


FILED

JAN 14 2020

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE

By 

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In the Matter of the Accusation of:)	DRE No. H-41332 LA
LAURA CHRISTINA PRECIADO,)	OAH No. 2019050289
Respondent.)	

DECISION

The Proposed Decision dated December 19, 2019, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

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

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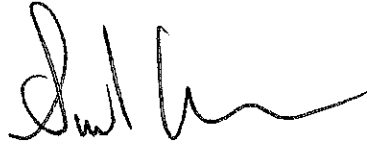
The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on February 3, 2020.

IT IS SO ORDERED

1/8/20

SANDRA KNAU
ACTING REAL ESTATE COMMISSIONER



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

In the Matter of the Third Amended Accusation against:

LAURA CHRISTINA PRECIADO, Respondent

DRE No. H-41332 LA

OAH No. 2019050289

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on November 18 and 19, 2019, in Los Angeles, California.

Complainant Maria Suarez was represented by Lissete Garcia, Counsel. Respondent Laura Christina Preciado was not present.

Oral and documentary evidence was received. The Third Amended Accusation was amended, at p. 21, paragraph 81, line 22, to change the reference of G/A 4, to B/A 4. Six boxes of audit working papers were remanded to the Department of Real Estate (Department) for it to maintain. A written protective order has been issued to seal exhibits 69-73 and 75 to protect confidential information. The record was closed and the matter was submitted for decision on November 19, 2019.

SUMMARY

From January 2016 through January 2018, respondent defrauded others by collecting earnest money deposits (EMD's) from prospective purchasers of real property which should have been held in trust, and converted the funds for her own use. Respondent solicited the sale of real properties to prospective purchasers through listings on the Multiple Listing Service. Respondent listed properties for which she had not obtained a valid listing agreement or received authorization to list the properties from the properties' owners or agents. Respondent claimed that the properties were unavailable for interior inspection or viewing for various alleged reasons.

Respondent accepted multiple offers from different buyers for the same property. Respondent induced buyers to submit EMD's to unlicensed escrow companies that she owned and controlled, and instructed the buyers to deliver their EMD's to bank accounts that she controlled. Respondent misrepresented her unlicensed companies as non-independent broker escrow companies and misled buyers into believing that their EMD's would be held in trust by respondent's escrow companies.

Respondent would provide excuses when buyers questioned the delay in their transactions. The buyers eventually asked to cancel the transactions and requested refunds of their EMD's. Respondent failed to return some EMD's to buyers in a timely manner or failed altogether to return the EMD's owed to some buyers. Respondent used new EMD's and property management trust funds to refund monies owed to earlier buyers and property management clients. During the period from January 2016 through January 31, 2018, Respondent collected an estimated \$1,050,810 in EMD's from at least 158 buyers for the purchase of approximately 23 properties. As of

January 31, 2018, respondent had refunded \$643,215 of EMD trust funds back to the buyers.

As found in an audit by the Department, several bank accounts created by respondent did not comply with applicable statutes and regulations. Respondent's property listings did not comply with the law. She failed to provide records and failed to properly supervise employees. Respondent committed negligent acts, dishonest acts, and fraudulent acts. As a consequence of her wrongful acts, respondent's license will be revoked.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant filed the Accusation, First Amended Accusation, Second Amended Accusation, and Third Amended Accusation in her official capacity as Department Supervising Special Investigator. Respondent filed a Notice of Defense, dated April 2, 2019. An administrative hearing was scheduled.

2. Respondent was licensed by the Department as a real estate salesperson from February 8, 2005, through March 16, 2014. On March 17, 2014, the Department issued real estate broker license number 01473934 to respondent, scheduled to expire April 3, 2022. Respondent was previously licensed under the name Laura Christina Benavides. There is no history of license discipline against respondent.

3. Respondent has an individual Mortgage Loan Originator (MLO) license endorsement, Nationwide Multistate Licensing System (NMLS) number 1284959. Respondent has a Company MLO license endorsement, NMLS number 1696087.¹

4. Respondent is not currently licensed by the Department to do business under any fictitious business names. However, her license history certification (exhibit 2) reflects that, on June 30, 2016, respondent filed a notice to add the dba AE Builders; however, the license history certification notes that the information is for reference purposes only, and there is no reference that the fictitious business name, or dba of AE Builders, was approved by the Department. On December 11, 2017, the Department approved dba's AE Mortgage and AE Management; these two dba's were cancelled as of February 25, 2019.

5. At all relevant times, respondent was doing business under several unlicensed fictitious business names including, but not limited to, AE Real Estate, Inc., AE Management (except for the approved period noted above), AE Mortgage (except for the approved period noted above), AE Builder, LLC, AE Builder Escrow, Adept Builder, LLC, Asset Management Company, and AE Mgmt Sales and Acquisitions.

Default of Respondent

6. On May 7, 2019, OAH served on respondent, at her address of record with the Department, a notice of hearing indicating that the hearing would commence on November 18, 2019. On May 9, 2019, complainant served on respondent, at her

¹ This information is taken from respondent's license history certification (exhibit 2), which does not identify which "company" has the MLO endorsement.

address of record with the Department, a notice of hearing indicating that the hearing would commence on November 18, 2019.

7. In later correspondence, respondent indicated that she was using a different address. Subsequent thereto, complainant served several documents on respondent at that address. Many of those documents included that the hearing dates were November 18 to 22, 2019.

8. Respondent was not present for any part of the hearing, which took place on November 18 and 19, 2019.

9. Respondent was properly served with notice of the hearing, and did not appear at the hearing. Under the authority of Government Code section 11520, respondent was in default. Complainant submitted evidence in support of the allegations in the Third Amended Accusation.

Failure to Handle Accounts and Trust Funds as Required by Law

10. On December 31, 2018, the Department completed two audit examinations of activities of respondent that required a license. Both audits covered the period of January 1, 2016 through January 31, 2018. One audit was for respondent's real estate sales activities, Audit number LA 170132 (the real estate audit). The second audit was for respondent's property management activities, Audit number LA 170168 (the property management audit). These are collectively referred to as the audit.

11. The auditor, Shirley Xie, held an entrance conference with respondent on February 8, 2018. The Department issued a subpoena duces tecum for respondent's books and records related to her real estate sales and property management activities.

The auditor did not receive some of respondent's records that were requested for the audit examination.

12. Based on information from respondent and examination of the records, in performing the acts and omissions found below, respondent sometimes relied upon others, including Manuel Preciado, Sandra Preciado, Yanet Galindo, Corrina Renee Benavides, Elizabeth Larson, John Christopher Larson, Raul Ray Castaneda III, Monica Nuques, Gina Pesquera, and Norma Pedroza, who acted as her employees, agents, co-conspirators or associates. These other persons committed the acts while engaged in the furtherance of respondent's business or operations and while acting within the course and scope of their authority and employment. Respondent either directed their actions, or was aware of their actions and approved them.

13. Based on information from respondent and examination of the records, respondent maintained the ten bank accounts listed below for her real estate broker activities during the audit period. The accounts were opened at different times and for different purported purposes. At some point respondent deposited funds, or transferred funds into, each of these ten accounts. By law, these funds were required to be held in trust. Therefore, each account was analyzed by the auditor as a trust account. When respondent deposited or transferred personal funds into any of these accounts, or paid personal expenses from any of these accounts, she commingled trust funds with personal funds.

Bank Account #1 (B/A 1): Account number 0253,² Bank of America, account name Adept Builder LLC DBA AE Builder Escrow.

² Only the last four digits of account numbers are used.

Bank Account #2 (B/A 2): Account number 6111, Wells Fargo Bank, account name Adept Builder LLC.

