

1 OREGON REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate License of)
5)
6 H. SCOTT MCCARTNEY) ORDER ON DEFAULT
7)
8)

9 1.

10 1.1 On July 13, 2012, the Real Estate Commissioner issued, by certified mail, a
11 notice of intent to suspend the real estate principal broker's license of H. Scott McCartney
12 (McCartney). The Real Estate Agency (OREA) sent the notice of intent to McCartney's last
13 known address of record with the OREA. The notice of intent was also mailed to McCartney
14 by regular first class mail in a handwritten envelope.

15 1.2 Over twenty (20) days have elapsed since the mailing of the notice issued in
16 this matter and no written request for hearing has been received.

17 1.3 Copies of the entire investigation file are designated as the record for
18 purposes of default, including any submission from respondent and all information in the
19 administrative file relating to the mailing of notices and any responses received.

20 2.

21 Based upon the foregoing and upon a review of the above described investigation
22 reports, documents and files, the Real Estate Commissioner finds:

23 2.1 Oregon Administrative Rule 863-001-0006 states, in part, that a notice of
24 intent is properly served when deposited in the United States mail, registered or certified
25 mail, addressed to the real estate licensee or to any other person having an interest in a
26 proceeding before the Commissioner at the licensee's or other person's last known address
27 of record with OREA.

28 2.2 McCartney's last known address of record with OREA was 4219 SW Condor
29 Ave, Portland Oregon, 97201.

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1 2.3 A certified mailing of the notice of intent was mailed to McCartney at his last
2 known address of record on July 13, 2012, and was returned "unclaimed" on August 6,
3 2012.

4 2.4 The mailing in the handwritten envelope has not been returned to OREA. In
5 accordance with ORS 40.135(1)(q), there is a presumption that the mailing properly
6 addressed and placed with the U.S. Postal Service was delivered. That presumption has
7 not been overcome by any evidence.

8 2.5 Over twenty (20) days have elapsed since the mailing of the notice and no
9 written request for a hearing has been received.

10 FINDINGS OF FACT
11 AND
12 CONCLUSIONS OF LAW

13 3.

14 3.1 At all times mentioned herein, McCartney was licensed as a principal broker
15 doing business under the registered business name of H. Scott McCartney Property
16 Management, LLC.

17 3.2 On October 27, 2010, OREA opened an investigation due to the non-response
18 of McCartney to OREA's request for the June 2010 reconciliation documents for
19 McCartney's clients' trust account ending with the numbers -2228 and named "Cooper
20 Mountain Vineyards." McCartney had until August 13, 2010, to submit the documentation.
21 The subsequent investigation found the following violations.

22 3.3 McCartney failed to notify OREA of his new main office location before
23 changing locations.

24 **Violation:** ORS 696.200(1)(d) (2011 Edition), which states that before changing a
25 main office location, the licensee must notify the agency of the new location on a form
26 approved by the agency.

27 3.4 McCartney failed to label his bank account maintained for management of the
28 Wilson Park Office Building as a "Clients' Trust Account."

29 **Violation:** ORS 696.241(1) (2009 Edition), which requires that a licensee shall
30 maintain in this state one or more separate bank accounts that shall be designated a

1 Clients' Trust Account in which all funds received or handled by the licensee on behalf of
2 any other person shall be deposited.

3 3.5 Review of the June 2010 reconciliation of the Wilson Park Office Building
4 account found that outstanding transactions lacked required information and negative
5 balances were not explained.

6 **Violation:** OAR 863-025-0025(20) (2009 Edition), which requires that a property
7 manager reconcile each clients' trust account within 30 calendar days of the date of the
8 bank statement, and must include an explanation for any adjustment and that the balances
9 of each component of the reconciliation must be equal to and reconciled with each other.

10 3.6 Upon review of the June 2010 check register, it was found that amounts were
11 posted before payment was actually made, details were not adequately recorded to allow
12 for tracing funds received and disbursed, and interest accrued and disbursed was not
13 posted.

14 **Violation:** OAR 863-025-0040(2) (2009 Edition), which requires that a record of
15 receipts and disbursements, or a check register, must contain the date the funds were
16 received, the amount of the funds received, the purpose of the funds and the identity of the
17 person who tendered the funds, the date the funds were deposited, and the account
18 balance after each entry.

19 3.7 McCartney disbursed funds on June 1, 2010, while the check register stated a
20 negative balance, and failed to end the day with a positive balance.

21 **Violation:** OAR 863-025-0025(12) and 863-025-0040(7) (2009 Edition), which states
22 that a property manager must not disburse funds from a clients' trust account unless there
23 are sufficient funds in the ledger account against which the disbursement is made, and that
24 a record of receipts and disbursements or check register for a clients' trust account may
25 show a negative balance during the course of a day only if it shows a positive balance at the
26 close of the day.

27 3.8 McCartney disbursed earned management fees after the time allowable by the
28 property management agreement, and in a different amount than stipulated in the property
29 management agreement.

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1 **Violation:** OAR 863-025-0025(15) and 863-025-0020(2)(f) (2009 Edition), which
2 states that a property manager must disburse earned management fees from the clients'
3 trust account at least once each month unless a difference schedule of disbursement is
4 specified in the property management agreement, and may only disburse such fees if
5 sufficient funds are available, and that the property management agreement must include
6 the amount of the management fees and when it will be paid.

7 3.9 McCartney disbursed funds on June 7, 2010, taking the check register balance
8 to
9 -\$1,587.40, until receipts deposited June 9, 2010 caused a positive ledger balance, and
10 disbursing funds on June 25, 2010 that caused the ledger to end the day, and eventually the
11 month, at -\$3,013.99.

12 **Violation:** OAR 863-025-0025(12) and 863-025-0040(7) (2009 Edition), which states
13 that a property manager must not disburse funds from a clients' trust account unless there
14 are sufficient funds in the ledger account against which the disbursement is made, and that
15 a record of receipts and disbursements or check register for a clients' trust account may
16 show a negative balance during the course of a day only if it shows a positive balance at the
17 close of the day.

18 3.10 McCartney made payments to *Changing Landscapes* and *A Light Up*
19 *Company* in different periods, which required adjusting entries erroneously posted to the
20 June 2010 check register.

21 **Violation:** OAR 863-025-0025(10) and 863-025-0040(5) (2009 Edition), which states
22 that a property manager is solely responsible for the receipts and disbursements on each
23 bank account, and that upon any activity, the property manager must record each receipt,
24 deposit or disbursement and record each deposit or disbursement on the corresponding
25 owner's ledger and/or tenant's ledger.

26 3.11 McCartney omitted entries on the August 2011 reconciliation related to
27 outstanding checks.

28 **Violation:** OAR 863-025-0025(20)(c) (2011 Edition, 4/15/11), which states that a
29 property manager must reconcile each clients' trust account within 30 calendar days of the

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1 date of the bank statement, and that outstanding checks must be listed by check number,
2 issue date, payee and amount.

3 3.12 McCartney disbursed management fees prior to the existence of a sufficient
4 credit balance, between disbursement on August 2, 2011 and deposit on August 4, 2011.

5 **Violation:** OAR 863-025-0025(15) (2011 Edition, 4/15/11), which states that a
6 property manager must disburse earned management fees from the clients' trust account at
7 least once each month unless a different schedule of disbursement is specified in the
8 property management agreement, and may only disburse such fees if sufficient funds are
9 available.

10 3.13 McCartney disbursed check #30424 on August 30, 2011, which caused a
11 negative ledger balance.

12 **Violation:** OAR 863-025-0025(12) (2011 Edition, 4/15/11), which states that a
13 property manager must not disburse funds from a clients' trust account unless there are
14 sufficient funds in the ledger account against which the disbursement is made.

15 4.

16 4.1 The above violations are grounds for discipline pursuant to ORS 696.301(12),
17 which states that a licensee may be disciplined if they have demonstrated incompetence or
18 untrustworthiness in performing any act for which the licensee is required to hold a license.
19 Based on these violations, OREA proposes to suspend McCartney's license for 60 days.

20 4.2 A suspension is appropriate under ORS 696.396(2)(c)(B), which states that a
21 license may be suspended if the licensee exhibits incompetence in the performance of
22 professional real estate activity.

23 5.

24 OREA reserves the right to investigate and pursue additional complaints that may be
25 received in the future regarding this licensee.

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1 ORDER

2 IT IS HEREBY ORDERED that McCartney's license be suspended for 60 days,
3 beginning October 1, 2012.

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5 Dated this 11th day of September, 2012.

6
7 OREGON REAL ESTATE AGENCY

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9 

10 _____
11 GENE BENTLEY
12 Real Estate Commissioner

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14 DATE of service: 9-11-12

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16 NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained
17 by filing a petition for review within 60 days from the date of service of this order. Judicial
18 review is pursuant to the provisions of ORS 183.482.