

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate License
5 of
6 JOHN ALAN LEIBY

7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
29)
30)
STIPULATED FINAL ORDER

10 The Oregon Real Estate Agency (OREA) and John Alan Leiby (Leiby) do hereby agree
11 and stipulate to the following:

12 FINDINGS OF FACT
13 &
14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Leiby was licensed as a principal broker with Bison
17 Properties.

18 1.2 On March 21, 2014, OREA received a complaint from Matthew C. Williams
19 (Williams) alleging that Leiby systematically stole money and stamps from the Bison Properties
20 office. OREA opened an investigation.

21 1.3 OREA investigator Philip Johnson (Johnson) interviewed Leiby on August 22,
22 2014. Leiby said he worked for Matthews for about six years and in that time he had also
23 worked with Williams as his managing principal broker. Leiby said he was working in the role
24 of managing principal broker for a little over a year up to March 21, 2014.

25 1.4 Leiby said he took money from the petty cash as reimbursements for copies and
26 mailings that he had made as part of his real estate activity. Leiby said he had also used
27 stamps from the office for the same reasons. He said all his use of the petty cash fund and/or
28 stamps was strictly related to business related correspondence and never for personal use.

29 ///
30 ///

1 1.5 Leiby told Johnson during his interview, upon reflection, the biggest mistake he
2 probably made was not keeping and submitting receipts for printing, copying and scanning of
3 documents from outside the office. Johnson asked Leiby during his interview if it would be
4 typical, given his personal experience in the real estate industry, for a brokerage to provide
5 either appropriate copy related equipment and/or reimburse for copy related expenses to
6 licensees. Leiby said he had seen it work both ways.

7 1.6 The investigation found that there was no written record of petty cash amounts
8 maintained in the office. Additionally, there was no verbal or written company policies for the
9 office regarding the proper use of the petty cash or stamps.

10 1.7 On January 8, 2014, after eight instances of money and stamps were missing
11 from the office, Williams installed CCTV cameras in the office without the knowledge of anyone
12 else in the office. The surveillance camera footage shows an instance of Leiby coming into the
13 office, walking over to the desk where the petty cash and stamps were, and taking money
14 and/or stamps from the desk and leaving the office.

15 1.8 Williams notified the Portland Police and filed a report on March 21, 2014, as
16 soon as he was aware Leiby was taking stamps and petty cash.

17 1.9 Leiby said, "There were stamps all over the office, there was no tracking system
18 in place or person you would go to get new stamps, it just wasn't that kind of environment."

19 1.10 Leiby said he offered to pay Williams back and Williams refused to settle.

20 1.11 Leiby said he pled guilty to the charges and was charged with Theft 2 in
21 Multnomah County Circuit Court. He said the only reason he pled guilty to the charge, was
22 because he could not financially afford representation for a not guilty plea. Leiby was
23 sentenced to 24 months of bench probation, 64 hours of community service, pay restitution to
24 Williams in the amount of \$419.26 and a court fine of \$100.00, plus a bench probation fee of
25 \$100.00.

26 **Violation:** By being charged with stealing postage stamps and petty cash from Bison
27 Properties, pleading guilty to the charge of Theft II, and being sentenced on that charge, Leiby
28 violated ORS 696.301(11) (2013 Edition), which states a licensee can be disciplined if they
29 have been convicted of a felony or misdemeanor substantially related to the licensee's
30 trustworthiness or competence to engage in professional real estate activity. Additionally,

1 Leiby violated ORS 696.301(14) (2013 Edition), which states a licensee can be disciplined if
2 they have committed an act of fraud or engaged in dishonest conduct substantially related to
3 the fitness of the applicant or licensee to conduct professional real estate activity, without
4 regard to whether the act or conduct occurred in the course of professional real estate activity.

5 1.12 Leiby provided OREA with multiple character references. One in particular was a
6 letter from Wallace Ashby (Ashby). Ashby is a broker who previously worked at Bison
7 Properties with Leiby. Ashby stated in his letter, "The office itself had no policy in regards to
8 use of company supplies and equipment. The computers / printer / and other supplies were
9 open for people to use with no expectation of reimbursement or logs to know who used what
10 supplies. Things like stamps, pens, pads of paper, etc were lying around and available for
11 anyone to use."

12 1.13 Ashby also stated, "I don't agree with Matt levying the charges as there were no
13 policies in place nor there ever was [sic] while I was working there."

14 2.

15 2.1 The forgoing violation is grounds for discipline pursuant to ORS 696.301. Based
16 on the violation, a suspension is appropriate under ORS 696.396(2)(c)(C) (2013 Edition).
17 According to ORS 696.396, OREA may suspend a real estate license if the material facts
18 establish a violation of a ground for discipline under ORS 696.301 that exhibits dishonesty or
19 fraudulent conduct.

20 2.2 OREA reserves the right to investigate and pursue additional complaints that
21 may be received in the future regarding this licensee.

22 STIPULATION & WAIVER

23 I have read and reviewed the above findings of fact and conclusions of law which have
24 been submitted to me by OREA and further, the order which follows hereafter. I understand
25 that the findings of fact, conclusions of law and this stipulation and waiver embody the full and
26 complete agreement and stipulation between OREA and me. I further understand that if I do
27 not agree with this stipulation I have the right to request a hearing on this matter and to be
28 represented by legal counsel at such a hearing. Hearings are conducted in accordance with
29 the procedures set forth in ORS Chapter 183 and in accordance with the Rules of Practice and
30 Procedure adopted by the Attorney General of the State of Oregon. I freely and voluntarily

1 waive my rights to a hearing, to representation by legal counsel at such a hearing, and to
2 judicial review of this matter.

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

9 ORDER

10 IT IS HEREBY ORDERED that Leiby's principal broker license be suspended for 60
11 (sixty) days. The suspension will be effective on June 30, 2015.

12
13 IT IS SO STIPULATED:

IT IS SO ORDERED:

14
15
16 
17 JOHN ALAN LEIBY

18 
19 GENE BENTLEY
20 Real Estate Commissioner

21 Date 03/13/15

22 Date 3.26.15

23
24
25
26
27
28
29
30
DATE of service: 3-26-2015