Bank Account #3 (B/A 3): Account number 4119, Bank of America, account name LCP [Laura Christina Preciado] Living Trust.

Bank Account #4 (B/A 4): Account number 0892, Bank of America, account name Adept Builder LLC.

Bank Account #5 (B/A 5): Account number 6129, Wells Fargo Bank, account name Adept Builder LLC.

General Account #1 (G/A 1): Account number 0240, Bank of America, account name Adept Builder LLC DBA AE Builder.

General Account #2 (G/A 2): Account number 7192, Bank of America, account name LCP Living Trust Laura C. Preciado Trtee John Christopher Larson Trtee.

General Account #3 (G/A 3): Account number 6103, Wells Fargo Bank, account name Adept Builder LLC.

General Account #4 (G/A 4): Account number 0562, Wells Fargo Bank, account name Adept Builder LLC.

General Account #5 (G/A 5): Account number 5818, Wells Fargo Bank, account name OCG Enterprises, Inc.

14. The auditor identified another four accounts that respondent maintained during the audit period, based on an examination of records subpoenaed from Bank of America: A/C 0986, A/C 7209, A/C 3440, and A/C 8239. Respondent failed to provide bank statements or full bank account numbers to the Department's auditor.

Respondent claimed that A/C 8239 belonged to her son and she would occasionally transfer money into A/C 8239.

15. Respondent opened at least two new bank accounts: A/C 3561 for property management fees earned, and A/C 5090, respondent's "Account Project MGMT" account, which was used to collect "investor" trust funds. Respondent collected approximately \$357,500 of additional trust funds after the auditor's cutoff date of January 31, 2018, found in A/C 5090. After the auditor's cutoff, several victims reported to the Department that respondent continued to collect EMD's.

16. Respondent told the auditor that these last two bank accounts were new and not from the audit period. She stated that "the Escrow Division is still a work in progress" and she would not open new escrows until her files were straightened out and all current transactions were closed. (Report for both audits, exhibit 70, p. 8.)

17. Funds collected and deposited into A/C 5090 were transferred into G/A 4 and B/A 5 to reimburse EMD's that respondent collected from earlier buyers. Respondent made some refunds to buyers from the new, additional trust funds that she collected after the audit cutoff date of January 31, 2018.

18. Victims reported to the Department that respondent instructed buyers to wire EMD's to the following two additional accounts whose records were not provided to the Department's auditor: Account 1387, JP Morgan Chase, account name Laura Preciado/AE Management and Sales, and Account 9918, JP Morgan Chase, account name AE Real Estate, Inc./AE Trust.

TRUST FUND SHORTAGE, B/A 1 AND B/A 2 AS OF JANUARY 31, 2018
(AUDIT REPORT ISSUE ONE A)

19. In her audit report transmittal (exhibit 69) and audit report for the two audits (exhibit 70), the Department's auditor identified and analyzed 14 issues, which are discussed separately below.³ The auditor prepared a combined minimum bank reconciliation for B/A 1 and B/A 2 as of January 31, 2018. The combined minimum adjusted bank balance was compared to the combined minimum accountability. As of January 31, 2018, there was a combined minimum trust fund shortage of \$407,741.29 in B/A 1 and B/A 2. The causes of the trust fund shortages included negative balances for EMD's, bank charges in B/A 2, and unauthorized disbursements in B/A 2, B/A 4, and B/A 5. The unauthorized disbursements represented commingling of trust funds.

20. Respondent failed to provide any evidence that the owners of the trust funds had given their written consent to allow respondent to reduce the balance of the funds in B/A 1 and B/A 2 to an amount less than the existing aggregate trust fund liabilities. Respondent's actions were in violation of Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2832.1.⁴

³ In the Third Amended Accusation, allegations and analysis of Audit Issue Two are found after all of the other audit issues. For purposes of consistency, it is treated the same in this Proposed Decision.

⁴ Statutory references are to the Business and Professions Code unless noted otherwise. References to the California Code of Regulations, title 10, are denoted "Regulation."

**TRUST FUND SHORTAGE, B/A 1 AND B/A 2 AS OF MARCH 31, 2017
(AUDIT REPORT ISSUE ONE B)**

21. As of March 31, 2017, there was a combined minimum trust fund shortage of \$266,925 in B/A 1 and B/A 2. Respondent failed to provide any evidence that the owners of the trust funds had given their written consent to allow respondent to reduce the balance of the funds in B/A 1 and B/A 2 to an amount less than the existing aggregate trust fund liabilities. Respondent's actions were in violation of Code section 10145 and Regulation 2832.1.

22. The causes of the trust fund shortages included negative values for EMD balances, bank charges in B/A 1, unauthorized disbursements in B/A 1, G/A 1, B/A 4, B/A 3, and G/A 2 (check 1026), that established that respondent commingled trust funds. There was also an unidentified shortage.

**TRUST FUND SHORTAGE, B/A 3, B/A 5, G/A 1 THROUGH G/A 4 AS OF
JANUARY 30, 2018 (AUDIT REPORT ISSUE ONE C)**

23. As of January 31, 2018, there was a combined minimum trust fund shortage of \$161,992.61 in B/A 3, B/A 5, G/A 1, G/A 2, G/A 3 and G/A 4, which were used for handling of trust funds in connection with respondent's property management activities. Respondent failed to provide any evidence that the owners of the trust funds had given their written consent to allow respondent to reduce the balance of the funds in these bank accounts to an amount less than the existing aggregate trust fund liabilities. Respondent's actions were in violation of Code section 10145 and Regulation 2832.1.

24. The causes of the trust fund shortages included negative property balances in B/A 5, bank charges for G/A 1, G/A 2, G/A 3, G/A 4, and B/A 3, and

unauthorized disbursements in G/A 1, G/A 2, G/A 3, G/A 4, B/A 3, and B/A 5 that represented conversion of trust funds, and charges to a Home Depot Credit Card in connection with B/A 5.

**TRUST FUND SHORTAGE, B/A 3 THROUGH B/A 5, G/A 1 THROUGH G/A 4
AS OF MARCH 31, 2017 (AUDIT REPORT ISSUE ONE D)**

25. As of March 31, there was a combined minimum trust fund shortage of \$18,182.89 in B/A 3, B/A 4, B/A 5, G/A 1, G/A 2, G/A 3 and G/A 4, which were used for handling of trust funds in connection with respondent's property management activities. Respondent failed to provide any evidence that the owners of the trust funds had given their written consent to allow respondent to reduce the balance of the funds in the afore-mentioned bank accounts to an amount less than the existing aggregate trust fund liabilities. Respondent's actions were in violation of Code section 10145 and Regulation 2832.1.

26. The causes of the trust fund shortages included negative property balances (i.e., disbursements related to properties when there were insufficient funds to do so), and unauthorized disbursements in B/A 4 and G/A 1 that represented conversion of trust funds

**ACCOUNT RECORDS VIOLATIONS, NO CONTROL RECORDS FOR B/A 1
THROUGH B/A 5 AND G/A 1 THROUGH G/A 5 (AUDIT REPORT ISSUE
THREE)**

27. During the audit period, respondent failed to maintain an accurate and complete record of trust funds received and disbursed (control record) for B/A 1, B/A 2, B/A 3, B/A 4, B/A 5, G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5, in violation of Code

section 10145 and Regulation 2831. Respondent collected a minimum of \$1,050,810 in EMD's from buyers for the purchase of properties between January 1, 2017 and January 31, 2018. The amounts collected were based on the Department's auditor's reconstructed separate records for respondent's real estate sales activities and the auditor's examination of the subpoenaed bank records for respondent's bank accounts for real estate sales trust funds (B/A 1 and B/A 2), property management trust funds (B/A 3, B/A 4, and B/A 5), and general operating accounts (G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5).

