

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

4 In the Matter of the Real Estate License of)
5)
6 DEREK SHANKS) ORDER ON DEFAULT
7)
8)

9 1.

10 1.1 On August 15, 2012, the Real Estate Commissioner issued, by certified mail, a
11 notice of intent to revoke the real estate principal broker's license of Derek Shanks (Shanks).
12 The Real Estate Agency (OREA) sent the notice of intent to Shanks's last known address of
13 record with the OREA. The notice of intent was also mailed to Shanks by regular first class
14 mail in a handwritten envelope on that same date.

15 1.2 Both copies of the notice of intent to revoke were returned to OREA on August
16 20, 2012, by the U.S. Postal Service "attempted-not known; unable to forward."

17 1.3 Over twenty (20) days have elapsed since the mailing of the notice issued in this
18 matter and no written request for hearing has been received.

19 1.4 Copies of the entire investigation file are designated as the record for purposes
20 of default, including any submission from respondent and all information in the administrative
21 file relating to the mailing of notices and any responses received.

22 2.

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

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

28 2.2 Shanks' last known address of record with OREA was 328 Talent Avenue,
29 Apartment S, Talent, Oregon, 97540.
30

1 0020(7) (2009 Edition), which requires that a property manager promptly deliver a legible copy
2 of the fully executed property management agreement to the owner of the property.

3 3.5 Shanks applied surcharges to invoices for maintenance on the Blowers'
4 properties, even though there was no provision in the property management agreement to do
5 so.

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

11 3.6 On March 27, 2012, Shanks admitted to OREA that he had comingled and
12 misappropriated money from Northwoods' tenants' security deposits trust account since March
13 2009. Bank statements showed payments identified as "overdraft protection" and "internet
14 transfer", which transferred money from the tenants' security deposits trust account to
15 Northwoods' operating account and totaled \$242,100. After adjusting for two outstanding
16 checks on these accounts, the total funds identified as misappropriated in this way is at least
17 \$244,100.

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

23 3.7 Shanks failed to maintain bank accounts that were designated as clients' trust
24 accounts as defined in ORS 696.245 (2011 Edition).

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

28 4.

29 4.1 The above violations are grounds for discipline pursuant to ORS 696.301(12) and
30 (14) (2011 Edition).

