

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

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

9 1.

10 1.1 On September 24, 2015, the Real Estate Commissioner issued, by certified mail,
11 a notice of intent to levy civil penalty and revoke the real estate principal broker license of Lynn
12 Smith (Smith). The Real Estate Agency (OREA) sent the notice of intent to Smith's last known
13 address of record with the OREA. The notice of intent was also mailed to Smith by regular first
14 class mail in a handwritten envelope.

15 1.2 The certified mailing of the notice of intent and the first class mailing were sent to
16 Smith at 1803 SW Emmigrant, Pendleton, OR 97801. Smith signed for the certified mailing on
17 September 28, 2015. No mailings have been returned to OREA.

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

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

23 2.

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

26 2.2 Smith's last known address of record with OREA was 1803 SW Emmigrant,
27 Pendleton, OR 97801.

28 2.3 A certified mailing of the notice of intent was mailed to Smith at her last known
29 address of record on September 24, 2015.

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

5 2.5 Over twenty (20) days have elapsed since the mailing of the notice and no
6 written request for a hearing has been received.

7 3.

8 FINDINGS OF FACT

9 &

10 CONCLUSIONS OF LAW

11 3.1 At all times mentioned herein, Smith was licensed as a principal broker doing
12 business under the registered business name of Pendleton Southgate Realty.

13 3.2 On January 9, 2014, OREA sent a clients' trust account (CTA) audit letter for
14 account ending in #6717 to Smith. Smith failed to produce the requested documents and was
15 contacted multiple times by Compliance Specialist, Danette Rozell (Rozell) and Compliance
16 Coordinator, Deanna Hewitt (Hewitt) over the next several months.

17 3.3 On June 4, 2014, OREA opened an investigation on Smith for failing to supply
18 required three-way reconciliations for the CTA audit.

19 3.4 On June 4, 2014, OREA Investigator, Peter Bale (Bale) emailed Smith to make
20 arrangements to visit her office in Pendleton. On June 6, 2014, Bale made a formal request by
21 email for Smith to produce the CTA reconciliation documents to OREA by June 9, 2014.

22 3.5 On June 19, 2014, Bale visited Smith's office in Pendleton. When Bale asked for
23 the three-way CTA reconciliations, Smith replied that "Nobody has said we need separate
24 reports for tenants' security deposits."

25 3.6 During Bale's visit on June 19, 2014, Smith provided several property
26 management agreements (PMAs). The PMA for properties at 418, 418 and ½, and 420 NW
27 9th, had no identifying code.

28 **Violation:** By failing to ensure that the property management agreements for 418, 418
29 and ½ and 420 NW 9th contained an identifying code, Smith violated ORS 696.301(3) (2011
30 and 2013 Editions) as it incorporates OAR 863-025-0020(2)(k) (4-15-11, 9-1-11, 4-1-13, 5-15-
14 Editions).

1 3.7 Smith provided copies of paperwork which indicated that three-way
2 reconciliations could be produced and that the security deposits CTA might be able to be
3 reconciled with explainable differences.

4 3.8 During Bale's visit on June 19, 2014, with Smith, Smith told Bale there were the
5 following CTAs used for the business: security deposits CTA at Umpqua Bank ending in
6 #6906, and CTA at Umpqua Bank ending in #5277.

7 3.9 A printout taken on November 10, 2014, from the OREA computerized database
8 showed that Pendleton Southgate Realty had three active CTA bank accounts ending in
9 #6717, #3688 and #3726. All three accounts were shown as held at the Community Bank in
10 Pendleton.

11 **Violation:** By failing to notify OREA within 10 business days after the date a clients'
12 trust account was opened, Smith violated ORS 696.301(3) (2013 Edition) as it incorporates
13 ORS 696.241(4) (2013 Edition), which requires within 10 business days after the date a clients'
14 trust account is opened, a licensed real estate property manager or principal broker shall file
15 with the Real Estate Agency, on forms approved by the agency, the following information
16 about the clients trust account: (a) the name of the bank; (b) the account number, (c) the name
17 of the account, (d) the date the account was opened, and (e) a statement by the licensed real
18 estate property manager or principal real estate broker authorizing the Real Estate
19 Commissioner or the commissioner's representative to examine the clients' trust account at
20 such times as the commissioner may direct.

21 3.10 Bale emailed Smith on July 9, August 14, and August 20, 2014, asking Smith for
22 an update of when she would be submitting the reconciliations.

23 3.11 On August 25, 2014, Bale sent a letter to Smith. The letter was a formal demand
24 for the production of three way reconciliations for April, May, and June for both the security
25 deposit CTAs and the owners CTA.

26 3.12 On August 29, 2014, Bale visited Smith's office in Pendleton. Smith claimed not
27 to have received any of the emails Bale sent her and she had not completed the three-way
28 reconciliations for the CTAs. Smith said she would submit the three-way reconciliations to
29 Bale by Friday, September 5, 2014.

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1 3.13 As of September 23, 2014, no reconciliations were submitted by Smith to OREA.

2 **Violation:** By failing to prepare and provide the required three-way reconciliations for
3 the CTA held at Umpqua Bank ending in #5277, Smith violated ORS 696.301(3) (2013 Edition)
4 as it incorporates OAR 863-025-0025(20) (4-1-13 and 5-15-14 Editions), which requires a
5 property manager to reconcile each clients' trust account within 30 calendar days of the date of
6 the bank statement. Additionally, Smith violated ORS 696.301(3) as it incorporates OAR 863-
7 025-0035(2)(A) (4-1-13 and 5-15-14 Editions), which states, when the Agency makes a
8 request for production of property management records, the property manager must provide
9 such records within no less than five banking days. Lastly, by failing to prepare and provide
10 the three-way reconciliations for the CTA ending in #5277, Smith demonstrated incompetence
11 or untrustworthiness in performing any act for which the licensee is required to hold a license,
12 in violation of ORS 696.301(12) (2013 Edition).

13 **Violation:** By failing to prepare and provide the required three way reconciliations for
14 the CTA security deposit account held at Umpqua Bank, ending in #6906 Smith violated ORS
15 696.301(3) (2013 Edition) as it incorporates OAR 863-025-0025(21) (4-1-13 and 5-15-14
16 Editions), which requires a property manager to reconcile each security deposits account
17 within 30 calendar days of the bank statement date. Additionally, Smith violated ORS
18 696.301(3) (2013 Edition) as it incorporates OAR 863-025-0035(2)(A) (4-1-13 and 5-15-14
19 Editions), which states, when the Agency makes a request for production of property
20 management records, the property manager must provide such records within no less than five
21 banking days. Lastly, by failing to prepare and provide the three way reconciliations for the
22 CTA ending in #5277, Smith demonstrated incompetence or untrustworthiness in performing
23 any act for which the licensee is required to hold a license, in violation of ORS 696.301(12)
24 (2013 Edition).

25 4.

26 4.1 The above violations are grounds for discipline pursuant to ORS 696.301. Based
27 on these violations, OREA is revoking Smith's principal broker license. A revocation is
28 appropriate under ORS 696.396(2)(c)(B) (2013 Edition) According to ORS 696.396, OREA
29 may revoke a real estate license if the material facts establish a violation of a ground for
30 discipline under ORS 696.301 that exhibits incompetence in the performance of professional
real estate activity.

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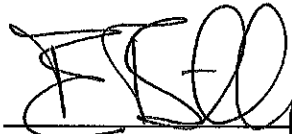
ORDER

IT IS HEREBY ORDERED that Smith's principal broker license is revoked.

IT IS FURTHER ORDERED, pursuant to ORS 696.990(6)(a), Smith pay a civil penalty in the sum of \$10,000, said penalty to be paid to the General Fund of the State Treasury by paying the same to OREA.

Dated this 9th day of NOVEMBER, 2015.

OREGON REAL ESTATE AGENCY



GENE BENTLEY

Real Estate Commissioner

DATE of service: 11/9/2015

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