28. During the audit period, respondent failed to maintain control records for the receipts and disbursements of EMD/trust funds collected from buyers for the purchase of real properties, and use of funds in B/A 1 and B/A 2, in connection with respondent's real estate sales activities. Respondent failed to maintain control records for B/A 1 from 1/1/2016 to 3/31/2017, and for B/A 2 from 4/1/2017 to 1/31/2018.

29. During the audit period, respondent did not maintain a control record for all transfers made between respondent's property management bank accounts (B/A 3, B/A 4, and B/A 5), real estate sales bank accounts (B/A 1 and B/A 2), and respondent's general operating accounts (G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5).

30. During the audit period respondent failed to maintain accurate and complete control records for the receipts and disbursements of trust funds for B/A 3, B/A 4, and B/A 5, in connection with respondent's property management activities. Based on the control records provided by respondent, the records did not include the date of funds received, some disbursements were not recorded, and respondent recorded inaccurate dates and disbursement amounts. In addition, respondent did not maintain control records for trust funds deposited and/or disbursed through G/A 1, G/A 2, G/A 3, and G/A 4.

ACCOUNT RECORDS VIOLATIONS, NO SEPARATE BENEFICIARY RECORDS FOR B/A 1 THROUGH B/A 5 AND G/A 1 THROUGH G/A 5 (AUDIT REPORT ISSUE FOUR)

31. During the audit period, respondent failed to maintain separate records for each beneficiary or transaction (separate records) for B/A 1, B/A 2, B/A 3, B/A 4, B/A 5, G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5, in violation of Code section 10145 and Regulation 2831.1.

32. A. Respondent failed to maintain the separate records for the receipts and disbursements of EMD trust funds collected from buyers for the purchase of properties and handled through B/A 1 and B/A 2, in connection with respondent's real estate sales activities. Respondent failed to maintain separate records indicating online transfers between trust fund bank accounts (B/A 1 and B/A 2) to respondent's property management trust fund bank accounts (B/A 3, B/A 4, and B/A 5), and respondent's general operating accounts (G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5). In addition, respondent failed to maintain separate records indicating online transfers from respondent's property management trust fund bank accounts (B/A 3, B/A 4, and B/A 5), to respondent's real estate sales trust fund bank accounts (B/A 1 and B/A 2) and to her general operating accounts (G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5).

B. Respondent failed to maintain accurate and complete separate records for the receipts and disbursements of trust funds for B/A 3, B/A 4, and B/A 5, in connection with respondents' property management activities. The separate records provided by respondent failed to include the date trust funds were deposited, and some of the receipts, deposits, and disbursements were not recorded.

ACCOUNT RECORDS VIOLATIONS, NO MONTHLY RECONCILIATION OF SEPARATE RECORDS AND CONTROL RECORDS FOR B/A 1 THROUGH B/A 5 AND G/A 1 THROUGH G/A 5 (AUDIT REPORT ISSUE FIVE)

33. During the audit period, respondent failed to perform or maintain accurate monthly reconciliations comparing the balance of all separate beneficiary or transaction records (separate records) to the balance of all trust funds received and disbursed (control records) for B/A 1, B/A 2, B/A 3, B/A 4, B/A 5, G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5, in violation of Code section 10145 and Regulation 2831.2. Respondent did not provide monthly reconciliation records during the audit examination.

TRUST ACCOUNT VIOLATIONS, FAILURE TO DESIGNATE ACCOUNTS AS TRUST ACCOUNTS (AUDIT REPORT ISSUE SIX)

34. During the audit period, respondent used B/A 1, B/A 2, B/A 3, B/A 4, B/A 5, G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5 for receipt and disbursement of trust funds. These bank accounts were not designated as trust accounts in respondent's name or respondent's then-licensed fictitious business names, as trustee, in violation of Code section 10145 and Regulation 2832. Instead, these bank accounts were named as set forth in Factual Finding 13 above.

35. Respondent collected EMD's and property management rent receipts that were sometimes deposited into respondent's general operating accounts (G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5) and commingled with respondent's operating funds. During the audit examination, respondent provided the bank signature cards for only B/A 2, B/A 5, G/A 3, G/A 4, and G/A 5.

**TRUST ACCOUNT VIOLATIONS, COMMINGLING OF TRUST FUNDS WITH
GENERAL OPERATING FUNDS (AUDIT REPORT ISSUE SEVEN)**

36. During the audit period, trust funds collected in connection with respondent's real estate sales and property management activities were deposited and handled through respondent's general operating accounts (G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5) and commingled with respondent's operating funds, in violation of Code section 10145 and Regulation 2834.

37. Based on the bank signature card for G/A 2 provided by Bank of America, John Christopher Larson, respondent's partner/non-licensee, was authorized as a signor on G/A 2 during the audit period.

**TRUST ACCOUNT VIOLATIONS, COMMINGLING OF EMD'S AND RENT
RECEIPTS WITH GENERAL OPERATING FUNDS (AUDIT REPORT ISSUE EIGHT)**

38. During the audit period, respondent collected EMD's and property management rent receipts that were sometimes deposited into respondent's general operating accounts (G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5) and commingled with respondent's operating funds in her general operating accounts, in violation of Code sections 10145 and 10176, subdivision (e), and Regulation 2832.

39. During the audit period, respondent commingled her personal funds into B/A 3, B/A 4, and B/A 5. During the course of the audit examination, the Department's auditor requested from respondent a running balance of personal funds held in bank accounts B/A 3, B/A 4, and B/A 5, and general operating accounts (G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5). Respondent did not provide the auditor with a list and the auditor could not determine whether respondent removed her personal funds in her property

management accounts (B/A 3, B/A 4, and B/A 5) and her general operating accounts (G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5).

40. During the audit period, respondent shared a residential rental property with her daughter, Corrina Benavides (Benavides), and Yanet Galindo (Galindo). Based on examination of bank records for B/A 3, respondent paid her personal rent, in addition to Benavides' and Galindo's portions of the rent, with trust funds from B/A 3. According to respondent, Galindo reimbursed respondent with personal checks payable to respondent, AE Builder, or Adept Builder. Respondent then commingled these reimbursements/personal funds with trust funds collected for her real estate sales and property management activities in B/A 4, B/A 5, G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5.

41. During the audit period, respondent received reimbursement or personal funds from different companies and from the government which were commingled with trust funds collected for respondent's property management activities in G/A 2, B/A 4, and B/A 5. Examples of commingled funds include, but are not limited to:

a. Deposited 5/6/2016, into G/A 2, payee respondent, paid by Target Corp., \$69.50.

b. Deposited 8/15/2016, into B/A 4, payee respondent, paid by U.S. Treasury (memo: tax refund), \$200.

c. Deposited 1/2/2018, into B/A 5, payee Adept Builder LLC, paid by State of California, \$400.

42. During the audit period, respondent received commission checks or funds from at least three escrow companies. Respondent deposited these personal

funds in G/A 1, B/A 3, and B/A 4, which were commingled with trust funds in those accounts. Examples of the commingled funds include:

a. Deposited 2/7/2017, into G/A 1, payee AE Builder, paid by Embassy Escrow, escrow number 1484-TG, \$15,000.

b. Deposited 5/9/2016, into B/A 3, payee AE Builder LLC, paid by Glen Oaks, escrow number 127411-JI, \$5,077.50.

c. Deposited 5/31/2016, into B/A 4, payee AE Builder, paid by Keller Williams Realty Trust Account, escrow number 1260-KDC, \$13,945.

**TRUST ACCOUNT VIOLATIONS, CONVERSION OF FUNDS (AUDIT REPORT
ISSUE NINE)**

43. During the audit period, respondent made unauthorized disbursements and converted EMD's and property management trust funds that were deposited into B/A 1 and B/A 2. Respondent made unauthorized disbursements to G/A 1, G/A 2, G/A 3, G/A 4, G/A 5, B/A 3, B/A 4, and B/A 5, from B/A 1 and B/A 2, and converted trust funds. These acts are in violation of Code sections 10145, 10176, subdivision (i), and 10177, subdivision (j).

44. Based on an examination of bank statements for B/A 1 and B/A 4, from January 1, 2016 through March 31, 2017, respondent transferred EMD trust funds into B/A 4 for unauthorized property management disbursements and converted EMD funds for personal expenses. The bank records for B/A 1 and B/A 2 showed that respondent made unauthorized disbursements of EMD refunds owed to buyers from whom respondent had collected EMD trust funds, and deposited EMD's in B/A 1.

Respondent paid the EMD refunds owed to earlier buyers with new EMD trust funds collected from new buyers whose EMD's were deposited into B/A 2.

45. Based on an examination of bank statements, the following list includes some of the minimum unauthorized disbursements of EMD trust funds that were then deposited into B/A 1 and B/A 2, which were used for respondent's personal and business expenses:

a. \$27,457.74 minimum unauthorized disbursements/conversion of trust funds in B/A 2 as of January 31, 2018.

b. \$277,223 minimum unauthorized disbursements made from B/A 2 to B/A 5 and conversion of trust funds in B/A 5 as of January 31, 2018.

c. \$ 95,214.05 minimum unauthorized disbursements made from B/A 1 to B/A 4 and conversion of trust funds in B/A 4 as of January 31, 2018.

d. \$12,128.62 minimum unauthorized disbursements/conversion of trust funds in B/A 1 as of March 31, 2017.

e. \$33,867.12 minimum unauthorized disbursements made from B/A 1 to G/A 1 and conversion of trust funds in G/A 1 as of March 31, 2017.

f. \$124,520.26 minimum unauthorized disbursements made from B/A 1 to B/A 4 and conversion of trust funds in B/A 4 as of March 31, 2017.

g. \$4,335 minimum unauthorized disbursements made from B/A 1 to B/A 3 and conversion of trust funds in B/A 3 as of March 31, 2017.

46. Respondent used her bank accounts and general operating accounts for handling trust funds in connection with respondent's property management receipts

and disbursements. Based on an examination of bank statements, respondent made unauthorized disbursements from B/A 3, B/A 4, and B/A 5 with property management funds collected and deposited into B/A 1, B/A 2, G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5. Respondent also transferred EMD trust funds from B/A 1 and B/A 2, and EMD and property management trust funds which were held in G/A 1, G/A 2, G/A 3, G/A 4, and G/A 5, into B/A 3, B/A 4, and B/A 5. Respondent converted the trust funds held in B/A 3, B/A 4, and B/A 5 for personal and business expenses.

47. Based on an examination of bank statements, the following list includes some of the minimum unauthorized disbursements of property management trust funds deposited into B/A 3, B/A 4, and B/A 5, which were used for respondent's personal and business expenses:

a. \$8,231.31 minimum unauthorized disbursements made from B/A 3 and B/A 5 to G/A 2 and conversion of trust funds in G/A 2 as of January 31, 2018.

b. \$14,843.32 minimum unauthorized disbursements made from B/A 3 and B/A 5 to G/A 4 and conversion of trust funds in G/A 4 as of January 31, 2018.

c. \$97,866 minimum unauthorized disbursements/conversion of trust funds in B/A 3 as of January 31, 2018.

d. \$6,935.36 minimum unauthorized disbursements/conversion of trust funds in B/A 5 as of January 31, 2018.

e. \$7,721.03 minimum unauthorized disbursements/conversion of trust funds in B/A 4 as of March 31, 2017.

f. \$7,955.03 minimum unauthorized disbursements made from B/A 4 to G/A 1 and conversion of trust funds in G/A 1 as of March 31, 2017.

48. Conversion of trust funds in B/A 3: From March of 2016 through January of 2018, respondent converted trust funds totaling a minimum of \$156,280.76 by paying for her own personal expenses from B/A 3. Examples include:

- a. Payroll paid to Gina Pesquera and Mirella Kourly.
- b. Payments for respondent's personal rent.
- c. Payments for gas, market, restaurant, shopping, health expenses, cell phone, cable, and credit cards.
- d. Loan payments to "LSW."

49. Conversion of trust funds in B/A 4: From January 2016 through January 2017, respondent converted trust funds totaling a minimum of \$283,626.01 by paying for her own personal expenses from B/ 4. Examples include:

- a. Payroll paid to Monica Nuques, Patricia Encinas, Mirella Kourly, and "Wells Fargo: Payroll."
- b. Payments for respondent's personal rent.
- c. Payments for gas, market, restaurant, shopping, retail, entertainment, health expenses, credit card, and cable.
- d. Checks to Galindo.
- e. Check to Manuel Preciado for \$28,251.27 (Check 209 disbursed on 5/6/2016).
- f. Check to John Larson for \$57,257.00 (Check 254 disbursed on 6/8/2016).

g. Cash withdrawals.

50. Conversion of trust funds in B/A 5: From May 2017 through September 2017, respondent converted trust funds by paying for her own personal expenses from B/A 5. Examples include:

a. Payroll paid to Monica Nuques, Patricia Encinas, Raymond Raul Castaneda, and Benavides.

b. Payments for gas, market, restaurant, shopping, retail, and health expenses.

51. Conversion of trust funds in G/A 1: From January of 2017 through December of 2017, respondent converted trust funds totaling a minimum of \$66,335.81 by paying for her own personal expenses from G/A 1. Examples include:

a. Payroll paid to Monica Nuques, Patricia Encinas, Raymond Raul Castaneda, and Benavides.

b. Payments for respondent's personal rent.

c. Payments for gas, market, restaurant, shopping, retail, and health expenses.

52. Conversion of trust funds in G/A 2: From January 2016 through January 2018, respondent converted trust funds totaling a minimum of \$76,765.28 by paying for her own personal expenses from G/A 2. Examples include:

a. Expenses for trip to Las Vegas, Nevada (hotel, shopping, entertainment, restaurants).

b. Payments for auto, gas, market, restaurant, shopping, retail, and health expenses.

c. Payroll paid to Gina Pesquera.

d. Transfers to respondent 's other accounts.

53. Conversion of trust funds in G/A 3: From March 2017 through January 2018, respondent converted trust funds totaling a minimum of \$35,044.79 by paying for her own personal expenses from G/A 3. Examples include:

a. Expenses for trip to San Francisco, California (restaurants, entertainment).

b. Cash withdrawals

c. Payments for market, restaurant, shopping, retail, and health expenses.

d. Payroll paid to Monica Nuques, Raul Raymond Castaneda, Patricia Encinas and Benavides.

e. Business expenses (Staples, Appfolio).

54. Conversion of trust funds in G/A 4: From June 2017 through July 2017, respondent converted trust funds totaling a minimum of \$44,134.84 by paying for her own personal expenses from G/A 4. Examples include:

a. Rent payments for business location (Sunny Hill Business).

b. Expenses for trip to Las Vegas, Nevada (taxi, restaurants, entertainment).

c. Car payments for respondent's sister, Sandra J. Preciado.

d. Payments for gym membership, market, restaurant, shopping, cable, cell phone, and groceries.

55. Unauthorized disbursements of trust funds in B/A 3, B/A 4, and G/A 2: During the audit period, respondent made unauthorized disbursements from B/A 3, B/A 4, and G/A 2, for the following:

a. 5/6/2016, payee Manuel Preciado, check 209, account B/A 4, \$28,251.27.

b. 6/1/2016, payee John Larson, check 254, account B/A 4, \$57,257.

c. 8/10/2017, payee OCG (A/C 5818), withdrawal, account B/A 3, \$54,010.

MISREPRESENTATION AND DISHONEST DEALING (AUDIT ISSUE TEN)

56. With respect to real property sales transactions, respondent mislead and misrepresented to prospective buyers that their offer was the only offer accepted by the seller, and that respondent performed in-house broker escrow services. Respondent listed the properties and received multiple offers from different buyers.

57. Respondent's transaction files indicated that multiple offers were received and accepted by the purported sellers. Once accepted, respondent would request buyers to pay their EMD to respondent's "escrow division" named "AE Builder Escrow," "AE Escrow," or "AE Builder." However, respondent failed to provide records to the Department's auditor to show that any in-house escrow transactions took place or that any escrows were closed. Respondent issued cancellation instructions to some of the buyers. There was no evidence that broker escrow activities were conducted by

respondent during the audit period other than receipt of EMD's, which were actually deposited in accounts under respondent's control, and occasionally the issuance of escrow cancellation instructions.

58. An examination of 124 sales transaction files provided by respondent showed that a majority of the purported sellers electronically signed sales transactions by DocuSign. In some of the files examined, the purported sellers signed the documents by hand and the manual signatures differed from the electronic signatures. The Department's auditor was unable to determine if the sellers actually signed the sales transaction file documents and whether respondent actually had authorization to list the properties for sale, due to respondent's failure to provide some documents requested for the audit. There was sufficient evidence to support the inference that respondent created the DocuSign signatures of many purported sellers (e.g., although DocuSign assigns a different, unique authorization number to each signature for each use, many of the signatures of purported sellers had the same DocuSign authorization number). Testimony from some victims and an investigator established that they contacted purported sellers/owners and learned they had not listed their properties for sale and were unaware that respondent had solicited and received offers for the sale of the properties. One owner/purported seller confirmed that he had not listed his home but had been contacted by buyers who had submitted EMD's to respondent. Examples of properties in which such misrepresentations were made are: 26065 Westridge Ave., Sun City, buyer B.P.; 10023 Cherry Ave., Cherry Valley, buyers J.Q. & B.B.; 14683 Juniper St., Hesperia, buyer E.I.; 13722 Dodie Ave., Victorville, buyer S.A.; 13722 Dodie Ave., Victorville, buyer A.A. & I.A.; 13722 Dodie Ave., Victorville, buyer M.P.D.; 13722 Dodie Ave., Victorville, buyer B.O.; 22389 Scotia Ln., Moreno Valley, buyer VCBI; 22389 Scotia Ln., Moreno Valley, buyer V.D.G.; and 22389 Scotia Ln.,

Moreno Valley, buyer Valer LLC. The conduct described above is in violation of Code section 10176, subdivision (a).

FAILURE OF LISTING AGREEMENT TO HAVE TERMINATION DATE (AUDIT ISSUE ELEVEN)

59. During the audit period, respondent maintained exclusive listing agreements for real estate sales activities that failed to state a definite, specific date of final and complete termination, in violation of Code section 10176, subdivision (f). Examples of the listing agreements include: 13722 Dodie Ave., Victorville; 14863 Juniper St., Hesperia; 1543 Turquesa Dr., San Jacinto; 38264 Marinus Way, Palmdale; 2055 E. Kettering St., Lancaster (two separate listing agreements were provided by respondent).

USE OF UNLICENSED FICTITIOUS BUSINESS NAMES (AUDIT ISSUE TWELVE)

60. Respondent conducted real estate sales and property management activities using fictitious names without first obtaining a license bearing such fictitious names from the Department, in violation of Code section 10159.5 and Regulation 2731. During the audit period, respondent conducted real estate sales and property management activities using the unlicensed fictitious names Adept Builder, LLC, AE Builder, AE Builder Escrow, and OCG Enterprises, Inc. Respondent filed fictitious business name statements for some of these entities in Orange County, but never obtained Department authorization to use the fictitious business names to carry out activities under her license.

61. During the period from January 1, 2016 through December 10, 2017, respondent conducted property management activities using the unlicensed fictitious name AE Management without first obtaining a license bearing such fictitious name

from the Department. The fictitious name of "AE Management" was licensed by the Department effective December 11, 2017.

FAILURE TO RETAIN RECORDS (AUDIT ISSUE THIRTEEN)

62. Respondent failed to retain records in connection with her real estate sales, alleged broker escrow, and property management activities. These records were subpoenaed by the Department for the audits, but were not provided by respondent, in violation of Code section 10148.

FAILURE OF BROKER TO SUPERVISE (AUDIT ISSUE FOURTEEN)

63. Respondent failed to adequately supervise the activities of her salespersons, employees, or agents and failed to establish policies, rules, procedures, and systems to review, oversee, inspect, and manage transactions requiring a real estate license and the handling of trust funds to ensure compliance with the Real Estate Law and Regulations, in violation of Code sections 10159.2 and 10177, subdivision (h), and Regulation 2725.

FRAUDULENT RECEIPT OF MULTIPLE EMD'S (AUDIT ISSUE TWO)

64. Based on complaints that were submitted to the Department, respondent misled buyers into believing that the sale of properties was sometimes contingent on the trustee's approval for Chapter 11 bankruptcy. Respondent mishandled trust funds in connection to said properties, did not return trust funds to buyers in a timely manner, and misrepresented herself as a non-independent broker escrow company handling sales transactions for buyers and sellers.

65. Respondent purported to perform residential resale activity, sometimes representing both buyers and sellers, and collected EMD's from a minimum of 158

different buyers for the purchase of a minimum of 23 properties listed by respondent during the audit period of January 1, 2016 to January 31, 2018.

66. Respondent's accounts (B/A 1 through B/A 5 and G/A 1 through G/A 5) reflect that respondent collected a minimum of \$1,050,810 in EMD's for the purchase of properties from January 1, 2017 through January 31, 2018. As of January 31, 2018, \$643,215 was refunded/disbursed back to buyers by respondent. Respondent used the remaining trust fund balances collected and deposited into B/A 1 and B/A 2, totaling \$407,595, to make unauthorized disbursements and transfers to respondent's property management bank accounts (B/A 3, B/A 4, and B/A 5) and respondent's general operating accounts. Respondent also made unauthorized property management disbursements in B/A 2.

67. Respondent issued EMD refunds to earlier buyers using EMD's collected from new buyers who made offers on other properties. Respondent collected new trust funds and deposited the funds into B/A 2 and A/C 5090. The trust funds were handled through B/A 2, B/A 5, G/A 4, and A/C 5090 after the audit cut-off date of January 31, 2018.

68. After the audit cut-off date of January 31, 2018, respondent's bank records reflect, for the period from February 1, 2018 through July 31, 2018, respondent continued to collect new trust funds, and issued refunds to earlier buyers for their EMD's. Not all of the bank records requested were provided to the Department's auditor.

69. Examples of respondent's collection of multiple EMD's through alleged broker escrow activities include:

a. 14863 Juniper St., Hesperia, seven buyers, deposits from 5/22/2017 to 6/5/2017, ranging from \$2,000 to \$20,000, total deposits of \$52,150.

b. 1543 Turquesa Dr., San Jacinto, three buyers, deposits from 9/26/2017 to 11/22/2017, \$10,000 each, total deposits of \$30,000.

c. 2055 E. Kettering St., Lancaster, seven buyers, deposits from 7/25/2017 to 8/29/2017, ranging from \$4,800 to \$10,000, total deposits of \$40,450.

d. 38264 Marinus Way, Palmdale, four buyers, deposits from 7/25/2017 to 7/27/2017, ranging from \$3,000 to \$5,000, total deposits of \$17,800.

e. 26065 Westridge Ave., Sun City, 10 buyers, deposits from 10/19/2017 to 11/24/2017, ranging from \$5,000 to \$19,500, total deposits of \$76,800.

f. 6812 Woodmere Dr., Riverside, 16 buyers, deposits from 11/16/2016 to 1/4/2017, ranging from \$5,000 to \$10,000, total deposits of \$89,070.

70. Respondent collected trust funds including EMD's from prospective buyers for escrow and failed to maintain or provide any sales transactions files for several transactions. Examples include: buyer S.S. Mgmt. Group, \$10,000 deposited on 1/23/2016; buyer R.L and C.C.L., \$10,000 deposited on 1/24/2016; buyer SBR, LLC, \$5,000 deposited on 1/29/2016; buyer K.H., \$5,000 deposited on 6/23/2017; buyer C.A.L., \$5,000 deposited on 7/3/2017; buyer I.P., \$5,250 deposited on 8/11/2017; buyer C.L. 68, LLC, \$20,000 deposited on 9/26/2017; buyer S.C., LLC, \$4,275 deposited on 10/2/2017; buyer G.R.R., \$4,200 deposited on 12/14/2017; buyer R.L.P., \$10,000 deposited on 1/2/2018; buyer W.R.J., \$10,000 deposited on 1/2/2018; and buyer J.R., \$10,000 deposited on 1/22/2018.

CONSUMER COMPLAINTS: SUBSTANTIAL MISREPRESENTATION, MAKING FALSE PROMISES, DISHONEST DEALING, AND FRAUD

71. Respondent's improper conduct, described above, of collecting multiple EMD's from different buyers for the same property and conversion of property management and EMD trust funds for respondent's own use involved similar acts, conduct, and omissions by respondent. Respondent made substantial misrepresentations and false promises, and engaged in dishonest dealing or fraud. Respondent's improper conduct included the acts found below.

72. Respondent claimed to be the broker and agent for sellers of real properties, using unlicensed fictitious business names, including AE Builder, AE Builder LLC, Adept Builder LLC, AE MGMT, AE Mgmt Sales & Acquisitions, and AE Sales and Acquisitions.

73. In some transactions, respondent acted as a dual agent for both the seller and prospective buyer, and induced the buyer to submit an offer on a real property.

74. Respondent solicited multiple prospective buyers to submit offers for the purchase of the same real property.

75. Respondent would submit a Seller Multiple Counter Offer (counter offer) to multiple buyers or the buyers' agents. The counter offers stated similar terms including, but not limited to:

- a. Property to be sold as is, termite clearance will not be provided.
- b. Buyer is aware property is tenant occupied and undergoing eviction.

c. Property to be vacant on a date certain and buyer to have three days to inspect and remove buyer contingencies.

d. Property to be delivered vacant five days prior to the close of escrow.

e. Escrow to be 60 days with AE Builder, and Title to be Ticor Title Kim;

f. EMD to be delivered to escrow one day from counter acceptance along with agent acknowledgement.

g. EMD is eligible for release back to buyer should escrow require an extension, and not close within 60 days.

76. Respondent provided various excuses for not allowing interior inspections of the properties, including alleged, uncooperative tenants facing eviction.

77. The buyers would accept the counter offer presented by respondent.

78. On the purchase agreements, unlicensed persons including Norma Pedroza and Elizabeth "Liz" Larson were listed as the escrow agent for respondent's unlicensed escrow companies, including AE Builder Escrow, AE Escrow, and Adept Builder LLC Asset Management Co., among others. No escrow functions were performed by these companies other than receipt of EMD's. The terms of the counter offers made it appear that additional escrow activities would occur.

79. Respondent instructed multiple buyers to wire their EMD's. Without knowing that other buyers' offers had also been accepted by respondent, multiple buyers wired EMD's for the same property to respondent's bank accounts.

80. Respondent would provide various excuses for delays in closing of the transactions and for failure to provide escrow documents to the buyers such as escrow instructions or a title report.

81. Some buyers submitted Notices to Seller to Perform, which were not complied with by respondent or the purported seller.

82. Some buyers discovered that respondent had also accepted offers and collected EMD's from other buyers for the same property.

83. In some transactions, the buyer's agent discovered that the property had been foreclosed and that respondent had failed to inform the buyer's agent of the foreclosure despite repeated requests for updates on the status from the buyer's agent.

84. In some transactions, respondent sent an email to the buyer or buyer's agent stating that escrow needed to be canceled.

85. Respondent often repeatedly promised to return EMD's to buyers.

86. After waiting several weeks or months for their transactions to close with no actual progress or close of escrow, buyers exercised their right for cancellation of the contract, demand for release of deposit from respondent, and cancellation of escrow.

87. Respondent failed to timely return EMD's to some buyers or failed to return the complete or entire amount of other buyers' EMD's, despite repeated demands from buyers for return of their deposits. In some transactions, Respondent refused to refund the EMD to a buyer unless the buyer signed a release of liability.

88. In some transactions, respondent falsely informed the buyers that a check for the refund of the buyer's EMD had been mailed to the buyer when, in fact, respondent never mailed the refund payment to the buyer. In doing so, respondent sometimes created false tracking information to give to the buyer. In some transactions, respondent would send a check to the buyer from one of respondent's bank accounts and then place a stop payment on the check. In some transactions, respondent issued a check from one of her bank accounts to the buyer as a refund, the check was returned for insufficient funds and the buyer was charged a returned check fee by the buyer's bank.

89. The misconduct of respondent included the following transactions:

EMD Date / Amount	Property / Buyer
5/13/2019, \$5,000	9470 S. Hobart Blvd., Los Angeles; AH, LLC
5/10/2019, \$10,000	9470 S. Hobart Blvd., Los Angeles; P.I.
4/30/2019, \$40,000	2609 Orange St., Riverside; J.O.
4/30/2019, \$5,000	2609 Orange St., Riverside; P.Y.
4/23/2019, \$7,500	2609 Orange St., Riverside; ZK, LLC
4/22/2019, \$9,500	9470 S. Hobart St., Los Angeles; J.B.
4/19/2019, \$7,500	2609 Orange St., Riverside; CFF, LLC
4/18/2019, \$7,500	2609 Orange St., Riverside; Y.O.Y.
4/16/2019, \$0	2609 Orange St., Riverside; LE.I.
4/15/2019, \$8,850	17149 Marin Ct., Fontana; L.R., M.R

4/8/2019, \$9,540	15096 Alyssum Ct., Fontana; H.L., Y.Z.
4/2/2019, \$10,000	15102 S. Raymond Ave., Gardena; F.P., Y.P.
4/1/2019, \$10,000	1040 W. 103 rd St., Los Angeles; E.C. Inc.
3/28/2019, \$5,000	1040 W. 103 rd St., Los Angeles; UCD
3/22/2019, \$10,000	1224 W. 81st St., Los Angeles; AH, LLC
3/21/2019, \$0	7021 John Sr., Riverside; MP, LLC
3/7/2019, \$10,000	1224 W. 81st St., Los Angeles; J.A.
2/27/2019, \$20,000	1224 W. 81st St., Los Angeles; A.L.
2/26/2019, \$9,750	12332 Runnymede St. #1, Hollywood; G.L, M.L.
2/13/2019, \$5,200	717 Juniper St., Hemet; FF, LLC
2/12/2019, \$5,200	717 Juniper St., Hemet; R.C., T.C.
2/5/2019, \$5,000	12332 Runnymede St. #1, Hollywood; J.H., E.H.
1/25/2019, \$10,000	37385 Brutus Way, Riverside; L, LLC
1/25/2019, \$10,000	11056 Night Shadow Dr., Riverside; L, LLC
1/23/2019, \$8,500	11056 Night Shadow Dr., Riverside; GAZI, Inc.
1/22/2019, \$8,500	11056 Night Shadow Dr., Riverside; CPD, Inc.
1/7/2019, \$9,000	3395 Mulberry St., Riverside; RH, LLC
12/24/2018, \$7,500	5482 Golden West Ave., Riverside; TREI, LLC

12/21/2018, \$9,500	5482 Golden West Ave., Riverside; E.M.
12/21/2018, \$9,200	5482 Golden West Ave., Riverside; CC, Inc.
12/19/2018, \$10,000	5482 Golden West Ave., Riverside; MPI, LLC
11/29/2018, \$5,500	16424 Welsh Ct., Moreno Valley; R.R., M.M.
11/27/2018, \$10,000	932 W. Poplar, Compton; RCDP, LLC
11/26/2018, \$9,750	2736 E. Harrison St., Corona; D&Y C
10/26/2018, \$8,900	12721 Paseo Azul Way, Corona; H.J.
10/25/2018, \$15,000	2736 E. Harrison St., Corona; M.M.
9/24/2018, \$9,500	760 Balsam Ln., Corona; W.S.
9/12/2018, \$11,500	3035 Winter St., Los Angeles; D.L.
9/7/2018, \$10,500	3035 Winter St., Los Angeles; G.N.S.
8/16/2018, \$12,000	3035 Winter St., Los Angeles; F.T.
7/27/2018, \$49,000	760 Balsam Ln., Corona; W.T.B.
7/20/2018, \$10,000	760 Balsam Ln., Corona; P.S.
6/20/2018, \$9,000	1114 Citron St. #59, Anaheim; SV, LLC
6/13/2018, \$10,000	253 E. Nicolet St., Banning; C28No.8LP
5/31/2018, \$9,500	3900 Albillo Loop, Perris; M.F.A.
5/31/2018, \$9,500	3900 Albillo Loop, Perris; Y.F. Trust

5/31/2018, \$9,500	3900 Albillo Loop, Perris; W.T.
5/24/2018, \$15,000	28594 Forest Oaks Way, Moreno Valley; M. Corp.
5/18/2018, \$10,000	28594 Forest Oaks Way, Moreno Valley; E.C.
10/24/2017, \$19,500	26065 Westridge Ave., Sun City; B.P., J.P.
10/23/2017, \$6,400	26065 Westridge Ave., Sun City; T.P.
10/19/2017, \$5,850	26065 Westridge Ave., Sun City; M.I.S., G.S.
9/26/2017, \$10,000	1543 Turquesa Dr., San Jacinto; N.P.I.
7/27/2017, \$10,000	2055 Kettering St., Lancaster; MCG
12/23/2016, \$5,000	6812 Woodmere Dr., Riverside; K.V.

90. In the Superior Court of California, County of Orange, Central Justice Center, Case No. 19CF0529, respondent has been charged with 22 felony counts of grand theft related to the fraudulent real estate conduct described above. That criminal case is pending.

91. In the Superior Court of California, County of Orange, Central Justice Center, Case No. 19CF1466, respondent has been charged with 25 felony counts of grand theft related to the fraudulent real estate conduct described above. That criminal case is pending. The charges in this second matter relate to events that occurred after respondent was released on bail after her arrest in the matter described in Factual Finding 90. On July 15, 2019, the judge issued an order that respondent was precluded from accepting any trust funds related to any acts for which a real estate broker license is required.

Costs

92. The costs for preparation of the two audits are \$35,366.48 (exhibit 11). These costs are reasonable.

93. The costs for investigation of this matter are \$26,280.64 (exhibit 10). These costs are reasonable.

94. The costs for prosecution of this matter are \$33,085.75 (exhibit 12). These costs are reasonable.

LEGAL CONCLUSIONS

Default, Jurisdiction, and Standard and Burden of Proof

1. Under the authority of Government Code section 11520, if the respondent fails to appear at the hearing, "the agency may take action based on the respondent's express admissions or upon other evidence" Respondent did not appear at the hearing. Complainant submitted evidence in support of the allegations in the Third Amended Accusation.

2. In this case involving discipline of a professional license, complainant bears the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*The Grubb Co., Inc. v. Dept. of Real Estate* (2011) 194 Cal.App.4th 1494, 1505.) This standard applies specifically to real estate brokers. (*Small v. Smith* (1971) 16 Cal.App.3d 350; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204.)

3. This means the burden rests on complainant to establish the charging allegations by proof that is clear, explicit and unequivocal—so clear as to leave no

substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Applicable Law

GENERAL LAW ON GROUNDS FOR DISCIPLINE

4. The commissioner of the Department may take disciplinary action against a licensee for various reasons listed in Code sections 10176 and 10177. As relevant to the allegations in this matter, Code section 10176 sets forth the following grounds for license discipline:

- (a) Making any substantial misrepresentation.
- (b) Making any false promises of a character likely to influence, persuade, or induce.
- (c) A continued and flagrant course of misrepresentation or making of false promises through licensees. [P]
- (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.
- (f) Claiming, demanding, or receiving a fee, compensation, or commission under any exclusive agreement authorizing a licensee to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination. [P] . . . [P]

(i) Any other conduct, whether of the same or of a different character than specified in this section, which constitutes fraud or dishonest dealing.

5. As relevant to the allegations in this matter, Code section 10177 sets forth the following grounds for license discipline:

(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. [P] . . . [P]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. [P]

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

6. The commissioner may take disciplinary action against the MLO registration of a licensee under Code sections 10166.05 and 10166.051. As relevant to the allegations in this matter, Code section 10166.051 sets forth the following grounds for discipline of a MLO license endorsement:

(b) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license endorsement, if an applicant or endorsement holder fails at any time to meet the requirements of Section 10166.05

7. Under Code section 10166.05, a MLO license endorsement shall not be issued unless the commissioner finds:

(c) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the article.

REQUIREMENTS FOR HANDLING TRUST FUNDS

8. As relevant to this matter, handling of trust funds is governed by Code sections noted above, as well as Code section 10145 and Regulations 2831, 2831.1, 2831.2, 2832, 2832.1, and 2834.

9. Code section 10145 states, in pertinent part:

(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 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. . . .

(3) An arrangement under which a person enumerated in subparagraph (A), (B), or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of a broker

shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody. [P] . . . [P]

(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.

(i) As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in paragraph (1) or (3) of subdivision (a) of Section 17006 of that code.

10. Under Regulation 2831, every broker must keep a record of all trust funds received, which shall set forth, in chronological order, certain information in columnar form, including, for example, the date trust funds were received, the amount, and from whom; the date of deposit, and a daily balance of the account.

11. Under Regulation 2831.1, every broker must keep a separate record "for each beneficiary or transaction, accounting for all funds which have been deposited to

the broker's trust bank account . . . [which] shall include information sufficient to identify the transaction and the parties to the transaction." The record shall set forth in chronological order certain information in columnar form, including, for example, the date trust funds were received, the amount, and from whom, the date of deposit and any related disbursement, the disbursement amount, and a balance after posting transactions on any date.

12. Reconciliation of accounts holding trust funds is governed by Regulation 2831.2, which states:

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.

13. Funds received on behalf of another must be handled according to Regulation 2832, which states in pertinent part:

(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. [P]

(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.

14. If disbursements from a trust fund reduce the balance below the liability for the trust funds, consent must be obtained under Regulation 2832.1, which states:

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.

15. Withdrawals from a trust account are governed by Regulation 2834, which states in pertinent part:

(a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:

(1) a salesperson licensed to the broker.

(2) a person licensed as a broker who has entered into a written agreement pursuant to section 2726 with the broker.

(3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.

[P]

(c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, or the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

THE LAW RELATING TO FICTITIOUS BUSINESS NAMES

16. A licensee using a fictitious business names must comply with statues and Regulations. Under Code section 10159.5, subdivision (a)(1):

Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.

17. Regulation 2731, on the use of a false or fictitious name, states, in pertinent part:

(a) A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.

(b) The Bureau shall issue a license required under the Real Estate Law only in the legal name of the licensee or in the fictitious business name of a broker who presents evidence of having complied with the provisions of Sections 17910 and 17917 of the Code. [P]

(d) A license may not be issued or renewed with a fictitious business name containing the term "escrow", or any name which implies that escrow services are provided, unless the fictitious business name includes the term, "a non-independent broker escrow" following the name. Licensees who have been or are issued a license with a fictitious business name with the term "escrow", or any term which implies that escrow services are provided, must include the term "a non-independent broker escrow" in any advertising, signs, or electronic promotional material. [P]

RETENTION OF RECORDS

18. A licensee must retain certain records make them available for inspection by the commissioner, under Code section 10148, which states, in pertinent part:

(a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of

the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature. This subdivision shall not be construed to require a licensed real estate broker to retain electronic messages of an ephemeral nature, as described in subdivision (d) of Section 1624 of the Civil Code. [P] . . . [P]

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

SUPERVISION OF OTHERS BY A BROKER

19. In the Third Amended Accusation, complainant alleges a violation of Code section 10159.2. However, this section refers only to brokers that are corporations. It is not relevant to this matter.

20. The requirements for a broker to supervise activities of her salespersons is governed by Regulation 2725, which states:

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.
- (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.

(g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

COSTS

21. Under Code section 10148, subdivision (b), the commissioner shall charge a real estate broker for the cost of any audit if, following a disciplinary hearing, it is found "that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145." Cost of audits was \$35,366.48.

22. Under Code section 10106, subdivision (a), in a disciplinary hearing, 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." Under subdivision (d), the ALJ "shall make a proposed finding of the amount of reasonable costs of investigation and

prosecution of the case.” The costs for investigation are \$26,280.64. The costs for prosecution are \$33,085.75.

Causes for Discipline

23. There is cause to suspend or revoke respondent’s real estate broker’s license for violating Code sections 10145, 10176, and 10177, and Regulation 2832.1, for trust fund shortages, as set forth in Factual Findings 10 through 89, and particularly 19 through 26.

24. There is cause to suspend or revoke respondent’s real estate broker’s license for violating Code sections 10145, 10176, and 10177, and Regulation 2831, for account records violations, as set forth in Factual Findings 10 through 89, and particularly 27 through 30.

25. There is cause to suspend or revoke respondent’s real estate broker’s license for violating Code sections 10145, 10176, and 10177, and Regulation 2831.2, for account records violations, as set forth in Factual Findings 10 through 89, and particularly 31 and 32.

26. There is cause to suspend or revoke respondent’s real estate broker’s license for violating Code sections 10145, 10176, and 10177, and Regulation 2831.2, for account records violations, as set forth in Factual Findings 10 through 89, and particularly 33.

27. There is cause to suspend or revoke respondent’s real estate broker’s license for violating Code sections 10145, 10176, and 10177, and Regulation 2832, for trust account violations, as set forth in Factual Findings 10 through 89, and particularly 34 and 35.

28. There is cause to suspend or revoke respondent's real estate broker's license for violating Code sections 10145, 10176, and 10177, and Regulation 2834, for trust account violations, as set forth in Factual Findings 10 through 89, and particularly 36 and 37.

29. There is cause to suspend or revoke respondent's real estate broker's license for violating Code sections 10145, 10176, and 10177, and Regulation 2832, for trust account violations, as set forth in Factual Findings 10 through 89, and particularly 38 through 42.

30. There is cause to suspend or revoke respondent's real estate broker's license for violating Code sections 10145, 10176, and 10177, for trust account violations, as set forth in Factual Findings 10 through 89, and particularly 43 through 55.

31. There is cause to suspend or revoke respondent's real estate broker's license for violating Code sections 10176 and 10177, for misrepresentation and dishonest dealing, as set forth in Factual Findings 10 through 89, and particularly 56 through 58.

32. There is cause to suspend or revoke respondent's real estate broker's license for violating Code sections 10176 and 10177, for failure of listing agreements to have a termination date, as set forth in Factual Findings 10 through 89, and particularly 59.

33. There is cause to suspend or revoke respondent's real estate broker's license for violating Code sections 10159.5, 10176 and 10177, and Regulation 2731, for use of unlicensed fictitious business names, as set forth in Factual Findings 10 through 89, and particularly 60 and 61.

34. There is cause to suspend or revoke respondent's real estate broker's license for violating Code sections 10148, 10176 and 10177, for failure to retain and produce records, as set forth in Factual Findings 10 through 89, and particularly 62.

35. There is cause to suspend or revoke respondent's real estate broker's license for violating Code sections 10176 and 10177, and Regulation 2725, for failure to supervise, as set forth in Factual Findings 10 through 89, and particularly 63.

36. There is cause to suspend or revoke respondent's real estate broker's license for violating Code sections 10166.051, 10166.05, and 10176, for substantial misrepresentation, making false promises, continued and flagrant misrepresentations, dishonest dealing, fraud, negligence, and violation of real estate laws and regulations. as set forth in Factual Findings 10 through 89, and particularly 64.

Outcome

37. Respondent's actions and violations were dishonest, calculated, methodical, severe and persistent, and caused harm to the public. Aggravating circumstances include that she continued in her unlawful activities over an extended period of time and in the face of complaints from aggrieved buyers and continued during the Department's audit and after she was charged with criminal violations. The rehabilitation criteria in Regulation 2912 have been considered. The only evidence of rehabilitation is that respondent has repaid a portion of her ill-gotten gains.

38. In practicing under a real estate license, "[h]onesty and integrity are deeply and daily involved in various aspects of the practice." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176). "The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license." (*Id.* at 177-178.) "Disciplinary

procedures provided for in the Business and Professions Code, such as section 10177, subdivision (d) [willful disregard of the Real Estate Law as grounds for discipline], are to protect the public not only from conniving real estate salesman but also from the uninformed, negligent, or unknowledgeable salesman." (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518.) Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Ibid.*) "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Harrington, supra*, 402; *Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.) Where a real estate broker received \$1,000 as a deposit on an offer to purchase property and deposited it in his trust account, and then withdrew \$420 for personal expenses, revocation of his license was not excessive or an abuse of discretion. (*Brown v. Gordon* (1966) 240 Cal.App.2d 659.)

39. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.*; see also *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817; *Handeland, supra*, 58 Cal.App.3d at 518.)

40. Under all of the circumstances, revocation of respondent's real estate broker's license is appropriate. Consideration has been given to an order for recovery

of costs only if respondent were to apply for license reinstatement or another license from the Department. However, this would deny to complainant a substantial fund, and the costs were necessarily incurred to perform the audits and the prosecution and investigation of the matter. Full cost recovery is appropriate.

ORDER

1. All licenses and licensing rights of respondent Laura Christina Preciado under the Real Estate Law, including real estate broker license number 01473934 and all mortgage loan originator endorsements, are revoked.

2. Within 60 days of the effective date of this decision, respondent shall pay to the commissioner the costs of the audits (\$35,366.48), investigation (\$26,280.64), and prosecution (\$33,085.75). The commissioner, in his or her discretion, may agree to a payment schedule.

DATE: December 19, 2019

DocuSigned by:

David Rosenman

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DAVID B. ROSENMAN

Administrative Law Judge

Office of Administrative Hearings