

1 OREGON REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER

3
4 In the Matter of the Real Estate License of

5
6 JANIS ZUMENTS

7
8) STIPULATED FINAL ORDER
9

10 The Real Estate Agency (OREA) and Janis Zuments (Zuments) do hereby agree and stipulate
11 to the following:

12 FINDINGS OF FACT
13 AND
14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Zuments was licensed as a multiple principal broker with
17 Brokers Trust Realty and Zuments-Guerra Investment Real Estate Firm. On June 28, 2010, he
18 registered the business name of Eastwind Property Management, LLC, and associated his license with
19 all three businesses.

20 1.2 On April 21, 2010, OREA received a complaint from Marcus Torres (Torres) alleging that
21 Patricia Kipers (Kipers) was representing herself as a licensed property manager by signing a
22 management agreement with owners of real property. The subsequent investigation found the
23 following violations related to the three properties listed below.

24 1.3 On April 23, 2010, Eastwind Property Management, LLC, (Eastwind) entered into a
25 property management agreement (PMA) with Kinsale Realty Advisors, LLC, (Kinsale) with respect to
26 the following properties: 1) Sunrise Village Investments, LLC, 900-968 NE 183rd Ave, Portland, Oregon
27 (63 units) (Sunrise); 2) Sunwood Investment, LLC, 755 SE Hogan Rd, Gresham, Oregon (25 units)
28 (Sunwood); and 3) Gresham Central Point, LLC, 318 NE Roberts Ave, Gresham, Oregon (22 units)
29 (Gresham). The PMA was signed by Zuments and Kipers, on behalf of Eastwood, and Charles
30 O'Connell (O'Connell) on behalf of Kinsale.

1 1.4 The PMA between Eastwind and O'Connell contained the following language:

2 a) Property manager to maintain two bank accounts for each property consisting of an operating
3 account and interest bearing savings account. All funds on deposit shall, at all times, be the property of
4 the owner.

5 b) The owner may withdraw funds from the client trust account subject to maintenance of an
6 operating reserve in an amount determined by agreement between owner and property manager.

7 **Violation:** OAR 863-025-0025(9) (2009 Edition), which prohibits a property manager from
8 allowing an owner to be a signer or allow the owner access to funds in a clients' trust account.

9 1.5 The PMA between Eastwind and O'Connell did not contain the following:

10 a) A statement that the property manager shall disclose to the owner in writing and in a timely
11 manner, any use of employees or a business in which the property manager has a pecuniary interest to
12 perform work on the property.

13 **Violation:** OAR 863-025-0020(2)(j) (2009 Edition), which requires that a PMA contain a
14 statement that the property manager will disclose to the owner in writing the property manager's
15 planned use of any employees or a business in which the property manager has a pecuniary interest to
16 provide services for the owner's property.

17 b) An identifying code.

18 **Violation:** OAR 863-025-0020(2)(k) (2009 Edition), which requires that a PMA contain an
19 identifying code.

20 c) The disposition of the property manager's records of the management of the owner's rental
21 real estate after termination of the agreement.

22 **Violation:** OAR 863-025-0020(2)(h) (2009 Edition), which requires that a PMA contain the
23 disposition of the property manager's records of the management of the owner's rental real estate after
24 termination of the agreement.

25 d) The addendum to the agreement did not contain an identifying code and did not contain the
26 signature of the property manager and the signature of the owner who signed the initial property
27 management agreement.

28 **Violation:** OAR 863-025-0020(4) (2009 Edition), which requires that any amendment or
29 addendum to a PMA agreement include the identifying code, and the signature of the property manager
30 and all owners who signed the initial PMA.

1 1.6 The terms of the *Written Policies and Delegation of Authority for Patricia Kipers Effective*
2 *April 23, 2010*, were not memorialized in writing and signed until June 24, 2010, approximately two
3 months after Eastwind signed the PMA for the management of the properties.

4 **Violation:** OAR 863-025-0015(1) (2009 Edition), which requires that each property manager
5 develop, maintain and follow written policies for persons and activities to be performed by an employee
6 of the property manager.

7 1.7 The business office of Eastwind was not designated by a sign.

8 **Violation:** ORS 696.200(2)(b) (2009 Edition), which requires that every real estate licensee
9 designate their place of business with a sign that contains the name under which the licensee conducts
10 professional real estate activity .

11 1.8 A review of the *Inventory of and Authorization to Examine Clients' Trust Accounts* form
12 submitted to the Agency by Eastwind found the following:

13 a) The account name for Sunwood was "Eastwind Property Management-Sunwood
14 Apartments, LLC-Trust Account", for Sunrise was "Eastwind Property Management-SRI" and for
15 Gresham was "Gresham Central Point, LLC-Operating Account."

16 **Violation:** OAR 863-025-0025(11)(c) (2009 Edition), which requires that a property manager
17 maintain a clients' trust account and that the account name must include the words "clients' trust
18 account."

19 b) There was no listing for clients' trust account – security deposits for any of these three
20 properties.

21 **Violation:** OAR 863-025-0025(4) (2009 Edition), which requires that a property manager who
22 receives security deposits on behalf of a property owner open and maintain a security deposits account
23 that is separate from the property manager's client's trust account.

24 1.9 The clients' trust accounts and clients' trust account – security deposits included the
25 name "Eastwind Property Management" on bank records for Sunrise and Sunwood. A garnishment
26 judgment against Eastwind, Sunrise and Sunwood included all funds in the accounts labeled "Eastwind
27 Property Management".

28 **Violation:** ORS 696.241(8) (2009 Edition), which states that that clients trust account funds are
29 not subject to execution or attachment on any claim against a principal real estate broker.

30

1 1.10 Zuments failed to supervise and control the professional real estate activity at Eastwind
2 by not regularly reviewing clients' trust account reconciliations completed by Kipers.

3 **Violation:** OAR 863-015-0140(3) (2009 Edition), which requires that a principal real estate
4 broker must supervise and control the professional real estate activity at any main or branch office
5 registered by the principal broker.

6 1.11 Zuments began conducting property management activity under the business name of
7 Eastwind Property Management, LLC, on April 23, 2010, but did not register the business name with
8 OREA until June 28, 2010.

9 **Violation:** of OAR 863-015-0095(1) (2009 Edition), which states that a principal real estate
10 broker who wishes to conduct real estate business in a name other than the licensee's legal name must
11 first register the business name with the Agency.

12 1.12 For each deposit of funds received the check number, cash receipt number or a unique
13 series of letters and/or numbers that establish an audit trail to the receipt of funds was missing from
14 each tenant ledger entry for Sunrise, Sunwood and Gresham.

15 **Violation:** OAR 863-025-0050(4)(d)(C) (2009 Edition), which requires that a tenant's ledger
16 contain, for each deposit of funds, a check number, cash receipt number or a unique series of letters
17 and/or numbers that establish an audit trail to the receipt of all funds.

18 1.13 For each deposit of funds the check number, cash receipt number or a unique series of
19 letters and/or numbers that establish an audit trail to the receipt of funds was missing from each owner
20 ledger entry for Sunrise, Sunwood and Gresham.

21 **Violation:** OAR 863-025-0055(3)(b)(C) (2009 Edition), which requires that an owner's ledger
22 contain, for each deposit of funds, a check number, cash receipt number or a unique series of letters
23 and/or numbers that establish an audit trail to the receipt of all funds.

24 1.14 For Sunrise there were 171 instances of violating OAR 863-025-0025:

25 a) Failed to include the words "clients' trust account" in six instances when identifying a clients'
26 trust account on bank records.

27 **Violation:** OAR 863-025-0025(11)(c) (2009 Edition), which requires that a property manager
28 maintain a clients' trust account and that the account name must include the words "clients' trust
29 account."
30

1 b) Failed to include the words "clients trust account – security deposits" in six instances when
2 identifying a clients' trust account on bank records.

3 **Violation:** OAR 863-025-0025(11)(d) (2009 Edition), which requires that if an account is a
4 security deposits account, that the account name must include the words "clients' trust account-security
5 deposits."

6 c) Zuments used a debit card associated with a clients' trust account in 153 instances for a total
7 of \$21,347.52.

8 **Violation:** OAR 863-025-0025(19) (2009 Edition), which prohibits a property manager from
9 utilizing any form of debit card issued by a financial institution on a client trust account or security
10 deposits account.

11 d) Zuments failed to obtain a signed and dated agreement from each owner authorizing the
12 transfer of funds from an owner's ledger account to one or more different owners' ledger accounts in
13 five instances, for a total of \$9,199.

14 **Violation:** OAR 863-025-0025(13)(a) (2009 Edition), which states that a property manager may
15 only transfer funds from an owners' ledger account to one or more different owners' ledger accounts if
16 each of the affected owners authorizing the transfer have signed and dated an agreement authorizing
17 such transfer that is separate from any PMA.

18 1.15 Zuments did not have written approval allowing bank expenses to be withdrawn from his
19 clients' trust accounts.

20 **Violation:** ORS 696.241(9) (2009 Edition), which states that a principal real estate broker may
21 not knowingly keep or cause to be kept any funds or money in any bank under the heading of clients'
22 trust account or any other name designating such funds or money as belonging to the clients of any
23 principal real estate broker, except actual trust funds deposited with the broker. (11 counts)

24 1.16 Zuments failed to include in the PMA that tenant security deposits were to be held by the
25 owner after such security deposits had been deposited into the clients' trust account.

26 **Violation:** OAR 863-025-0025(7) (2009 Edition), which states that when a PMA and a
27 corresponding lease or rental agreement provide that the security deposit will be transferred to and held
28 by the owner, the security deposit funds must be deposited in the clients' trust account and disbursed to
29 the owner in the month they are received.

30 1.17 For Sunwood there were 135 instances of violating OAR 863-025-0025:

1 a) Zuments failed to include the words "clients' trust account" in six instances when identifying a
2 clients' trust account on bank records.

3 **Violation:** OAR 863-025-0025(11)(c) (2009 Edition), which requires that a property manager
4 maintain a clients' trust account and that the account name must include the words "clients' trust
5 account."

6 b) Zuments failed to include the words "clients' trust account – security deposits" in six instances
7 when identifying a clients' trust account – security deposits on bank records.

8 **Violation:** OAR 863-025-0025(11)(d) (2009 Edition), which requires that if an account is a
9 security deposits account, that the account name must include the words "clients' trust account-security
10 deposits."

11 c) Zuments used a debit card associated with a clients' trust account and a clients' trust account
12 – security deposits in 111 instances for a total of \$18,656.05.

13 **Violation:** OAR 863-025-0025(19) (2009 Edition), which prohibits a property manager from
14 utilizing any form of debit card issued by a financial institution on a client trust account or security
15 deposits account.

16 d) Zuments failed to obtain a signed and dated agreement from each owner authorizing the
17 transfer of funds from an owner's ledger account to one of more different owners' ledger accounts in 12
18 instances for a total of \$16,997.70.

19 **Violation:** OAR 863-025-0025(13)(a) (2009 Edition), which states that a property manager may
20 only transfer funds from an owners' ledger account to one or more different owners' ledger accounts if
21 each of the affected owners authorizing the transfer have signed and dated an agreement authorizing
22 such transfer that is separate from any PMA.

23 1.18 Zuments did not have written approval allowing bank expenses to be withdrawn from his
24 clients' trust accounts.

25 **Violation:** ORS 696.241(9) (2009 Edition), which states that a principal real estate broker may
26 not knowingly keep or cause to be kept any funds or money in any bank under the heading of clients'
27 trust account or any other name designating such funds or money as belonging to the clients of any
28 principal real estate broker, except actual trust funds deposited with the broker. (2 counts)

29 1.19 Zuments failed to include in the PMA that tenant security deposits are to be held by the
30 owner after such security deposits have been deposited into the clients' trust account.

1 **Violation:** OAR 863-025-0025(7) (2009 Edition), which states that when a PMA and a
2 corresponding lease or rental agreement provide that the security deposit will be transferred to and held
3 by the owner, the security deposit funds must be deposited in the clients' trust account and disbursed to
4 the owner in the month they are received.

5 1.20 Zuments did not establish a clients' trust account for Gresham until July 14, 2011.

6 **Violation:** OAR 863-025-0025(2) (2009 Edition), which requires that a property manager open
7 and maintain at least one clients' trust account.

8 1.21 Zuments did not establish a clients' trust account – security deposits for Gresham until
9 July 14, 2011.

10 **Violation:** OAR 863-025-0025(4) (2009 Edition), which requires that a property manager who
11 receives security deposits on behalf of an owner open and maintain a security deposits account that is
12 separate from the property manager's client's trust account.

13 1.22 When a clients' trust account was established for Gresham, the wording was indicated
14 as "Client Trust Account".

15 **Violation:** OAR 863-025-0025(11)(c) (2009 Edition), which requires that a property manager
16 maintain a clients' trust account and that the account name must include the words "clients' trust
17 account."

18 1.23 When a clients' trust account for security deposits was established for Gresham, the
19 wording is indicated as "Client Trust Account – Tenant Deposit Account".

20 **Violation:** OAR 863-025-0025(11)(d) (2009 Edition), which requires that if an account was a
21 security deposits account, that the account name must include the words "clients' trust account-security
22 deposits."

23 1.24 On June 1, 2011, a new PMA entered into between Eastwind and Gresham contained
24 the following language:

25 a) Property manager to maintain two bank accounts for the property consisting of an operating
26 account and an interest bearing savings account. All funds on deposit shall, at all times, be the
27 property of the owner.

28 b) The owner may withdraw funds from the Client Trust Account subject to the maintenance of
29 an operating reserve in an amount determined by agreement between owner and property manager.
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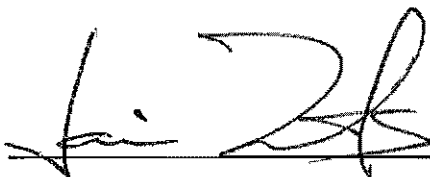
1 accordance with the Rules of Practice and Procedure adopted by the Attorney General of the State of
2 Oregon. I freely and voluntarily waive my rights to a hearing, to representation by legal counsel at such
3 a hearing, and to judicial review of this matter.

4 I hereby agree and stipulate to the above findings of fact and conclusions of law and understand
5 that the order which follows hereafter may be completed and signed by the Real Estate Commissioner
6 or may be rejected by the Real Estate Commissioner, in which case an amended notice of intent may
7 be issued in this matter. I understand that, in accordance with the provisions of ORS 696.445(3), notice
8 of this order shall be published in the Oregon Real Estate News Journal.

9 ORDER

10 IT IS HEREBY ORDERED that Zuments' license be, and hereby is, reprimanded. In addition,
11 Zuments must complete the property manager pre-licensing course within 120 days of the date of this
12 Order, and must notify OREA when he has done so. If Zuments does not complete the property
13 manager pre-licensing course within 120 days, Zuments' license will automatically and immediately be
14 suspended for 90 days.


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16 IT IS SO STIPULATED:

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20 JANIS ZUMENTS

21
22 Date 16 Aug 2012

IT IS SO ORDERED:

23
24
25 

26 GENE BENTLEY

27 Real Estate Commissioner

28 Date 8.21.12

29
30 DATE of service: 8-21-12

