

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate License of)

5
6 LINDA WESTPHAL)

STIPULATED FINAL ORDER

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

12 FINDINGS OF FACT
13 &
14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Westphal was licensed as a principal broker with
17 Action Realty.

18 1.2 OREA received two different complaints regarding Westphal. For the first
19 complaint, OREA received a complaint from property owner Scott Landrey (Landrey), dated
20 July 15, 2015, alleging Westphal allowed permanent entry of a renter, without a contract, first
21 and last month's rent, or a security deposit. OREA opened an investigation.

22 1.3 The second complaint was forwarded from the Department of Justice from
23 property owner Nancy Harris (Harris).

24 **Investigation of Landrey's Complaint:**

25 1.4 Landrey and Westphal signed a property management agreement effective
26 August 23, 2012, for property located at 85289 Hwy, 101, Florence, Oregon (85289 Hwy 101).

27 1.5 In April 2014, 85289 Hwy 101 became vacant and Landrey listed it for sale.
28 When a sale didn't occur, Landrey agreed to rent his property again. Westphal learned of a
29 prospective tenant, Heather Thompson (Thompson) who planned to move from Alaska to
30 Florence, OR. Thompson agreed to rent 85289 Hwy 101 upon her arrival from Alaska.

1 1.6 On August 1, 2014, Thompson arrived in Florence, OR, and did not have a place
2 to stay. Westphal allowed Thompson to move into 85289 Hwy 101. At the time of move in
3 Westphal failed to have Thompson sign a tenant agreement, or collect rental income or a
4 security deposit from Thompson. Westphal told Thompson she could come back later that
5 week to pay and sign the lease.

6 **Violation:** By allowing tenant, Thompson, to move into 85289 Hwy 101 without first
7 signing a tenant agreement and paying rent and/or a security deposit, Westphal violated ORS
8 696.890(4)(c),(f) (2013 Edition) which states a property manager owes the property owner the
9 following affirmative duties: c) to exercise reasonable care and diligence; and f) to be loyal to
10 the owner by not taking action that is adverse or detrimental to the owner's interest.

11 1.7 Within a few days after Thompson moved in, Westphal received a call from
12 Thompson, expressing her interest to look for another rental property. She did not want to sign
13 a tenant agreement. Thompson paid rent of \$950.00 for August 2014, and had a partial
14 payment of \$415.00 toward the security deposit of \$1,000.00.

15 1.8 Over the next few weeks, a series of repairs major repairs were required on
16 85289 Hwy 101. On September 2, Westphal and Thompson negotiated a daily rate until
17 Thompson could move out. Landrey accepted the offer to receive a daily rate from Thompson,
18 and gave direction to Westphal, if Thompson changed her mind and decided to stay, he
19 wanted signed documents and the appropriate security deposit. If Thompson would not sign,
20 but pay, Landrey directed Westphal to serve Thompson a thirty day notice and to move
21 forward with an eviction.

22 1.9 On September 3, 2014, Landrey messaged Westphal the following, "So, it
23 sounds like the housing issue is adequate at this time. I take it that she will stay and pay daily
24 until she leaves. If she changes her mind again and wants to stay. I will need it all down on
25 paper, signed. With cash up front. First and last, damage deposit and dog deposit... if she will
26 not sign I want you to give her 30-day's notice if she pays. I want her to leave as soon as it is
27 legally ok to evict her."

28 1.10 On September 3, 2014, Westphal emailed Landrey, the following, "OK. I will take
29 care of it. If she doesn't pay I will give her [sic] 72-hour notice."

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1 1.11 By September 16, 2014, Thompson still occupied 85289 Hwy 101, had not
2 signed a tenant agreement and had not paid any rental income for the month of September
3 2014. As of September 16, 2014, Westphal had not served the seventy-two hour notice.

4 **Violation:** On September 3, 2014, Westphal wrote to Landrey, that she would give
5 Thompson a seventy two (72) hour notice to vacate if she did not pay. Westphal failed to issue
6 the notice, in violation of ORS 696.890(4)(a),(c) (2013 Edition) which states a property
7 manager owes the property owner the following affirmative duties: a) to deal honestly and in
8 good faith; and c) to exercise reasonable care and diligence. Additionally, Westphal created a
9 reasonable probability of damage or injury to a person by making one or more material
10 misrepresentations or false promises in a matter related to professional real estate activity, in
11 violation of ORS 696.301(1) (2013 Edition).

12 1.12 OREA Investigator/Auditor Meghan Lewis (Lewis) reviewed the owner ledger for
13 Landrey. The owner ledger dated January 1, 2014 through December 31, 2014, shows a
14 receipt of cash payments for \$950.00 on August 8, 2014. The transaction was noted as,
15 "Payment from Heather Thompson," and deposited on August 11, 2014. Missing from the
16 owner ledger entry was a lack of description for the purpose of the funds.

17 **Violation:** By failing to include a description of the purpose of the funds on the owner
18 ledger entry, Westphal violated OAR 863-025-0055(3)(b)(B) (5-15-14 Edition) which states all
19 owner ledgers must contain at least the following information: b) for each deposit of funds: B)
20 the purpose of the funds and the identity of the person who tendered the funds.

21 1.13 Further review of Landrey's owner ledger showed the following disbursements
22 causing negative balances:

- 23 • On August 6, 2014, a disbursement of \$29.49 caused a resulting balance of \$-
- 24 18.65, which remained negative until a deposit was made on August 11, 2014,
- 25 which brought the balance positive.
- 26 • On August 26, 2014, a disbursement of \$950.00 caused a resulting balance of -
- 27 \$18.65, which remained negative until a deposit of \$600.00 was made on
- 28 September 17, 2014 which brought the balance positive to \$581.35.

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1 **Violation:** By making or allowing disbursements to be made from Mr. Landrey's owner
2 ledger when there were insufficient funds to do so, Westfall violated OAR 863-025-0025(12)(5-
3 15-2014), which states a property manager must not disburse funds from a clients' trust
4 account or security deposit account unless there are sufficient funds, as defined in OAR 863-
5 025-0010, in the ledger account against which the disbursement is made.

6 **Investigation of Harris' Complaint:**

7 1.14 Harris and Westphal signed a property management agreement for Harris' 1977
8 manufactured home located at 89443 Shorecrest Drive, Florence OR (Shorecrest), effective
9 May 26, 2004. During the term of the property management agreement, which was
10 approximately ten years, multiple renters resided in Shorecrest.

11 1.15 In 2012, Mary and Nathanael Bossen (Bossen) contacted Harris directly about
12 purchasing Shorecrest. Harris agreed to give Bossens time to qualify for a loan to purchase
13 the property. Harris agreed to \$500.00 a month for rent and a \$3,000.00 non-refundable
14 deposit to be held as part of the purchase option. Westphal signed a month to month rental
15 agreement, dated March 2, 2012, with the Bossens for which she collected a ten percent
16 management fee.

17 1.16 An email thread dated May 10, 2012, forwarded from Harris to Westphal
18 indicates Bossen discovered mold in a bedroom and a soft spot in the roof over the bedroom.
19 Bossen stated she would continue to clean with a bleach solution and purchase a mold killing
20 primer and paint the rooms in the summer.

21 1.17 Around February 2014, Bossen notified Harris of a broken board on the porch.
22 Westphal's handyman, Kevin Hughes (Hughes) made the repair and Harris claimed at that
23 time Hughes informed Westphal Shorecrest was "trashed" with dog urine and feces, food
24 everywhere, piles of dirt and clothes and an unbearable stench inside and out.

25 1.18 Westphal explained to Lewis during the investigation she didn't check on the
26 house because she assumed Bossens would be buying Shorecrest. She said often Bossens
27 would contact Harris directly and she wouldn't be informed of repairs or problems.

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1 1.19 Bossens rented from Harris for two years, but ultimately were unable to purchase
2 Shorecrest. The final rent payment was received March 3, 2014. When Westphal surveyed
3 Shorecrest, she found it to be in poor condition.

4 1.20 Westphal requested funds for the removal of debris and cleanup from Harris,
5 since all deposit funds had been sent to Harris.

6 1.21 In April 2014, Harris sent Westphal \$500.00 for repairs.

7 1.22 In an email dated May 8, 2014, Westphal wrote, "Ali brought me the keys this
8 morning and we have arranged for the outside power washing. I have already arranged for a
9 cleaning crew and hopefully it will be done by next week. I will take care of getting the mobile
10 back to the condition before Mary moved in. I will pay for it now and go after Mary for payment
11 and any money I collect from her will be applied to these cleaning/damage issues."

12 1.23 A review of Harris' owner ledger, showed no additional receipts or disbursements
13 for repairs or maintenance occurred between April 22, 2014, and October 27, 2014.

14 1.24 Harris sent Westphal \$1,000.00 which showed to be received October 28, 2014
15 to be used for repairs. Another \$1,000.00 was sent to Westphal to pay for roofing materials
16 which was received January 6, 2015, but was returned for non-sufficient funds.

17 1.25 Per Westphal, during clean up and painting, her handyman Kevin Hughes
18 climbed on the roof and removed parts of the roof to discover water damage. Westphal did not
19 want Hughes to do work beyond his scope but it appeared to be a small leak easily fixed with
20 plywood and they wanted to do the repair as affordable to Harris as possible.

21 1.26 In December 2014, Westphal claimed to have purchased materials at her own
22 expense. Westphal told Lewis her handyman, Hughes covered the roof with a tarp. Sometime
23 around March 2015, Harris communicated directly with Hughes about the roof repairs.

24 1.27 Harris ordered some lumber to be delivered to Shorecrest for repairs. Harris
25 contacted Hughes to ask about the progress of repairs and learned from Hughes that his car
26 had broken down and he hadn't been able to get back to Shorecrest to complete the repairs.
27 Harris alleged Hughes told her that he left Shorecrest's roof exposed.

28 1.28 Shorecrest was vacant from April 2014 through March 2015, when Westphal
29 terminated the property management agreement by written notice dated March 13, 2015.

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1 1.29 In March 2015, Harris contacted another property management company to
2 check on Shorecrest. James Booth, a property management assistant with Dolphin Property
3 Management, obtained keys from Westphal and went to inspect Shorecrest with the intent to
4 manage Harris' rental real estate. Booth described Shorecrest as having the roof torn up and
5 a tarp (which didn't cover the entire roof) had left the interior exposed. Booth said there was
6 water damage throughout the interior and the insulation was falling apart. Booth stated
7 Shorecrest was completely ruined and there was nothing left to manage.

8 1.30 A licensed contractor was contacted to give an estimate and opinion of the
9 property, he submitted an estimate to Harris, which stated based on his professional opinion
10 the structure was a complete loss, and the repair estimate would be in excess of \$60,000.00.

11 **Violation:** By failing to check on the condition of Harris' rental during the Bossen
12 tenancy and failing to ensure further damage to the property didn't occur until the property
13 management agreement was terminated, Westphal violated ORS 696.890(4)(a),(c) (2013
14 Edition) which states a property manager owes the property owner the following affirmative
15 duties: a) to deal honestly and in good faith; and c) to exercise reasonable care and diligence.

16 1.31 A review of Harris' owner ledger indicates the following instances where
17 disbursements were made when there were insufficient funds to do so:

- 18 • On April 14, 2014, a disbursement of \$75.00 caused the resulting balance to be -
19 \$35.00 until April 15, 2014.
- 20 • On October 8, 2014, a disbursement of \$24.21 caused the resulting balance to
21 be \$-23.13 until October 28, 2014.

22 **Violation:** By making disbursements from Harris' owner ledger when there were
23 insufficient funds to do so, Westphal violated OAR 863-025-0025(12) (4-1-13, 5-15-14
24 editions), which states a property manager must not disburse funds from a clients' trust
25 account or security deposits account unless there are sufficient funds, as defined in OAR 863-
26 025-0010, in the ledger account against which the disbursement is made.

27 1.32 As of February 17, 2016, Harris' owner ledger had ending balance of \$15.58 that
28 had not been disbursed to Harris after the property management agreement was terminated in
29 March 2014.

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1 **Violation:** By failing to timely disburse the remaining owner funds after termination of
2 the property management agreement, Westphal violated OAR 863-025-0070(2)(b)(B) (4-1-13,
3 5-15-14 Editions) which states, not later than 60 days after the effective date of the
4 termination, the property manager must disburse all obligated funds to the part or parties
5 entitled to the funds.

6 1.33 All of the above demonstrate incompetence in performing acts for which
7 Westphal is required to hold a license.

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

11 2.

12 2.1 OREA reserves the right to investigate and pursue additional complaints that
13 may be received in the future regarding this licensee.

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15 **STIPULATION & WAIVER**

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

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


ORDER

IT IS HEREBY ORDERED that Westphal's principal broker license be, and hereby is reprimanded.

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

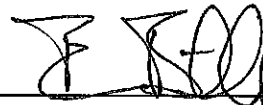
IT IS SO STIPULATED:

IT IS SO ORDERED:



LINDA A. WESTPHAL

Date 6.9.2017



GENE BENTLEY

Real Estate Commissioner

Date 6.13.17

Date of Service: 6/13/2017