

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

DOROTHY D. ZIEBERT

}
} FINAL ORDER BY DEFAULT
}

PROCEDURAL HISTORY

1.

1.1 On August 8, 2018, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Revoke* the real estate principal broker license of Dorothy D. Ziebert (Ziebert).¹ The Oregon Real Estate Agency (Agency) sent the Notice of Intent to Ziebert's last known address of record with the Agency (PO Box 72025 Springfield, OR 97475). The *Notice of Intent* was also mailed to Ziebert by regular first class mail. The certified mailing return receipt showed the *Notice of Intent* was received by Ziebert on August 15, 2018. The regular first class mailing was not returned to the Agency.

1.2 By letter dated August 15, 2018, Ziebert, through her attorney Adam Shultz, requested a hearing in this matter.² On December 6, 2018, the Agency referred the matter to Office of Administrative Hearings (OAH)³ who scheduled a Pre-Hearing Conference for February 6, 2019.⁴ On January 28, 2019, Attorney Adam Schultz advised OAH and the Agency that he no longer represented Ms. Ziebert.⁵ Thereafter on January 31, 2019, Ms. Ziebert advised OAH that she would be present at the "hearing",⁶ Ms. Ziebert did not appear at the Pre-hearing Conference and the Hearing was scheduled, in her absence, for October 1-

¹ P1.

² P2.

³ P3 and P4.

⁴ P5.

⁵ P6 page 1.

⁶ P7.

3, 2019.⁷ Ms. Ziebert was advised of the Hearing date in a February 6, 2019, Pre-Hearing Conference letter from Administrative Law Judge (ALJ) Gutman and again on February 6, 2019, through the *Notice of In-Person Hearing*.⁸

1.3 On September 17, 2019, the Real Estate Commissioner issued an *Amended Notice of Intent to Revoke* the principal broker license of Ziebert.⁹ The *Amended Notice of Intent* was mailed both certified and regular first class mail to the following addresses: PO Box 72025 Springfield, OR 97475 (Agency address of record) and 380 Q Street, Springfield, OR 97477. The certified mailing return receipt for the mailing to 380 Q Street, Springfield, OR showed the *Amended Notice of Intent* was received by Ziebert on September 23, 2019. The certified mailing return receipt for the mailing to PO Box 72025 Springfield, OR 97475 showed the *Amended Notice of Intent* was received by Ziebert on October 21, 2019. The regular first class mailing was not returned to the Agency.

1.4 A Protective Order was issued on September 20, 2019, which permitted the agency to share its investigative documents with its prior investigator for purposes of preparation for Hearing.¹⁰

1.5 On September 17, 2019, the Agency's Exhibits, Witness List, and Pleading Index were filed with the OAH. The Agency filed a Supplemental Exhibit Index and relevant Supplemental Exhibits on September 27, 2019. On the same date, the Supplemental Exhibit Index and Supplemental Exhibits were emailed to Respondent Ziebert.

1.6 Ziebert did not appear at the hearing, nor did she notify the Agency or the OAH that she would not appear at the scheduled hearing.

1.7 The ALJ and the Agency remained at the Hearing room for twenty (20) minutes past the time set for Hearing before going on the record to document that Respondent had failed to appear.¹¹

1.8 The Agency, in its *Notice of Intent* and *Amended Notice of Intent*, designated its entire investigation file for inclusion in the evidentiary record for purposes of default, including

⁷ P8 and P9.

⁸ P9 and P10.

⁹ P12.

¹⁰ P11 and P13.

¹¹ OAH Hearing audio.

all submissions from respondent and all information in the administrative file relating to the mailing of notices and any responses received.¹²

2.

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

FINDINGS OF FACT

2.1 On June 20, 2014, the Agency received Preferred Professional Property Management's (PPPM) response to a mandatory mail in audit of a security deposits account ending in #2293.¹³ Agency staff identified deficiencies in the documentation submitted in the response and, it appeared the account was short.¹⁴ The Agency opened an investigation.¹⁵

2.2 Thereafter, on June 24, 2015, the Agency received a complaint from Martin Lay (Lay); this was opened as a separate investigation.¹⁶

Investigation: 2014 Clients' Trust Account Audit.

2.3 As of the start of the investigation on September 17, 2014, Ziebert was licensed as a principal broker doing business under the registered business name of Preferred Northwest Realty (PNR).¹⁷

2.4 Ziebert also had part ownership (51% share) of another company named Preferred Professional Property Management (PPPM) and her daughter Cindy Webber (Webber) owned the other 49% share.¹⁸

2.5 As of the start of the investigation, on September 17, 2014, Ziebert's license was not associated with PPPM and PPPM was not affiliated with Preferred Northwest Realty.¹⁹

¹² P1 and P12.

¹³ Ex. A7 pages 1-8.

¹⁴ Ex. A7 pages 1-8 and Ex. A7.4 page 12.

¹⁵ Ex. A7 pages 1-8.

¹⁶ Ex. A8 and Ex. A9.

¹⁷ Ex A. 7 at Ex.A7.2; Ex.A10 and Ex.A11.

¹⁸ *Id.* at Ex.A7.1, Ex.A7.2 and Ex.A7.3.

¹⁹ *Id.* and Ex. A7.4, Ex. A7.5 and Ex. A11.

