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**FILED**

JAN 18 2013

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation Against	)	DRE No. H-35676LA
	)	OAH No. 2011120728
100 LOS ANGELES REAL ESTATE INC., doing	)	
Business as ReMax 100; KYUNG HEE HWANG,	)	
individually, and as designated officer of 100 Los Angeles	)	
Real Estate Inc.; JOEL BARRY LEWIS; and	)	
<b><u>FRED ALEXANDER SAENZ</u></b> , individually and as	)	
former designated officer of 100 Los Angeles Real Estate	)	
Inc.;	)	
	)	
Respondents.	)	

DECISION AFTER REJECTION  
(FRED ALEXANDER SAENZ)

Julie Cabos-Owen, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, ("OAH") heard this matter on July 23, 2012, in Los Angeles, California.

Elliot MacLennan, Real Estate Counsel, represented Complainant, Robin Trujillo, Deputy Real Estate Commissioner of the California Department of Real Estate ("Department"). FRED ALEXANDER SAENZ was present and represented himself. All other Respondents timely filed Notices of Defense and their respective cases were previously dispensed with. The hearing proceeded against FRED ALEXANDER SAENZ ("Respondent").

1 Oral and documentary evidence was received, the case argued, and the matter  
2 submitted for decision on July 23, 2012. On August 3, 2012, the ALJ submitted a Proposed  
3 Decision which I declined to adopt as my Decision herein.

4 Pursuant to Section 11517(c) of the Government Code of the State of  
5 California, Respondent was served with notice of my determination not to adopt the  
6 Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondent  
7 was notified that I would decide the case upon the record, the transcript of proceedings  
8 held on July 23, 2012, and upon any written argument offered by Respondent and  
9 Complainant. Complainant submitted written argument. Respondent did not submit  
10 argument. I have given careful consideration to the record in this case, including the  
11 transcripts of proceedings of July 23, 2012. I have also considered the arguments  
12 submitted by Complainant. The following shall constitute the Decision of the Real Estate  
13 Commissioner ("Commissioner") in this proceeding:

14 FINDINGS OF FACT

15 1. The Complainant brought the Accusation in her official capacity on  
16 or about February 10, 2009.

17 *Procedural Background*

18 2. (a) On or about February 10, 2009, the Accusation was served on  
19 Respondent and the other Respondents named therein.

20 (b) Joel Barry Lewis ("Lewis") filed a Notice of Defense and the  
21 matter of the Accusation against him was heard by OAH on October 26, 2009, in  
22 OAH Case No. 201112078. A Proposed Decision was issued pertaining to the  
23 disposition of the Accusation against Lewis. Pursuant to a Decision After  
24 Reconsideration, the Commissioner adopted the Factual Findings of the ALJ's  
25 Proposed Decision, and Lewis' broker license was revoked with rights to apply for a  
26 restricted broker license within a specified time period.

1 (c) The cases against KUNG HEE HWANG and 100 LOS ANGELES  
2 REAL ESTATE INC. were previously were resolved prior to the July 23, 2012  
3 hearing.

4 (d) On December 2, 2011, Respondent filed a Notice of Defense and  
5 requested a hearing on the merits. He persuasively explained to the Department that  
6 he had moved out of state and was residing in Nevada at the time the Accusation was  
7 filed in 2009 and mailed to him at his address in California. The Department granted  
8 Respondent's request for the within hearing.

9 3. The Decision After Reconsideration, along with the documents  
10 admitted as exhibits in OAH No. L-2009040178 was provided as of the jurisdictional  
11 documents in the Department's formal hearing file, in the subject cast OAH No.  
12 201112078.

13 4. Respondent has been licensed as a real estate broker since February  
14 3, 1992. His broker's license will expire on March 13, 2016. At hearing, Respondent  
15 testified that he participated in the creation of 100 Los Angeles Real Estate Inc. and  
16 was its designated broker officer since around 2001.

17 5. At all times relevant, 100 Los Angeles Real Estate Inc. ("100  
18 LAREI") was licensed by the Department as a corporate real estate broker. Its license  
19 expired on or about January 8, 2009. 100 LAREI did not file a Notice of Defense. Its  
20 renewal rights were revoked.

21 6. The Department previously issued a Desist and Refrain Order  
22 against Respondent and 100 LAREI on August 13, 2004 in Department Case No.  
23 H-31173 LA. In that case, Respondent was ordered to desist and refrain from various  
24 trust accounting violations committed during his tenure as designated broker-officer  
25 of 100 LAREI.

26 7. Beginning in 2001, and continuing through March 5, 2006,  
27 Respondent was the broker officer designated pursuant to Code Section 10159.2 to be

1 responsible for supervising the activities of 100 LAREI and its officers, employees  
2 and agents, to ensure compliance with the Real Estate Law.<sup>1</sup>

3 8. At all times relevant, 100 LAREI operated a residential real estate  
4 sales business and brokered loans. It also operated a broker-controlled escrow  
5 division, Choice Escrow, under the exemption set out in Financial Code section  
6 17006 (a)(4).<sup>2</sup>

7 9. In 2008, the Department received a complaint that an unlicensed  
8 employee of 100 LAREI, Elizabeth Quinones, had been embezzling money from the  
9 escrow account and was terminated.

10 10. In 2008, the Department conducted an audit of 100 LAREI. The  
11 audit, No. LA 070381, covered the time period between July 1, 2005 and June 30,  
12 2008. During that period, 100 LAREI accepted or received funds in trust on behalf of  
13 actual or prospective parties to real estate transactions such as buyers, borrowers,  
14 lenders and escrow beneficiaries. 100 LAREI used the fictitious business names  
15 ReMax 100 Corp and Choice Escrow for some of their real estate activities.  
16 Transactions were handled by 100 LAREI and its agents, who made deposits and  
17 disbursements of such funds. During the relevant time period, the funds were  
18 deposited into trust accounts at City National Bank in Commerce, California and  
19 maintained by 100 LAREI.

20 11. Respondent was the designated broker-officer of 100 LAREI  
21 during part of the time covered during audit No. LA 070381: July 1, 2005 through  
22 June 30, 2008. As such, he was a signatory on one of the trust accounts: Account

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24 <sup>1</sup>Yong Woong Pae (Pae) was the designated broker-officer of 100 LAREI from March 6, 2006 through  
25 May 3, 2006. Joel Barry Lewis (Lewis) was the designated broker-officer of 100 LAREI from May 4,  
2006 through January 21, 2008. Kyung Hee Hwang (Hwang) acted as the designated officer of 100  
LAREI from January 22, 2008 through November 7, 2008

26 <sup>2</sup>Pursuant to that exemption, 100 LAREI, as a real estate broker, was allowed to provide escrow services  
27 related to transactions in which it represented one or more of the principals, without requiring an  
additional escrow license from the Department of Corporations. It was not permitted to conduct third  
party, independent escrow business under that exemption.

1 #13267782; "Choice Escrow Trust Account," City National Bank, 5601 East Slauson  
2 Avenue, City of Commerce, CA 90040 ("Trust Account 1"). Audit No. LA070381,  
3 which was completed on November 26, 2008, revealed numerous violations of the  
4 Real Estate Law contained in the Business and Professions Code ("Code") and Title  
5 10, Chapter 6 of the California Code of Regulations ("Regulations"), including  
6 violations which occurred during Respondent's tenure as designated broker-officer of  
7 100 LAREI.

8 12. The following violations revealed during the audit pertain to Trust  
9 Account 1 and Respondent's conduct during his tenure as designated broker-officer of  
10 100 LAREI:

11 (a) As of March 5, 2006, when Respondent resigned as designated  
12 broker-officer of 100 LAREI, there was a shortage in Trust Account 1 of  
13 \$207,347.43. Of this, the auditor was able to determine that \$95,483.34 of the  
14 shortage was the result of embezzled funds; there were an additional miscellaneous  
15 overdrawn balances totaling \$51,949.77; and \$59,899.32 of the shortage was  
16 attributed to record keeping problems due to funds not being properly deposited into  
17 the trust account within one business day of receipt. There was no evidence in the  
18 files examined that the owners of the trust funds had given 100 LAREI written  
19 consent to allow 100 LAREI to reduce the balance of funds in the escrow trust fund  
20 accounts to an amount less than the existing aggregate trust fund liabilities. This was  
21 in violation of rules relating to handling of trust funds for multiple beneficiaries,  
22 including Code section 10145 and Regulations 2832.1 and 2951.

23 (b) During the audit period, including between July 1, 2005 and March  
24 5, 2006, disbursements were made from the trust account without the written  
25 authorization of the beneficiaries. These unauthorized disbursements constituted  
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1 fraud or dishonest dealing, and were in violation of Code section 10145 as well as  
2 Regulation 2950(g).<sup>3</sup>

3 (c) 100 LAREI failed to render each principal in the escrow  
4 transactions a written statement of all receipts and disbursements together with the  
5 name of the person to whom any such disbursement is made. This failure to provide a  
6 statement of funds at the close of escrow was in violation of Code section 10145 and  
7 Regulation 2950(i).

8 (d)Based on the signature cards provided during the Department's  
9 audit, Trust Account 1 (Acct. #13267782), was set up by Respondent during his  
10 tenure as designated broker-officer as "Choice Escrow Trust Account." The account  
11 was not set up properly under the broker's name as trustee (100 LAREI or  
12 Respondent as trustee). In addition, Choice Escrow was used as the fictitious  
13 business name on the account, but was not established with the Department as a  
14 licensed dba. Finally, trust funds received were held by the agents longer than one  
15 day before being deposited into Trust Account 1. These were violations of the trust  
16 fund handling rules set forth Code section 10145 and Regulations 2832 and 2951.

17 (e) The records of trust funds received and disbursed for trust accounts  
18 were not always accurate or complete. In addition, there were no dates of deposit and  
19 there was no daily balance after posting transaction on any date. Respondent's failure  
20 to ensure that 100 LAREI maintained proper trust fund records was in violation of  
21 Code section 10145 and Regulations 2831 and 2951.

22 (f) Separate records of trust funds received and disbursed for Trust  
23 Account 1 were not always accurate and complete. Respondent's failure to ensure  
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26 <sup>3</sup> There is no evidence that Respondent was directly involved in the unauthorized disbursements or embezzlement.  
27 Nonetheless, employees of 100 LAREI engaged in this conduct under Respondent's watch as designated broker-officer.

1 that 100 LAREI maintained proper separate records for each beneficiary and/or  
2 transaction was in violation of Code section 10145 and Regulations 2831.1 and 2951.

3 (g) Monthly reconciliations of the control records to the separate  
4 records were not accurately maintained for Trust Account 1, and failed to identify the  
5 trust fund liabilities to the beneficiaries. Respondent's failure to ensure that 100  
6 LAREI maintained monthly reconciliations of the control records to the separate  
7 records was in violation of Code section 10145 and Regulations 2831.2 and 2951.

8 (h) Respondent allowed Elizabeth Quinones, an unlicensed employee of  
9 100 LAREI, to be an authorized signatory on the bank account handling escrow  
10 receipts and disbursements without fidelity bond coverage. Quinones was added as a  
11 signatory and given the power to make disbursements from Trust Account 1 during  
12 Respondent's tenure as designated broker-officer in June of 2004. She continued as a  
13 signatory without proper fidelity bond coverage through the time Respondent left 100  
14 LAREI in March of 2006, and was not removed until 2007. Respondent's  
15 authorization of Quinones as a signatory on Trust Account 1, when she was  
16 unlicensed and 100 LAREI did not have fidelity bond coverage for her, was in  
17 violation of Code section 10145 and Regulations 2834 and 2951.

18 (i) 100 LAREI conducted third party escrow transactions which were  
19 not exempt under Finance Code Section 17006(a)(4). Escrows were conducted by  
20 100 LAREI during Respondent's tenure as designated broker-officer related to  
21 transaction in which 100 LA was not an agent or party to the underlying transactions.  
22 This was in violation of Code Section 10086 in conjunction with Financial Code  
23 section 17006(a)(4).

1 (j)100 LA conducted its escrow activities using an unlicensed fictitious  
2 name, Choice Escrow, when it was not the holder of a license bearing the fictitious  
3 name. This was in violation of Code Section 10159.5 and Regulation 2731.<sup>4</sup>

4 (k) Based on the issues listed above, Respondent, as the corporate  
5 officer and manager of 100 LAREI from its creation through March 5, 2006, did not  
6 exercise reasonable control and supervision over the activities conducted on behalf of  
7 100 LAREI by its employees as necessary to secure full compliance with the Real  
8 Estate Law. This was in violation of Code Sections 10159.2 and 10177(h) as well as  
9 regulation 2725.

10 13. Respondent testified at hearing that he helped start 100 LAREI  
11 with its two owners, Su Choi and Joyce Lee in around 2000 or 2001. He helped  
12 establish the escrow division, known as Choice Escrow. Respondent hired Elizabeth  
13 Quinones to act as the day-to-day manager of 100 LAREI's escrow business, even  
14 though she was not licensed, and even though the company did not have fidelity  
15 coverage for her. Respondent offered no description or explanation as to any  
16 measures he took to supervise the activities of Choice Escrow. He did not refute any  
17 of the matters cited in the Accusation.

18 14. Respondent testified that he was never notified of any  
19 discrepancies in the trust fund handling during the time he was designated officer of  
20 100 LAREI. Respondent stated that he attempted to delegate all responsibility for  
21 bookkeeping and auditing the escrow funds to Quinones and the unlicensed owners of  
22 the company. However, as the designated officer, the broker licensee, Respondent  
23 was the individual responsible for maintaining books and records. He offered no  
24 explanation of why he did not see to it that control records and separate beneficiary  
25 and transaction records were maintained, and why the books were not reconciled. In  
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27 <sup>4</sup> This violation was also addressed with Respondent in the prior audit and D&R.



1 sum, he offered no examples of steps he took constituting reasonable supervision of  
2 the activities of 100 LAREI to ensure compliance with the Real Estate Law.

3 15. The ALJ found that Respondent testified credibly that he was  
4 unaware of Quiones' embezzlement until he returned to Los Angeles in 2011 and was  
5 informed by the Department, however, Respondent did not offer any documents or  
6 independent witnesses to refute any of the charges or to attest to his good character  
7 and fitness to be a licensee.

### 8 LEGAL CONCLUSIONS

9 1. Cause exists to revoke Respondent 's real estate broker license and license  
10 rights pursuant to Code Sections 10177(d) and 10177(g) for violating Code Sections 10145,  
11 10159.5 and Regulations 2832.1, 2951, 2950(g), 2950(i), 2831, 2831.1, 2831.2, 2832, 2834,  
12 and 2731.

13 2. Cause exists to revoke Respondent's real estate broker license and license rights  
14 pursuant to Code Sections 10177(h) and 10177(d) for violating Code Section 10159.2 and  
15 Regulation 2725.

#### 16 *Discussion of Broker Supervision*

17 3. The Real Estate Law details how real estate transactions are to be  
18 conducted by licensees. It establishes employment criteria, sets forth disclosures that  
19 must be made during the course of transactions, and provides for a system of handling  
20 and accounting for trust funds. Under the real estate law, salespersons are only  
21 authorized to act under the supervision of brokers, and corporations must designate a  
22 broker to be responsible for that supervision.

23 4. Under the Real Estate Law, broker supervision is key to achieving  
24 maximum protection for the public engaging in real estate transactions. In hiring and  
25 managing the sales force, reviewing and disseminating advertisements, protecting and  
26 accounting for trust funds, and handling escrows, brokers ensure that strict standards are  
27 adhered to. Brokers must ensure that only trustworthy, competent individuals will be privy to

1 the sensitive financial information and matters involved in buying, selling, renting out and  
2 mortgaging of real property.

3 (a) Business and Professions Code Section 10159.2 sets forth the primary  
4 broker supervision requirement in which the designated licensed broker is responsible for  
5 exercising sufficient supervision and control over his or her employees necessary to achieve  
6 full compliance with the Real Estate Law. Only qualified personnel are allowed to supervise,  
7 and the DRE must know exactly which broker licensee is responsible and accountable for the  
8 conduct of a licensed real estate company.

9 (b) The supervision requirement in Business and Professions Code section  
10 10159.2 is supported by Business and Professions Code Section 10177(h). This section calls  
11 for disciplinary action against any broker who fails to exercise "reasonable supervision" over  
12 the salesperson practicing under his or her license, as well as for any designated corporate  
13 broker licensee who fails to exercise reasonable supervision and control of the activities of  
14 the corporation for which a real estate license is required.

15 (c) In exercising reasonable supervision over the activities of his or her  
16 salespersons, Regulation 2725 requires that brokers establish policies, rules, procedures and  
17 systems to review oversee inspect and manage transactions requiring a real estate license;  
18 documents which may have a material effect upon the rights or obligations of a party to the  
19 transaction; filing, storage and maintenance of such documents; handling of trust funds;  
20 advertising of any service for which a license is required; familiarizing salespersons with the  
21 requirements of federal and state laws relating to the prohibition of discrimination; and  
22 regulation and consistent reports of licensed activities of salespersons.

23 The form and extent of such policies, rules, procedures and systems must take  
24 into consideration the number of salespersons employed and the number and location of  
25 branch offices. A designated broker must keep track of who is working for the company,  
26 what the license status is of employees, and which office they are working out of. A broker  
27 also must have a system in place to monitor the overall policies and procedures. Brokers

1 may use the services of other brokers and salespersons to assist in administering these  
2 supervisory policies and procedures, so long as the broker does not relinquish overall  
3 responsibility for supervision of the acts of salesperson license to the broker.

4 (d) The employing broker and the designated broker of the corporation are  
5 responsible for ensuring that agents are properly licensed and that unlicensed employees do  
6 not perform activities requiring a real estate license. In this way, supervising brokers ensure  
7 that the sales force is licensed and has demonstrated the basic requisite knowledge, skills,  
8 experience and character to represent members of the public in real estate transactions.  
9 Ensuring that all employees act with the utmost honesty and integrity and adhere to their  
10 duties as fiduciaries is an inherent part of the Supervising broker's responsibility. Any  
11 delegation of supervisory duties to other broker-officers of a corporation must be done  
12 pursuant to procedures set forth in Regulation 2743, and requires a formal corporate  
13 resolution.

14 5. The Real Estate Law and the disciplinary procedures provided for in  
15 the Real Estate Law are designed to protect the public and to achieve the maximum  
16 protection for the purchasers of real property and those dealing with real estate licensees.  
17 Real estate licensees act as fiduciaries in their dealings with the public. Real estate  
18 brokers hold money and other personal property on behalf of clients, and supervise the  
19 conduct of salespersons and others under their employ. (*Ring v. Smith* (1970) 5  
20 Cal.App.3d 197, 205; *Golde v. Fox* (1976) 98 Cal.App.3d 167, 177; *Harrington v.*  
21 *Department of Real Estate* (1989) 214 Cal.App.3d 394, 402). The public dealing with  
22 licensees who are brokering mortgage loans are entitled to rely on real estate agents'  
23 expertise and integrity in representing them. (*Wyatt v. Union Mortgage Company et al.*  
24 (1979) 24 Cal.3d 773).

25 6. In this case, Respondent SAENZ admits that he allowed an unlicensed  
26 individual, Elizabeth Quinones, and the unlicensed owners of 100 LAREI to have  
27 independent authority over the daily operations of Choice Escrow and the trust account. By

1 failing to exercise any oversight, Respondent was complicit in the mishandling and  
2 embezzlement of trust funds. The fact remains that at the time he resigned from 100 LAREI  
3 and, apparently, left the state, there was a trust fund shortage of in excess of \$207,000.00.  
4 Having been given the opportunity to at minimum explain what happened, Respondent  
5 offered no documentation or independent testimony to demonstrate any good faith effort on  
6 his part to discover mishandling of trust funds, prevent malfeasance or participate in repairing  
7 damage done under his watch.

8 7. Respondent has not demonstrated that he is qualified to be entrusted with  
9 the fiduciary duties incumbent upon a real estate licensee. For those reasons, the public  
10 protection requires that his real estate broker license be revoked.

11 ORDER

12 All licenses and licensing rights of Respondent FRED SAENZ under the  
13 Real Estate Law are revoked.

14 This Decision shall become effective at 12 o'clock noon on  
15 February 7, 2013.

16 IT IS SO ORDERED Jan. 17, 2013.

17  
18 REAL ESTATE COMMISSIONER

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20 By: 

21 Wayne Bell  
22 Chief Deputy Commissioner  
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SEP 17 2012

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA  
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In the Matter of the Accusation of

FRED ALEXANDER SAENZ,

Respondent.

No. H-35676 LA

OAH No. 2011120728

NOTICE

TO: FRED ALEXANDER SAENZ, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 3, 2012, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 3, 2012, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on July 23, 2012, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of July 23, 2012, at the

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Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: Sept. 11, 2012

Real Estate Commissioner



By WAYNE S. BELL  
Chief Counsel

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

FRED SAENZ,

Respondent.

No. H-35676 LA

OAH No. 2011120728

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on July 23, 2012, in Los Angeles, California. Complainant was represented by Elliott MacLennan, Counsel for the Department of Real Estate. Fred Saenz (Respondent) appeared and represented himself.

At the administrative hearing, the Accusation was amended as follows:

at page 7, lines 17 and 19, the words "and the Recovery Account" were stricken;

at page 8, line 5, the words "10176(i)" were stricken;

at page 9, line 2, the words "10176 (i) and /or10177(j)" were stricken;

at page 9, line 3, paragraph (f)(1), the words "and the Recovery Account" were stricken;

at page 10, line 15, after "(j)," the word "(SAENZ)" was added, and the words "and Simon Cheon" were stricken;

at page 10, line 17, the words "and the Recovery Account" were stricken,

at page 10, line 19, after "(k)," the word "(SAENZ)" was added;

at page 13, line 1, all of the allegations under item A were stricken;

at page 13, line 2, all of the allegations under item B were stricken;

at page 13, line 3, the words "willful disregard" were stricken;

at page 13, line 4, the words "and/or" were stricken;

at page 13, line 5, all of the allegations under item D were stricken; and

at page 13, line 6, all of the allegations under item E were stricken.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on July 23, 2012.

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## FACTUAL FINDINGS

1. On February 10, 2009, Complainant, Robin Trujillo, filed the Accusation while acting in her official capacity as Deputy Real Estate Commissioner of the Department of Real Estate (Department), State of California.

2(a). On March 19, 2009, the Accusation was served on Respondent and other the respondents named in the Accusation (100 Los Angeles Real Estate, Inc.; Kyung Hee Hwang; and Joel Barry Lewis). All other respondents timely filed Notices of Defense and their respective cases were previously dispensed with.

2(b). Respondent had moved to Nevada prior to service of the Accusation and did not receive service of the Accusation in 2009. However, when he returned to Los Angeles County in 2011, he discovered that the Department had filed the Accusation against him.

2(c). Respondent filed his Notice of Defense in December 2011.

3. Respondent has been licensed as a real estate broker since February 3, 1992. His broker's license will expire on March 13, 2016, unless renewed. Respondent has no prior disciplinary record.

4(a). At all times relevant to this matter, 100 Los Angeles Real Estate, Inc. (100 LAREI) was licensed by the Department as a real estate broker. It was first licensed in January 2001.

4(b). At all relevant times, 100 LAREI, doing business as Remax 100, operated a residential sales business. It also operated a broker-controlled escrow division, under the exemption set out in Financial Code section 17006, subdivision (a)(4).

5(a). Respondent was the designated officer of 100 LAREI from July 1, 2005, to March 5, 2006.

5(b). Young Woong Pae (Pae) was the designated officer from March 6, 2006, through May 3, 2006. Joel Barry Lewis (Lewis) was the designated officer May 4, 2006 until January 21, 2008. Kyung Hee Hwang (Hwang) acted as the designated officer for the corporation from January 22, 2008, through November 7, 2008.

### *The Embezzlement of Trust Funds from the Escrow Division of 100 LAREI*

6. During the relevant time period, 100 LAREI accepted or received funds in trust, on behalf of actual or prospective parties to real estate transactions such as buyers, borrowers, lenders, and escrow beneficiaries. The transactions were being handled by 100 LAREI and its agents, who made deposits and disbursements of such funds. The funds were deposited/maintained by 100 LAREI in two accounts designated as trust accounts at City National Bank in Commerce, California.



7. Respondent helped to start 100 LAREI, with its two owners, Su Choi and Joyce Lee, and also later helped establish the escrow division, known as Choice Escrow. He was responsible for hiring Elizabeth Quinones (Quinones), who acted as the escrow officer for Choice Escrow, in charge of the day-to-day management of 100 LAREI's escrow business. Respondent conducted research and recommended that the company purchase software with auditing capability, which the company purchased and used for daily audits. Quinones was required to send information regarding all real estate transactions to the owners of the company, and if there were any discrepancies, they were supposed to notify Quinones and Respondent.

8. Respondent was never notified of any discrepancies during the time he was the designated officer of 100 LAREI.

9. Unbeknownst to Respondent (and subsequent designated officers of 100 LAREI), Quinones had been embezzling escrow trust funds for several years.

10. Respondent's successor, Lewis, discovered the embezzlement in March or April 2007. He found many escrow checks which had been issued but not mailed to the payees according to escrow instructions. Lewis spent hours investigating unauthorized payments and hired different escrow officers and an outside consultant, Rose Mares (Mares) to determine the extent of money embezzled by Quinones. In April 2007, 100 LAREI identified approximately \$222,224.52 of escrow trust funds which were disbursed from a trust account by Quinones without written escrow instructions.

11. When she was confronted in 2007, Quinones agreed to return the embezzled funds to 100 LAREI. Funds amounting to \$225,000 were returned to 100LAREI by Quinones, through her mother Ernestine Stupin (Stupin), by way of checks for \$150,000 and \$75,000.

12. In the course of investigating the embezzlement, 100LAREI determined that Quinones had paid some of the embezzled funds to Michael Bates, a salesperson with whom Quinones had a personal relationship. Although it was not established that Bates had knowledge of the embezzlement, he reimbursed 100LAREI a sum which was unspecified by the evidence. However, at the administrative hearing, Complainant noted that 100LAREI received sufficient funds for return of all of the embezzled trust funds.

13(a). Quinones' embezzlement scheme was sophisticated and undetectable by Respondent.

13(b). At the administrative hearing, Respondent testified credibly that he was unaware of Quinones' embezzlement until he returned to Los Angeles in 2011 and was informed by the Department. Respondent believes that he exercised reasonable supervision over Quinones and the licensed activities of 100LAREI because it was unreasonable to expect him to detect Quinones' crime. Despite being a retired peace officer and having a law degree, he was unable to catch Quinones' theft because she was an expert who ensured she

would not be caught. He did not have the ability or expertise to detect Quinones' "nefarious deeds and crime of embezzlement."

13(c). Complainant admitted that Respondent did not cause the embezzlement and that "the Department does not see Respondent as responsible for the embezzlement." The software Respondent recommended for oversight of the escrow trust accounts is one of the standard software packages used for trust accounts. Complainant's counsel noted that embezzlers are experts who "know where the checkpoints are and find the road around it," so software will not catch them. He further noted that "it is not impossible to fool a standard software package," and "a person with a non-accounting background couldn't detect [the embezzlement], no matter what they did."

#### *The Department's Audit Findings*

14. On November 26, 2008, Department completed an audit examination of the books and records of 100 LAREI pertaining to the broker-escrow activities that require a real estate license. The audit covered the period from July 1, 2005, through June 30, 2008. The audit revealed the following finding pertaining to Respondent, set forth below:<sup>1</sup>

(a). As of March 5, 2006, Trust Account 1 had a shortage of \$207,347.43. The shortage consisted of overdrawn balances totaling \$51,949.77, embezzled trust funds totaling \$95,483.34, funds received and not deposited within one business day although disbursements were made totaling \$59,899.32, and a bank charge of \$15.

(b). From July 2001 through February 2007, 100LAREI made escrow disbursements from Trust Account 1 without written escrow instructions. These funds were embezzled by former escrow officer Quinones.

(c). 100LAREI failed to render each principal in the escrow transaction a written statement of all receipts and disbursements together with the name of the person to whom any such disbursement is made.

(d). The records of trust funds received and disbursed for trust accounts were not always accurate or complete. In addition, there were no dates of deposit and there was no daily balance after posting transactions on any date.

(e). The separate records of trust funds received and disbursed for Trust Account 1 were not always accurate and complete.

(f). Monthly reconciliations of the control records to the separate records were not accurately maintained for Trust Account 1.

(g). 100LAREI conducted third party escrow transactions which were not exempt under Finance Code section 17006, subdivision (a)(4).

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<sup>1</sup> Only the audit findings pertaining to Respondent are set forth below.

(h). Trust Accounts were not set up in 100LAREI's name as trustee, but were set up in the name of an unlicensed fictitious name (dba), Choice Escrow instead.

(i). Unlicensed employee, Quinones, was an authorized signatory on the trust accounts handling escrow receipts and disbursements without fidelity bond coverage. (This is a violation of Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2834.)

(j). 100LAREI conducted its escrow activities using an unlicensed fictitious name, Choice Escrow, when it was not the holder of a license bearing the fictitious name.

(k). Based on the issues listed above, Respondent did not exercise reasonable control and supervision over the activities conducted on behalf of 100LAREI by its employees as necessary to secure full compliance on the real estate laws.

15(a). Complainant's counsel noted that the trust fund violations noted during the audit were related to the embezzlement and were caused by Quinones. The allegations regarding Respondent's failure to supervise are related to the embezzlement as well.

15(b). Complainant's counsel admitted that the only violation for which Respondent bore responsibility was allowing Quinones, an unlicensed and unbonded person to be an authorized signatory on a trust account (See Accusation, p. 10, para. 7(j)). However, Complainant also noted that the bonding would not have prevented the embezzlement. Instead, the purpose of Respondent confirming the bonding of Quinones was to ensure that the embezzled monies were paid back, which they were.

15(c). Complainant noted that, without the trust fund violations, the remaining allegations pertaining to fictitious name and bonding violations would not likely have given rise to the Department's filing of the Accusation against Respondent.

16(a). The Department is seeking \$31,977.90 in reimbursement for the cost of its audit.

16(b). According to Complainant's counsel, this sum is high due to the extent of the embezzlement, the difficulty in "find[ing] the money" due to Quinones' expertise, and therefore the need for an extensive and lengthy investigation by the Department auditor. According to Complainant, since Respondent is the only remaining licensed party, he is responsible for the entire cost of the audit.

16(c). Respondent maintains that the audit cost resulted from an embezzlement for which he was not responsible and consequently, he should not be ordered to pay the audit costs. Respondent moved to dismiss the Accusation against him.

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## LEGAL CONCLUSIONS

1. Cause does not exist to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10145 and California Code of Regulations, title 10, sections 2832.1, 2950, subdivision (g), and 2951, in that Complainant did not establish that Respondent permitted or caused the disbursement of funds from a trust account such that the total aggregate of funds was less than the existing aggregate trust fund liability, as set forth in Factual Findings 3 through 15. Complainant admitted that the trust fund violations noted during the audit were related to the embezzlement and were caused by Quinones.

2. Cause does not exist to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code sections 10145 and 10177, subdivision (g), and California Code of Regulations, title 10, sections 2950, subdivision (g), and 2951, in that Complainant did not establish that Respondent withdrew or paid out trust funds (previously embezzled and later restored to the trust account) without proper consent, since Respondent was not the designated officer nor affiliated with 100LAREI at the time the funds were restored and withdrawn, as set forth in Factual Findings 3 through 15.

3. Cause does not exist to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2950, subdivision (i), in that Complainant did not establish that Respondent "failed to render each principal of an escrow transaction a written statement setting forth all receipts and disbursements together with the name of the person to whom any such disbursement was made," as set forth in Factual Findings 3 through 15. Complainant admitted that the trust fund violations noted during the audit were related to the embezzlement and were caused by Quinones.

4. Cause exists to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10145 and California Code of Regulations, title 10, sections 2832, subdivision (e), and 2951, for setting up a trust account in the name of an unlicensed fictitious name (Choice Escrow) instead of the name of the licensed broker, as set forth in Factual Findings 3 through 15.

5. Cause does not exist to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2950, subdivision (f), in that Complainant did not establish that Respondent failed to place trust funds into a trust account not later than the next business day following receipt of the funds, as set forth in Factual Findings 3 through 15. Complainant admitted that the trust fund violations noted during the audit were related to the embezzlement and were caused by Quinones.

6. Cause does not exist to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831, 2950, subdivision (d), and 2951, in that Complainant did

not establish that Respondent failed to maintain an accurate and complete control record for each beneficiary transaction, as set forth in Factual Findings 3 through 15. Complainant admitted that the trust fund violations noted during the audit were related to the embezzlement and were caused by Quinones.

7. Cause does not exist to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831, 2950, subdivision (d), and 2951, in that Complainant did not establish that Respondent failed to maintain a separate record for each beneficiary or transaction, as set forth in Factual Findings 3 through 15. Complainant admitted that the trust fund violations noted during the audit were related to the embezzlement and were caused by Quinones.

8. Cause does not exist to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831, 2950, subdivision (d), and 2951, in that Complainant did not establish that Respondent failed to perform an accurate and complete monthly reconciliation of the balance of all separate beneficiary or transaction records, as set forth in Factual Findings 3 through 15. Complainant admitted that the trust fund violations noted during the audit were related to the embezzlement and were caused by Quinones.

9. Cause exists to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10145 and California Code of Regulations, title 10, sections 2834, 2950, subdivision (d), and 2951, for allowing an unlicensed and unbonded person, Quinones, to be an authorized signatory on the trust account, as set forth in Factual Findings 3 through 15.

10. Cause exists to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10159.5 and California Code of Regulations, title 10, sections 2731, for using a fictitious name (Choice Escrow) to conduct licensed activities, including broker-controlled escrows, without holding a license bearing that fictitious business name, as set forth in Factual Findings 3 through 15.

11. Cause exists to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10177, subdivision (d), for violation of the Real Estate Law, as set forth in Factual Findings 3 through 15, and Legal Conclusions 4, 9 and 10.

12. Cause does not exist to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10177, subdivision (g), in that Complainant did not establish that Respondent committed negligence or incompetence, as set forth in Factual Findings 3 through 15. Complainant admitted that the trust fund violations noted during the audit were related to the embezzlement and were caused by Quinones.

13(a). Cause does not exist to discipline Respondents' licenses and licensing rights, pursuant to Business and Professions Code section 10159.2 and California Code of

Regulations, title 10, section 2725, in that Complainant did not establish that Respondent failed to exercise supervision and control of the activities conducted by 100LAREI or reasonable supervision over the activities of his salespersons, as set forth in Factual Findings 3 through 15.

13(b). Complainant admitted that the trust fund violations noted during the audit were related to the embezzlement and were caused by Quinones. Complainant also admitted that Respondent did not cause the embezzlement and that "the Department does not see Respondent as responsible for the embezzlement." Furthermore, Complainant noted that, despite the use of standard software, an embezzler with expertise, such as Quinones, will find ways to "fool a standard software package." According to Complainant, "a person with a non-accounting background couldn't detect [the embezzlement], no matter what they did." This assertion is supported by the fact that Quinones had manipulated the records for years, undetected by several designated officers and 100LAREI's owners, and by the fact that it took extensive investigation by 100LAREI and a lengthy audit by the Department to ferret out the entirety of Quinones' theft. Consequently, despite Respondent's reasonable attempts to maintain oversight over the escrow operations, he was unable to detect Quinones' sophisticated embezzlement scheme. The fact that trust fund violations and embezzlement occurred does not, by itself, establish Respondent's failure in his duty to supervise. In this case, the evidence did not establish that Respondent failed to exercise supervision and control of the activities conducted by 100LAREI or failed to exercise reasonable supervision over the activities of his salespersons.

14(a). Pursuant to Business and Professions Code section 10106, Complainant is entitled to recover reasonable costs of investigation and prosecution of this matter. The Department is seeking \$31,977.90 in reimbursement for the cost of its audit. This amount was not broken down to indicate what specific activities were performed and "billed" by the Department's auditor or how much time was spent on each issue or each respondent's actions. There was no indication regarding whether and/or how typical auditor /Department employee overhead was deducted from the total cost of the investigation of this case. Consequently, the evidence did not establish what the reasonable costs of investigation were.

14(b). Nevertheless, a specific sum need not be determined. Complainant has conceded that Respondent did not cause or was responsible for the embezzlement and that, despite reasonable attempts at supervision, Respondent could not have detected the embezzlement. Consequently, Respondent should not be responsible for the cost of the audit which detailed Quinones' embezzlement, and it would not be reasonable to order him to pay such a cost.

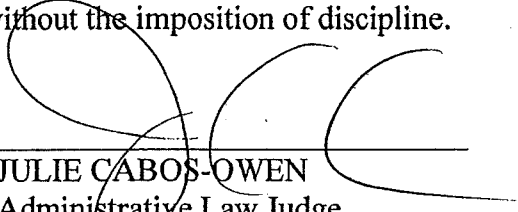
15. It is well established that the purpose of proceedings of this type is to protect the public, and not to punish a licensee. (See, *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786.) In the case at hand, Respondent committed three violations of the Real Estate Law and regulations (i.e. unbonded person as signatory; trust account in unlicensed fictitious name; and using unlicensed fictitious name to conduct licensed activities). However, these were considered

less egregious violations, and Complainant's counsel noted that, without the trust fund violations, the remaining allegations pertaining to fictitious name and bonding violations would not likely have given rise to the Department's filing of the Accusation against Respondent. Consequently, although cause for discipline was established, imposition of probation or other discipline would be punitive.

ORDER

Cause for discipline is sustained, without the imposition of discipline.

DATED: August 3, 2012

  
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JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings

Not  
Adopted