OREGON REAL ESTATE AGENCY BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of	}
DEREK SHANKS	ORDER ON DEFAULT
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	1.

- 1.1 On August 15, 2012, the Real Estate Commissioner issued, by certified mail, a notice of intent to revoke the real estate principal broker's license of Derek Shanks (Shanks). The Real Estate Agency (OREA) sent the notice of intent to Shanks's last known address of record with the OREA. The notice of intent was also mailed to Shanks by regular first class mail in a handwritten envelope on that same date.
- 1.2 Both copies of the notice of intent to revoke were returned to OREA on August 20, 2012, by the U.S. Postal Service "attempted-not known; unable to forward."
- 1.3 Over twenty (20) days have elapsed since the mailing of the notice issued in this matter and no written request for hearing has been received.
- 1.4 Copies of the entire investigation file are designated as the record for purposes of default, including any submission from respondent and all information in the administrative file relating to the mailing of notices and any responses received.

2.

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

- 2.1 Oregon Administrative Rule 863-001-0006 states, in part, that a notice of intent is properly served when deposited in the United States mail, registered or certified mail, addressed to the real estate at the licensee's last known address of record with OREA.
- 2.2 Shanks' last known address of record with OREA was 328 Talent Avenue, Apartment S, Talent, Oregon, 97540.

- 2.3 A certified mailing of the notice of intent was mailed to Shanks at his last known address of record on August 15, 2012, and was returned to OREA on August 20, 2012.
- 2.4 The mailing of the notice of intent in the handwritten envelope was mailed to Shanks at his last known address of record on August 15, 2012, and was returned to OREA on August 20, 2012.
- 2.5 Over twenty (20) days have elapsed since the mailing of the notice and no written request for a hearing has been received.

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW

3.

- 3.1 At all times mentioned herein, Shanks was licensed as a principal broker doing business under the registered business name of Northwoods Property Management, LLC. On April 2, 2012, Shanks surrendered his real estate license. OREA retains authority to discipline Shanks under ORS 696.775.
- 3.2 On September 16, 2011, OREA received a complaint from Loren Blowers (Blowers) alleging that Shanks was refusing to give her the tenants' security deposits for her properties. In addition, Blowers complained that Shanks had charged for work not authorized, withheld rents, moved tenants in without rental agreements, failed to provide receipts to back up expenses, added unauthorized handling charges to invoices, failed to obtain authorization for maintenance costs over the agreed limit, and failed to provide adequate financial statements.
- 3.3 Shanks entered into property management agreements with Loren and Clark Blowers (the Blowers) on June 1, 2009, to manage approximately 70 rental units. The Blowers terminated their agreements with Shanks on August 31, 2011.
- 3.4 Shanks never provided fully executed copies of the property management agreements to the Blowers.

Violation: ORS 696.301(3) (2011 Edition), which states that a licensee may be disciplined for disregarding or violating any rule of the Real Estate Agency, and OAR 863-025-

0020(7) (2009 Edition), which requires that a property manager promptly deliver a legible copy of the fully executed property management agreement to the owner of the property.

3.5 Shanks applied surcharges to invoices for maintenance on the Blowers' properties, even though there was no provision in the property management agreement to do so.

Violations: ORS 696.301(12) (2011 Edition), which states that a real estate licensee may be disciplined if they have demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license, and OAR 863-025-0020(2)(f) and (j) (2011 Edition), which requires that any management fees and any other form of compensation must be included in the property management agreement.

3.6 On March 27, 2012, Shanks admitted to OREA that he had comingled and misappropriated money from Northwoods' tenants' security deposits trust account since March 2009. Bank statements showed payments identified as "overdraft protection" and "internet transfer", which transferred money from the tenants' security deposits trust account to Northwoods' operating account and totaled \$242,100. After adjusting for two outstanding checks on these accounts, the total funds identified as misappropriated in this way is at least \$244,100.

Violations: ORS 696.301(12) and (14) (2011 Edition), which states that a real estate licensee may be disciplined if they have demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license, and/or has committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the licensee to conduct professional real estate activity.

3.7 Shanks failed to maintain bank accounts that were designated as clients' trust accounts as defined in ORS 696.245 (2011 Edition).

Violation: ORS 696.241(2) (2011 Edition), which requires that a licensee maintain one or more bank accounts that are designated as clients' trust accounts, and that all funds received or handled by the licensee must be deposited into a clients' trust account.

4.

4.1 The above violations are grounds for discipline pursuant to ORS 696.301(12) and (14) (2011 Edition).

1	4.2 The above violations are grounds for revocation pursuant to ORS 696.396(2)(A),	
2	(B) and (C) (2011 Edition).	
3	5.	
4	OREA reserves the right to investigate and pursue additional complaints that may be	
5	received in the future regarding this licensee.	
6	ORDER	
7	IT IS HEREBY ORDERED that Shanks' license be, and hereby is, revoked.	
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9	Dated thisI/ ^d day of September, 2012.	
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11	OREGON REAL ESTATE AGENCY	
12		
13	TEX M	
14	- Sky	
15	GENE BENTLEY	
16	Real Estate Commissioner	
17		
18	DATE of service: $9-1/-10$	
19		
20	NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by	
21	filing a petition for review within 60 days from the date of service of this order. Judicial review	
22	is pursuant to the provisions of ORS 183.482.	
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