

FILED

OCT 07 2015

BUREAU OF REAL ESTATE

By *Byrd Stenner*

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
BALBOA CREDIT GROUP, INC.;)
ADELA C. OLIVARES, individually)
and as Designated Officer of Balboa)
Credit Group Inc.; and JOHN)
STEVEN GOLIATH individually and)
as Designated Officer of Balboa)
Credit Group Inc.,)
)
Respondents.)

NO. H-39552 LA
L-2015020854

DECISION

The Proposed Decision dated August 21, 2015, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made:

Caption: "In the Matter of the Accusation of: ADELA C. OLIVARES" shall read "In the Matter of the Accusation of BALBOA CREDIT GROUP, INC.; ADELA C. OLIVARES individually and as Designated Officer of Balboa Credit Group Inc.; and JOHN STEVEN GOLIATH individually and as Designated Officer of Balboa Credit Group Inc."

Page 2, Factual Findings, paragraph 7, "supervise Jaimez and Balboa in his dealings with the public" shall read "supervise Jaimez and Balboa in their dealings with the public".

Page 5, Factual Findings, paragraph 11, "PLRS" shall read "PRLS".

Page 5, Factual Findings, paragraph 12, "PLRS" shall read "PRLS".

Page 5, Factual Findings, paragraph 14, "PLRS" shall read "PRLS".

Page 6, Factual Findings, paragraph 19(b), "Goliath, not Respondent" at the conclusion of the paragraph shall read "Goliath, not Respondent. (Exhibit 5.)"

Page 7, Factual Findings, paragraph 19(d), "PLRS" shall read "PRLS".

Page 7, Factual Findings, paragraph 19(e), "PLRS" shall read "PRLS".

Page 7, Factual Findings, paragraph 19(f), "PLRS" shall read "PRLS".

Page 7, Factual Findings, paragraph 19(g), "PLRS" shall read "PRLS".

Page 9, Factual Findings, paragraph 24, "PLRS" shall read "PRLS".

Page 9, Factual Findings, paragraph 26, "later that month" shall read "later that month."

Page 9, Factual Findings, paragraph 28, "Respondent's August, 2014 and December, 2014 requests" shall read "Respondent's August 2014 and December 2014 requests".

Page 12, Legal Conclusions, paragraph 5, "10592" shall read "10159.2".

Page 12, Legal Conclusions, paragraph 5, "and/ or" shall read "and/or".

Page 12, Legal Conclusions, paragraph 6, "(g), in that, Respondent" shall read "(g), in that Respondent".

Page 15, Legal Conclusions, paragraph 14(b), "10679" shall read "10167.9".

Page 15, Legal Conclusions, paragraph 15(b), "Forseith" shall read "Forseth".

Page 19, Order, paragraph F.(2), "that no final" shall read "That no final".

The Decision imposes discipline on one or more real estate licenses on the ground of the violation of the Real Estate Law, Part 1 commencing with Section 10000 of the Business and Professions Code ("Code") and/or the Regulations of the Real Estate Commissioner, Title 10, Chapter 6 of the California Code of Regulations ("Regulations").

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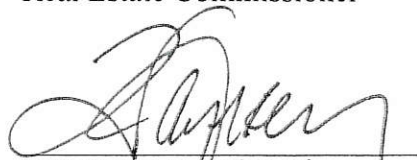
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OCT 27 2015 This Decision shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED 10/2/2015

Real Estate Commissioner



WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ADELA C. OLIVARES,

Respondent.

Case No. H-39552 LA

OAH Case No. 2015020854

PROPOSED DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter, in Los Angeles on August 5 and 6, 2015. Evidence was received and argument was heard. The record was closed and the matter was submitted for decision on August 6, 2015.

Amelia Vetrone, Bureau of Real Estate Counsel, represented Maria Suarez (Complainant).

Sandra Coleman, Attorney at Law, represented Adela C. Olivares (Respondent), who was present throughout the hearing.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity as Deputy Real Estate Commissioner of the Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.
2. Respondent timely submitted a Notice of Defense, which contained a request for a hearing.
3. On October 14, 1998, the Bureau issued real estate salesperson license number B/01246930 to Respondent. On November 1, 2001, the Bureau issued a real estate broker license to Respondent under the same license number. Respondent's broker license is due to expire on October 31, 2017.

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Overview of Allegations

4. This matter involves an Accusation originally brought against Balboa Credit Group, Inc. (Balboa), John S. Goliath (Goliath), a licensed real estate broker, and Respondent. By the time of hearing, the Bureau had revoked Balboa's license¹ and had reached a written Stipulation and Agreement with Goliath in which the Bureau disciplined his license with specific terms and conditions.² Therefore, although the charges in the Accusation were set forth against Balboa, Goliath, and Respondent together, Respondent faced them alone.

5. Balboa operated a Prepaid Rental Listing Service (PRLS) under its corporate real estate broker license, with an unlicensed person, Larry Jaimez (Jaimez), substantially involved in its dealings. PRLS businesses engage in supplying prospective tenants with listings of residential real properties for tenancy, by publication or otherwise, pursuant to an arrangement under which the prospective tenants are required to pay an advance or contemporaneous fee, either specifically to obtain listings, or to purchase other products or services in order to obtain listings. The person conducting the PRLS does not become involved in the negotiation of rentals.³

6. Balboa could not legally operate as a PRLS without a licensed real estate broker acting as its "designated officer." In this case, Goliath was Balboa's first designated officer, followed by Respondent.

7. Complainant's case at the hearing focused mostly on Jaimez's allegedly improper dealings with prospective tenants while he was providing PRLS services to them. Accordingly, the Accusation charged both Goliath and Respondent, as designated officers, with failing to supervise Jaimez and Balboa in his dealings with the public. Complainant further alleged that Balboa committed multiple technical violations regarding bank accounts, record keeping and maintenance, using a service contract that had not been pre-approved by the Bureau, failing to refund unearned fees, among other violations. As designated officers, Goliath and Respondent allegedly bore responsibility for these violations.

¹ Official notice is taken that the Bureau revoked Balboa's license pursuant to its Decision and Order dated November 24, 2014, which became effective on January 6, 2015. The Bureau's Decision and Order was based on the Commissioner's Default Order dated October 31, 2014, in which the Bureau found that Balboa had failed to file a Notice of Defense to the Accusation in case no. H-39552 (i.e., the Accusation pending in this matter) within the time required by statute.

² The Bureau's Stipulation and Agreement with Goliath is discussed in significant detail in the Legal Conclusions herein.

³ See Business and Professions Code section 10167, subdivision (a).

8. The doctrine of *respondet superior* has long held employers responsible for the acts of their employees. If a licensee elects to operate his business through employees, the licensee must be responsible to the licensing authority for the employees' conduct in the exercise of the license. (*Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 144.) By virtue of ownership of a license, the owner has a responsibility to see to it that the license is not used in violation of the law. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360.) In this case, a licensee acting as Balboa's designated officer would be responsible for Jaimez's misconduct in the course of Balboa's business practices during the time in which the licensee was designated officer, even if the designated officer was not involved in that misconduct. Therefore, it is critical to establish the period as to when Respondent acted as designated officer before considering Respondent's alleged culpability.

Respondent's Starting Time as Designated Officer

9(a). On November 29, 2012, the Bureau issued a corporate real estate broker license to Balboa, and identified Goliath as its designated officer. Pursuant to the Bureau's certified history of licensure for Balboa, on March 15, 2013, the Bureau cancelled Goliath's status as Balboa's designated officer and added Respondent as Balboa's new designated officer. (Exhibit 12.) The Accusation alleges March 15, 2013, as the date Respondent became Balboa's designated officer.

9(b). Respondent testified credibly that despite the Bureau's records regarding Balboa's, Goliath's, and Respondent's licensure, the process she undertook to become licensed as Balboa's designated officer had not yet been completed by March 15, 2013, but instead took significantly longer.

9(c). On April 10, 2013, the Bureau sent Respondent a letter, dated the same and stamped with a notation stating "CORP. DOCUMENT PENDING." The letter requested that Respondent submit additional documentation, which was "needed to complete your application to be licensed as the designated officer of [Balboa]." (Exhibit P.) Respondent was further directed to submit a different form, a "fully completed and signed Corporation License Application (RE 201)." (Exhibit P.)

9(d). The Bureau's April 10, 2013 letter contradicts its own certified history of licensure stating that Respondent became Balboa's designated officer on March 15, 2013. The letter also corroborates Respondent's contention that her process of becoming Balboa's designated officer concluded sometime after March 15, 2013. This discrepancy leaves the true date of licensure in question.

9(e). Respondent testified that she attempted to comply with the Bureau's April 2013 request for further documentation by completing a Corporate License Application (RE 201), which she filled out with assistance from Jaimez, signed and dated on April 22, 2013, then submitted shortly thereafter to the Bureau. (Exhibit G.)

9(f). Based on the facts presented, it is reasonable to estimate that the Bureau received the new application within five to 10 working days of its creation and mailing by Respondent, and then processed the application within another five to 10 working days. In such case, the Bureau's licensure process most likely would have concluded in May 2013 with its issuance to Respondent of the designated officer license.

9(g). The sum of the evidence established that Respondent became Balboa's designated officer in May 2013.

Respondent's Association with Jaimez and Balboa

10. Respondent testified that in February 2013, a friend referred her to Jaimez. Respondent did not previously know Goliath, or anyone else associated with Balboa, but the friend said that Jaimez was working with a PRLS, and was a reliable person. Respondent believed she could make some money if she was associated with a successful PRLS, so she contacted Jaimez and met with him. Jaimez described the business to Respondent as generally providing rental listings to customers for a fee. Jaimez told Respondent that he planned to engage another licensed realtor as needed to show properties to prospective tenants. Jaimez said that in contracting with prospective tenants, he would use a PRLS form contract that had been approved by the Bureau, as required by law. Jaimez did not provide a copy of the approved form contract for Respondent's review. Respondent did not work out specific terms regarding what compensation she would receive from Balboa in return for supervising the PRLS business, but she expected that it would be a set percentage. She planned to take up the issue of compensation later, when the PLRS business was up and running.

11. Based on her friend's referral, Respondent initially assumed that Jaimez was honest and reliable. She had no experience in the operation of PRLS businesses, but thought she could make a profit by working with Jaimez. She prepared a written plan for Jaimez, dated February 26, 2013 (the PRLS plan), outlining her terms and conditions as follows:

- [Jaimez] is solely responsible for all operational expenses including all management and accounting.
- [Jaimez] is responsible for delivering a copy package for each transaction to [Respondent] either via email or hard copy. All payments are due . . . upon [the] closed transaction.
- All agents must be registered and approved by [Respondent].
- [Balboa] can't get new clients until all documents are approved by the [Bureau].
- [Balboa] can't collect money or payments in advance.
- All client information including files must be safely locked after hours. All client information must be kept confidential.
- [Jaimez] must open a trust account to comply with the [Bureau's] requirements.
- [Balboa] is not authorized to manage properties.

-In the event that [Jaimez] does not comply with [these conditions],
[Respondent] will cancel the relationship with [Balboa] without a notice.

(Exhibit F.) Respondent and Jaimez signed and dated the PLRS plan on February 26, 2013. Respondent testified that she told Jaimez he had to meet the terms and conditions stated in the agreement before she would begin working with him and Balboa.

12. The PLRS plan further stated that Jaimez was to conduct business as the owner of Balboa in its office located at 131 N. Tustin Avenue, Suite 107, in Tustin, California (the Balboa office). Respondent had never visited that location. At the time, she worked as a real estate broker full-time from an office in Santa Ana, California, which was approximately a 15-minute drive from the Balboa office.

13. Respondent testified that she intended to be Balboa's designated officer only if Jaimez completed all of the preliminary steps in the PRLS plan.

The Bureau's Audit

14. Lisa Kwong, a General Auditor III for the Bureau, testified that she was assigned to perform an audit of Balboa's books and records to ensure compliance with California's real estate laws. The Bureau's audit was for the period of November 29, 2012, through December 31, 2013 (the audit period). The Bureau initiated the audit due to multiple complaints alleging that Balboa was misleading customers, failing to provide the PLRS services as promised, and failing to provide refunds. Ms. Kwong performed the audit "intermittently" from November 4, 2013, to February 26, 2014.

15. During her audit of Balboa, Ms. Kwong met once with Goliath, who failed to produce the files and records she had subpoenaed. Goliath told Ms. Kwong that he did not have broker copies of the files she wanted because the Balboa office had suffered a fire in May 2013 which destroyed those files.

16. Ms. Kwong met twice with Respondent and Jaimez during her audit, the first time in November 2013, and the second time on February 5, 2014, for an "exit conference" during which Ms. Kwong detailed perceived violations that arose during the audit period. Both Respondent and Jaimez provided Ms. Kwong with access to documents and other Balboa records as requested.

17. Ms. Kwong's audit revealed that during the audit period, Balboa did not maintain a client trust account, despite collecting approximately \$3,400 in advance fees from prospective tenants related to Balboa's PRLS services. Instead, Balboa held funds in three general bank accounts (the Balboa accounts). One account was in Jaimez's name, with Jaimez as signatory. The other two accounts were in Balboa's name, with Jaimez as signatory. Respondent was not a signatory on any of the Balboa accounts. Because Balboa collected advance fees from customers and deposited those fees into these accounts, they were required to be trust accounts. Because Balboa used the Balboa accounts to deposit fees

Balboa had earned as well as fees Balboa had not yet earned, the unearned funds, which should have been deposited into a trust account, were commingled with the funds in the general bank accounts.

The Balboa Contract, Failures to Perform, and Unearned Fees

18. Ms. Kwong's audit, and her review of complaints prospective tenants had made to the Bureau, revealed that Balboa was entering into contracts with prospective tenants using a contract (the Balboa contract) that had not been previously approved by the Bureau, as required by law. The Balboa contract charged a \$200 advance fee for services and offered a \$60 refund if the prospective tenant was not approved by a landlord for tenancy in a desired property. The contract would expire 90 days after it was signed.

19(a). The Accusation alleges that Balboa collected advance fees from certain prospective tenants and, after failing to provide the listing services promised, failed to "provide refunds" to those prospective tenants. The Accusation alleges that Balboa failed to provide refunds to seven specific prospective tenants. Although the Accusation is silent as to how much of the advance fees should have been refunded, it suggests that Balboa provided no services of value to any prospective tenant. The evidence established the following regarding each prospective tenant:

19(b). Prospective tenant "Donna P." allegedly signed a contract with Balboa for PLRS services on September 18, 2012, paying an advance fee of \$200. Complainant did not provide any evidence of Balboa non-performing or failing to refund any portion of the \$200 advance fee. In any event, Goliath was the designated officer from September 18, 2012, through December 18, 2012, when the contract between Balboa and Donna P. was executed and the alleged non-performance occurred. Any violations relevant to Donna P. over the course of her contract with Balboa would have been the responsibility of Goliath, not Respondent.

19(c). Prospective tenant Yajie Wang testified credibly that in about July 2013 she saw an advertisement on the Craigslist website for an apartment that seemed ideally priced. When she called the number in the advertisement she was connected to Balboa. She came in to Balboa's offices and met a man whose name she could not recall. He presented her with a contract and asked for an advance fee of \$200, which, he promised, was fully refundable if she did not get the property she wanted. She signed the contract, dated July 6, 2013, despite a term stating that she could only be refunded \$60, because the man made repeated assurances that she would receive a full refund if not satisfied. (Exhibit 3.) Balboa thereafter failed to help Ms. Wang rent the property she had seen on Craigslist, and failed to provide her with listings of any other acceptable properties. One property she liked turned out to be occupied by another tenant. Ms. Wang demanded a full refund and later received \$60. At the hearing, she was asked to identify Respondent. Ms. Wang said that she did not know Respondent and had never seen her before.

19(d). Prospective tenants "Eduardo and Petra R." allegedly signed a contract with Balboa for PLRS services on September 6, 2013, paying an advance fee of \$200. Complainant did not provide any evidence of Balboa non-performing or failing to refund any portion of the \$200 advance fee. While testifying for the Bureau, Ms. Kwong produced from her audit file a worksheet she had compiled that showed fees collected and refunded by Balboa for various prospective tenants. One such client, "Petra Ruiz," was noted to have received a \$200 refund on August 24, 2013. (Exhibits D, E.)

19(e). Prospective tenant "Juliana S." allegedly signed a contract with Balboa for PLRS services on July 21, 2013, paying an advance fee of \$200. Complainant failed to provide any evidence of Balboa non-performing or failing to refund any portion of the \$200 advance fee.

19(f). Prospective tenants John Hyler and Jessica Forseith submitted a complaint to the Bureau alleging that they had signed a contract with Balboa for PLRS services on August 5, 2013, paying to Balboa an advance fee of \$200. They dealt with people named Kathy, Jesse, George, and Annette, but their complaint does not indicate that they ever met Respondent. They alleged that they received worthless property listings for non-existent properties and demanded a refund, but received none. (Exhibit 7.) While testifying for the Bureau, Ms. Kwong produced from her audit file a worksheet she had compiled that showed fees collected and refunded by Balboa for various prospective tenants. One such client, "John Hyker [*sic*]," was noted to have received a \$60 refund on January 21, 2014. (Exhibit E.) In addition, in Ms. Kwong's Audit Report, which she wrote upon completion of the Balboa audit and which contains the results of her investigation, she notes that on January 21, 2014, John Hyler received a \$60 refund. (Exhibit 8.)

19(g). Prospective tenants "Uriel D. and Nancy P." allegedly signed a contract with Balboa for PLRS services on August 23, 2013, paying an advance fee of \$200. Complainant failed to provide any evidence of Balboa non-performing. While testifying for the Bureau, Ms. Kwong produced from her audit file a worksheet she had compiled that showed fees collected and refunded by Balboa for various prospective tenants. One such pair of clients, listed as "Uriel Diaz/Nancy Perez," was noted to have received a \$60 refund on January 21, 2014. (Exhibit 8.)

19(h). Prospective tenant Johanna Venturoli testified credibly that she saw an advertisement on the Craigslist website for an apartment that was reasonably priced and with a landlord who allowed pets. When she called the phone number in the advertisement she was connected to Balboa. She called, then came in to Balboa's office and met a man named Orlando. He presented her with a contract and asked for an advance fee of \$200, which, he promised, was fully refundable if she did not get the property she wanted. She signed the contract on August 28, 2013, despite a term stating that she could only be refunded \$60, and despite questioning Orlando about this contradiction of his promise of a full refund. Because Orlando made repeated assurances that if she was unsatisfied she would, indeed, receive a full refund, Ms. Venturoli signed the contract. (Exhibit 4; Exhibit B.) Balboa thereafter failed to help Ms. Venturoli secure the rental property listed on Craigslist. They merely

provided listings so far outside her stated budget that they were of no value to her. Ms. Venturoli demanded a full refund but stated that she never received one. However, Ms. Kwong produced from her audit file a worksheet she had compiled that showed fees collected and refunded by Balboa for various prospective tenants. On the worksheet, "Johanna Venturoli," was noted to have received a \$60 refund on January 21, 2014. (Exhibit 8.) Respondent also produced a copy of an undated check, made out to Ms. Venturoli, for \$60, with the word "refund" written on the check's memo line. (Exhibit A.) The weight of the evidence thereby established that Ms. Venturoli received a \$60 refund. In court, Ms. Venturoli was asked if she could identify Respondent. Ms. Venturoli could not identify Respondent.

Other Alleged Violations

20. During her audit, Ms. Kwong noted that Balboa failed to maintain a columnar record of the receipt and disbursements of trust funds handled through the Balboa accounts and failed to maintain a separate record for each beneficiary of trust funds collected.

21. Balboa's main office was listed as 131 North Tustin #107, in Tustin, California in the Bureau's certified history of licensure. (Exhibit 12.) However, Ms. Kwong was informed by Respondent and Jaimez, during her November 2013 interview with them, that after the Tustin office fire, Balboa had moved its office to 1800 East Garry Avenue, unit 214, in Santa Ana, California. According to Jaimez, the move occurred in June 2013. Respondent failed to report this change of address to the Bureau.

22. Respondent allegedly failed to retain records regarding Balboa's PRLS activities. No evidence was presented in support of this allegation. According to Ms. Kwong, Goliath failed to produce prospective tenant records she had subpoenaed, claiming that the May 2013 fire had destroyed the files he had maintained when he was Balboa's designated officer. By contrast, Ms. Kwong credited Respondent with providing multiple transaction files that she had requested as part of her audit. Ms. Kwong described Respondent as being helpful and compliant during the audit process.

Cancellation of Respondent's Designated Officer Status

23. The Bureau's certified histories of licensure for Balboa (Exhibit 12) and for Respondent (Exhibit 2) both list February 14, 2014, as the date upon which the Bureau cancelled Respondent's status as Balboa's designated officer. February 14, 2014 is also the date alleged in the Accusation as the conclusion of Respondent's term as designated officer. Respondent contested this allegation at hearing, contending that she should have been relieved as designated officer months sooner than February 2014. The following evidence supports Respondent's contention.

24. Respondent testified that in July 2013 she began to hear complaints from prospective tenants about Jaimez's failure to provide adequate services. She also had not received any of the follow-through documentation Jaimez had promised to her as specified in

the PLRS plan.⁴ Respondent was under the impression that Jaimez was not, therefore, running a PLRS through Balboa at the time. By August 1, 2013, Respondent realized that this was a wrong assumption, due to the complaints prospective tenants had made about Jaimez and Balboa. She decided to sever her relationship with Jaimez immediately and wrote a letter to him, dated August 1, 2013, in which she stated her concerns and informed him that their business association had ended. She further directed Jaimez to “immediately stop using me as your employer broker” and informed him that she was preparing documentation to submit to the Bureau “to terminate my relationship with you and your business[,] Balboa” Respondent concluded her letter by asking Jaimez to “complete and submit all necessary documentation for the corporation so it can be terminated legally by the [Bureau].” (Exhibit H.)

25. Respondent contacted the Bureau by phone in August 2013 to express her intention to disassociate herself with Jaimez and Balboa. She also asked which of the Bureau’s forms she should use to cancel her designated officer status with Balboa. The Bureau mailed Respondent a “Broker Change Application,” which she filled in, signed, and dated August 16, 2013, then mailed back to the Bureau. The Bureau received Respondent’s “Broker Change Application” on August 21, 2013. (Exhibit I.)

26. On September 10, 2013, the Bureau sent a letter to Respondent acknowledging receipt of her application to terminate her designated officer status, and directing her to have the licensed officers of the corporation submit another signed statement indicating that the corporation is no longer conducting business for which a real estate license is required. (Exhibit K.) Respondent received the letter later that month

27. By the time the Bureau wrote back to Respondent in September 2013, Respondent realized that they had initially sent her the wrong form, in August 2013, to help her begin the cancellation process. Next, Respondent completed a Bureau “Corporation Change Application,” checking a box that stated, “I am not remaining with the firm as a licensed officer.” She signed and dated the form on December 19, 2013, and submitted it to the Bureau shortly thereafter.⁵ (Exhibit J.) Overall, Respondent described her attempts to remove herself as designated officer of Balboa as part of a confusing, frustrating process. She was dismayed that despite her having contacted the Bureau to withdraw as designated officer and filling out various forms at their direction as early as August 2013, the Bureau still left her status as designated officer unchanged for months longer, until February 2014.

28. Complainant offered no evidence as to why the Bureau did not grant Respondent’s August, 2014 and December, 2014 requests to be removed as Balboa’s

⁴ Although Jaimez participated in the Bureau’s audit of Balboa, by the date of the hearing, Jaimez still had not provided a single client file for Respondent’s review or consideration.

⁵ Respondent did not provide a reason for why she waited two months to fill in the form and submit it to the Bureau.

designated officer until February 14, 2014, although the Bureau's September 10, 2013 letter makes plain that the delay was at least partially due to Respondent's initial use of the wrong form which the Bureau had supplied.

29. Complainant criticized Respondent at the hearing for being a real estate broker who should know how to decipher official forms and documents, but who could not properly do so in this instance. However, the forms offered to Respondent and exchanged in this context were less than clear. The "Broker Change Application" which the Bureau sent to Respondent in August 2013 suggests, by its name, that a broker/licensee would utilize it to change her status; yet apparently, this is not possible using that form. Similarly, the "Corporation Change Application" bears a name at cross-purposes with its use, suggesting a change in a corporation's status as its purpose, but not necessarily a change in a broker's individual status. Yet, by checking one very small box on this form, a designated officer may remove themselves from a firm. Respondent's confusion about this process appears to have been genuine. The weight of the evidence established that Respondent made a good faith effort to both disassociate herself with Jaimez and Balboa, and officially remove herself as designated officer of Balboa, in August 2013. The Bureau should have removed Respondent as designated officer by September 2013.

30. The sum of the evidence established that Respondent's status as Balboa's designated officer concluded in September 2013.

Additional Evidence

31. Respondent testified that she made a serious mistake in assuming that Jaimez was honest and trustworthy. She was inexperienced in how trust funds worked and overly relied on Jaimez to set up a trust account. She stated that she made another serious mistake by associating with Balboa despite not being present in their office when it did business with prospective tenants. Although Respondent maintained she did not know that Jaimez was even providing PRLS services to prospective tenants, because he communicated nothing of the sort to her, she was remorseful that she had not put herself in a position to supervise him closely enough to detect what he was doing. Respondent stated that she made no money through her association with Jaimez and Balboa, nor was she presented with a single prospective tenant file for her review. Respondent has no plans to engage in a PRLS business ever again.

32. Respondent testified that she insisted that Jaimez and Balboa could not accept advance fees while operating as a PRLS. This assertion was implausible. The term "prepaid," as defined in Business and Professions Code section 10026, subdivision (a), delineates an advance fee for services to be performed, and the statutes defining advance fees and describing PRLS businesses contemplate advance fees being paid to the PRLS by

prospective tenants.⁶ As an experienced broker, Respondent reasonably should have known that a "prepaid" fee was the same as an advance fee.

33. Respondent submitted character reference letters from E. Alex Dominguez, Yolanda Hernandez, Pablo Bermudez, and Yesenia Vasquez, all of whom have worked with Respondent in the mortgage and real estate industry. Each of these letter-writers extolled Respondent's honesty, integrity, and professionalism. None of the letters referenced the Accusation in this matter, or whether the letter-writers knew there were disciplinary charges pending against Respondent.

Costs

34(a). The Board submitted written evidence of its costs of investigating and prosecuting this matter, in the total of \$2,156.95 (Exhibit 9). These costs are itemized for the eight individuals who billed time on the matter. The majority of billable time was \$1,918.90, attributed to Special Investigator Antonio Chavez at a rate of \$62 per hour. Other Bureau employees who worked on the case billed relatively minimal time. Considering the scope of the allegations and issues involved in this case, these costs appear to be reasonable.

34(b). Complainant's counsel submitted a certified statement of costs detailing her costs for enforcement of the case. In an attached activity log, counsel provides comments on the types of activities she performed in support of her billings. Her original total included time spent working on settlement with a former co-respondent to the Accusation, but those billing-entries were redacted, reducing the total costs, at a rate of \$89 per hour, from \$2,336.25 to \$1,846.75. (Exhibit 11.) These costs appear to be reasonable.

34(c). Complainant submitted a certified statement of audit costs, totaling \$4,488.25, reflecting the time Ms. Kwong spent performing the audit on Balboa at a rate of \$57 per hour. The scope of the audit covered 13 months, from November 29, 2012, to December 31, 2013. This time-period also encompassed three and one-half months that another former co-respondent, John Goliath, was acting alone as Balboa's delegated officer, from November 29, 2012, until March 15, 2013. The 13-month audit period also exceeded Respondent's cancellation as delegated officer by four months, from October through December 2013. The audit thereby covered a total of eight months during which Respondent was not Balboa's designated officer. Respondent should not bear the burden of paying the Bureau's audit costs for more than the five months that she was Balboa's designated officer, from May 2013 through September 2013. Five months represents 38.4 per cent of the Bureau's 13-month audit period. Therefore, Complainant's recoverable audit costs are reduced, by 61.6 per cent, to \$1,041.27.

34(d). Based on the above analysis, Complainant's total recoverable costs are \$5,044.97.

⁶ See Business and Professions Code sections 10026, subdivision (a), and 10167, subdivision (a).

LEGAL CONCLUSIONS

1. The standard of proof to be used in these proceedings is “clear and convincing evidence.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856, 185 Cal.Rptr. 601.) This means the burden rests with Complainant to offer 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.)

Failure to Supervise

2. Business and Professions Code (Code) section 10159.2, subdivision (a), provides:

The officer designated by a corporate broker licensee pursuant to Section 10211 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.

3. Code section 10177, subdivision (h), provides that the commissioner of the Bureau may discipline a licensee who fails to exercise reasonable supervision, as a designated officer, over the activities of the corporation for which the licensee’s real estate license was required.

4. California Code of Regulations (Regulations), title 10, section 2725, requires a broker to exercise reasonable supervision over his or her salespersons regarding transactions, documents, filing, trust accounting, and other business procedures.

5. Cause exists to discipline Respondent’s license and licensing rights under Code sections 10592, subdivision (a), and 10177, subdivision (h), in that Respondent, as designated officer of Balboa from May 2013 through August 2013, failed to supervise Jaimez, and/ or Balboa’s other employees, in Balboa’s activities as a PRLS, as set forth in Factual Findings 4 through 14 and 17 through 22.

6. Cause exists to discipline Respondent’s license and licensing rights under Code section 10177, subdivision (g), in that, Respondent demonstrated negligence in her failure to supervise Jaimez, or Balboa’s other employees, in Balboa’s activities as a PRLS, as set forth in Factual Findings 4 through 14 and 17 through 22.

7. Cause does not exist to discipline Respondent’s license under Regulations section 2725, as Jaimez is not a real estate salesperson, as set forth in Factual Finding 5.

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Violations re Balboa's Activities

8. Cause exists to discipline Respondent's license and licensing rights under Code section 10176, subdivision (a). The evidence did not establish that Respondent made any substantial misrepresentations to prospective tenants, as set forth in Factual Findings 10, 11, 13, 19 and 24. None of the prospective tenants who testified ever had contact with Respondent, and there was no additional evidence to show that Respondent made misrepresentations to other prospective tenants. However, the doctrine of *respondeat superior* is an exception to the general rule that liability follows fault. An employer is vicariously liable for the torts of its employees committed within the scope of the employment. (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296-297) Respondent is vicariously liable for Jaimez's misrepresentations because they were made in reference to the company's refund policy and other services Balboa, as a PRLS, would provide, so they were plainly within the scope of Jaimez's employment.⁷ (See, also, *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 208)

9. Cause does not exist to discipline Respondent's license and licensing rights under Code section 10177, subdivision (d), as the evidence did not establish by clear and convincing evidence that Respondent willfully disregarded or violated the Real Estate Law. Willful or wanton misconduct is defined as "intentional wrongful conduct, done either with a knowledge that serious injury to another will probably result, or with a wanton and reckless disregard of the possible results." (*New v. Consolidated Rock Products Co.* (1985) 171 Cal.App.3d 689, internal citations omitted.) Respondent was the designated officer of Balboa for a brief time during which Jaimez operated without her knowledge. She was unaware of potential public harm because she did not know that Jaimez was doing business. Respondent's attempts to disassociate herself with Jaimez and Balboa at the first sign of Jaimez's malfeasance belie any wanton or reckless disregard by Respondent of the possible results of his poor performance.

10(a). Code section 10145, subdivision (a)(1), provides:

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.

⁷ Respondent is also vicariously liable for any further violations committed by Jaimez or other Balboa employees with regard to bank accounts, record-keeping, handling of funds, refunding unearned fees, and use of a contract not approved by the Bureau.

10(b). Regulations section 2832 states that compliance with Code section 10145 requires that funds held on behalf of another be placed in a neutral escrow depository or trust account.

10(c). Code section 10146 requires brokers to deposit advance fees in a client trust account.

10(d). Cause exists to discipline Respondent's license and licensing rights under Code sections 10145, subdivision (a), and 10146, and Regulations section 2832, in that Respondent, Jaimez, or an employee of Balboa, accepted advance fees without depositing them into a trust account maintained by Respondent, as set forth in Factual Finding 17 and 19.

11(a). Code section 10176, subdivision (e), prohibits a broker from commingling with his or her own money the money or other property of others that the broker has received and held in trust.

11(b). Cause exists to discipline Respondent's license and licensing rights under Code sections 10145, subdivision (a), and 10176, subdivision (e), and Regulations section 2832, in that Respondent, Jaimez, or an employee commingled funds by not depositing advance fees into a trust account maintained by Respondent, but instead depositing those fees into a general account, as set forth in Factual Finding 17 and 19.

12(a). Regulations section 2831, subdivision (a), states:

A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

- (1) Date of deposit.
- (2) Amount of deposit.
- (3) Date of each related disbursement.
- (4) Check number of each related disbursement.
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account.
- (7) Balance after posting transactions on any date.

12(b). Cause exists to discipline Respondent's license and licensing rights under Code section 10145, subdivision (a), and Regulations section 2831, in that Respondent, Jaimez, or a Balboa employee failed to maintain a columnar record with the data required under that regulation, by virtue of the failure to maintain a trust account as set forth in Factual Finding 17.

13(a). Regulations section 2831.1 requires that a broker keep a separate record for each beneficiary or transaction, accounting for all funds that have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction.

13(b). Cause exists to discipline Respondent's license and licensing rights under Code section 10145, subdivision (a), and Regulations section 2831.1, in that Respondent, Jaimez, or a Balboa employee failed to maintain a separate record for trust account funds as required under that regulation, by virtue of the failure to maintain a trust account as set forth in Factual Finding 17.

14(a). Code section 10167.9, subdivision (c), requires a broker using a form contract for PRLS services to obtain the Bureau's approval for using a PRLS form contract prior to using that document.

14(b). Cause exists to discipline Respondent's license and licensing rights under Code section 10679, subdivision (c), in that Respondent failed to obtain the Bureau's approval prior to using the Balboa contracts as set forth in Factual Findings 18 and 19.

15(a). Code section 10167.10, subdivision (a), provides:

A licensee shall refund in full the fee paid by a prospective tenant if the licensee does not, within five days after execution of the contract, supply at least three rental properties then available to the prospective tenant and meeting the specifications of the contract, unless the prospective tenant obtains a rental through the services of the licensee.

15(b). Cause exists to discipline Respondent's license and licensing rights under Code section 10167.10, subdivision (a), in that Respondent, Jaimez, or a Balboa employee failed to refund in full the unearned advance fees paid by prospective tenants Yajie Wang, John Hyler and Jessica Forseith, and Johanna Venturoli, as set forth in Factual Findings 19(c), 19(f), and 19(h). In all three cases, the evidence showed that the PRLS services Balboa provided were of no real value, yet each prospective tenant was refunded only \$60 of the \$200 in advance fees they had paid.

16(a) Code section 10145, subdivision (a), requires that a trust fund account be maintained by a real estate broker. Regulations section 2834 requires that a broker be a signatory on any withdrawals made from a trust account.

16(b). Cause exists to discipline Respondent's license and licensing rights under Code section 10145, subdivision (a), and Regulations section 2834, in that Respondent, Jaimez, or a Balboa employee failed to maintain Balboa's bank accounts or act as signatory on their bank accounts as set forth in Factual Finding 17.

17(a). Code section 10162, subdivision (c)(1), requires brokers to inform the commissioner of any change to his or her office or mailing address, telephone number, or electronic mail address no later than 30 days after making the change.

17(b). Cause exists to discipline Respondent's license and licensing rights under Code section 10162, subdivision (c)(1), in that Respondent failed to inform the Bureau of Balboa's change of address within 30 days of Balboa's change of address from its North Tustin address to its Santa Ana address, as set forth in Factual Finding 21.

18(a). Code section 10148, subdivision (a), requires that real estate brokers retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by the broker or obtained by the broker in connection with any transactions for which a real estate broker license is required. These books, accounts, and records shall be made available for examination and shall, upon sufficient cause, be subject to audit.

18(b). Cause does not exist to discipline Respondent's license and licensing rights under Code section 10148, subdivision (a), in that the evidence did not show that Respondent failed to maintain records of Balboa's PRLS activity, as set forth in Factual Finding 22.

Analysis

19. Respondent's overriding act of professional misconduct was her failure to be present at Balboa's offices to supervise Jaimez's, and the Balboa staff's, activities as a PRLS. Although Respondent acknowledged her mistake in having trusted Jaimez, her lack of diligence caused several prospective tenants financial harm and significant grief. As Balboa's designated officer from May 2013 through September 2013, Respondent bore the professional responsibility of ensuring the company's compliance with real estate law, and plainly, by her total absence during that time-period, she failed. This lack of oversight led to multiple violations regarding Balboa's handling of advance fees, its maintenance of bank accounts, its record-keeping practices, its failure to refund unearned fees, and its use of a services contract that lacked prior Bureau approval. Respondent's inattention to Jaimez and Balboa stood contrary to the fundamental competency standards required of a real estate broker.

20. Nonetheless, the Accusation overstated the extent of Respondent's misconduct, as the evidence established that she was Balboa's designated officer for only five months, not 13 months as alleged. Although the Accusation called attention to \$3,400 in allegedly mishandled funds, that sum covered the entire 13-month Bureau-audit period, far exceeding Respondent's actual time spent as Balboa's designated officer. Similarly, the Accusation named seven prospective tenants who allegedly had not received refunds from Balboa due to Balboa's substandard service, and asserted that those refunds amounted to \$200 per person. Yet the evidence established that only three prospective tenants, each of whom had been provided with a \$60 partial refund already from Balboa, were due the remaining \$140 of unearned advance fees. At the hearing, Complainant repeatedly cast

Respondent as acting in league with Jaimez, but the evidence showed that Respondent was absent from Jaimez's activities and did not benefit financially from her association with him. The only acts Respondent directly engaged in with Jaimez were the two audit interviews she attended with Jaimez, and according to Ms. Kwong, Respondent was helpful and compliant during that process. (Factual Finding 22)

21. Respondent showed appropriate remorse for her misconduct and insight into her mistakes. She readily took responsibility for failing to oversee Jaimez and Balboa.

22(a). Section 10106 of the Code provides, in pertinent part, that the Commissioner may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. 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, are prima facie evidence of reasonable costs of investigation and prosecution.

22(b). Pursuant to Code section 10148, subdivision (b), the Bureau may charge the real estate broker for the cost of any audit if the Bureau finds in a final decision that the broker has violated Code section 10145.

22(c). Pursuant to Code section 10106, Complainant is entitled to recover reasonable costs of investigation, auditing, and enforcement of this matter in the amount of \$5,044.97, as set forth in Factual Finding 33.

23. By her words and actions, Respondent showed that she understood the nature, extent, and gravity of her misconduct. Her involvement with a PRLS was a one-time occurrence of short duration, and the reoccurrence of such misconduct appears unlikely. For these reasons, Respondent has shown rehabilitation from her misconduct. The issue, then, is what disciplinary order would be most appropriate in terms of public protection. The Bureau's recent stipulation and agreement with Goliath provides significant guidance on this question. As noted above, the Accusation charged Goliath with concurrent, identical allegations to those charged herein against Respondent, so the relevance of the Bureau's decision and order in that matter is high.

24. Official notice is taken that on March 25, 2015, the Bureau adopted a Stipulation and Agreement between Complainant and Goliath, effective April 27, 2015, in case number H-39552 LA, which, by adoption, the Bureau made into its disciplinary order (the Goliath order). Pursuant to the Goliath order, Goliath was suspended for 90 days, with the initial 30 days of suspension stayed for two years. Goliath was ordered to pay a monetary penalty of \$50 per day for each of the 30 days for a total monetary penalty of \$1,500. If Goliath paid the fine and had no further disciplinary actions brought against him within the next two years, the stay on the initial 30-day suspension would become permanent. The remaining 60 days of the 90-day suspension was also stayed for 2 years, with various terms and conditions imposed, including completion of educational course

work, taking and passing the Professional Responsibility Examination, and payment of the Bureau's costs for auditing and investigation of the underlying disciplinary matter. If Goliath timely completed all of the terms and conditions set forth and no cause for disciplinary action occurred within two years, the stay on the remaining 60 days of suspension would become permanent.

25. By adopting the Stipulation and Agreement as the Goliath order, the Bureau indicated its assent to that order, with all its terms and conditions, as an appropriate and fair disposition that would ensure public protection. Respondent, who was charged identically with Goliath in the Accusation in this matter and appears to have rehabilitated herself, should be afforded the same disposition.

ORDER

All licenses and licensing rights of Respondent Adela C. Olivares under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Decision; provided, however, that the initial thirty (30) days of that suspension shall be stayed for two years upon the following terms and conditions;

A. Respondent shall pay a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code of \$50 per day for each of the thirty (30) days for a total monetary penalty of \$1,500.

B. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Bureau prior to the effective date of the Decision in this matter.

C. No further cause for disciplinary action against the real estate license of Respondent occurs within two (2) years from the effective date of the Decision in this matter.

D. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension, in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau under the terms of this Decision.

E. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within two (2) years from the effective date of the Decision, the stay hereby granted will become permanent.

F. The remaining sixty (60) days of the ninety (90) day suspension shall be stayed for two (2) years upon the following terms and conditions:

(1) Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

(2) that no final determination be made after hearing or upon stipulation, that
cause for disciplinary action occurred within two (2) years from the effective date of this
Decision. Should such a determination be made, the Commissioner may, in his discretion,
vacate and set aside the stay order and re-impose all or a portion of the stayed suspension.
Should no such determination be made under this section, the stay imposed herein shall be
permanent.

(3) Respondent shall, within nine (9) months from the effective date of this
Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent
has, since the most recent issuance of the original or renewal real estate license, taken and
successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of
the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
condition, the Commissioner may, in his discretion, vacate and set aside the stay order and
re-impose all or a portion of the stayed suspension until Respondent presents such evidence.
The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the
Administrative Procedure Act to present such evidence.

(4) Respondent shall, within six (6) months from the effective date of this
Decision, take and pass the Professional Responsibility Examination administered by the
Bureau including the payment of the appropriate examination fee. If Respondent fails to
satisfy this condition, the Commissioner may order the suspension of Respondent's real
estate broker license until Respondent passes the examination.

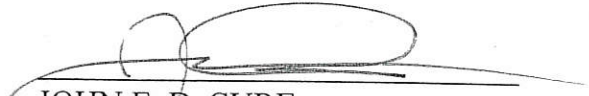
(5) Pursuant to sections 10106 and 10148 of the Business and Professions Code,
Respondent shall pay the Commissioner's reasonable costs for investigation of the case and
audit which led to the disciplinary action in the sum of \$5,044.97. Respondent shall pay
such costs within one year of the effective date of this Decision. The Commissioner has the
discretion to create a payment plan for Respondent for repayment of these costs, and to
extend the time for repayment.

(6) The Commissioner may suspend the license of Respondent pending a hearing
held in accordance with section 11500, et seq., of the Government Code, if payment is not
timely made as provided for herein, or as provided for in a subsequent agreement between
the Respondent and the Commissioner. The suspension shall remain in effect until payment
is made in full or until Respondent enters into an agreement satisfactory to the Commissioner
to provide for payment, or until a decision providing otherwise is adopted following a
hearing held pursuant to this condition.

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(7) Respondent shall, within sixty (60) days of the effective date of this Decision, submit proof satisfactory to the Commissioner of payment of restitution in the amount of: \$140 to Yajie Wang; \$140 to John Hyler and Jessica Forseith; and \$140 to Johanna Venturoli. If Respondent fails to satisfy this condition, the Commissioner may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension until Respondent presents such evidence.

Date: 8-21-15


JOHN E. DeCURE
Administrative Law Judge
Office of Administrative Hearings