust Account (or Trust Account 1) in the amount of \$12,249.49 caused by negative property balances in three properties: (1) 4311 West 190th Street (190th Street Property) of \$1,556.9; (2) 120 South Palm Drive (Palm Drive Property) of \$7,492.56; and (3) 12401 Woodley Avenue (Woodley Property) of \$3,199.99. There was no evidence that the owners of the trust funds had given Bella Vista their written consent to reduce the balance of the funds in the trust account to a negative balance in violation of Regulation 28321.

///

///

20. According to Respondent Hirai, the shortages in the trust fund balances for the three properties involved similar accounting errors caused by a change in the accounting software used by Bella Vista.

A. R.Y. is the property owner of 190th Street Property. (Initials are used to protect the privacy of the property owners.) R.Y. also owns a property located on 19936 Mildred Avenue (Mildred Avenue Property) under Y.M. LLC. The trust funds for both properties are held in Master Trust Account. The 190th Street Property had a negative balance at the beginning of the Audit Period, while the Mildred Avenue Property had a positive balance. Additional payments were made on the account to pay for 190th Street Property's fees and make repairs on the property, causing the deficit to grow. Respondent Hirai explained that when there is the same beneficiary to multiple properties, the software Bella Vista had previously used would have recorded a cash withdrawal from the positive trust fund balance of the Mildred Avenue property, and a cash deposit to the trust fund balance of the 19th Street Property, thereby avoiding any shortage.

B. The Palm Drive property is owned by a family in Japan. The family forms a different entity for each of their properties. The family also owns a property at 208 South Catalina Avenue (Catalina Property). The trust funds for both properties are held in Master Trust Account. Though the Palm Drive Property is ostensibly owned by V. Inc. while the Catalina Property is owned by G. LLC, both companies have the same corporate structure and the same beneficiaries.

The Palm Drive Property was operating at a deficit with a negative balance of \$1,370 at the beginning of the Audit Period. The deficit grew to \$7,492.56 when Bella Vista paid Palm Drive Property's fees and made payments for repairs to the property. The Catalina Property, however, had a positive balance of \$19,014.49.

According to Respondent Hirai, this transaction should have been reflected as a cash withdrawal from the positive trust fund balance of the Catalina Property and a cash deposit to the trust fund balance of the Palm Drive Property.

C. The Woodley Property is owned by J.A. J.A. also owns another property 918 Park Circle (Park Circle Property) which, at the time of the audit, was held under the Knollwood Property Group (Knollwood). The trust funds for the Park Circle Property was held in the Master Trust Account while the trust funds for Knollwood was held in its own trust account. The Park Circle Property has since been returned to J.A.'s personal name and the trust funds are again held under Master Trust Account.

The shortage arose because Bella Vista over disbursed the trust funds in the Woodley Property account after it paid for plumbing repairs on the property on August 11, 2022. Continued disbursements were made from the Master Trust Account for other repairs and fees which resulted in the Woodley Property operating at a negative.

21. During the hearing, Respondent Hirai repeatedly referred to the errors in Bella Vista's handling of the trust funds for the three properties to be journaling errors through Respondent Hirai did acknowledge, after questioning, that handling negative balances in the manner described is improper.

TRUST ACCOUNT RECONCILIATION

22. Bella Vista did not maintain an accurate monthly trust account reconciliation for the Master Trust Account, comparing the balances of all separate records to the control record.

///

23. According to Mr. Sidhu, he concluded that Bella Vista did not perform its monthly trust account reconciliation because Bella Vista did not have the reconciliation reports for the account. If the trust account reconciliation had been performed, Respondent Hirai would have been aware of the negative balance on the Woodley Property. The trust fund reconciliation, however, would have shown the negative balances in the 190th Street or Palm Drive Properties.

24. At hearing, Respondent Hirai asserted that Bella Vista did perform trust fund reconciliations but did not present any records of the trust fund reconciliation. Regulation 2831.2 requires that a trust fund account be reconciled at least once a month, except in those months when the bank account did not have any activities, and a record of the trust fund reconciliation be maintained. Bella Vista was in violation of Regulation 2831.2 in that it did not have a record of the monthly trust fund reconciliations that were performed during the Audit Period.

CORRECTIONS

25. Following the audit, Mr. Sidhu discussed the deficiencies and methods of corrections with Respondent Hirai by telephone on February 10, 2023. The Non-Compliance Summary was sent to Respondent Hirai by email. Respondent Hirai signed the Non-Compliance Summary and returned it to Mr. Sidhu on February 13, 2023. (Exh. 4, p. A119.)

26. Respondents cured the trust fund shortage to the three accounts and submitted evidence that the shortages were resolved on February 13, 2023.

///

///

Costs

COST OF AUDIT

27. Complainant requested Respondents be ordered to pay \$8,035 for the cost of Department's audit. A certified statement of audit costs was admitted as Exhibit 6.

COST OF INVESTIGATION AND ENFORCEMENT

28. Complainant requested recovery of the costs of investigation and enforcement totaling \$7,086.36. In support of the request for costs, complainant submitted a certified statement of investigation costs of \$2,856.36, and a declaration of enforcement costs in the amount of \$4,230. A portion of these costs were not properly supported.

29. Specifically, other than the audit that was performed by the Department auditor, there was no evidence the Department conducted any other investigation into the allegations in the Accusation. The investigators who submitted billing did not testify at hearing and the report that was purportedly prepared was not offered into evidence. The requested investigative costs of \$2,856.36 are therefore disallowed.

30. Based on the forgoing, the reasonable cost of investigation and enforcement was \$4,230.

ABILITY TO PAY

31. Bella Vista currently has only 10 clients and no employees. The business generates approximately \$3,000 a month. Bella Vista's liabilities, which include shared

rent, phone and software costs, resulted in a negative net balance of approximately \$10,000 last year.

32. Respondent Hirai believes that if allowed to keep its license, Bella Vista will be able to pay the requested costs if they could be paid through a payment plan.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proving each ground for discipline alleged in the 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].)

2. “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.*)

Applicable Law

3. Under Business and Professions Code section 10177:

The [Real Estate 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 this part or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of this part 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.

[¶] . . . [¶]

(Bus. & Prof. Code, § 10177, subds. (d), (g), & (h).)

First Cause for Discipline

4. Complainant established by clear and convincing evidence that grounds exist to discipline Bella Vista's license pursuant to Business and Professions Code section 10177, subdivisions (d) and (g), in that Bella Vista violated Business and Professions Code section 10145 and attendant regulations as follows: (1) Bella Vista had trust fund shortages in the Master Trust Account without a written consent from all the beneficiaries, (Reg., § 2832.1); (2) Bella Vista did not perform and maintain a monthly reconciliation of all the separate records with the control record of all trust funds received and disbursed, (Reg., § 2831.2); (3) Bella Vista used a bank account that was not designated as a trust fund and was not in Bella Vista's name to hold trust funds, (Reg., § 2832); and (4) Bella Vista allowed a non-licensee to be an authorized signer and make withdrawals from a bank account that was used by Bella Vista to hold trust funds without maintaining a fidelity bond or insurance (Reg., § 2834).

Second Cause for Discipline

5. Complainant established by clear and convincing evidence that grounds exist to discipline Bella Vista's license pursuant to Business and Professions Code section 10177, subdivisions (d), (g), and (h) in that Bella Vista operated from March 4, 2020, until October 24, 2021, without a designated officer in violation of Business and Professions Code section 10158 and Regulation 2740. (Complainant alleged Bella Vista

violated Business and Professions Code section 10130, which requires individuals acting as a real estate broker or salesperson in California to hold a license. There was no evidence presented at hearing of a violation of this provision. (See also Exhibit 4, p. A93.))

Third Cause for Discipline

6. Complainant also established by clear and convincing evidence that grounds exist to discipline Respondent Hirai's license pursuant to Business and Professions Code section 10177, subdivisions (d), (g), and (h) in that Respondent Hirai failed to exercise reasonable supervision and control over Bella Vista's licensed activities in violation of Business and Professions Code section 10159.2 and Regulation 2725.

Analysis

7. In determining the appropriate discipline of a licensee who has engaged in misconduct, the central question is what level of discipline is necessary to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) "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." (Bus. & Prof. Code, § 10050.1.)

8. Complainant established each of the alleged causes for discipline by clear and convincing evidence, which raises concerns regarding Respondents' competency in performing property management duties. That said, Respondents have held their respective licenses for more than 10 years and have no prior license discipline. Once they became aware of the shortages on the three accounts, Respondents promptly

corrected the shortages. There is no evidence of intentional misconduct or deceit. In view of the forgoing, issuance of restricted licenses in lieu of outright license revocation is the appropriate discipline.

Cost of Audit

9. Pursuant to Business and Professions Code section 10148, subdivision (b), real estate broker shall reimburse the Department for the cost of an audit after the Department issues a final decision finding that the broker violated Business and Professions Code section 10145 or any regulation interpreting that statute. Bella Vista violated Business and Professions Code section 10145, and Regulations 2831.2, 2832, 2832.1, 2834, and 2749, as set forth in Factual Findings 11 and 16 through 24 and Legal Conclusions 3 and 4. Therefore, Bella Vista shall reimburse the Department \$8,035 for the cost of Mr. Sidhu's audit.

Enforcement and Investigation Costs

10. Business and Professions Code section 10106, subdivision (a), provides that in any order issued in resolution of a disciplinary proceeding, "the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." As set forth in Factual Finding 30, the Department's reasonable costs are \$4,230.

11. Recovery of costs of investigation and enforcement, however, must be assessed not only against the language of Business and Professions Code section 10106, but also the standards enunciated in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, which directs the administrative law judge and the licensing agency to evaluate several factors to ensure that the cost recovery provision

does not deter individuals from exercising their right to a hearing including, a licensee's ability to pay, the licensee's subjective good faith in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline. (*Id.* at 45.) Finally, a licensing agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Ibid.*)

12. Here, though Department's prosecution was proportional to the violation, respondent did obtain a reduction in the severity of the discipline imposed and offered evidence indicating that payment of the full costs, along with the cost of the audit would result in financial hardship. The costs are, therefore, reduced by one third. Respondents are liable for paying Complainant's costs in the amount of \$2,820 as set forth in the Order below.

ORDER

All licenses and licensing rights of respondents Bella Vista Property Management Incorporated and Kevin Isamu Hirai under the Real Estate Law are revoked; provided, however, restricted real estate broker licenses (a restricted corporate real estate broker license for Bella Vista Property Management Incorporated and a restricted individual real estate broker license for Kevin Isamu Hirai) shall be issued to Respondents pursuant to section 10156.5 of the Business and Professions Code if Respondents make application therefor and pay to the Department of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision.

The restricted licenses issued to Respondents shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of that Code:

The restricted licenses issued to Respondents may be suspended prior to hearing by order of the Real Estate Commissioner in the event of Respondents' conviction or plea of nolo contendere to a crime which is substantially related to Respondents' fitness or capacity as a real estate licensee.

The restricted licenses issued to Respondents may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondents have violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted licenses.

Respondents shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations, or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

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

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

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

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

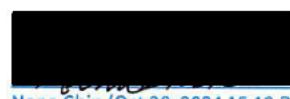
Pursuant to section 10148 of the Business and Professions Code, Respondents shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondents have corrected the trust fund violations found in the Factual Findings. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall be permitted to pay such costs in a payment plan approved by the Department. The Commissioner may suspend the restricted license issued to Respondents pending a hearing held in accordance with section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide

for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

Respondent Hirai shall, prior to and as a condition of the issuance of the restricted licenses, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in subdivision (a) of section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that Respondent Hirai has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

Consistent with the foregoing, and as a condition of Respondents' restricted licenses, Respondents shall jointly and severally pay the Commissioner audit costs of \$8,035; and enforcement costs of \$2,820, for a total of \$10,855. Such costs may be paid pursuant to two-year payment plan approved by the Commissioner, but shall be paid in full before an application for an unrestricted license is made.

DATE: 10/28/2024


Nana Chin (Oct 28, 2024 15:12 PDT)

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings