

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER

3
4 In the Matter of the Real Estate License of)

5
6 VALERIE LYNN WHITE)

STIPULATED FINAL ORDER

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10 The Real Estate Agency (OREA) and Valerie Lynn White (White) do hereby agree and
11 stipulate to the following:

12 FINDINGS OF FACT

13 &

14 CONCLUSIONS OF LAW

15 1.

16 1.1 White was licensed as a property manager doing business under the registered
17 business name Encompass Management & Consulting, LLC (EMC) from August 29, 2013,
18 onwards. Prior to August 29, 2013, White's license was associated with the registered
19 business name Rushing Real Estate, Inc. (Rushing RE).

20 1.2 On March 27, 2015, OREA received a complaint from David Parker (Parker)
21 against White.

22 1.3 On March 30, 2015, OREA opened an investigation.

23 1.4 On October 5, 2010, Parker and his wife, and Steve and Gloria Drake signed a
24 property management agreement with Rushing RE for a multifamily complex called Cypress
25 Gardens located at 1600 Chemeketa St NE, Salem (subject property). White signed on
26 behalf of Rushing RE.

27 1.5 On August 29, 2013, White transferred her license to EMC.

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1 1.6 White continued to manage the subject property after leaving Rushing RE
2 without having a new property management agreement executed. In an interview with OREA
3 Investigator/Auditor Peter Bale (Bale) White said there were owners who transferred to EMC
4 from Rushing RE that did sign a new property management agreement with EMC, however,
5 there was not a new property management signed for the subject property.

6 **Violation:** By managing the subject property without a property management
7 agreement in place between the owners and EMC, White violated ORS 696.301(3) (2013 and
8 2015 Editions) as it incorporates OAR 863-025-0020(1) (4-1-2013 and 5-15-2014 Editions),
9 which state a property manager must not engage in the management of rental real estate
10 without a written, unexpired property management agreement between the owner and the
11 property manager.

12 1.7 For the investigation Parker provided accounting records that he had received
13 from EMC. Included in these was a cash flow statement for the subject property or
14 September 2014, and a cash flow 12-month statement for 2014. In the "Cash Flow" section of
15 the reports were discrepancies where the closing balance for September 2014 was greater
16 than the opening balance for October 2014. Specifically, the ending cash balance for
17 September 2014 was \$13,155.65, and the beginning cash balance for October 2014 was
18 \$1,230.11.

19 **Violation:** By providing reports to Parker relating to the cash flow containing
20 discrepancies between the closing balance for September 2014 and the October 2014
21 opening balance, White violated ORS 696.301(3) (2013 Edition) as it incorporates OAR 863-
22 025-0035(3)(b) (5-15-2014 Edition), which states if a property manager uses a computerized
23 system for creating, maintaining and producing required records of reports: (b) posting of
24 owner ledgers, record of receipts and disbursements, tenant ledgers and manipulation of
25 information and documents must be maintained in a format that will readily enable tracing and
26 reconciliation. White also violated ORS 696.890(4)(a), (c), and (e) (2013 Edition), which state
27 a real estate property manager owes the property owner the following affirmative duties: (a)
28 To deal honestly and in good faith, (c) To exercise reasonable care and diligence, and (e) To
29 act in a fiduciary manner in all matters relating to trust funds. White's conduct is grounds for
30 discipline under ORS 696.301(15) (2013 Edition).

1 1.8 During the investigation, Bale searched the OREA licensing database on May 29,
2 2015, and there were no clients' trust accounts on file for EMC. In White's written response to
3 the initial complaint, she wrote, "You are correct we do not have Client Trust Accounts
4 registered on the OREA database because we do not use Client Trust Accounts. This is
5 because the Property Management Agreements and each tenant's Rental Agreements have
6 the option of having these funds held by the owners. So then these Owner Funds are put into
7 the Owner's Property's Operating Account so it could be used towards their property when
8 needed."

9 1.9 In her interview on July 14, 2015, White confirmed to Bale that none of the bank
10 accounts held by EMC were actually clients' trust accounts. The accounts used by EMC were
11 checking accounts. White said she had quite a few commercial owners as well as residential
12 owners, and none of them had CTAs. White said she would review the situation and open
13 CTAs for each.

14 1.10 A review of the eLicense database on August 5, 2015, and December 4, 2015, a
15 search showed two CTAs had been registered under EMC.

16 **Violation:** By failing to open and maintain a clients' trust account, White violated ORS
17 696.301(3) (2013 and 2015 Editions) as it incorporates OAR 863-025-0025(2) (4-1-13 and 5-
18 15-2014 Editions), and ORS 696.241(2) (2013 and 2015 Editions), which requires a property
19 manager to open and maintain at least one clients' trust account.

20 1.11 When Bale reviewed tenants security deposits for the subject property he found
21 the following. The property management agreement, signed by White when she was an
22 employee at Rushing RE, section 2.11, specified that tenants' security deposits "shall be held
23 in bank account designated to the property. Owner agrees that all leases executed by
24 tenants shall clearly state that Security Deposits shall be held by Manager."

25 1.12 Copies of three tenant agreements were reviewed, one was issued when
26 Rushing RE was the property manager, and the other two were issued when EMC was the
27 property manager. All three had the box checked, "if checked, deposits will be held by owner."

28 1.13 In her interview on April 10, 2015, White said that the tenants' security deposits
29 were paid into the owner's account and left there. So the "held by owner," actually meant held
30 by the manager (EMC) in the owner's account.

1 1.14 Parker supplied a copy of the "rent roll for the subject property as of September
2 30, 2013. The amount shown for tenants' security deposits was \$7,170.00.

3 1.15 Two bank accounts at EMC held owner and tenant funds for the subject property.
4 The first was "Encompass Management and Consulting LLC- Cypress Gardens Business
5 Checking" ending in #5232 and "EMC-Cypress Gardens Client Trust," ending in #5240.

6 1.16 A copy of the Bank of Cascades statement for bank account named "EMC-
7 Cypress Gardens Client Trust" ending in #5240 for October 2013, shows \$7,170.00,
8 transferred from account named "Encompass Management & Consulting LLC-Cypress
9 Gardens Business Checking" account ending in #5232. The effect of this was that tenants'
10 security deposits for the subject property were being held and maintained by White in accounts
11 not registered as a clients' trust security deposits account. Neither of these accounts above
12 were registered with OREA.

13 1.17 The account "EMC-Cypress Gardens Client Trust" ending in #5240, which initially
14 held the tenants' security deposits of \$7,170.00, had the following balances on the following
15 dates: 9/1/2014 \$1,589.60, 9/30/2014 \$2,489.60, 11/2/2014 \$2,378.67, and 11/30/2014
16 \$2,898.71.

17 1.18 In her written response dated June 24, 2015, White wrote, "#5240 is a checking
18 account which was used to save money for capital improvements, deposit returns, etc."

19 **Violation:** By failing to open and maintain a security deposit trust account to hold the
20 tenants' security deposits White was holding, she violated ORS 696.301(3) (2013 and 2015
21 Editions) as it incorporates OAR 863-025-0025(4) (4-1-2013 and 5-15-2014 Editions) which
22 states a property manager who receives a security deposit on behalf of an owner must open
23 and maintain a security deposits account.

24 1.19 On the bank statements for bank account "Encompass Management &
25 Consulting LLC- Cypress Gardens Business Checking" ending in #5232 for January 2014
26 there is an entry "1/29 Overdraft Fee 33.00." The bank statement for this account for
27 December 2013, indicated there had been year to date overdraft fees of \$171.00.

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1 1.20 In her written response dated June 24, 2015, White wrote, "It looks like they were
2 due to Tenant's checks that bounced after we paid the property's bills. We will be happy to
3 pay for these charges." In this written response, White referred to account ending in #5232 as
4 the subject property's operating account.

5 **Violation:** By allowing the subject property's bank account to be overdrawn during the
6 year 2013, White violated ORS 696.890(4)(c), and (e) (2013 Edition), which state a property
7 manager owes the property owner the following affirmative duties: (c) To exercise reasonable
8 care and diligence, (e) To act in a fiduciary manner in all matters relating to trust funds. White's
9 conduct is grounds for discipline under ORS 696.301(15) (2013 Edition).

10 1.21 On December 30, 2014, all four owners of Cypress Gardens signed a notice of
11 termination of the property management agreement, effective January 30, 2015. The
12 agreement specified the new property managers as Homestead Property Management starting
13 on February 1, 2015.

14 1.22 In an email to Bale dated May 14, 2015, Parker wrote, "Valerie White declared
15 the 1/3 property tax bill for Cypress Gardens was paid back in November 2014. It was not."

16 1.23 On December 10, 2014, Parker wrote an email to White, which included the
17 following, "Please pay the property taxes ASAP." On December 11, 2014, White sent an email
18 to Parker including the following, "Due to the painting of the complex the taxes will have to be
19 paid in thirds this year. The first third has already been paid."

20 1.24 The Real Property Tax Statement for account R95404 showed the due date for
21 the payment was November 17, 2014.

22 1.25 The reconciliation report for bank account ending in #5232 for January 2015 had
23 the following entry: "Check#1270 Marion County Tax Collector 1/10/2015 \$4,502.78." This
24 check was presented at the bank on January 21, 2015.

25 1.26 The Marion County Assessor's database on June 10, 2015, showed no receipt of
26 payment on the property tax account for 2014-15, for account R95404 Cypress Gardens until
27 January 15, 2014.

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1 **Violation:** By telling Mr. Parker that the first third of the property taxes had already been
2 paid, when it had not been, White engaged in dishonest conduct in violation of ORS
3 696.301(14) (2013 Edition). White also violated ORS 696.890(4)(a) (2013 Edition), which
4 states, a real property manager owes the property owner the following affirmative duties: (a)
5 To deal honestly and in good faith. White's conduct is grounds for discipline under ORS
6 696.301(15) (2013 Edition).

7 1.27 Parker supplied Bale with a copy of a quote from Central Valley Construction
8 Group, LLC. (Central) for painting the outside of the buildings. The quote, dated May 5, 2015,
9 totaled \$15,675.00, including options. A search of the Secretary of State website showed that
10 Geoff White (White's husband) was the member and agent of Central.

11 1.28 In an email to Bale on June 15, 2015, Parker wrote that Encompass had made
12 the following payments to Central:

- 13 • \$3,135.00 Sept 2014
- 14 • \$2,640.00 Oct 2014
- 15 • \$1,360.00 Oct 2014
- 16 • \$2,000.00 Nov 2014
- 17 • \$4,000.00 Dec 2014
- 18 • \$3,830.49 Jan 2015 "last payment"

19 Total= \$16,965.49

20 In the same email, Parker wrote, "They still have not completed the painting."

21 1.29 Included in another email received from Parker on June 15, 2015, was a report
22 from Gardner to Parker concerning an inspection done on the property on February 19, 2015.
23 Multiple emails were provided for the investigation between Parker and Geoff White, the
24 emails are primarily Parker pointing out the flaws in the work done and Geoff White suggesting
25 resolutions to the problems.

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1 1.30 During the investigation, Bale asked White why the final payment was made on
2 the painting before the job was completed. White wrote in her letter dated, June 24, 2015, "In
3 looking back at bills and notes it looks like the initial payment was made of [sic] to the
4 contractor on 9-4-14 for them to put this painting on the schedule and to get started. They
5 began work about 3 weeks later and they had to fight with a rainy season and bad weather.
6 They also had encountered a large amount [sic] of damage and dry rot that was not accounted
7 for in the initial estimate and had to be repaired to continue on with the job. We did in fact
8 provide them with a final payment in January of this year in error as it was found that the work
9 was not completed to the owner's satisfaction. I have been informed that they have been
10 working directly with the current manager and the work has been completed as of this week.
11 They warranted the work they had done as well as repaired additional [sic] rot that was not in
12 the original scope of the work to make it right with the owners."

13 1.31 In her interview on July 14, 2015, White said the main problems were caused by
14 Geoff White, her husband, employing a subcontractor to do the work. The subcontractor had
15 not done a good enough job. The subcontractor told Geoff White that the work was complete,
16 so EMC paid Central Valley the final amount due.

17 **Violation:** By making the final payment to her husband's company, Central Valley
18 Construction Group, for the building painting of Cypress Gardens, when the work had not been
19 completed to Mr. Parker's satisfaction and with visible defects, White violated ORS
20 696.890(4)(c) and (e) (2013 and 2015 Edition) which states a property manager owes the
21 property owner the following affirmative duties: (c) To exercise reasonable care and diligence
22 and (e) To act in a fiduciary manner in all matters relating to trust funds. White's conduct is
23 grounds for discipline under ORS 696.301(15) (2013 and 2015 Editions).

24 1.32 All of the above demonstrate incompetence in performing acts for which White is
25 required to hold a license.

26 **Violation:** ORS 696.301(12) (2013 and 2015 Editions), which states a licensee's real
27 estate license can be disciplined if they have demonstrated incompetence in performing any
28 act for which the licensee is required to hold a license.

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

STIPULATION & WAIVER

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

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

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ORDER

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

IT IS FURTHER ORDERED that White complete the 27-hour Property Manager Advanced Practices course, (detailed in OAR 863-022-0022) within four (4) months from the effective date of this order. White must submit documentation, such as certificate to OREA showing completion of the 27-hour Property Manager Advanced Practices course. This documentation must be submitted to OREA no later than 10 days after the education has been completed.

IT IS SO STIPULATED:



VALERIE LYNN WHITE

Date 8-2-16

IT IS SO ORDERED:



GENE BENTLEY
Real Estate Commissioner

Date 8.22.16

Date of service: 8/22/2016