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**MAY 30 2023**

DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of:	)	DRE NO. H-3309 FR
	)	
PERFORMANCE PROPERTY	)	OAH NO. 2022110120
MANAGEMENT, INC. and	)	
STEPHANIE DIANE MAZZA,	)	
	)	
Respondent(s).	)	

ORDER STAYING EFFECTIVE DATE

On May 9, 2023, a Decision was rendered in the above-entitled matter to become effective June 08, 2023.

IT IS HEREBY ORDERED that the effective date of June 08, 2023, is stayed for a period of 30 days to allow Respondents PERFORMANCE PROPERTY MANAGEMENT, INC. and STEPHANIE DIANE MAZZA, to file a petition for reconsideration or consider Respondent's petition for reconsideration.

The Decision of May 9, 2023, shall become effective at 12 o' clock noon on July 10, 2023.

DATED: 5.24.23

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER





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 JUN 08 2023.

IT IS SO ORDERED 5.9.23

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER



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

**In the Matter of the Accusation Against:**

**PERFORMANCE PROPERTY MANAGEMENT, INC., and  
STEPHANIE DIANE MAZZA, Respondents**

**Agency Case No. H-3309 FR**

**OAH No. 2022110120**

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on February 21, 2023, by videoconference from Sacramento, California.

Megan Lee Olsen, Counsel, represented complainant Brenda Smith, a Supervising Special Investigator of the State of California.

Gabriel A. Godinez of Godinez Law represented respondents Performance Property Management, Inc. (PPMI) and Stephanie Diane Mazza. Ms. Mazza was present throughout the hearing.

Evidence was received, and the record was left open to allow complainant to submit redacted versions of Exhibits 5 and 7 and designate the portions of Exhibit 5 that should be subject to a protective order. Respondents waived their right to

respond to the redacted exhibits and did not object to a protective order.

Complainant's redacted exhibits and Request for Protective Order Sealing Confidential Records were received, and the record was closed and the matter submitted for decision on March 3, 2023.<sup>1</sup>

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. The Department of Real Estate (Department) issued Ms. Mazza Real Estate Salesperson License Number S01971765 on January 31, 2015. The Department terminated the license and issued Ms. Mazza Real Estate Broker License Number B01971765 on May 15, 2018. The broker license expires on May 14, 2026, unless renewed. There is no history of prior discipline of the salesperson or broker license.

2. Ms. Mazza was the designated officer listed on the following corporate real estate broker licenses during the following time frames:

- Realty Dimensions, Inc., August 21 – September 6, 2018;
- PPMI, February 8, 2019 – February 7, 2023; and
- Performance Realtors, Inc., October 17, 2019 – March 2, 2023.

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<sup>1</sup> Exhibit 5 (pages A488–A723 and A732–A821 only) is sealed pursuant to the Protective Order Sealing Confidential Records issued March 28, 2023.

3. The Department issued PPMI Corporate Real Estate Broker License Number C02083609 on February 8, 2019. The license expired February 7, 2023, and complainant introduced no evidence of its current status. There is no history of prior discipline of the license. Only Ms. Mazza has been listed as the designated officer on the license.

4. Complainant signed the Accusation solely in her official capacity on February 21, 2020. The Accusation alleges cause to discipline Ms. Mazza's and PPMI's real estate licenses because an audit of PPMI's real estate activities revealed multiple violations of the Real Estate Law (Bus. & Prof. Code, § 10000) and the regulations implementing it.

### **PPMI's Background**

5. PPMI is a real estate company founded by Ms. Mazza and Sigifredo "Freddy" Perez. Ms. Mazza is the Chief Executive Officer, Mr. Perez the Chief Financial Officer, and Guadalupe Rodriguez the Secretary and Treasurer. Ms. Mazza owns a 20 percent interest in the company, Mr. Perez a 55 percent interest, and Ms. Rodriguez a 5 percent interest. The remaining 20 percent interest is owned by several other people, none of whom are corporate officers. Ms. Mazza and Mr. Perez are the only shareholders who hold a real estate license. Mr. Perez has a real estate salesperson license, and his responsible broker is Performance Realtors, Inc.

6. PPMI is in Bakersfield, California. It engages exclusively in property management and is responsible for advertising vacancies, soliciting prospective tenants, screening and placing tenants, collecting security deposits and rents, and ordering, supervising, and paying for repairs and maintenance. It also makes loan, property tax, and insurance payments on behalf of its clients. PPMI does not employ

any real estate licensees, although its operations manager, Mackenzie West, is currently studying to take her real estate salesperson examination. PPMI intends to employ her as a salesperson upon licensure.

7. PPMI maintains two bank accounts at Wells Fargo Bank for client trust funds, Trust Account 1 and Trust Account 2. Trust Account 1 is used as an "operating" account. All funds received on behalf of clients, except security deposits, are deposited into that account, and all payments made on behalf of clients are paid out of that account. Trust Account 2 is used exclusively for the deposit and disbursement of security deposits.

### **Audit of PPMI's Real Estate Activities**

8. The Department decided to conduct an investigative audit of PPMI's real estate activities based on information it received during an unrelated investigation of another real estate licensee. Amanda Patterson, an Auditor II with the Department at the time,<sup>2</sup> conducted the audit. She audited PPMI's real estate activities from February 8 through August 31, 2019 (audit period).<sup>3</sup>

9. Ms. Patterson performed the field portion of her audit at PPMI's office in Bakersfield on September 25 and 26, 2019. She interviewed Ms. Mazza to obtain background information and requested and reviewed various documents, including bank records. At hearing, Ms. Patterson explained Ms. Mazza was cooperative when

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<sup>2</sup> Ms. Patterson was subsequently promoted to Auditor III.

<sup>3</sup> The Accusation alleged the audit period began February 1, 2019. However, the persuasive evidence established otherwise.



asked questions and producing documents. She opined Ms. Mazza was open and forthcoming and did not obstruct the audit.

10. During the audit period, PPMI managed 95 properties consisting of 130 units on behalf of 74 owners. The properties included 87 one-to-four family residences, seven apartment complexes, and one commercial complex. Its monthly property management fee was a flat rate and ranged from \$40 to \$400 per unit. It also charged fees: (1) when a property first joined PPMI's portfolio; (2) upon execution of a lease; and (3) for late payments, mark-up, annual inspections, 30-day notices, foreclosures, and walk-through inspections.

### **RECONCILIATION OF TRUST ACCOUNT 1**

11. Ms. Patterson reconciled Trust Account 1 as of July 31, 2019. The reconciliation consisted of three steps: (1) determining PPMI's "accountability," the amount of trust funds held on behalf of clients; (2) calculating Trust Account 1's "adjusted balance," the account balance "adjusted" for deposits and debits that had not posted yet; and (3) comparing the accountability with the adjusted balance to determine any "discrepancy." The discrepancy should always be \$0.00. Otherwise, there is an overage if the adjusted balance exceeds the accountability and a shortage if the accountability exceeds the adjusted balance.

12. As of July 31, 2019, Trust Account 1's adjusted balance was \$73,143.83. PPMI's accountability was \$73,328.83. Therefore, there was a shortage of \$185, i.e., if all clients demanded their funds that day, PPMI would have been short \$185.

13. Ms. Patterson traced the shortage to two separate properties, one for \$85 and the other for \$100. When the shortage was brought to Ms. Mazza's attention, she was unable to produce written consent to the shortage from each of the owners of

the trust funds PPMI held during the audit period. Ms. Mazza researched her records and traced \$85 to a check that was deposited and subsequently returned for non-sufficient funds. She traced the remaining \$100 to a negative balance that was incorrectly transferred to Trust Account 1 when PPMI changed accounting software.

## **RECONCILIATION OF TRUST ACCOUNT 2**

14. Ms. Patterson also reconciled Trust Account 2 using the steps described above. As of July 31, 2019, Trust Account 2's adjusted balance was \$84,759, and PPMI's accountability was \$84,971. Therefore, there was a shortage of trust funds of \$212.

15. Ms. Patterson traced the shortage to two separate properties, one for \$12 and the other for \$200. When the shortage was called to Ms. Mazza's attention, she was unable to produce written consent to the shortage from each of the owners of the trust funds PPMI held during the audit period. Ms. Mazza researched her records and traced \$200 to a check for a security deposit that was deposited and subsequently returned for non-sufficient funds. She traced the remaining \$12 to a bank charge for non-sufficient funds.

## **UNAUTHORIZED SIGNATORIES ON TRUST ACCOUNTS 1 AND 2**

16. During the audit period, Mr. Perez and Ms. Rodriguez were authorized signatories on both Trust Account 1 and 2. Though Mr. Perez was a licensed real estate salesperson, PPMI was not his responsible broker. Ms. Rodriguez was unlicensed, and no fidelity bond or insurance coverage was issued for either account.

17. When the unauthorized signatories were called to Ms. Mazza's attention, she told Ms. Patterson that Ms. Rodriguez was never supposed to be a signatory on either account but was only supposed to be an authorized user of the Wells Fargo

Bank's online account system. Ms. Mazza admitted fault for allowing Mr. Perez to be a signatory on both accounts. She explained her mistaken belief that any real estate licensee could be a signatory on a trust account.

### **Broker Office Survey**

18. Araceli Amezola is a Special Investigator with the Department. She conducted a Broker Office Survey (BOS) at PPMI on the second day of Ms. Patterson's audit. A BOS is a series of questions to determine the nature of a real estate broker's business and compliance with the Real Estate Law and the regulations implementing it. Ms. Amezola arrived shortly after Ms. Patterson on September 26, 2019.

### **UNLICENSED ACTIVITY**

19. Ms. Mazza provided Ms. Amezola several property management agreements and lease agreements. During Ms. Amezola's review of the agreements, she noticed that Ms. Mazza had signed two property management agreements on October 29, 2018, and January 3, 2019, respectively, on behalf of PPMI. Ms. Mazza had also signed two lease agreements on January 10 and 29, 2019, respectively. But the Department did not issue PPMI's corporate real estate broker license until after she had signed the last lease agreement. When Ms. Mazza was questioned about these discrepancies, she said she thought she had done everything correctly as she "learned from last time," referring to the Department's prior investigation of Realty Dimensions, Inc., when she was the designated officer listed on its license.

### **UNDISCLOSED COMPENSATION**

20. Ms. Amezola learned during her BOS that PPMI contracted with Pinnacle General Contractors, LLC, to provide maintenance and repair services for the

properties it manages. She also learned Ms. Mazza owns a 20 percent interest in Pinnacle General Contractors, LLC. Ms. Mazza did not produce any evidence that she disclosed her ownership interest in writing to any of PPMI's clients. She told Ms. Amezola she was unaware of any obligation to do so.

### **Follow-Up Visit**

21. Ms. Amezola returned to PPMI on December 5, 2019, to conduct an "audit follow-up" to the violations she and Ms. Patterson had discovered. Ms. Mazza produced evidence that the shortages in Trust Accounts 1 and 2 were cured on September 25, 2019. She also provided evidence that Mr. Perez and Ms. Rodriguez had been removed as signatories from both accounts. Lastly, Ms. Mazza explained she had revised PPMI's property management agreements to disclose her ownership interest in Pinnacle General Contractors, LLC, and provided a copy of the revised agreement. She also explained she had sent a letter disclosing her interest to existing owners, and she provided Ms. Amezola a copy of the letter the following week.

22. At hearing, Ms. Amezola described Ms. Mazza as cooperative during the BOS and subsequent follow-up interview. She believed Ms. Mazza was honest during the investigation, and Ms. Amezola had no reason to believe Ms. Mazza was trying to be deceptive. Ms. Mazza provided all requested information in a timely manner. Ms. Amezola also had no reason to believe Ms. Mazza's violations were motivated by her intent to mislead or deceive others.

### **Ms. Mazza's Testimony**

23. Ms. Mazza recalled Ms. Patterson's visits on September 25 and 26, 2019, and explained she was open and honest and did not try to deceive anyone during the audit. She voluntarily provided all the documents used to uncover her violations. When

Ms. Patterson discovered the shortages in Trust Accounts 1 and 2, Ms. Mazza's first reaction was to replace the missing funds.

24. Ms. Mazza explained that she and Mr. Perez opened the two trust accounts when forming PPMI. She noticed Ms. Guadalupe was named as a signatory on both accounts, and Ms. Mazza contacted Wells Fargo Bank multiple times to remove Ms. Guadalupe as a signatory and limit her access to the bank's online banking system. She thought Wells Fargo Bank had already fixed the problem when Ms. Patterson told her otherwise. Ms. Mazza reiterated that she did not know Mr. Perez could not be a signatory because she thought any real estate licensee could be one.

## **Analysis**

### **CAUSE FOR DISCIPLINE**

25. The compelling evidence established that Ms. Mazza signed two property management agreements and two lease agreements on behalf of PPMI prior to the Department issuing PPMI a corporate broker license. The compelling evidence further established that Ms. Mazza was the designated officer listed on PPMI's license during the entire audit period. On July 31, 2019, there was a shortage of trust funds in Trust Accounts 1 and 2, and none of the owners of those funds consented in writing to the shortages. Additionally, Mr. Perez and Ms. Guadalupe were signatories on both accounts, even though PPMI was not Mr. Perez's supervising broker and Ms. Guadalupe was unlicensed and there was no fidelity bond or insurance coverage on either account. Furthermore, PPMI contracted with Pinnacle General Contractors, LLC, and Ms. Mazza did not disclose her ownership interest in that company to any of PPMI's clients. Lastly, Ms. Mazza failed to exercise reasonable supervision over PPMI's real estate activities.

26. Ms. Mazza did not testify, introduce any documents, or call any witnesses to establish otherwise. Instead, she argued she has always acted honestly and openly, and, though "there were hiccups," she cured any mistakes immediately. Furthermore, her misconduct was due to mistakes or misunderstandings, rather than a nefarious motive. She argued that the appropriate discipline is an administrative fine.

### **FITNESS FOR LICENSURE**

27. "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.) Here, there was no evidence that Ms. Mazza lacks honesty. Ms. Patterson described Ms. Mazza as cooperative, open, and forthright during the audit, and she provided all the documents that were used to uncover her violations. Ms. Amezola also described Ms. Mazza as cooperative and explained she had no reason to believe Ms. Mazza was trying to be deceptive during the investigation. Ms. Amezola further explained she had no reason to believe Ms. Mazza had any nefarious intent when she engaged in her misconduct.

28. But Ms. Mazza's misconduct does not raise questions about her character traits for honesty or truthfulness. Instead, her actions raise concerns over her knowledge of the Real Estate Law and the regulations implementing it. Additionally, her conduct raises questions about the extent of her understanding and appreciation of her duties and responsibilities as a real estate broker and PPMI's designated officer.

29. As PPMI's designated officer, Ms. Mazza owed fiduciary duties to the owners of trust funds held in Trust Accounts 1 and 2 and was, therefore, charged with constructive knowledge of the status of those accounts. She was required to reconcile



all trust funds at least monthly. Nonetheless, the shortages in Trust Accounts 1 and 2 went undetected for almost two months (from July 31, 2019, the adjusted balance date to September 25 or 26, 2019, the date of the audit). Furthermore, Ms. Mazza's lack of understanding that Mr. Perez could not be a signatory for either account is alarming. Her willingness to grant Ms. Guadalupe online access to those accounts despite knowing Ms. Guadalupe could not be a signatory on either shows Ms. Mazza's complete lack of understanding of her obligation to protect against the unauthorized use of trust funds.

30. Ms. Mazza had held a real estate license for almost four years when she signed the property management agreement on behalf of PPMI on October 29, 2018. She knew, or should have known, she was performing real estate activities for which PPMI needed a corporate broker license. But the Department did not issue PPMI's license until after Ms. Mazza had signed the agreement and three others. Such conduct demonstrates a complete lack of respect for the laws and regulations governing the practice of real estate and raises serious doubts over her fitness to supervise others. Ms. Mazza's apparent lack of awareness of her obligation to disclose her ownership interest in Pinnacle General Contractors, LLC, raises similar concerns.

31. In sum, Ms. Mazza did not demonstrate her continued fitness to practice real estate in a manner consistent with public health, safety, and welfare. She did not introduce any evidence demonstrating otherwise. And though she engaged in her misconduct as a real estate broker, she demonstrated a fundamental lack of understanding of the laws and regulations governing the practice of real estate as a whole. Additionally, one's fitness to safely practice as a real estate salesperson necessarily depends on recognizing and understanding the different scopes of

authority for a salesperson and a broker. Ms. Mazza's misconduct demonstrates her lack of fitness to practice real estate in any capacity.

### **Request for Audit Costs**

32. At hearing, complainant requested that respondents be ordered to pay \$2,985.52 for the cost of Ms. Patterson's audit. Complainant introduced a Certified Statement of Audit Costs itemizing the cost of the audit by date, activity, amount of time spent, hourly rate, and total cost per activity, to which respondents did not object. For the reasons explained in Legal Conclusion 25, respondents shall pay for Ms. Patterson's audit.

### **Request for Investigation and Enforcement Costs**

33. Complainant requested costs pursuant to Business and Professions Code section 10106 in the total amount of \$3,036.45. That amount consists of investigation costs in the amount of \$1,768.20 and enforcement costs in the amount of \$1,268.25. At hearing, complainant introduced a Certified Statement of Investigation Costs certifying under penalty of perjury that the Department incurred costs in the amount of \$1,768.20 for the time staff spent investigating this matter. Attached to the Certified Statement of Investigation Costs is a spreadsheet itemizing the time spent by staff member, date, task, time, hourly rate, and total amount.

34. Complainant also introduced a Certified Statement of Costs signed by Ms. Olsen. Ms. Olsen certified, under penalty of perjury, that the Department incurred, or was anticipated to incur, costs in the amount of \$1,268.25 for the time she spent, or was anticipated to spend, on this matter prior to hearing. She itemized her time by date, activity, and time spent and included her hourly rate.



35. The entire amount of the costs of investigation and enforcement complainant requested is reasonable in light of the issues involved in this matter as discussed in Legal Conclusion 29.

## **LEGAL CONCLUSIONS**

### **Applicable Burden/Standard of Proof**

1. Complainant has the burden of proving each ground for discipline alleged in the Accusation by clear and convincing evidence to a reasonable certainty. (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 552, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"]; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212 [the standard of proof applicable to proceedings for the discipline of a real estate license is clear and convincing evidence to a reasonable certainty].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

### **Applicable Law**

#### **AUTHORIZED SCOPE OF PRACTICE**

2. Subject to exceptions not applicable here, a real estate license is required to perform real estate activities. (Bus. & Prof. Code, § 10130.) A "real estate broker" is a

person who, for payment or in anticipation of payment, performs real estate activities on behalf of another. (Bus. & Prof. Code, § 10131.) A corporation wishing to perform real estate activities shall be licensed through an officer who holds a real estate broker license or has passed the broker license examination and is eligible to obtain a broker license. (Bus. & Prof. Code, § 10159.) "Real estate activities" include leasing or renting, offering to lease or rent, placing for rent, soliciting listings of places for rent, soliciting prospective tenants, or collecting rents. (Bus. & Prof. Code, § 10131, subd. (b).)

3. A "real estate salesperson," on the other hand, is someone licensed by the Department as such who is "retained by a real estate broker" to perform real estate activities for payment or in anticipation of payment. (Bus. & Prof. Code, § 10016.) A salesperson cannot perform real estate activities on behalf of anyone other than her affiliated broker. (Bus. & Prof. Code, § 10137 [salesperson cannot accept compensation for real estate activities from anyone "other than the broker under whom . . . she is at the time licensed"]; see Bus. & Prof. Code, § 10138 [it is unlawful to pay a person for performing real estate activities if she is not licensed as a real estate broker]; see also Cal. Code Regs., tit. 10, § 2753 ["The license certificate of a real estate salesperson licensee shall be retained at the main business office of the real estate broker to whom the salesperson is licensed"].)

## **CLIENT TRUST ACCOUNTS**

### **Funds Held in Trust**

4. A real estate broker who receives money belonging to a client while performing real estate activities holds the money in trust for the client and must, within three days of receipt: 1) deliver the money to the client; 2) deposit it with a neutral escrow depository; or 3) deposit it into a trust account with a bank or other

financial institution. (Bus. & Prof. Code, § 10145, subd. (a); Cal. Code Regs., tit. 10, § 2832, subd. (a).)

### **Records of Trust Funds**

5. For any trust funds deposited into a trust account with a bank or other financial institution, the broker must keep a written record of the funds deposited, including: 1) the date of receipt; 2) from whom they were received; 3) the amount received; 4) the date of deposit; 5) the check number and date of any disbursement; and 6) the daily balance in the trust account. (Cal. Code Regs., tit. 10, § 2831, subd. (a).)

6. Additionally, the broker must maintain a separate record of all trust funds deposited on behalf of each client. (Bus. & Prof. Code, § 10145, subd. (g); Cal. Code Regs., tit. 10, § 2831.1, subd. (a).) The separate record must include the: 1) date of deposit; 2) amount of deposit; 3) date of disbursement; 4) check number for disbursement; 5) amount of disbursement; and 6) balance after each posted transaction. (Cal. Code Regs., tit. 10, § 2831.1, subd. (a).)

7. The broker must reconcile the written record of all trust funds deposited with the separate records every month in which trust funds are received or disbursed and keep a written record of the reconciliation. (Cal. Code Regs., tit. 10, § 2831.2.)

### **Authorized Signatories**

8. The following people may be signatories on a corporate broker's trust account: (1) the designated officer listed on the broker's license; (2) a salesperson affiliated with the broker's license, provided the designated officer is a signatory and authorizes adding the salesperson in writing; or (3) an unlicensed person, provided the designated officer is a signatory and authorizes adding the unlicensed person in

writing and the unlicensed person is covered by a fidelity bond or insurance policy in an amount not less than the maximum amount of trust funds to which she will have access. (Bus. & Prof. Code, § 10145, subd. (a)(2)(A), (C); Cal. Code Regs., tit. 10, § 2834, subd. (b)(1), (2).)

### **Disbursement of Trust Funds**

9. A broker may not make a disbursement from a trust account "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" without the prior written permission of each owner. (Cal. Code Regs., tit. 10, § 2832.1; see Bus. & Prof. Code, § 10145, subd. (a)(1) ["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"].)

### **DUTY TO DISCLOSE COMPENSATION**

10. A broker is required to disclose all income from a transaction for which a broker license is required to the parties to the transaction. (Bus. & Prof. Code, § 10176, subd. (f).)

### **DUTY TO SUPERVISE**

11. A broker has a duty to "exercise reasonable supervision over the activities of their salespersons or broker associates acting in the capacity of a salesperson." (Cal. Code Regs., tit. 10, § 2725.) "The officer designated by a corporate broker . . . shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the

corporation in the performance of acts for which a real estate license is required." (Bus. & Prof. Code, § 10159.2, subd. (a).)

## **Cause for Discipline**

### **AUDIT VIOLATIONS**

12. A real estate license may be disciplined if the licensee willfully violated the Real Estate Law or the regulations implementing it. (Bus. & Prof. Code, § 10177, subd. (d).) Respondents willfully violated Business and Professions Code section 10145, subdivision (a)(1), and California Code of Regulations, title 10, section 2832.1, by having a shortage of trust funds in Trust Accounts 1 and 2 without the written permission of all owners of the funds on July 31, 2019. Therefore, cause exists to discipline respondents' respective real estate broker licenses pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code section 10145, subdivision (a)(1), and California Code of Regulations, title 10, section 2832.1.

13. Respondents also willfully violated Business and Professions Code section 10145, subdivision (a)(2)(A), (C), and California Code of Regulations, title 10, section 2834, subdivision (b)(1), (2), by allowing Mr. Perez and Ms. Guadalupe to be signatories on Trust Accounts 1 and 2. Therefore, cause exists to discipline respondents' respective real estate broker licenses pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code section 10145, subdivision (a)(2)(A), (C), and California Code of Regulations, title 10, section 2834, subdivision (b)(1), (2).

14. Respondents also willfully violated Business and Professions Code section 10176, subdivision (g), by not disclosing to their clients that Ms. Mazza received

compensation based on PPMI's contractual relationship with Pinnacle General Contracting, LLC. Therefore, cause exists to discipline respondents' respective real estate broker licenses pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code section 10176, subdivision (g).

15. A real estate license may also be disciplined if the licensee "demonstrated negligence or incompetence in performing an act for which the officer, director, or person is required to hold the license." (Bus. & Prof. Code, § 10177, subd. (g).) Respondents demonstrated negligence or incompetence while performing real estate activities by having a shortage of trust funds in Trust Accounts 1 and 2 without the written permission of all owners of the funds on July 31, 2019. Therefore, cause exists to discipline their respective real estate broker licenses pursuant to Business and Professions Code section 10177, subdivision (g), based on that conduct.

16. Respondents also demonstrated negligence or incompetence while performing real estate activities by allowing Mr. Perez and Ms. Guadalupe to be signatories on Trust Accounts 1 and 2. Therefore, cause exists to discipline their respective real estate broker licenses pursuant to Business and Professions Code section 10177, subdivision (g), based on that conduct.

17. Respondents also demonstrated negligence or incompetence while performing real estate activities by not disclosing to their clients that Ms. Mazza received compensation based on PPMI's contractual relationship with Pinnacle General Contracting, LLC. Therefore, cause exists to discipline their respective real estate broker licenses pursuant to Business and Professions Code section 10177, subdivision (g), based on that conduct.



18. A real estate license may also be disciplined if the licensee did not disclose all income from a transaction for which a broker license is required to the parties to the transaction. (Bus. & Prof. Code, § 10176, subd. (g).) Respondent did not disclose to their clients that Ms. Mazza received compensation based on PPMI's contractual relationship with Pinnacle General Contracting, LLC. Therefore, cause exists to discipline their respective real estate broker licenses pursuant to Business and Professions Code section 10176, subdivision (g).

### **BOS VIOLATIONS**

19. Respondents also willfully violated Business and Professions Code sections 10130 and 10131, subdivision (b), when Ms. Mazza signed the two property management agreements and two lease agreements prior to the Department issuing PPMI's broker license. Therefore, cause exists to discipline their respective real estate broker licenses pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code sections 10130 and 10131, subdivision (b).

20. Respondents also demonstrated negligence or incompetence while performing real estate activities when Ms. Mazza signed the two property management agreements and two lease agreements prior to the Department issuing PPMI's broker license. Therefore, cause exists to discipline their respective real estate broker licenses pursuant to Business and Professions Code section 10177, subdivision (g), based on that conduct.

### **DUTY TO SUPERVISE**

21. Respondents also willfully violated Business and Professions Code section 10159.2 and California Code of Regulations, title 10, section 2725, when Ms. Mazza

failed to exercise proper supervision over PPMI's real estate activities. Therefore, cause exists to discipline their respective real estate broker licenses pursuant to Business and Professions Code section 10177, subdivision (d), as that statute relates to Business and Professions Code section 10159.2 and California Code of Regulations, title 10, section 2725.

22. Respondents also demonstrated negligence or incompetence while performing real estate activities when Ms. Mazza failed to exercise reasonable supervision over PPMI's real estate activities. Therefore, cause exists to discipline their respective real estate broker licenses pursuant to Business and Professions Code section 10177, subdivision (g), based on that conduct.

23. A real estate broker license may also be disciplined for failing to exercise reasonable supervision as required by Business and Professions Code section 10159.2 and/or California Code of Regulations, title 10, section 2725. (Bus. & Prof. Code, § 10177, subd. (h).) Ms. Mazza failed to exercise reasonable supervision over PPMI's real estate activities. Therefore, cause exists to discipline respondents' respective real estate broker licenses pursuant to Business and Professions Code section 10177, subdivision (h).

## **Conclusion**

24. Cause exists to discipline respondents' respective real estate broker licenses for the reasons explained in Legal Conclusions 12 through 23, individually and collectively. Considering the evidence as a whole, respondents did not present sufficient evidence of their continued fitness to perform the duties of a real estate licensee in a manner consistent with public health, safety, and welfare in any capacity



for the reasons explained in Factual Findings 27 through 31. Therefore, their respective real estate broker licenses should be revoked.

### **Award of Costs of Audit**

25. A 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. (Bus. & Prof. Code, § 10148, subd. (b).) Respondents violated Business and Professions Code section 10145, subdivision (a)(1), (2)(A), (C), and California Code of Regulations, title 10, sections 2832.1 and 2834, subdivision (b)(1), (2), as set forth in Legal Conclusions 12 and 13. Therefore, respondents are jointly and severally responsible for reimbursing the Department \$2,985.52 for the cost of Ms. Patterson's audit. (Bus. & Prof. Code, § 10148, subd. (b).)

### **Award of Investigation and Enforcement Costs**

26. An order resolving a disciplinary proceeding in the Department's favor may require a real estate licensee to pay the Department's reasonable costs of investigation and enforcement. (Bus. & Prof. Code, § 10106, subd. (a).) "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing." (Bus. & Prof. Code, § 10106, subd. (c).)

27. The Department may prove its reasonable costs of investigation and enforcement by submitting "[d]eclarations that contain specific and sufficient facts to

support findings regarding actual costs incurred and the reasonableness of the costs.” (Cal. Code Regs., tit. 1, § 1042, subd. (b).) When costs are sought for services provided by a Department employee, the declaration “may be executed by the [Department] or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached.” (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1).)

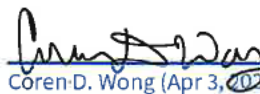
28. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 10106. Those factors include: 1) the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

29. Complainant introduced prima facie evidence of the reasonableness of the costs incurred. (Bus. & Prof. Code, § 10106, subd. (c); Cal. Code Regs., tit. 10, § 1042, subd. (b)(1).) No evidence was introduced to rebut such evidence. Therefore, after considering the *Zuckerman* factors, the entire amount of costs of investigation and enforcement complainant requested is reasonable. Consequently, respondents are jointly and severally liable for paying complainant’s costs in the total sum of \$3,036.45 as set forth in the Order below.

## ORDER

1. All licenses and licensing rights of respondent Performance Property Management, Inc., are REVOKED.
2. All licenses and licensing rights of respondent Stephanie Diane Mazza are REVOKED.
3. Respondents Performance Property Management, Inc., and Stephanie Diane Mazza shall, individually and collectively, reimburse the Department of Real Estate the sum of \$2,985.52 for the cost of Amanda Patterson's audit within 60 days of the Department's mailing a notice of billing.
4. Respondents Performance Property Management, Inc., and Stephanie Diane Mazza shall, individually and collectively, reimburse the Department of Real Estate the sum of \$3,036.45 for costs incurred while investigating and enforcing this matter. These costs may be paid pursuant to a payment plan approved by the Department or its designee.

DATE: April 3, 2023

  
Coren D. Wong (Apr 3, 2023 10:36 PDT)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings