

**FILED**

**MAR 18 2021**

**DEPT. OF REAL ESTATE**

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of:

DONALD EUGENE PETERS, doing business as  
Equity Growth Properties, JOHN CLAYTON LEWIS,  
A TRUE TREASURE, INC., doing business as  
Monarch Escrow, A Non-Independent Broker Escrow and  
Realty Executives Temecula, and  
CARLA MARIE CISCEL-SHUMWAY, doing business as  
Realty Executives of the Foothills, individually and as  
designated officer of A True Treasure, Inc.,

Respondents

) DRE No. H-41329 LA

) OAH No. 2019111014

DECISION

The Proposed Decision dated January 11, 2021, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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

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

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

This Decision shall become effective at 12 o'clock noon on April 16, 2021

IT IS SO ORDERED

3.9.21

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER

DOUGLAS R. McCAULEY

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

**In the Matter of the First Amended Accusation against:**

**DONALD EUGENE PETERS, dba**

**EQUITY GROWTH PROPERTIES,**

**JOHN CLAYTON LEWIS, A TRUE TREASURE, INC., dba**

**MONARCH ESCROW, A Non-Independent Broker Escrow and**

**Realty Executives Temecula, and**

**CARLA MARIE CISCEL-SHUMWAY, dba**

**REALTY EXECUTIVES OF THE FOOTHILLS, individually and as  
designated officer of A True Treasure, Inc.,**

**Respondents.**

**Agency Case No. H-41329**

**OAH No. 2019111014**

## PROPOSED DECISION

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on September 1 and 2 and November 19 and 20, 2020, by videoconference.

Steve Chu, Counsel, represented Veronica Kilpatrick (Complainant), Supervising Special Investigator, Department of Real Estate (Department).

Mark R. Denning, Attorney, represented Donald Eugene Peters, doing business as Equity Growth Properties (Respondent).<sup>1</sup>

Oral and documentary evidence was received. The record was left open by the ALJ until December 11, 2020 for parties to file respective closing briefs and for Complainant to file a certified copy of Respondent's Salesperson Change Application as a supplement to Exhibit 19. On December 10, 2020, Complainant filed her closing brief, marked as Exhibit 20, and the certified copy of Respondent's Salesperson Change Application, marked and admitted as part of Exhibit 19. On December 11, 2020, Respondent filed his closing brief, marked as Exhibit U.

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<sup>1</sup> Respondents John Clayton Lewis, A True Treasure Inc., doing business as Monarch Escrow, A Non-Independent Broker Escrow and Realty Executives Temecula, and Carla Marie Ciscel-Shumway, doing business as Realty Executives of the Foothills, individually and as designated officer of A True Treasure, Inc. did not take part in the hearing, having entered into stipulated settlements with the Department prior to matter proceeding to hearing.

The record was closed and the matter was submitted for decision on December 11, 2020.

### **STATEMENT OF THE CASE**

Respondent is licensed by the Department as a real estate broker and was previously licensed as a real estate salesperson. The Department seeks to impose discipline action against all licenses and licensing rights of Respondent based upon Respondent's actions in a real estate transaction while he was acting as a real estate licensee. Complainant alleges that Respondent acted dishonestly in loan and partnership agreements regarding a property, failed to maintain a place of business, used an unlicensed fictitious business name, and failed to disclose a real estate identification number. In sum, Respondent's actions are alleged to constitute negligent violation of the Real Estate Law. Respondent stipulates to the failure to maintain a place of business allegation. However, he denies all additional wrongdoing and offers evidence in support of retention of his real estate license and license rights. At hearing, Complainant's allegations against Respondent were established through clear and convincing evidence. Respondent provided no reasonable mitigating circumstances for his acts or omissions and no evidence of rehabilitation. To ensure public protection, revocation of all license and licensing rights of Respondent is warranted and necessary.

## FACTUAL FINDINGS

### Jurisdictional Matters

1. On March 25, 2019, Complainant filed the Accusation in her official capacity. Subsequently, on April 14, 2020, a First Amended Accusation was signed by Complainant. The First Amended Accusation is the operative pleading in this matter.
2. Respondent timely filed a notice of defense and this hearing took place, pursuant to Government Code section 11500 et seq.
3. At the time of the relevant events, Respondent had license rights under the Real Estate law, Part 1 of Division 4 of the California Business and Professions Code (Code).<sup>2</sup> On January 11, 2017, the Department issued a real estate broker license to Respondent. From August 3, 1990 to January 10, 2017, Respondent was licensed by the Department as a real estate salesperson. On January 11, 2017, Respondent's salesperson license terminated. Respondent's broker license expires on January 10, 2021. There is no evidence of prior license discipline.

### Background Information

4. From March 28, 2014, to March 22, 2016, Respondent was affiliated as a salesperson with employer broker respondent Carla Marie Ciscel-Shumway (Ciscel-Shumway).

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<sup>2</sup> All further references are to the Business and Professions Code unless otherwise noted. All references to "Regulations" are to Title 10, Chapter 6 of the California Code of Regulations.

5. From March 31, 2016, to January 10, 2017, Respondent was affiliated as a salesperson with employing broker respondent True Treasure, Inc. (True Treasure). At all times relevant, True Treasure was licensed by the Department as a corporate real estate broker by and through Ciscel-Shumway, as the designated officer and broker responsible.

6. From January 11, 2017, to January 22, 2018, Respondent was affiliated as a broker associate with employing broker True Treasure. On January 8, 2018, Respondent started doing business as Equity Growth Properties.

7. From October 13, 2009, to March 22, 2016, respondent John Clayton Lewis (Lewis), a real estate salesperson, was affiliated with employing broker Ciscel-Shumway. From March 25, 2016, to an unknown date, Lewis was affiliated with employing broker True Treasure. Lewis is the owner of True Treasure.

#### **RESPONDENT'S FINAL JUDGMENT, TAX LIEN, AND BANKRUPTCY**

8. On July 15, 2013, in the Superior Court of California, County of Riverside, Case No. TEC1203409, a final judgment was entered in favor of Bear Creek Master Association against Respondent, ordering him to pay \$4,643.99 (final judgment).

9. The Bear Creek Master Association final judgment resulted from a civil lawsuit filed by one of the approximately 47 real estate investors who invested and lost money in a limited liabilities company, Gates and Haas Investments, LLC (Gates and Haas), which invested in real estate through 22 limited liability companies, called Murrieta Madison LLC. Gates and Haas were the managing members of the 22 Murrieta Madison LLCs.

10. Forty-seven investors invested a total of six million dollars in the Murrieta Madison LLC. Respondent was a general partner and vice president of Gates and Haas. After a forensic accountant investigation revealed that approximately two million dollars of the investor money from the 22 Murrieta Madison LLC could not be accounted for and may have been converted, one of the investors filed a civil suit against Respondent, Gates, and Haas on the grounds of fraud, misrepresentation, and deceit. The civil suit was stayed when Respondent filed for bankruptcy protection.

11. On February 5, 2011, Respondent filed for Chapter 7 bankruptcy in the United States Bankruptcy Court, Central District of California, Case No. 6:11-bk-13905-DS. On May 24, 2011, Respondent was granted a discharge.

12. On April 10, 2014, the California Franchise Tax Board filed and recorded a tax lien against Respondent in the amount of \$5,542.34 (tax lien).

13. From approximately 2013 to 2015, Respondent and his former fiancé, D. Barlet (Barlet) were partners in the limited liability company Sunrise Equity Group, LLC (Sunrise Equity). On Respondent's request and with Barlet's cooperation, Barlet solicited friends and family to invest in real estate through Sunrise Equity.

14. For approximately five projects, Sunrise Equity bought the real estate property, rehabilitated the property, and sold the property. The matter of whether the specific sale of the real estate investment properties resulted in a profit or loss was not established at hearing and is a matter of dispute between Respondent and Barlet, who both testified at hearing. Respondent collected his entire real estate commission for each of Sunrise Equity's real estate projects regardless of whether the sale of a property resulted in a profit or loss to investors. Respondent, with Barlet's consent, used investors' money for his dental work and to purchase an engagement ring.



Respondent did not pay the money back to Sunrise Equity. The net final transaction resulted in losses of \$45,000 to Barlet and the other investors of Sunrise Equity. Barlet testified at hearing that she is still in the process of repaying investors for their losses. Sunrise Equity is no longer operational and Barlet no longer has a business or personal relationship with Respondent.

### **Cardinal Flower House**

15. In the summer of 2015, Respondent became a tenant in the home of N.F.<sup>3</sup> Todd Hansen (Hansen) is N.F.'s boyfriend. Hansen is a grocery clerk who had no previous real estate investment experience at the time he met Respondent. Hansen had money he had earned from the sale of his residence which he was interested in investing in real estate.

16. Respondent solicited Hansen to invest in real estate, representing to Hansen that he had experience and had made money in previous real estate investments. Respondent explained to Hansen that he had put his previous real estate investments into limited liability companies.

17. Respondent asked Hansen for a loan at a one percent monthly return, which Hansen declined. Hansen informed Respondent that he was not interested in loaning money or being a hard money lender. Rather, Hansen told Respondent that he was interested in a partnership and learning how to invest in real estate.

18. Respondent represented to Hansen that they would have a partnership and own the investment property together. He did not inform Hansen that he was

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<sup>3</sup> First and last initials or titles are used to protect individuals' privacy.

solely to be an investor. Respondent represented to Hansen he would only use licensed contractors to work on their joint real estate investment.

19. Respondent did not disclose to Hansen that Respondent had an unpaid final judgment, tax lien, and that he had filed for bankruptcy and received a discharge.

20. In late February 2016, Hansen agreed to a partnership with Respondent to purchase the house at 41165 Cardinal Flower Drive, Murrieta, California 95262 (Cardinal Flower house or property) under joint ownership to rehabilitate and sell for a profit. Respondent represented to Hansen that title to the Cardinal Flower house would be held by a limited liability company with Hansen as a member of the limited liability company. Hansen asked Respondent for a written agreement prior to the purchase of the Cardinal Flower house. However, none was provided by Respondent until a month after the April 2016 closing of escrow on the purchase.

#### **CARDINAL FLOWER HOUSE PURCHASE**

21. On December 4, 2015, Respondent, as principal buyer, represented by broker Ciscel-Shumway through salesperson Lewis, submitted an offer to purchase the Cardinal Flower house through a signed Residential Purchase Agreement. In the Residential Purchase Agreement, Respondent, Lewis, and Ciscel-Shumway used the unlicensed fictitious business names "Realty Executives OTF" and "Monarch Escrow." Per the agreement, Respondent represented that he would make an initial deposit of \$2,300 directly to the escrow holder.

22. On March 14, 2016, the Cardinal Flower house seller submitted Seller Counter-Offer No. 1 to Respondent and Lewis. On March 14, 2016, Respondent signed Seller Counter-Offer No. 1 in which the parties acknowledged that it was a short sale

transaction, and acceptance was based on receiving a written approval from all lien holders.

23. On March 16, 2016, Respondent and Lewis signed the Short Sale Affidavit from servicer Seterus for the Cardinal Flower house. In relevant part, the Short Sale provided, "There are no agreements, understandings or contracts relating to the current sale or subsequent sale of the property that have not been disclosed to the Servicer." (Exhibit 13.) Respondent failed to disclose the partnership agreement between Respondent and Hansen to purchase the Cardinal Flower house, to rehabilitate it, and to sell it for profit.

24. On March 31, 2016, Respondent signed a Uniform Residential Loan Application for the Cardinal Flower house. Under "Section VI. ASSETS AND LIABILITIES" of the Uniform Residential Loan Application, Respondent failed to disclose the unpaid final judgment and tax lien. Under "Section VIII. DECLARATIONS" of the Uniform Residential Loan Application, in response to Question a., "Are there any outstanding judgments against you?" Respondent answered "No" and failed to disclose the unpaid final judgment. Under "Section VIII. DECLARATIONS" of the Uniform Residential Loan Application, in response to Question b., "Have you been declared bankrupt within the past 7 years?" Respondent answered "No" and failed to disclose the bankruptcy and discharge.

25. Respondent was aware at the time he signed the Cardinal Flower house loan application that he had an unpaid final judgment, tax lien, and that he had filed for bankruptcy and received a discharge. Respondent was willfully dishonest in failing to disclose the obligations. Respondent's testimony at hearing that he did not remember and was not aware of the final judgment, tax lien, and bankruptcy at the time he signed the loan is not credible.

26. Mortgage broker Trimark Funding Inc. solicited lender NJR Three Properties, LLC to provide a loan of \$221,000 to Respondent for the purchase of the Cardinal Flower house.
27. On March 31, 2016, Respondent and Hansen signed Third Party Deposit Instructions for Generations Escrow. Hansen provided \$44,874 of his personal funds to Generations Escrow for the purchase of the Cardinal Flower house.
28. On March 31, 2016, Respondent signed the Deed of Trust for the Cardinal Flower house with lender NJR Three Properties, LLC as the beneficiary (First Deed). According the First Deed, the amount borrowed was \$221,000 and the due date for the deed to be paid in full was May 1, 2017. The First Deed's 1-4 Family Rider states, in part "Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission."
29. On April 4, 2016, the First Deed was recorded and lender NJR Three Properties, LLC disbursed \$221,000 to Generations Escrow for the Cardinal Flower house.
30. On April 4, 2016, title for the Cardinal Flower house was recorded solely in Respondent's name. Hansen was not included on the title.
31. Contrary to his representation in the Residential Purchase Agreement, Respondent did not make an initial deposit of \$2,300 to the escrow holder, Generations Escrow. Instead, on April 5, 2016, Respondent asked Hansen to provide an additional \$2,300 and \$1,636.05 to Generations Escrow for the Cardinal Flower house.
32. On April 5, 2016, Hansen disbursed two cashier's checks in the amounts of \$2,300 and \$1,636.05 to Generations Escrow for the Cardinal Flower house.

Respondent did not inform Hansen at the time he provided the additional funds for the purchase of the home that title for the Cardinal Flower house had already been recorded solely in Respondent's name.

33. On April 5, 2016, Generations Escrow disbursed \$6,500 in real estate commission payments for Ciscel-Shumway and Lewis to Ciscel-Shumway for the purchase of the Cardinal Flower house.

34. On April 5, 2016, Generations Escrow disbursed a \$40 check to Respondent representing a buyer refund for the purchase of the Cardinal Flower house. Respondent did not inform Hansen about this refund and converted the \$40 in trust funds.

#### **POST CARDINAL FLOWER HOME PURCHASE ACTS AND EVENTS**

35. On April 8, 2016, Respondent hired unlicensed contractor Michael Baker (Baker) to perform rehabilitative construction work on the Cardinal Flower house. Respondent was aware at the time he hired Baker that he was not a licensed contractor California. According to Respondent, Baker was a licensed contractor in Hawaii. Respondent's claim is uncorroborated and irrelevant to the issue of whether he was licensed in California to perform construction work on the Cardinal Flower house.

36. Baker was a friend of Respondent. In addition, Baker was a friend and the tenant of Ernest Kline (Kline). Kline was Respondent's friend and past-real estate transaction business associate. Respondent had also acted as the real estate salesperson on the sale of Kline's home and collected a real estate commission on the sale.

37. In addition, in 2014, Kline had been compensated in the amount of \$2,000 as a Sunrise Equity independent contractor through his association with Respondent.

38. On April 19, 2016, Respondent signed and recorded the Deed of Trust and Assignment of Rents for the Cardinal Flower house with Hansen as the beneficiary (Second Deed). As a result, Respondent violated the terms of the First Deed by perfecting an inferior lien, the Second Deed, against the Cardinal Flower house. The Second Deed afforded Hansen the right to recoup Hansen's Cardinal Flower house rehabilitation expenditures.

39. Hansen repeatedly asked Respondent for their partnership contract and limited liability agreement. When neither was received, Hansen provided Respondent with a Real Estate Joint Venture Agreement, which Respondent refused to sign.

40. Hansen first learned that the Cardinal Flower house title was solely in Respondent's name at the time of the Second Deed in April 2016, after escrow closed on the home and his money had been used to purchase the home. On May 23, 2016, Respondent provided Hansen with a written partnership agreement (Partnership Agreement).

41. While Respondent had previously represented to Hansen that they would be partners in the real estate venture, leading Hansen to reasonably believe, based on Respondent's representations, that he would be on the title of the Cardinal Flower house from the time of its purchase, the terms of the Partnership Agreement were vague as to whether title of the Cardinal Flower house was to be held in both Hansen and Respondent's names. Respondent asserted at hearing that Hansen was solely intended to an investor, not a partner on title of the property from the inception of

their agreement. Respondent's assertions are contrary to his communications to Hansen and are credibly contradicted by Hansen's testimony.

42. After more than two months, Baker did not perform the work on the Cardinal House that he had been hired to perform. Hansen then discovered that Baker was not licensed. As a result, Hansen terminated Baker. Hansen subsequently hired licensed contractors to make the repairs to the property and paid more money to get the work completed. In order to reduce costs, both Hansen and his girlfriend spent days making repairs to the property and spending Hansen's own money for those repairs. Respondent did not pay for any of the costs.

43. Hansen did not pay Baker the money Baker felt he was owed for his construction work on the Cardinal Flower house based on Hansen's belief that Baker either did not perform the work or performed work in a deficient manner. As a result, on June 15, 2016, Respondent and Baker informed Hansen that Baker intended to put a lien on the Cardinal Flower house if Hansen did not sign a promissory note in the amount of \$4,500. According to the terms of the note, Baker would be paid \$4,500 at the close of escrow for the sale of the Cardinal Flower house. At Respondent's insistence, Hansen signed the promissory note. At the time Respondent presented the promissory note to Hansen for his signature, Respondent was aware that Baker, unlicensed as a contractor in California, was prohibited from filing a mechanics lien or bringing any action to collect compensation pursuant to Code section 7031, subdivision (a).

### **TWO UNSUCCESSFUL SALES OF THE CARDINAL FLOWER HOUSE**

44. On June 13, 2016, Respondent entered into a Residential Listing Agreement with Ciscel-Shumway through Respondent to sell the Cardinal Flower

house. The contract time period was from June 13, 2016, to June 13, 2017. Respondent signed the Residential Listing Agreement for Ciscel-Shumway. The Residential Listing Agreement did not name True Treasure as the broker.

45. On June 13, 2016, Respondent listed the Cardinal Flower house on the multiple listing service (MLS). Ciscel-Shumway was listed as the broker, not True Treasure. Under the MLS section "SHOWING INFORMATION," for "OCCUPANCY TYPE," Respondent input "Vacant." Under the MLS section "LISTING," for "PRIVATE REMARKS", Respondent wrote, "Listing agent has vested interest in the property."

46. On July 6, 2016, a buyer submitted an offer to Respondent to purchase the Cardinal Flower house through a signed Residential Purchase Agreement.

47. On July 7, 2016, Respondent accepted the offer from the buyer and signed the Residential Purchase Agreement. In the Residential Purchase Agreement, Respondent and True Treasure used the unlicensed fictitious business name "Realty Executives OTF." In the Residential Purchase Agreement, Respondent and True Treasure failed to provide True Treasure's license number.

48. Respondent and the buyer could not come to agreement on the sale. On July 27, 2016, Respondent and the buyer signed the Cancellation Instructions for the Cardinal Flower house.

49. On August 12, 2016, a second buyer submitted an offer to Respondent to purchase the Cardinal Flower house through a signed Residential Purchase Agreement.

50. On August 15, 2016, Respondent accepted the offer from the second buyer and signed the Residential Purchase Agreement. In the Residential Purchase Agreement, Respondent and True Treasure used the unlicensed fictitious business



name "Realty Executives OTF." In the Residential Purchase Agreement, Respondent and True Treasure did not provide True Treasure's license number.

51. On August 19, 2016, Respondent signed a "COMMISSION DISBURSEMENT AUTHORIZATION" authorizing a real estate commission in the amount of \$8,997.50 to Respondent and True Treasure.

52. On September 8, 2016, True Treasure asked Hansen for his demand for the balance due on the Second Deed.

53. On September 12, 2016, True Treasure submitted a Demand for Lien Payoff Request to the California Franchise Tax Board for Respondent's tax lien.

54. On September 13, 2016, Hansen provided True Treasure with a "PAYOFF DEMAND STATEMENT" in the amount of \$115,760.20 for the Second Deed and for Hansen's expenditures for rehabilitation of the Cardinal Flower house per the terms of the Second Deed.

55. On September 13, 2016, Bear Creek Master Association filed a Memorandum of Costs after Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest for the final judgment against Respondent. The total in post-judgment costs was \$3,769.37, with zero credit to date.

56. On September 15, 2016, the California Franchise Tax Board provided True Treasure with a "DEMAND FOR PAYMENT OF STATE TAX LIEN" in the amount of \$673.14 for Respondent's tax lien.

57. On September 20, 2016, Bear Creek Master Association provided True Treasure with a \$10,855.88 payoff demand for Respondent's final judgment.

58. On October 6, 2016, True Treasure generated an Estimated Combined Closing Statement. The statement included disbursements for "BEAR CREEK MASTER ASSOC." in the amount of \$10,855.88, "FRANCHISE TAX BOARD" in the amount of \$673.14, unlicensed contractor Baker in the amount of \$4,500, and True Treasure's and Respondent's real estate commission in the amount of \$8,997.50. The four disbursements totaled \$25,026.44, with a balance due to escrow of \$31,107.38.

59. On October 10, 2016, Hansen provided True Treasure with a "PAYOFF DEMAND STATEMENT" in the amount of \$115,760.20 for the Second Deed and for Hansen's Cardinal Flower house rehabilitation expenditures per the terms of the Second Deed. Hansen also demanded that Respondent apply his real estate commission to escrow, pay the final judgment and tax lien, and waive unlicensed contractor Baker's demand for payment. Respondent offered to pay \$1,500. Respondent and Hansen did not come to agreement on the payoff demand.

60. On October 11, 2016, Respondent and the second buyer signed a Cancellation Instructions for the Cardinal Flower house.

#### **RENTAL AND FORECLOSURE OF CARDINAL FLOWER HOUSE**

61. On October 11, 2016, Respondent rented the Cardinal Flower house to his friend Kline without Hansen's knowledge or consent. Respondent and Kline signed a "BASIC RENTAL AGREEMENT AND RESIDENTIAL LEASE" (Lease). Under the Lease, the monthly rent on the property was a below-market amount of \$1,300 per month, and the security deposit was zero. Respondent was aware that the market rent for the Cardinal Flower home was approximately \$1,800. The Lease term was from October 11, 2016, to October 11, 2017. Either party could terminate the Lease with a 60-day written notice.

62. On October 21, 2016, Respondent changed the MLS listing status for the Cardinal Flower house from active to hold. A "hold" status indicates the seller is not showing the property. However, in the MLS listing, under section "SHOWING INFORMATION," for "OCCUPANT TYPE," Respondent failed to change "Vacant" to "Occupied" after Kline moved in.

63. From October 2016 to April 2017, Respondent collected \$6,500 in rent from Kline for the Cardinal Flower house. Respondent converted the \$6,500 in trust funds for his personal use.

64. On November 18, 2016, Hansen served Respondent with a "Demand for Payment and Notice of Intent to Foreclose" based on the Second Deed for the Cardinal Flower house.

65. On December 6, 2016, Hansen served and recorded a "NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST" dated December 5, 2016, based on the Second Deed for the Cardinal Flower house.

66. On March 13, 2017, Hansen served and recorded a "NOTICE OF TRUSTEE'S SALE" dated March 7, 2017, based on the Second Deed for the Cardinal Flower house. The date of sale was set for April 6, 2017.

67. On April 6, 2017, the Cardinal Flower house was foreclosed upon at the Trustee's Sale. Hansen was the winning bidder for the Cardinal Flower house, having bid \$118,544.89, the amount of the debt due under the Second Deed, subject to the First Deed. The Balloon Note secured by the First Trust Deed was due and payable May 1, 2017.

68. On April 10, 2017, the "TRUSTEE'S DEED UPON SALE" was recorded, and title to the Cardinal Flower house was in Hansen's name.

69. Once he became the owner of the Cardinal Flower house, Hansen served Kline with a Notice to Vacate Premises. However, because of the lease between Respondent and Kline, Hansen could not remove Kline, could not sell the property, and could not live in the property.

70. On April 10, 2017, Hansen attempted to obtain financing for the First Deed on the Cardinal Flower house. However, the hold status placed by Respondent in the MLS listing for the Cardinal Flower house prevented Hansen from being able to obtain financing.

71. After the Cardinal Flower house was no longer owned by Respondent, he did not remove himself as listing agent for the property, failed to remove the hold status, and failure to remove the property from MLS.

#### **SOUTHWEST RIVERSIDE COUNTY ASSOCIATION OF REALTORS DISCIPLINE**

72. On April 21, 2017, Hansen filed a complaint with the Southwest Riverside County Association of Realtors (Association), Case No. DS17-04, against Respondent, Lewis, and Ciscel-Shumway regarding the Cardinal Flower house (Hansen's Complaint).

73. After the Association notified Respondent about Hansen's Complaint, Respondent changed the MLS listing status for the Cardinal Flower house from hold to "withdrawn." "Withdrawn" means that the listing is still in effect, but the property is not being marketed.

74. Respondent failed to change the MLS listing to "cancelled" and failed to ask True Treasure or Ciscel-Shumway to cancel the MLS listing. "Cancelled" means the

listing agreement is terminated, thereby ending the relationship between the owner and the listing agent. Respondent also failed to change the MLS listing to update the fact that he no longer had a vested interest in the property.

75. On May 10, 2017, Hansen obtained refinancing for the First Deed on the Cardinal Flower house. The property was eventually sold by Hansen for approximately \$370,000. Hansen testified that he ultimately lost approximately thirty to forty thousand dollars on the Cardinal Flower house.

76. On August 15, 2017, Respondent submitted a response to the Association to Hansen's Complaint. Respondent asserted, among other things, that: Hansen was only an investor with a Second Trust deed with the anticipation of profit; Respondent had no real estate fiduciary obligation on the Cardinal Flower house because it was a private business venture; the hold status was placed on the property because clear title to escrow could not be produced by Respondent based on the encumbrances and demands put on title by Hansen; Kline was solely a renter with no other affiliation to Respondent; and that Respondent withdrew the property from the MLS as soon as he found out that Hansen was owner.

77. On October 24, 2017, an Association Hearing Panel (Hearing Panel) held a disciplinary hearing on Hansen's Complaint. The Hearing Panel found Respondent in

violation of Articles 1, 2, 9, 11, and 12 of the Realtors Code of Ethics<sup>4</sup> and in violation of Sections 7.11,<sup>5</sup> 8.3,<sup>6</sup> 10.1,<sup>7</sup> and 12.10,<sup>8</sup> and 12.21<sup>9</sup> of the MLS Rules and Regulations.

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<sup>4</sup> Article 1, 2, 9, 11, and 12 provide that realtors: owe a fiduciary duty to their clients (Article 1); must avoid concealment of pertinent facts (Article 2); must ensure that all agreements are in writing and are clear (Article 9); must provide competent service (Article 11); and must be honest in their real estate communications and present a true picture in advertising.

<sup>5</sup> MLS Rules and Regulations, Section 7.11 provides that all listings input in the MLS shall be complete in every detail.

<sup>6</sup> MLS Rules and Regulations, Section 8.3 requires accuracy in MLS listings and describes responsibility for accuracy for participants and subscribers to the MLS.

<sup>7</sup> MLR Rules and Regulations, Section 10.1 provides the definitions of the stages of property statuses active, active under contract, hold, withdrawn, pending, cancelled, expired, sold, and leased.

<sup>8</sup> MLS Rules and Regulations, Section 12.10 prohibits false or misleading advertising and representations and describes true picture standards for listings.

<sup>9</sup> MLS Rules and Regulations, Section 12.21 requires that realtors conduct themselves consistent with the competency standards of conduct their clients and customers can reasonably expect from the specific real estate discipline for which they engage. For example, those participants and subscribers who are competent in residential real estate brokerage shall not provide services to their customers and clients outside their field of competency, such as real estate auction, unless they

78. In summary, after listening to the testimony of the parties and witnesses, including, among others, Respondent, Hansen, Ciscel-Shumway, and Lewis, the Hearing Panel found as to Respondent, the following:

- Respondent failed to make sure Hansen was fully aware that he would be an investor and not an owner of the property. Respondent failed to promote and protect the interests of Hansen and further failed to put the interest before Respondent's own interest. (Violation of Article 1 of Realtors Code of Ethics.)
- Respondent misrepresented or concealed the true agreement between him and Hansen. Hansen was not aware at the time he provided funds to Respondent in February 2016 that he would be a trust deed holder in second position and not on title to the Cardinal Flower house. The Second Trust Deed executed by Respondent in favor of Hansen was not recorded until April 2016. The Partnership Agreement between Respondent and Hansen was not seen by Hansen until May 2016. Respondent concealed from Hansen the pertinent fact that Respondent moved a tenant into the Cardinal Flower house, despite informing Hansen that the property would be rehabilitated and then immediately

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engage the assistance of someone who is competent on such types of property or service, unless the facts are fully disclosed to their client.

sold. (Violation of Article 2 of the Realtors Code of Ethics.)

- The Partnership Agreement was not seen nor presented to Hansen for several months; and when it was presented, the Agreement was not in clear and understandable language expressing the specific terms, conditions, obligations, and commitments of the parties. (Violation of Article 9 of the Realtors Code of Ethics.)
- Respondent failed to conform to the standard of practice and competence which are reasonably expected by: failing to make sure Hansen was fully aware that he would be an investor and not an owner of the Cardinal Flower house; failing to promote and protect the interests of Hansen; failing to put the interest of Hansen before Respondent's own interest; and failing to provide the Agreement between Respondent and Hansen in a timely manner. (Violation of Article 11 of the Realtors Code of Ethics.)
- Respondent failed to honestly communicate with Hansen about: their Partnership Agreement; the fact that an unlicensed contractor, Baker, was being used to perform construction work on the property; Respondent not having an affiliation with Kline; and the lease signed and tenant, Kline, moved into the Cardinal Family house. (Violation of Article 12 of the Realtors Code of Ethics.)



- Respondent failed to change the MLS listing on the property when a tenant, Kline, was placed in the Cardinal Flower house and that he failed to cancel the MLS listing within two business days. (Violation of MLS Rule 7.11.)
- The listing stated the Cardinal Flower house was vacant when, in fact, there was a tenant in the property. The proper status of the Cardinal Flower house was vacant when, in fact, there was a tenant in the property. The listing stated that the Cardinal Flower house was vacant when, in fact, there was a tenant in the property. (Violation of MLS Rules 8.3, 10.1, and 12.10.)
- Respondent violated MLS Rule 12.21 by failing to: cancel the listing within two business days, state that there was a tenant in the property, and failing to state the proper status in the MLS after he no longer owned the property.

(Exhibit 11.)

79. The California MLS Rules and Regulations are designed and intended for use by Member Associations of the California Association of Realtors (CAR), such as the Association. They provide a set of rules, in accordance with California law and the National Association of Realtors, for the administration for the MLS relevant to the Association.

80. On December 28, 2017, Respondent appealed the Hearing Panel's findings. In his appeal, Respondent admitted to violating MRL Rules 7.11, 10.1, 12.10,

and 12.21. He also admitted that Kline was not, as he previously asserted, simply a tenant, but was also Respondent's friend.

81. In January 2018, Respondent resigned from True Treasure in lieu of the intended termination by Ciscel-Shumway and Lewis. The basis of the termination was Respondent's actions with regards to the Cardinal Flower house.

82. On February 2, 2018, Respondent withdrew his request for review of the decision and discipline recommended by the Association Hearing Panel regarding Hansen's Complaint. The Association Hearing Panel decision was subsequently adopted by a Review Panel of the Association Board of Directors.

83. At the hearing of this matter, during cross-examination, Respondent admitted that he violated MLS Rules 7.11, 10.1, 12.10, and 12.21. Respondent's admission of the violations of the foregoing rules, which provide for the standards of conduct applicable to him as a real estate licensee, constitutes his admission that he was negligent by not changing the MLS listing from vacant when a tenant, Kline, was placed in the Cardinal Flower house; not cancelling the MLS listing within two business days after Respondent was no longer the owner of the Cardinal Flower house; and failing to state the proper status of the home in the MLS after he no longer owned the property.

### **Respondent's Failure to Maintain A Place of Business**

84. Respondent stipulated that he failed to maintain a place of business in violation of Code section 10162 and Regulations section 2715. (Exhibit 1, First Amended Accusation, paragraphs 86, 87, and 89.)

## **Respondent's Use of An Unlicensed Fictitious Business Name and Failure to Use His Current Broker's License**

85. From April 30, 2014, to March 23, 2016, Respondent was licensed as a salesperson under broker Ciscel-Shumway. (Exhibit 2.) On September 25, 2006, Ciscel-Shumway added the fictitious business name "Realty Executives of the Foothills" to her real estate license. (Exhibit 18.) Ciscel-Shumway's real estate license number was 01235781.

86. On March 29, 2016, Respondent submitted a Salesperson Change Application (Application) to activate his salesperson license under broker A True Treasure, Inc. (Exhibit 19.) The Application was certified by Respondent through the Department's eLicensing system. Respondent disavowed any knowledge of the Application at hearing. However, he admitted that he provided his e Licensing login information to his brokers. Respondent's claims that he was not aware of the Application are not credible. In the alternative, even if Respondent's claims of ignorance are credited, he is responsible for the activity of eLicensing account if he voluntarily provided access to his account to his brokers. On March 31, 2016, A True Treasure, Inc. certified Respondent's Application.

87. On June 13, 2016, Respondent listed the Cardinal Flower house. (Exhibit 13.) He used the unlicensed fictitious business name "Realty Executives OTF" as the name of his broker in the property's MLS listing. However, "Realty Executives OTF" was not a licensed fictitious business name of Respondent's broker True Treasure (Exhibit 18.)

88. While Respondent's former broker Ciscel-Shumway licensed "Realty Executives of the Foothills," "Realty Executives OTF" was not a licensed abbreviation of "Realty Executives of the Foothills."

89. In addition, Respondent used his former broker Ciscel-Shumway's real estate license number in the Cardinal Flower house's MLS listing, instead of his then-broker's True Treasure's license number. (Exhibit 13.)

90. Respondent's actions, as set forth in Factual Findings 87 through 89, in providing incorrect MLS listing information was willful and negligent.

91. As described in Factual Finding 47, on July 7, 2016, Respondent signed the first purchase agreement for the Cardinal Flower house. (Exhibit 13.) In the Real Estate Broker section of the first purchase agreement, Respondent handwrote his name, signature, and real estate number. (*Id.*) Respondent left his broker's license number blank and did not make any attempt to replace the unlicensed fictitious business name "Realty Executives OTF" with his current broker's name. (*Id.*)

92. Respondent's actions, as described in Factual Findings 47 and 91, in failing to provide his broker's license name and using an unlicensed fictitious business name were willful and negligent.

93. As described in Factual Finding 49 and 50, Respondent signed a second purchase agreement for the Cardinal Flower house on August 15, 2016. (Exhibit 13.) In the Real Estate Broker section of the agreement, Respondent electronically signed his name using DocuSign. At hearing, Respondent admitted during cross-examination that he had the ability to print out the purchase agreement, edit it, and sign by hand instead of using DocuSign.

94. Respondent, however, did not to replace the unlicensed fictitious business name "Realty Executives OTF" or the incorrect broker's real estate license number, 01825299, with his current broker's name, True Treasure, or broker's license, 1918635. (Exhibits 13 and 18.)

95. Respondent's actions, as described in Factual Findings 49, 50, 93, and 94, in failing to provide his broker's license name and using an unlicensed fictitious business name were willful and negligent.

### **Respondent's Fraudulent and Dishonest Dealings**

96. Respondent's act of recording the Second Deed of Trust without written permission from the lender of the First Deed of Trust, as described in Factual Findings 21 through 34, was dishonest and fraudulent.

97. Respondent's failure to disclose his agreement with Hansen to the Short Sale servicer Seterus, as described in Factual Findings 21 through 34, was dishonest and fraudulent.

98. Respondent's actions in providing false answer on his Uniform Residential Loan Application for the purchase of the Cardinal Flower house regarding his bankruptcy and final judgment, as described in Factual Findings 21 through 34, were dishonest and fraudulent. (Exhibit 7 and 9.)

99. Respondent's actions in asking Hansen to sign a \$4,500 promissory note for Baker's unlicensed construction work on the property, as described in Factual Finding 43, when he knew he was asking Hansen to sign an invalid contract was dishonest. (Exhibit 13.) Respondent was aware at the time he told Hansen to sign the note that an unlicensed contractor cannot put a lien on someone's house or maintain

an action in court for payment of unlicensed work. As such, he knew the note was not a valid contract and still told Hansen to sign it.

100. Respondent acted dishonestly in trying to pay for his tax lien and judgment from the proceeds of the second attempted sale of the Cardinal Flower house, as described in Factual Findings 49 through 60. As of September 19, 2016, the costs, services, and debts to be paid at closing exceeded the Cardinal Flower house sales price by \$31,107.38. (Exhibit 13.) Respondent's tax lien and judgment accounted for \$11,529.02 of the difference. Hansen asked Respondent to pay for the tax lien and judgment himself as his pre-existing non-disclosed financial obligations instead of having the tax lien and judgment paid for from the proceeds of the sale of the Cardinal Flower house. Respondent refused, offering to pay only \$1,500. (*Id.*)

101. Respondent acted dishonestly regarding the leasing of the Cardinal Flower house to Kline for \$1,300 a month despite his agreement with Hansen to sell the Cardinal Flower house. (Exhibit 13.) In correspondence with the Department and at hearing, Respondent admitted that the market rent for the property was \$1,800 a month. Previously, Respondent represented to the Department that he used the total \$6,500 in rental income received from Kline to offset expenses "derived from owning the property [Hansen] after foreclosing on the property would not honor the lease agreement." (Exhibit 13, p. 1045.) During hearing, however, Respondent admitted that he incurred between \$2,500 to \$3,000 on the Cardinal Flower house but kept the entire \$6,500 without providing any of the rental proceeds to Hansen. Respondent's acts and omissions in leasing the Cardinal Flower house at a below-market price rent to his friend Kline, converting the rental trust funds beyond his expenditures, and falsely writing to the Department that the rent was used to offset his total expenses were dishonest.

102. Respondent's acts and omission, as set forth in Factual Findings 76 and 80 of providing false information to the Association regarding his relationship with Kline was dishonest. (Exhibit 11, pp. 566, 608-614.)

### **Respondent's Evidence**

103. Respondent denies all allegations related to his actions towards Hansen in the Cardinal Flower house real estate transaction. He argues that the Department has no jurisdiction to discipline his licenses and license rights because he was not acting as a licensee in his dealings with Hansen and the Cardinal Flower house. In the alternative, Respondent argues that the Department's Accusation is barred by the statute of limitations.

104. Respondent asserts that he was a victim in this matter. According to Respondent, any issues with the Cardinal Flower house were based on Hansen's ignorance as a real estate investor and overspending on the rehabilitation of the property. Respondent deflects all responsibility on Hansen, Ciscel-Shumway, and Lewis.

105. Respondent's testimony and arguments are factually and legally unpersuasive and are not credited.

106. First, Respondent's arguments that the Department's Accusation, filed on March 25, 2019, was barred by the statute of limitations because it was more than three-years after Respondent signed the Short Sale Affidavit on March 16, 2016, is legally untenable based on the facts.

107. The "last overt act" doctrine, which provides for a delay in the statute of limitations when the underlying fraud is continuing is applicable here. (*Wyatt v. Union*

*Mortgage Co.*, (1979) 24 Cal.3d 773, 778.) Respondent engaged in continuing wrongdoing of failing to disclose his agreement with Hansen to the servicer Seterus through the close of escrow on April 4, 2016. Accordingly, the Department's Accusation, and by extension, the subsequently filed First Amended Accusation, is not barred by the statute of limitations.

108. Second, Respondent clearly acted as a real estate licensee throughout his interactions with Hansen as to the Cardinal Flower house. The documents and his conduct illustrate that he was to collect a real estate commission when the Cardinal Flower house and used his license privileges to manipulate the property listing on the MLS throughout.

109. Third, both the facts established at hearing and Respondent party-admissions of his negligence to the Association undermine his claims that he was the victim in this matter.

110. Respondent used his extensive knowledge and experience of the Real Estate Law to attempt to victimize Hansen throughout their Cardinal Flower house real estate transaction. His efforts were unsuccessful. Instead of admitting any responsibility at hearing, Respondent continues to be dishonest and deflect blame for his willful actions.

111. Respondent is 72 years old. He testified at hearing that he wants to retain his license and licensing rights and intends to act as a real estate licensee in the future.

112. In support of his claims of good character and rehabilitation, Respondent submitted a letter from his former pastor and client, Derek Bartelt. (Exhibit S.) According to Pastor Bartelt, Respondent successfully represented him and his wife as a real estate licensee in the purchase of their first home in November 2017 and the sale



of the home in October 2020. Pastor Bartlet described Respondent as possessing "a hard-working attitude, a strong conscience, and patience." (*Id.*) The letter is afforded little evidentiary weight because Pastor Bartlet does not indicate whether he has knowledge of the allegations against Respondent by Complainant and what, if any, impact such knowledge would have on his positive opinion of Respondent.

113. Respondent completed ethics courses in accordance with the Association Hearing Panel's decision and paid over \$3,000 in fees. He also submitted evidence that he has completed his continuing education real estate licensee course requirements. (Exhibit T.)

114. Respondent strongly believes that his actions in connection with Hansen and the Cardinal Flower house do not warrant Department's discipline of his license and licensing rights.

### **Costs**

115. The Department incurred \$8,301.70 in investigative costs and \$10,301.75 in enforcement costs in the prosecution of this matter, for a total of \$18,603.45 in costs. The costs are reasonable.

116. Respondent, as one of four respondents in this matter to whom four of the six causes of action in the First Amended Accusation apply, should reasonably be responsible for a quarter, rather than the total of the reasonable costs, in the amount of \$4,650.86.

117. Except as set forth in this decision, all other allegations in the First Amended Accusation and all other contentions by the parties lack merit or constitute surplusage.

## LEGAL CONCLUSIONS

### Jurisdiction and Standard and Burden of Proof

1. Jurisdiction was established pursuant to Code section 10100, based on Factual Findings 1 through 7.

2. The burden of proof is on the Complainant to show that Respondent's real estate broker's license should be disciplined. To prevail in this matter, Complainant must establish the allegations against Respondent through clear and convincing evidence, to a reasonable certainty. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853.)

### Applicable Statutes and Regulations

3. Code section 10176 states, in relevant part:

The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade, or induce.

(c) A continued and flagrant course of misrepresentation or making of false promises through licensees. [11] . . . [11]

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

4. Code section 10177 states, in relevant part:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following: [11] . . . [11]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2. [11] . . . [11]

(g) Demonstrated negligence or incompetence in performing an act for which the officer, director, or person is required to hold a license. [¶] . . . [¶]

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

5. Code section 10162 states, in relevant part:

(a) Every licensed real estate broker shall have and maintain a definite place of business in the State of California that serves as his or her office for the transaction of business. This office shall be the place where his or her license is displayed and where personal consultations with clients are held.

(b) A real estate license does not authorize the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.

(c) (1) Every real estate broker and salesperson licensee shall provide to the commissioner his or her current office or mailing address, a current telephone number, and a current electronic mail address that he or she maintains or uses to perform any activity that requires a real estate license, at which the bureau may contact the licensee.

(2) Every real estate broker and salesperson licensee shall 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.

6. Code section 10165 provides, in relevant part, that for a violation of any provision of section 10162, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee.

7. Code section 10159.5 provides, in relevant part:

(a) (1) Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.

(2) A responsible broker may, by contract, permit a salesperson to do all of the following:

(A) File an application on behalf of a responsible broker with a county clerk to obtain a fictitious business name.

(B) Deliver to the bureau an application, signed by the responsible broker, requesting the bureau's approval to use a county approved fictitious business name that shall be identified with the responsible broker's license number.

- (C) Pay for any fees associated with filing an application with a county or the bureau to obtain or use a fictitious business name.
- (D) Maintain ownership of a fictitious business name, as defined in paragraph (2) of subdivision (a) of Section 10159.7, that maybe used subject to the control of the responsible broker.
- (b) (1) A salesperson using a fictitious business name authorized by subdivision (a), shall use that name only as permitted by his or her responsible broker.
- (2) This section does not change a real estate broker's duties under this division to supervise a salesperson.
- (c) A person applying to a county for a fictitious business name pursuant to subdivision (a) may file his or her application in the county or counties where the fictitious business name will be used.
- (d) Advertising and solicitation materials, including business cards, print or electronic media and "for sale" signage, using a fictitious business name obtained in accordance with paragraph (2) of subdivision (a) shall include the responsible broker's identity, as defined in paragraph (1) of subdivision (a) of Section 10159.7, in a manner equally as prominent as the fictitious business name.

(e) Notwithstanding subdivision (b) of Section 10140.6, advertising and solicitation materials, including print or electronic media and "for sale" signage, containing a fictitious business name obtained in accordance with paragraph (2) of subdivision (a) shall include the name and license number of the salesperson who is using the fictitious business name.

8. Code section 10140.6, subdivision (b)(1) provides:

A real estate licensee shall disclose his or her name, license identification number and unique identifier assigned to that licensee by the Nationwide Mortgage Licensing System and Registry, if that licensee is a mortgage loan originator, and responsible broker's identity, as defined in Section 10015.4, on all solicitation materials intended to be the first point of contact with consumers and on real property purchase agreements when acting in a manner that requires a real estate license or mortgage loan originator license endorsement in those transactions. The commissioner may adopt regulations identifying the materials in which a licensee must disclose a license identification number and unique identifier assigned to that licensee by the Nationwide Mortgage Licensing System and Registry, and responsible broker's identity.

9. Regulations section 2715, pertaining to the business and residence address requirements of licensees, provides:

Every real estate broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his or her principal place of business for brokerage activities, the address of each branch business office and his or her current mailing address, if different from the business address.

Every broker who is acting in the capacity of a salesperson to another broker under written agreement shall maintain on file with the Commissioner the address of the business location where he or she expects to conduct most of the activities for which a license is required and his or her current mailing address.

A real estate salesperson shall maintain on file with the Commissioner his current mailing address, and when applicable, the address of the principal business office of the broker to whom the salesperson is at the time licensed.

Whenever there is a change in the location or address of the principal place of business or of a branch office of a broker, that broker shall notify the Commissioner thereof not later than the next business day following the change.

This section shall apply to those who are licensed and to those who have license rights under Section 10201 of the Code.



10. Regulations, section 2731, subdivision (a), provides that "A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name."

11. Regulations, section 2773, subdivision (a), provides, in relevant part:

A real estate broker or salesperson, when engaging in acts for which a license is required, shall disclose its, his or her eight (8) digit real estate license identification number and responsible broker's name as currently licensed, and may, but is not required to, also include the responsible broker's license identification number, on all solicitation materials intended to be the first point of contact with consumers. If the name of more than one licensee appears in the solicitation, the license identification number of each licensee shall be disclosed. The license identification numbers of responsible brokers or corporate brokers whose names, logos or trademarks appear on solicitation materials along with the names and license numbers of salespersons or broker associates do not need to appear on those materials.

**First Cause of Action – Substantial Misrepresentation, False Promise, Conversion, Fraud, Dishonesty**

12. Cause exists pursuant to Code sections 10176, subdivisions (a), (b), (c), and (i), and 10177, subdivision (j), to discipline Respondent's license and license rights

based on Complainant establishing through clear and convincing evidence Respondent's dishonest and fraudulent conduct, acts, and omissions, as described in Factual Findings 8 through 83, and 96 through 102, and Legal Conclusions 1 through 4.

### **Second Cause of Action – Failure to Maintain A Place of Business**

13. Cause exists pursuant to Code sections 10165, and 10177, subdivisions (d) and (g), to discipline Respondent's license and licensing rights based on Respondent's admitted to violations of Code section 10162 and Regulations section 2715 in failing to maintain a place of business, as described in Factual Finding 84 and Legal Conclusions 1, 2, 4, 5, and 9.

### **Third Cause of Action – Use of Unlicensed Fictitious Business Name**

14. Cause exists pursuant to Code sections 10177, subdivisions (d) and (g), to discipline Respondent's license and licensing rights based on Respondent's use of the unlicensed fictitious business names "Realty Executives OTF" and "Realty Executives," in violation of Code section 10159.5 and Regulations, section 2731, as described in Factual Findings 49, 50, and 85-95 and Legal Conclusions 1, 2, 4, 7, and 10.

### **Fourth Cause of Action – Failure to Disclose Real Estate Identification Number**

15. Cause exists pursuant to Code section 10177, subdivisions (d) and (g), to discipline Respondent's license and licensing rights based on Respondent's failure to disclose True Treasure's real identification number on solicitation material intended to the first point of contact with consumers, including, but not limited to the MLS listing for the Cardinal Flower house, the residential purchase agreements for the Cardinal

Flower House, and the sale escrow instructions for the Cardinal Flower house, in violation of Code sections 10140.6 and Regulations, section 2773, as described in Factual Findings 49, 50, and 85-95 and Legal Conclusions 1, 2, 4, 8, and 11.

### **Fifth Cause of Action**

16. Cause exists pursuant to Code section 10177, subdivision (d) and (g), to discipline Respondent's license and licensing rights based on Respondent's willful disregard and violation of the Real Estate Law and negligence, as set forth in Factual Findings 4 through 102 and Legal Conclusions 1, 2, and 4.

### **Appropriate Discipline**

17. Respondent has the burden of demonstrating rehabilitation. Criteria have been developed by the Department to evaluate the rehabilitation of a licensee who has committed a crime. Although respondent has not committed a crime, it is appropriate to evaluate his rehabilitation by reference to the applicable criteria found at Regulations, section 2912. Respondent has not met most of the relevant rehabilitation criteria. Respondent is no longer employed at the brokerage where the dishonesty occurred. (Regulations, § 2912, subd. (h). Respondent has made no restitution to Hansen and continues to assert that Hansen reaped a profit from the eventual sale of the Cardinal Flower house, a claim Hansen credibly disputes. (Regulations, § 2912, subds. (b) and (g).) It has been more than two years since the Cardinal Flower house real estate transactions. (Regulations, § 2912, sub. (a)(1).) Regulations, section 2912, subdivision (a)(1), provides for passage of two years since the act or offense, which can be increased by considering the nature and severity of the crime and the licensee's history of criminal convictions that are "substantially related" to the qualifications, functions, or duties of a real estate licensee.

18. Respondent presented no evidence that he has been involved in programs designed to provide social benefits or to ameliorate social problems. (Regulations, §2912, subd. (j).) Regulations, section 2912, subdivision (m), calls for a change in attitude from the time of the criminal acts to the present, evidenced by: (1) evidence of rehabilitation from Respondent; (2) evidence from family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns; (3) evidence from probation or parole officers or law enforcement officials regarding Respondent's social adjustments; (4) evidence from psychiatrists, psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances; and (5) absence of subsequent convictions or other conduct which reflect an inability to conform to societal rules when considered in light of the conduct in question.

19. Respondent demonstrated no remorse for his acts or conduct towards Hansen or in relation to the real estate transactions pertinent to Cardinal Flower house. Respondent clearly fails to understand how he violated his licensee duties by his knowing and willful conduct, continuing to maintain that he is a victim and should not be held accountable for any of his actions. Accordingly, he has not demonstrated the necessary change in attitude that makes future recurrence of dishonest and fraudulent conduct unlikely by continuing to refute any responsibility for the dishonesty perpetrated under his license. (Regulations, § 2912, subd. (m).)

20. Respondent submitted one affidavit attesting to his professional competence and good character. (Factual Finding 112.) "Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" can be helpful in determining whether a person seeking licensure is rehabilitated. (See *In the Matter of Brown* (1993))

2 Cal. State Bar Ct. Rptr. 309, 317 - 318.) Here, the positive endorsement of Pastor Bartlet is afforded little evidentiary weight because the author does not indicate if they are aware of the Department's disciplinary actions against Respondent.

21. Rehabilitation is a state of mind and the law looks with favor upon one who has achieved reformation and regeneration with the reward of the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menha* (1995) 11 Cal.4th 975, 991.) Respondent bears the particular burden of establishing rehabilitation sufficient to compel his licensure. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.)

22. Rehabilitation depends upon a track record of conduct that convinces the Department that that the public would be safe in granting privileges of licensure to respondent. A respondent must establish a history of reliable, responsible and consistently appropriate conduct.

23. Respondent's continued licensure would not be in the public interest. In determining the appropriate discipline, the central question is what level of discipline is necessary to protect the public. Disciplinary proceedings to suspend or revoke a real estate license are not conducted for the primary purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) The acts underlying discipline of Respondent's license are directly related to the kinds of activities in which he may

engage as a licensee of the Department. Further, Respondent is charged with providing supervision to broker associates and salespersons operating under his license. His failure to take responsibility for his actions is alarming and demonstrates a continuing lack of understanding of the Department's requirements. Moreover, Respondent's stance shows that he may not be competent to provide proper supervision as a licensed broker. Respondent failed to even acknowledge that his actions are subject to Department oversight, arguing that this was a business transaction involving him as a private citizen and not a licensee, and therefore outside the Department's disciplinary jurisdiction. This lack of acknowledgment of his duties and responsibilities as a real estate licensee, the authority of the Department, as well as his continued insistence that he is blameless in the dishonesty perpetrated under his license against an unsophisticated and vulnerable consumer, Hansen, demonstrates that Respondent's continued licensure on a restricted basis is untenable. Respondent has not met his burden to establish rehabilitation. Absent any meaningful assurances by Respondent that violations of the Real Estate Law will not recur in the future, the primary purpose of public interest can only be achieved by outright revocation of Respondent's license and licensing rights.

### **Costs**

24. Code section 10106 permits an administrative law judge to direct a licensee to pay the reasonable costs of investigation and enforcement. Complainant provided sufficient evidence to support an award of the costs of the investigation and enforcement in the amount of \$4,650.86. (Factual Finding 116.)

25. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court set forth four factors to be considered: (1) Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction

in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. Applying the *Zuckerman* factors, based on the loss of his professional license and its negative impact on Respondent's ability to generate his livelihood, it is reasonable to require Respondent to pay the Board's \$4,650.86 in costs if he chooses to reapply for licensure in the future.

### ORDER

1. All licenses and licensing rights of respondent, Donald Eugene Peters, doing business as Equity Growth Properties, under the Real Estate Law are revoked.
2. Respondent shall pay costs of investigation and enforcement of \$4,650.86 to the Department upon reapplication for licensure after his license revocation.

DATE: 01/11/2021

*Irina Tentser*

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings