

1 REAL ESTATE AGENCY  
2 BEFORE THE REAL ESTATE COMMISSIONER  
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4 In the Matter of the Real Estate License of )  
5 )  
6 JASON GIST ) FINAL ORDER BY DEFAULT  
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10 1.1 On September 25, 2018, the Real Estate Commissioner issued, by certified mail,  
11 a Notice of Intent to revoke Jason Gist's (Gist) property manager license. The Oregon Real  
12 Estate Agency (Agency) sent the Notice of Intent to Gist's last known address of record with  
13 the Agency. The Notice of Intent was also mailed to Gist by regular first class mail in a  
14 handwritten envelope.

15 1.2 The certified mailing of the Notice of Intent and the first class mailing of the  
16 Notice of Intent were sent to Gist at 1867 Williams Hwy Ste 223, Grants Pass, OR 97527.  
17 These mailings have not been returned to the Agency.

18 1.3 The Notice of Intent was also mailed certified and first class mail to Gist's  
19 residence located at 354 Mary Harris Way, Grants Pass, OR 97526. Neither of these mailings  
20 have been returned to the Agency.

21 1.4 The Notice of Intent was also emailed to Gist on September 25, 2018, at his  
22 address on record with the Agency.

23 1.5 Over twenty (20) days have elapsed since the mailing of the notice issued in this  
24 matter and no written request for hearing has been received.

25 1.6 Copies of the entire investigation file are designated as the record for purposes  
26 of default, including any submission from respondent and all information in the administrative  
27 file relating to the mailing of notices and any responses received.

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

1           2.1     Oregon Administrative Rule 863-001-0006 states, in part, that a notice of intent is  
2 properly served when deposited in the United States mail, registered or certified mail,  
3 addressed to the real estate licensee or to any other person having an interest in a proceeding  
4 before the Commissioner at the licensee's or other person's last known address of record with  
5 the Agency.

6           2.2     Gist's last known address of record with the Agency was 1867 Williams Hwy Ste  
7 223, Grants Pass, OR 97527.

8           2.3     A certified mailing of the Notice of Intent was mailed to Gist at his last known  
9 address of record on September 25, 2018. The Notice of Intent was also mailed on the same  
10 day to Gist by regular first class mail in a handwritten envelope. These mailings have not been  
11 returned to the Agency.

12           2.4     The Notice of Intent was also mailed certified and first class mail to Gist's  
13 residence located at 354 Mary Harris Way, Grants Pass, OR 97526 on September 25, 2018.  
14 Neither of these mailings have been returned to the Agency.

15           2.5     The Notice of Intent was emailed to Gist on September 25, 2018, at his email  
16 address on record with the Agency.

17           2.6     The mailing in the handwritten envelopes have not been returned to the Agency.  
18 In accordance with ORS 40.135(1)(q), there is a presumption that the mailing properly  
19 addressed and placed with the U.S. Postal Service was delivered. That presumption has not  
20 been overcome by any evidence.

21           2.7     Over twenty (20) days have elapsed since the mailing of the notice and no  
22 written request for a hearing has been received.

23           2.6     Pursuant to ORS 696.775, the expiration of Gist's license does not prohibit the  
24 Commissioner from proceeding with further action.

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FINDINGS OF FACT  
&  
CONCLUSIONS OF LAW

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3.1 At all times mentioned herein, Gist was licensed as property manager working under the registered business name of Cory's Professional Services.

3.2 Gist's property manager license expired on May 1, 2018.

3.3 On June 14, 2017, a new mandatory mail-in clients' trust account audit was sent to Gist for account ending #0030. Gist responded, noting the account had been closed on February 28, 2013.

3.4 On August, 17, 2017, the Agency mailed Gist a letter advising him to update his clients' trust account records in the Agency's licensing database. As of April 20, 2018, Gist had not notified the Agency in the licensing database that account ending in #0030 had been closed.

**(1) Violation:** By failing to properly notify the Agency of the closed clients' trust account, Gist violated ORS 696.301(3) as it incorporates ORS 696.241(6) (2013 and 2015 Editions), ORS 696.245(3) (2017 Edition) which requires a property manager to properly notify the Agency, within 10 business days after the date the account is closed.

3.5 On December 5, 2017, the Agency sent a mandatory mail-in clients' trust account audit for security deposit account ending in #2208 to Gist, for the month of November 2017. Gist responded on January 8, 2018, with a bank reconciliation report, bank statement and tenant ledger. The reconciliation report was not signed or dated. The tenant ledger failed to show receipts and disbursements of funds, identity of the person who tendered the funds, check numbers or the balance after each recorded entry.

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1 **(2) Violation:** By failing to properly complete a three way monthly reconciliation as  
2 required, Gist violated ORS 696.301(3) as it incorporates OAR 863-025-0025(21)(d)(B) (11-15-  
3 16 Edition) which requires a property manager to reconcile each security deposits account  
4 within 30 calendar days of the bank statement pursuant to the requirements contained in this  
5 section: (d) within 30 calendar days of the date of the bank statement the property manager  
6 must: (B) sign and date the reconciliation document, attesting to the accuracy and  
7 completeness of the reconciliation.

8 3.6 On February 21, 2018, Agency Investigator/Auditor Lisa Montellano (Montellano)  
9 emailed Gist a demand letter requesting Gist provide specific property management records.  
10 Among the documents requested, were invoices or receipts itemizing charges for maintenance  
11 on five properties owned by Bill Herndon (Herndon). Gist provided the invoices from Cory's  
12 Professional Services to Herndon, but he failed to provide any receipts or supporting  
13 documents for the invoices.

14 3.7 On March 13, 2018, Montellano presented a demand letter to Gist for the  
15 production of records. Among the documents requested were, "ALL supporting documents,"  
16 for the five invoices Gist had provided in response to the first demand letter. The due date for  
17 this production request was March 20, 2018. As of April 24, 2018, Gist had not provided all of  
18 the supporting documents for the five invoices relating to Herndon's properties.

19 **(3) Violation:** By failing to produce the documents requested by the Agency from the  
20 February 21, 2018 and March 13, 2018 demand letters, Gist violated ORS 696.301(3) as it  
21 incorporates OAR 863-025-0035(2)(b) (1-1-18 Edition) which requires a property manager to  
22 produce records for inspection by the Agency as follows: (a) when the Agency makes a  
23 request for production of property management records, the property manager must provide  
24 such records within no less than five banking days.

25 3.8 On January 15, 2018, Gist wrote check #5409 for \$1,101.40 to the City of Grants  
26 Pass for water and sewer for eight of Herndon's properties. Herndon received notice from the  
27 city on January 30, 2018, that the check was returned by the bank due to insufficient funds in  
28 the account, resulting in a returned check fee of \$23.50.

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1 **(4) Violation:** By disbursing funds from the clients' trust account without sufficient funds in  
2 the account to do so, Gist violated ORS 696.301(3) as it incorporates ORS 696.890(4)(c) and  
3 (e) (2017 Edition) which states a property manager owes the property owner the following  
4 affirmative duties: (c) to exercise reasonable care and diligence and (e) to act in fiduciary  
5 manner in all matters relating to trust funds. Gist also demonstrated incompetence in violation  
6 of ORS 696.301(12) (2017 Edition).

7 3.9 On April 3, 2017, tenant Jennifer Wallner (Wallner) entered into a rental  
8 agreement for 2548 Lower River Road, a property owned by Jennifer Darby (Darby) and her  
9 husband. A few months later, Darby received information from a neighbor regarding Wallner  
10 and the declining condition of her property.

11 3.10 Darby asked Gist to evict Wallner. Gist indicated to Darby he was evicting  
12 Wallner. Gist emailed Darby several emails providing details and status updates of the alleged  
13 eviction in process.

14 3.11 In his email on August 15, 2017, Gist wrote in part, "Our next hearing is on the  
15 21<sup>st</sup>...we also have another notice expiring on the 31<sup>st</sup> we can enforce as well. Our 8/21 court  
16 date is for deliberation, so, we will have a decision and a move out date from the judge."

17 3.12 In his email August 24, 2017, Gist wrote in part, "We had a hearing yesterday the  
18 judge wanted to give her 60 days... I told him she already has a 60 day termination and he  
19 recommended filing on that one on 8/31 then she would get a couple weeks."

20 3.13 After several months, Darby checked with Josephine County Court and  
21 discovered no eviction had been filed against Wallner for the 2548 Lower River Road property.

22 3.14 Montellano also checked online court records to confirm that no eviction  
23 proceedings had occurred regarding this tenant and property.

24 **(5) Violation:** By providing false information to property owner Darby, Gist violated ORS  
25 696.890(4)(a),(c), and (f) (2015 Edition) which states a property manager owes the property  
26 owner the following affirmative duties: (a) to deal honestly and in good faith, (c) to exercise  
27 reasonable care and diligence, (f) to be loyal to the owner by not taking action that is adverse  
28 or detrimental to the owner's interest. Gist's conduct is grounds for discipline under ORS  
29 696.301(12), (14) and (15).

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1           3.15 Gist told Montellano, he had given Wallner a 60 day no cause notice, but later  
2 decided not to evict her. Gist said he relocated Wallner to 594 Larch Road, a property owned  
3 by Herndon.

4           3.16 On March 7, 2018, Gist emailed Montellano a document he claimed was a rental  
5 agreement for tenant Wallner for 594 Larch Road property. The signature pages of the rental  
6 agreement have the signature of Ashley Wilson, as the Lessor, Agent for the Owner. Ashley  
7 Wilson, was an independent contractor who had worked for Gist.

8           3.17 Montellano contacted Ashley Wilson on April 6, 2018, and emailed her the  
9 signature page from the Larch Road rental agreement Gist had provided. Wilson confirmed  
10 the signature was hers, but said she could not have signed the rental agreement because it  
11 was dated October 24, 2017.

12           3.18 Wilson left Cory's Professional Services on June 30, 2017, and did not work  
13 there again. Wilson forwarded an email she had sent to Gist on June 22, explaining that June  
14 30<sup>th</sup> would be her last day working for Cory's Professional Services.

15           3.19 In February 2018, Herndon hired 221 Property Services as his new property  
16 management company. When Herndon and Pam Hurlburt (Hurlburt), owner of 221 Property  
17 Services, Inc., contacted Wallner to try to track down a copy of the rental agreement, Wallner  
18 told them she had asked Gist for one but had never received one.

19 **(6) Violation** By creating a fraudulent lease agreement for tenant Wallner and providing it  
20 to the Agency, Gist violated ORS 696.301(14) (2015 and 2017 Editions) which states a real  
21 estate license may be disciplined if the licensee committed an act of fraud or engaged in  
22 dishonest conduct substantially related to the fitness of the applicant or real estate licensee to  
23 conduct professional real estate activity, without regard to whether the act or conduct occurred  
24 in the course of professional real estate activity.

25           3.20 Gist was unable to account for multiple tenants' security deposits:

26 Jennifer Wallner (Wallner):

27           3.21 The rental agreement for 2548 Lower River Road, dated April 3, 2017, listed a  
28 security deposit of \$1,500. Wallner moved out of 2548 Lower River Road and was relocated  
29 into Herndon's property at 594 Larch Road. Gist said Wallner moved into Larch Rd in October  
30 2017, but didn't vacate Lower River Road until December 2017.

1           3.22 Gist provided a tenant ledger for Wallner at 2548 Lower River Road. The last  
2 two entries on the tenant ledger are dated January 1, 2018: one is a check #1018 for \$1,500,  
3 with a comment "Security Deposit Refund," and the other is for \$253.67 with the comment,  
4 "Refund Tenant Overpayment," with no check number listed.

5           3.23 When questioned about the status of the security deposit for Wallner, Gist told  
6 Montellano that Wallner had left 2545 Lower River Road (Darby's property) immaculate so  
7 there was no need to deduct anything from it, and that the security deposit transferred to the  
8 new property with Wallner.

9           3.24 An email from Darby, dated January 24, 2018, indicates there was trash left  
10 behind at the property, and asked Gist if money was taken out of the security deposit to cover  
11 it.

12           3.25 On January 24, 2018, Gist responded in part with the following, "Yes those funds  
13 were claimed for trash out cleaning and damage."

14           3.26 No cleanup had been done or arranged for on the property by Gist. Darby had to  
15 pay to have the property cleaned up and never received any portion of Wallner's security  
16 deposit to help cover the cost.

