

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate License of

5
6 JAMES MICHAEL STRAUB

STIPULATED FINAL ORDER
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10 The Real Estate Agency (OREA) and James Michael Straub (Straub) 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, Straub was licensed as a property manager doing
17 business under the registered business name of Acorn Property Management, LLC (Acorn).

18 1.2 On August 16, 2013, OREA received a complaint from Mabel Armstrong
19 (Armstrong) against Acorn. Armstrong's complaint contained several allegations, one of which
20 was that her owner statements contained errors. OREA opened an investigation.

21 1.3 Armstrong signed a property management agreement with Straub on March 14,
22 2011, for two properties located in Eugene, one located at 339 W. Broadway, Eugene, OR (W.
23 Broadway), and a second located at 465-473 W. 10th, Eugene, OR (W. 10th).

24 1.4 In January 2012, Acorn changed their record keeping software. When Armstrong
25 reviewed her owner ledger for the two properties managed by Acorn, the balance for the two
26 properties showed a zero beginning balance. Armstrong alleged this was inaccurate and there
27 should have been a cash balance in the owner ledger forwarded from December 2011 into
28 January 2012.

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1 1.5 OREA Investigator/Auditor Meghan Lewis (Lewis) reviewed accounting records
2 related to Armstrong's properties. A review of the owner's ledger for Armstrong's properties
3 showed several instances where there were negative balances in the owner's ledger during
4 time periods from January 27th through July 31st, 2012 caused by disbursements for mortgage
5 payments and other owner-related expenses when there were insufficient funds in the ledger
6 account.

7 The following instances identified are set out below:

- 8 • W. 10th:
 - 9 ○ On January 27, 2012, a disbursement of \$1,098.17 which caused the
 - 10 resulting balance to be -\$1,098.17. The balance remained negative from
 - 11 January 27, 2012 through January 31, 2012.
 - 12 ○ On June 18, 2012, two disbursements of \$1,500.00 and \$660.00 caused
 - 13 the resulting balance to be -\$1,403.07 and the balance remained negative
 - 14 until July 2, 2012.
 - 15 ○ On July 3, 2012, two mortgage payments of \$1,036.24 and \$861.96
 - 16 caused the resulting balance to be -\$1,789.69, and the balance remained
 - 17 negative until July 10, 2012.
- 18 • W. Broadway:
 - 19 ○ On January 27, 2012, a disbursement of \$1,361.78 caused the resulting
 - 20 balance to be -\$1,361.78. The balance remained negative from January
 - 21 27, 2012, through January 31, 2012.
 - 22 ○ On June 26, 2012, an invoice expense of \$873.00 caused the resulting
 - 23 balance to be -\$851.33 and the balance remained negative until June 28,
 - 24 2012.
 - 25 ○ On July 26, 2012, an invoice expense of \$319.00 caused the resulting
 - 26 balance to be -\$175.05 and the balance remained negative until July 31,
 - 27 2012.

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1 **Violation:** By making disbursements, or allowing disbursements to be made during the
2 time periods from January 27th through July 31st, 2012, without having a sufficient balance in
3 Armstrong's owner ledger to do so, Straub violated ORS 696.301(3) (2011 Edition) as it
4 incorporates OAR 863-025-0025(12) (9-1-11 Edition), which states a property manager may
5 not disburse funds from a clients' trust account or security deposit account unless there are
6 sufficient funds in the ledger account which the disbursement is made.

7 1.6 Further review of Armstrong's owner ledger for the W. 10th property showed:

- 8 • On July 12, 2012, management fees disbursed to Acorn of \$403.50, caused the
9 resulting balance to be -\$120.98 and the balance remained negative until July 31, 2012.

10 **Violation:** By disbursing or allowing management fees to be disbursed on July 12,
11 2012, when there were insufficient funds in the owners' ledger to do so, Straub violated ORS
12 696.301(3) (2011 Edition) as it incorporates OAR 863-025-0025(15) (9-1-11 Edition), which
13 states a property manager must disburse earned management fees from the clients' trust
14 account at least once each month unless a different schedule of disbursement is specified on
15 the property management agreement, and may only disburse fees if sufficient funds are
16 available.

17 1.7 In April 2012 Straub hired Mauren Queener (Queener), an unlicensed individual.
18 Queener's duties included the following: handle clients' trust funds, and negotiate, review and
19 approve tenant rental lease agreements. During the investigation, Straub acknowledged he
20 failed to have a proper written delegation of authority for Queener to perform certain duties.

21 **Violation:** By failing to sign and date a delegation of authority for his unlicensed
22 employee, Queener, to perform certain management of rental real estate functions, Straub
23 violated ORS 696.301(3) (2011 Edition) as it incorporates OAR 863-025-0015(6)(b)(c) (9-1-11
24 Edition) which states the following delegations of the property manager's authority must be in
25 writing, dated, and signed by the property manager, and kept with written policies: (b) receive
26 and disburse funds, and (c) review, approve and accept tenant rental and lease agreements.

27 1.8 In Lewis' interview with Straub, he explained he was not aware of Queener
28 allowing Armstrong's clients' trust funds to become insufficient.

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1 **Violation:** By failing to provide proper supervision to Queener during the time when
2 multiple disbursements were made when insufficient funds existed in the owner ledger, Straub
3 violated ORS 696.890(3)(c) and (e) (2011 Edition), which states a property manager owes the
4 property owner the following affirmative duties: (c) to exercise reasonable care and diligence,
5 and (e) to act in a fiduciary manner in all matters relating to trust funds.

6 1.9 Regarding clients' trust account reconciliations, during the investigation Straub's
7 bookkeeper Debbie Obert (Obert) acknowledged she first used a single reconciliation form as
8 required by rule in January 2014. Straub failed to have a written delegation of authority in
9 place for Obert. He explained to Lewis that he had only given verbal authority to Obert to
10 complete the reconciliations.

11 **Violation:** By failing to ensure the three components were properly contained in a
12 single reconciliation document Straub violated ORS 696.301(3) (2011 and 2013 Editions) as it
13 incorporates OAR 863-025-0025(20) and (21) (6-15-10, 4-15-11, 9-1-11, 9-14-12 and 4-1-13
14 Editions) which requires a property manager to complete a reconciliation with three
15 components contained in a single reconciliation document.

16 **Violation:** By failing to sign and date a written delegation of authority for Obert to review
17 and approve reconciliations and receive and disburse funds from the clients' trust account,
18 Straub violated ORS 696.301(3) (2011 and 2013 Editions) as it incorporates OAR 863-025-
19 0015(6)(b) (9-1-11, 9-14-12, 4-1-13 Editions), which state the following delegations of the
20 properties manager authority must be in writing, dated, and signed by the property manager
21 and kept with the written policies: (b) review and approve reconciliations and receive and
22 disburse funds.

23 1.10 Effective January 13, 2013, Armstrong terminated her property management
24 agreement with Acorn. In the written notice, Armstrong directed Acorn to send all relevant
25 paperwork, keys and deposits to Bell Real Estate (Bell). A review of property management
26 records transferred to Bell indicated four tenant agreements, executed by Acorn between the
27 dates of May 10, 2011 and September 12, 2012, were missing the agent and/or landlord
28 signature.

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1 **Violation:** By failing to sign tenant lease agreements, or failing to ensure that an
2 employee signed and dated tenant lease agreements, dated between May 10, 2011 and
3 September 12, 2012, Straub, per ORS 696.361(2011 Edition), which states a real estate
4 property manager is regulated and bound as a real estate broker and as a principal real estate
5 broker violated ORS 696.301(3) (2011 and 2013 Editions) as it incorporates OAR 863-015-
6 0250(1)(c) (9-1-11 Edition) which states complete and adequate records of professional real
7 estate activity include complete, legible and permanent copies of all documents required by
8 law or voluntarily generated during a real estate transaction, which includes but is not limited to
9 a copy of any written agreement for the listing, sale purchase, rental, lease, lease option, or
10 exchange of real property generated by a real estate broker or principal real estate broker
11 while engaging in professional real estate activity that must be signed by all parties to such an
12 agreement.

13 1.11 Throughout the investigation Lewis requested and reviewed multiple
14 reconciliation documents. On several occasions, reconciliations showed discrepancies that
15 were not resolved in a timely manner.

- 16 • A June 2012 reconciliation for clients' trust account (CTA) ending with #6261 contained
17 a difference of \$66,908.96 between Parts I and Parts II and III. Written as an
18 explanation of the difference was, "Originally off on date of recon 64,238.83 (2,670.13
19 diff). Clean up continued." The reconciliation form was dated September 7, 2014 and
20 signed by Obert.
- 21 • A December 2012 reconciliation for CTA ending with #6261, showed that Part I was
22 \$12,451.69 more than Parts II and III. Written as an explanation of the difference was,
23 "Originally off on date of recon 12,451.69 (3519.00). Clean up continued." The
24 reconciliation document was dated September 7, 2014.
- 25 • A January 2013 reconciliation for CTA ending with #6261, showed the \$12,451.69
26 difference continued from the December 2012 reconciliation. An attachment was
27 provided to explain the differences and corrective action taken. An explanation of
28 corrective action to resolve the difference in Part IV indicated a bank adjustment of the
29 January 2013 difference \$12,571.71 was made with the February 2013 reconciliation to
30 correlate the bank statement with the property management records. \$12,571.71 was

1 transferred from the CTA #6261 to Acorn's general account to resolve the difference.
2 Obert explained clean up continued of the records, with the adjustments made
3 February, March and April of 2013.

4 **Violation:** By failing or allowing employees to fail to take corrective action to resolve
5 adjustments prior to the next reconciliation, Straub violated ORS 696.301(3) (2011, 2013, and
6 2015 Editions) as it incorporates OAR 863-025-0025(22) (9-1-11, 9-14-12, 4-1-13, 5-15-14
7 Editions), which state a property manager must take corrective action to resolve all
8 adjustments made in a reconciliation prior to the next reconciliation or document the good faith
9 efforts the property manager has taken to resolve the adjustment.

10 1.12 During the investigation Straub and his staff worked cooperatively with Lewis to
11 fix the existing reconciliation problems. A reconciliation was submitted for December 2014, for
12 CTA #6261 which had contained a difference of \$263.95 between Parts I and Parts II and III.
13 Written as the explanation was, "\$263 Acorn deposited to CTA in error... Phillip to xfer to Acorn
14 1-30-15." The reconciliation was dated February 13, 2015 and signed by Obert.

15 1.13 The Agency did not find that Straub's actions were a result of dishonest or
16 fraudulent conduct.

17 1.14 Since the investigation, Straub has updated his office policies and now has
18 proper written delegations of authority in place for employees engaged in any management of
19 rental real estate activities.

20 2.

21 2.1 OREA reserves the right to investigate and pursue additional complaints that
22 may be received in the future regarding this licensee.

23 STIPULATION & WAIVER

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

1 Procedure adopted by the Attorney General of the State of Oregon. I freely and voluntarily
2 waive my rights to a hearing, to representation by legal counsel at such a hearing, and to
3 judicial review of this matter.

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

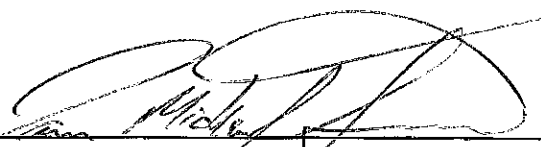
9 ORDER

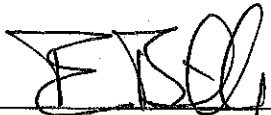
10 IT IS HEREBY ORDERED that Straub's property manager license be, and hereby is,
11 reprimanded.

12 IT IS FURTHER ORDERED that Straub complete the 27-hour Property Manager
13 Advanced Practices course, (detailed in OAR 863-022-0022) within four (4) months from the
14 effective date of this order. Straub must submit documentation, such as certificate to OREA
15 showing completion of the 27-hour Property Manager Advanced Practices course. This
16 documentation must be submitted to OREA no later than 10 days after the education has been
17 completed. (Straub has already complied with this requirement by submitting his course
18 completion certificate for the 27-hour Property Manager Advanced Practices course completed
19 on June 27, 2016.)
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22 IT IS SO STIPULATED:

IT IS SO ORDERED:

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26 JAMES MICHAEL STRAUB

26 GENE BENTLEY

27 Real Estate Commissioner

28 Date July 8th 2016

28 Date 7.20.16

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30 Date of service: 7/20/2016