17           3.27 When Gist moved Wallner over to 594 Larch Road (Herndon's property) the  
18 document provided as the alleged rental agreement lists a security deposit of \$1,350.00, the  
19 document states that the security deposit will transfer from 2548 Lower River Road to the new  
20 unit and any amount needed to bring the security deposit to \$1,350 is due and payable within  
21 45 days.

22           3.28 Gist said the difference between the two security deposits \$1,500 to \$1,350 was  
23 kept for cleaning, which was not true.

24           3.29 On March 13, 2018, Montellano was able to have Gist confirm the January 1,  
25 2018, check #1018 (refunding Wallner's security deposit) had not cleared the bank. Gist never  
26 indicated that Wallner's security deposit was owner held, yet it was not included on the ledger  
27 of all security deposits held by Cory's Professional Services. Wallner's deposit was not  
28 transferred to the 594 Larch Road property, nor was it refunded. Wallner's entire security  
29 deposit appears to be unaccounted for.

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1 Kacie Huntley (Huntley):

2 3.30 The rental agreement dated July 20, 2017, listed a security deposit of \$1,325.  
3 The rental agreement indicates that Gist was holding the security deposit. A Notice to Tenant  
4 letter, dated August 1, 2017, informed the tenant that the security deposit will be held by the  
5 property owner, Herndon. Huntley's name does not appear on the letter Gist provided  
6 regarding the transfer of security deposits to Herndon, nor does it appear on the ledger of all  
7 security deposits held by Cory's Professional Services. Herndon reported never receiving the  
8 security deposit funds and Gist did not provide documentation showing the funds were  
9 transferred to Herndon. Huntley's security deposit appears to be unaccounted for.

10 Jenna and Joshua Ortega (Ortegas):

11 3.31 The rental agreement dated March 23, 2015, listed a security deposit of \$2,250.  
12 The rental agreement indicates that Gist was holding the security deposit. A Notice to Tenant  
13 letter dated August 1, 2017, informed the tenant that the security deposit will be held by the  
14 property owner, Herndon. The Ortegas' names do not appear on Gist's July 31, 2017 letter to  
15 Herndon regarding the transfer of security deposits to him. The Ortegas do not appear on the  
16 ledger of all security deposits held by Cory's Professional Services. Herndon reported never  
17 receiving the security deposit funds and Gist did not provide documentation showing the funds  
18 were transferred to Herndon. The Ortega's security deposit appears to be unaccounted for.

19 Carla Adkins (Adkins):

20 3.32 Two rental agreements were provided for this tenant. The first agreement dated  
21 September 17, 2016, for 1400 Kokanee Lane indicates that the security deposit was \$1,700.  
22 The rental agreement indicates that Gist was holding the security deposit. A Notice to Tenant  
23 letter dated August 1, 2017, informed the tenant that the security deposit will be held by the  
24 property owner, Herndon.

25 3.33 The second rental agreement for 711A SW Fort Street, dated February 9, 2018,  
26 indicates the security deposit was \$2,000 and will be held by Gist. A Notice to Tenant letter  
27 dated February 9, 2018, informed the tenant that the security deposit will be held by the  
28 property owner, Herndon.

29 3.34 The general ledger during this timeframe (January 1, 2017- March 13, 2018)  
30 does not show any security deposits transferred to the owner.



1           3.35    There was no record of the \$1,700 security deposit being refunded to the tenant,  
2 nor the \$2,000 being collected on the second property. There is nothing to indicate that Adkins  
3 paid the \$300.00 difference, or any record that it was transferred to the property owner. At  
4 least \$300.00 is unaccounted for.

5 Benjamin Villasenor (Villasenor) and Maria Gonzalez (Gonzalez):

6           3.36    On August 19, 2017, Villasenor and Gonzalez signed a rental agreement for  
7 4080 Azalea Drive. The agreement states that the security deposit was \$1,650 and indicates  
8 Gist would hold the security deposit. In a Notice to Tenant letter dated August 30, 2017, Gist  
9 informs the tenants that the security deposit will be held by the property owner.

10          3.37    For the investigation, Gist produced a tenant ledger with handwritten amounts  
11 next to five rent payments. Gist said he allowed the tenants to make payment arrangements  
12 for the security deposit. Gist said the tenants moved out in February 2018, but continued to  
13 pay down the balance.

14          3.38    The tenant ledger showed Gist billed a security deposit of \$1,650 and the tenant  
15 ledger he provided shows \$1,650 in alleged payments made towards the security deposit.

16          3.39    Villasenor's name appears on Gist's July 31, 2017 letter to Herndon regarding  
17 the transfer of security deposits to him, however the security deposit amount is listed as  
18 \$1,100. Gist was unable to show the paper trail where the security deposit was actually  
19 transferred to Herndon.

20          3.40    The tenant ledger does not show a security deposit refund or any claims against  
21 the security deposit when the tenants moved out in February 2018. Villasenor and Gonzalez'  
22 security deposit appears to be unaccounted for.

23 Dovie Shuler (Shuler) and Shawn Woods (Woods):

24          3.41    On September 20, 2017, Shuler and Woods signed a rental agreement showing  
25 a security deposit of \$1,150.00. The rental agreement indicates Gist holds the security  
26 deposit.

27          3.42    In a Notice to Tenant letter dated September 30, 2017, Gist informs the tenants  
28 that the security deposit will be held by the property owner.

29          3.43    In Gist's letter to Herndon, dated July 31, 2017, notifying Herndon of the transfer  
30 of the security deposits, Shuler is listed with a security deposit amount of \$850.00. Neither

1 Shuler nor Woods appear on the list of security deposits held by Gist. At least \$300.00 of their  
2 security deposit is unaccounted for.

3 **(7) Violation:** By failing to properly account for tenants security deposits for the above  
4 tenants, Gist violated ORS 696.890(4)(a),(c),(d),(e), (f) (2015 Edition), which states a property  
5 manager owes the property owner the following affirmative duties: (a) to deal honestly and in  
6 good faith; (c) to exercise reasonable care and diligence; (d) to account in a timely manner for  
7 all the funds received from or on behalf of the owner; (e) to act in a fiduciary manner in all  
8 matters relating to the trust funds, and (f) to be loyal to the owner by not taking action that is  
9 adverse or detrimental to the owner's interest. Gist's conduct is grounds for discipline under  
10 ORS 696.301(12), and (15). Gist also violated ORS 696.301(3) as it incorporates OAR 863-  
11 025-0030(1) (11-15-16 Edition), which states all tenants' security deposits received by a  
12 property manager must be deposited and maintained in a security deposits account until: (a)  
13 the property manager forwards the tenant's security deposit to the owner of the property  
14 according to the terms of the tenant's rental or lease agreement and the property management  
15 agreement; (b) the property manager disburses the tenant's security deposit for the purposes  
16 authorized by the tenant's rental or lease agreement and the property management  
17 agreement; (c) the property manager refunds a deposit to the tenant according to the terms of  
18 the tenant's rental or lease agreement and the property management agreement; or (d) the  
19 property management agreement is terminated and the property manager transfers the  
20 tenant's security deposit to the owner unless the owner directs the property manager, in  
21 writing, to transfer the security deposits and fees to another property manager, escrow agent  
22 or person.

23 3.44 Gist explained his process for owner held security deposits to Montellano. First,  
24 Gist would collect the deposit, which he then deposits into the owner's clients' trust account,  
25 where it is held until the end of the month and then is paid out to the owner. Gist said Herndon  
26 was the only owner who held the security deposits. He said he would send Herndon an email  
27 when Gist was disbursing funds to Herndon, notifying him that a portion of the disbursement  
28 was a security deposit.

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1           3.45    On March 13, 2018, while at Gist's office, Montellano requested Gist provide the  
2 email he would have sent to Herndon regarding tenant Julie Cynor's security deposit  
3 disbursement. After searching his email account, Gist was unable to locate the email. Gist  
4 attempted to log into another account but his password was incorrect. Gist left the office with  
5 his phone to use the restroom. Gist returned from the restroom and attempted to log in to his  
6 email again, however his password was not working. He then decided to access his email on  
7 his phone.

8           3.46    Using his phone, Gist immediately located an email dated October 31, 2017,  
9 where he notified Herndon that a \$1,850 security deposit for Cynor was being included in  
10 October's owner's draw. Gist forwarded the email to Montellano. The email shows a date of  
11 October 31, 2017, and was sent to Herndon's personal email account instead of his business  
12 email account.

13           3.47    On March 14, 2018, Montellano contacted Herndon asking him to check for any  
14 email received October 31, 2017 from Gist. Herndon then offered that he had just received an  
15 email from Gist regarding a security deposit. Montellano asked Herndon to forward the email  
16 he had just received from Gist.

17           3.48    The email Herndon recently received from Gist matched what Gist provided to  
18 Montellano exactly, other than the date it was sent to Herndon.

19           3.49    Herndon received the email on March 13, 2018, at 1:18, sent by Gist, during the  
20 time he stepped out of his office to visit the building's restroom.

21           3.50    Gist had not emailed Herndon on October 31, 2017, relating to Cynor's security  
22 deposit disbursement, as he claimed.

23 **(8) Violation:** By creating a fraudulent email and providing it to Herndon and the Agency,  
24 regarding the \$1,850 security deposit for tenant, Julie Cynor, Gist violated ORS 696.301(14)  
25 (2017 Edition) which states a real estate licensee may be disciplined if the licensee committed  
26 an act of fraud or engaged in dishonest conduct substantially related to the fitness of the  
27 applicant or real estate licensee to conduct professional real estate activity, without regard to  
28 whether the act or conduct occurred in the course of professional real estate activity.

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1           3.51 A review of invoices relating to Herndon's properties shows multiple times when  
2 Gist charged Herndon a 10% project management fee for property cleanup for turnover and on  
3 supplies.

- 4           • Invoice 7302 dated June 21, 2017 for 4080 Azalea Drive shows Gist charged  
5 Herndon a 10% project management fee on property cleanup for turnover, trash  
6 and debris removal, and supplies such as fixtures, electrical and plumbing.
- 7           • Invoice #7718 dated October 6, 2017, for 1134 Bridge Street Unit A shows Gist  
8 charged Herndon a 10% project management fee on property cleanup for  
9 turnover, trash and debris removal, and supplies such as fixtures, mirrors, sinks,  
10 plates, blinds and trim.
- 11          • Invoice #7721 dated November 3, 2017, for 1134 SW Bridge Street Unit B shows  
12 Gist charged Herndon a 10% project management fee on property cleanup for  
13 turnover, trash and debris removal and supplies such as fixtures, mirrors, sinks,  
14 plates, blinds and trim.
- 15          • Invoice #7293 dated November 3, 2017, for 711A SW Fourth Street shows Gist  
16 charged Herndon the 10% project management fee on roofing materials.

17           3.52 Herndon's property management agreement stated the following regarding the  
18 project management fee:

19           “(11) In addition to the compensation described in the previous paragraph, if manager  
20 becomes responsible for arranging, organizing, or supervising extraordinary alterations,  
21 improvements or remodeling to the property, or any part thereof, for which the costs  
22 exceeds \$1,000.00, manager shall receive additional compensation upon the  
23 completion of such work, which compensation shall be equivalent to 10% of the gross  
24 cost of such work.”

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1 **(9) Violation:** By charging Herndon a 10% project management fee for cleanup for  
2 turnover and supplies, Gist violated ORS 696.890(4)(a),(c),(e),(f) (2015 Edition) which states a  
3 property manager owes the property owner the following affirmative duties: (a) to deal honestly  
4 and in good faith; (c) to exercise reasonable care and diligence; (e) to act in a fiduciary manner  
5 in all matters relating to the trust funds, and (f) to be loyal to the owner by not taking action that  
6 is adverse or detrimental to the owner's interest. Gist's conduct is grounds for discipline under  
7 ORS 696.301(12), and (15).

8 3.53 Gist charged Herndon for work that that had not been done. Invoice #7302 dated  
9 June 21, 2017, for Azalea Drive (one of Herndon's properties) showed a charge for: "Air Duct  
10 System for HVAC Remove/Dispose [sic] and Install New, Attach and Hang 16 hours 3 workers  
11 \$2,960.00."

12 3.54 Herndon hired Valley Heating and Air (Valley) to repair the heat pump on Azalea.  
13 On March 8, 2018, Valley workers notified Herndon that some of the new ducts were not  
14 connected, and that Gist's workers had left all of the old ducting lying under the house.

15 **(10) Violation:** By charging property owner Herndon for services not provided, Gist violated  
16 ORS 696.890(4)(a),(c),(e), (f) (2015 Edition) which states a property manager owes the  
17 property owner the following affirmative duties: (a) to deal honestly and in good faith; (c) to  
18 exercise reasonable care and diligence; (e) to act in a fiduciary manner in all matters relating  
19 to the trust funds, and (f) to be loyal to the owner by not taking action that is adverse or  
20 detrimental to the owner's interest. Gist's conduct is grounds for discipline under ORS  
21 696.301(12), and (15).

22 3.55 Herndon received two estimates for roof repair from licensed, bonded roofing  
23 companies for 711A Fourth Street.

- 24 • Tim Crary Construction for \$6,850,
- 25 • Eric Preston Roofing LLC for \$7,860.

26 3.56 Both estimates were for similar materials. Gist ended up having his independent  
27 contractors do the job. Herndon said Gist promised him a special labor rate of \$15.50 per hour  
28 for the independent contractors doing the job.

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1           3.57 Invoice #7293 dated November 3, 2017, for 711 SW Fourth Street showed labor  
2 as a 3 man crew labor at 32 hours for a cost of \$5,740.00. This breaks down into  
3 approximately an average of \$179.00 per hour for all three contractors.

4           3.58 However, Gist reported to Montellano that he charged Herndon \$185.00 per hour  
5 on average, for all three independent contractors, claiming that it was the current market rate  
6 for skilled labor.

7           3.59 Gist told Montellano that he has each independent contractor turn in their time  
8 cards and he pays them, then marks up the labor cost to fair market value which he considers  
9 to be \$185 per hour for all three independent contractors. Gist said he pays one worker  
10 \$30/per hour and the other two \$15-\$20 per hour. Dave Winterbourne (Winterbourne), the  
11 lead independent contractor for Gist, reported to Montellano that the independent contractors  
12 actually received the following rates for their work: Winterbourne, \$22 per hour, Wesley  
13 Conklin, \$13 per hour, and Benjamin Villasenor, \$15 per hour.

14           3.60 The property management agreement does not address labor costs.

15           3.61 A review of several invoices billed to Darby by Gist show labor charges of \$50.00  
16 per hour.

17 **(11) Violation:** By up-charging the labor to \$185.00 per hour for the roof repairs Gist violated  
18 ORS 696.890(4)(a),(c),(e),(f) (2015 Edition) which states a property manager owes the  
19 property owner the following affirmative duties: (a) to deal honestly and in good faith; (c) to  
20 exercise reasonable care and diligence; (e) to act in a fiduciary manner in all matters relating  
21 to the trust funds, (f) to be loyal to the owner by not taking action that is adverse or detrimental  
22 to the owner's interest. Gist's conduct is grounds for discipline under ORS 696.301(12), and  
23 (15).

24           3.62 During an interview with Gist, on February 28, 2018, Gist told Montellano that  
25 Herndon had asked him to stop sending receipts with his owner statements. Gist said he  
26 could provide a copy of the email from Herndon to prove it. Gist later forwarded an email from  
27 Herndon to himself dated September 8, 2017. The email read in part, "Also because the  
28 monthly statements are quite large please stop sending the copies of all the bills paid every  
29 month. If we need copies of any bills we can always get them later."

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1           3.63 The forwarded email had two different headers showing it was sent from  
2 Herndon, they had different fonts and contained different information. Herndon's daughter,  
3 Kayla Herndon, was also copied on the email. Montellano had Herndon search both of his  
4 email accounts and he was unable to locate an email on any date with the subject line: "3520B  
5 WRONG RENT, & Mtg Followup." Kayla Herndon, however, located an email dated  
6 September 7, 2017, with the subject line "3520B WRONG RENT, & Mtg Followup." The email  
7 was identical to the one Gist provided to Montellano, except it did not contain the verbiage,  
8 "Also because the monthly statements are quite large please stop sending the copies of all the  
9 bills paid every month. If we need copies of any bills we can always get them later."

10 **(12) Violation:** By fraudulently altering email correspondence and providing it to the  
11 Agency, Gist violated ORS 696.301(14) (2015 Edition). Per ORS 696.301(14) a real estate  
12 license may be disciplined if the licensee committed an act of fraud or engaged in dishonest  
13 conduct substantially related to the fitness of the applicant or real estate licensee to conduct  
14 professional real estate activity, without regard to whether the act or conduct occurred in the  
15 course of professional real estate activity.

16           3.64 A Profit & Loss 12 Month Recap shows Gist deducted the following property  
17 management fees from clients' trust account ending #3008:

- 18           • January \$1,648.98
- 19           • February \$1,876.54
- 20           • March \$0.00
- 21           • April \$0.00
- 22           • May \$5,714.75
- 23           • June \$0.00
- 24           • July \$0.00
- 25           • August \$0.00
- 26           • September \$6,638.82
- 27           • October \$0.00
- 28           • November \$0.00
- 29           • December \$0.00

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1           3.65 During the months where no property management fee was collected, incoming  
2 rents were received consistently.

3           3.66 The report indicates each month there was sufficient funds in the account for Gist  
4 to withdraw his management fee.

5           3.67 Property management agreement for 4080 Azalea stated: "(10) Manager shall  
6 receive from owner either a monthly fee equal to 5 ½% [sic] Of the gross receipts collected by  
7 manager in connection with the operation of the property or the sum of \$n/a, whichever is  
8 greater. Such compensation shall be disbursed monthly by manager to manager as an  
9 expense of the operation of the property."

10 **(13) Violation:** By failing to timely remove his property management fee from the clients'  
11 trust account ending in #3008, Gist violated ORS 696.301(3) as it incorporates OAR 863-025-  
12 0025(15) and OAR 863-025-0065(3) (11-15-16 Edition). Per OAR 863-025-0025(15) a  
13 property manager must disburse earned management fees from a clients' trust account at  
14 least once each month unless a different schedule of disbursement is specified in the property  
15 management agreement, and may only disburse such fees if sufficient funds are available.  
16 Per OAR 863-025-0065(3) a property manager may not deposit any funds received on behalf  
17 of an owner in the property manager's personal account or commingle any such funds  
18 received with the personal funds of the property manager. Gist also violated ORS  
19 696.890(4)(a),(c),(e),(f) (2015 Edition) which states a property manager owes the property  
20 owner the following affirmative duties: (a) to deal honestly and in good faith; (c) to exercise  
21 reasonable care and diligence; (e) to act in a fiduciary manner in all matters relating to the trust  
22 funds, Gist's conduct is grounds for discipline under ORS 696.301(12), (14), and (15).

23           3.68 All of the above demonstrates incompetence in performing acts for which Gist is  
24 required to hold a license.

25 **(14) Violation:** ORS 696.301(12) (2015 and 2017 Editions) which states a real estate  
26 license can be disciplined if the licensee demonstrates incompetence or untrustworthiness in  
27 performing any act for which the licensee is required to hold a license.

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4.

4.1 The above violations are grounds for discipline pursuant to ORS 696.301.

4.2 Based on these violations, the Agency is revoking Gist's property manager license. A revocation is appropriate for violations of ORS 696.301(12) and (14).

4.3 A revocation of Gist's property manager license is appropriate under ORS 696.396(2)(c)(B) and (C). According to ORS 696.396 the Agency may revoke a real estate license if material facts establish a violation of a ground of discipline under ORS 696.301 that exhibits incompetence in the performance of professional real estate activity, or exhibits dishonesty or fraudulent conduct.

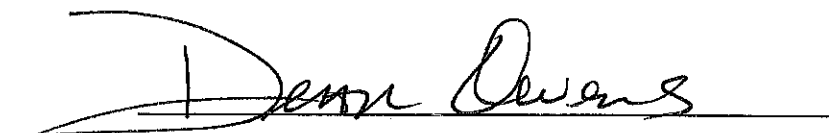
4.4 The Agency reserves the rights to investigate or pursue additional complaints that may be received in the future regarding this licensee.

ORDER

IT IS HEREBY ORDERED that Gist's property manager license is revoked.

Dated this 22<sup>nd</sup> day of October, 2018.

OREGON REAL ESTATE AGENCY



Dean Owens

Acting Real Estate Commissioner

Date of Service: 10/22/2018

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.