2.6 Notwithstanding the above, Ziebert handled most of PPPM's field work such as property inspections and showing rentals to prospective tenants. She also managed the company's bookkeeping and accounting records. All of the above occurred during the time that Ziebert's license was not associated with PPPM. Prior to October 2014, Ziebert was also responsible for PPPM's accounting. During that time, there was no written delegation of authority between Ziebert and Webber.²⁰

2.7 In October 2014, after the commencement of the agency audit, Webber and Ziebert decided to hire a bookkeeper. The Agency determined that as of January 26, 2015, Webber had just recently hired bookkeeper Sue Harris to assist with accounting.²¹

2.8 The Agency investigator also determined during the audit that in 2012 a storm caused major damage to a rental home managed by PPPM at 35 E. C Street, Halsey, OR 97348, owned by Phyllis Barker (Barker). Barker's insurance company covered much of the damage to the rental home however, it did not cover the entirety of the needed repairs. Vendor invoices totaled \$28,000, and the insurance payment was only \$17,867.20. The shortfall equaled \$10,780. Barker did not have sufficient funds in her owner account to cover the out of pocket cost of the repairs.²²

2.9 Because of the deficiency in Barker's account, Ziebert took it upon herself to use multiple tenants' security deposit funds from the tenants' security deposit account #2293²³ to pay the outstanding repair expenses on Barker's behalf. On May 4, 2012, check #456 for \$10,780 was transferred out of the tenants' security deposits account. The description for check #456, noted on the internal record of disbursement for the check entry was, "[trust 7643] PPPM BARKER," (the clients' trust account ends in #7643). These funds were used to pay expenses on Barker's behalf.²⁴

2.10 Ziebert planned to then withhold a portion of Barker's monthly owner draws and apply those funds to the security deposit account, to repay Barker's debt.²⁵

²⁰ *Id.*

²¹ *Id.*

²² *Id.* and Ex. A7.4, Ex. A7.5, Ex. A7.7, Ex. A7.8 and Ex. A11.

²³ This account was later renamed and renumbered as #2415.

²⁴ *Id.* and Ex. A7.4, Ex. A7.5, Ex. A7.7, Ex. A7.8 and Ex. A11.

²⁵ Ex. A7.4 page 13 Ex. A7.5 pages 16-18 and Ex. A11.

2.11 Ziebert and Webber considered the \$10,780 used on Barker's behalf to be a loan. There was no written contract, payment plan or promissory note related to this debt.²⁶

2.12 A handwritten ledger reflects the following 5 payments on the loan:

- July 9, 2014, \$1,000 payment, remaining balance \$9,780.00
- August 8, 2014, \$1,000 payment, remaining balance \$8,780.00
- (Month and day not clear) 2014, \$ 1,000 payment, remaining balance \$7,780.00
- January 7, 2015, \$1,500 payment, remaining balance \$6,280.00
- February 9, 2015, \$6,280 payment, remaining balance \$0.00²⁷

2.13 A copy of the Siuslaw Bank statement dated February 27, 2015, for account ending in #2415 showed the account name as "Client Trust Acct Security Dep."²⁸

2.14 On February 26, 2015, the Agency issued a written demand for documentation for the clients' trust account and security deposit on file with the Agency (clients' trust account ending in #7643 and tenants' security deposits ending in #2415²⁹). The demand requested the three way reconciliations for the month of February 2015 for both accounts. These documents were to be submitted by March 9, 2015. The records were not provided until April 30, 2015.³⁰

2.15 Reconciliation documentation received by the Agency on May 8, 2015, included a bank statement for account ending in #7643 at US Bank for the month of February 2015. The name of the account was titled "Preferred Professional Property Managem [sic] Real Estate Trust Account," on the bank statement.³¹

2.16 On May 12, 2015, the Agency received reconciliation packets for the months of February 2015 (a second submission for February 2015, with different totals and additional documentation that was not previously submitted), March 2015, and April 2015. The reconciliations were for clients' trust account ending in #7643. The clients' trust account ending in #7643 held funds for multiple properties.³²

²⁶ Ex. A7.8.

²⁷ Ex. A7.9.

²⁸ Ex. A7.11 page 27.

²⁹ Formerly known as #2293.

³⁰ Ex. A 7.10 page 23 -24.

³¹ Ex. A7.17 pages 59-63.

³² Ex. A7.18 (pages 64-75), Ex. A7.17(pages 75 to 86), Ex. A7.20 (pages 87 to 99).

2.17 The three-way reconciliation document had been reviewed and signed by Ziebert. Each packet contained a receipts and disbursement journal. The receipts and disbursement journal did not contain transaction descriptions or identifying codes for all entries. There were several entries listed simply as, "RENT INCOME," and did not indicate which tenants had paid the rent or for which properties the rent had been paid.³³

2.18 Each of the reconciliation packets included a report which was meant to serve as an owners' ledger. There were no transaction dates or descriptions present on the owners' ledgers.³⁴

2.19 The three components of the reconciliation were out of balance on the May 12, 2015 clients' trust reconciliation submissions for February 2015, March 2015 and April 2015 for clients' trust account ending in #7643.³⁵

2.20 All three months indicated that there was less money in the bank than what was recorded on the owners' ledger.³⁶

2.21 For February 2015, there was a stated difference of \$2,889.06. On the reconciliation form there was the following explanation, "During the month of February, an error in computing was discovered in the property management software. We have been in contact with technical assistance for correction. We are researching other software programs. This computer error interfered with the ability to balance. We have corrected the errors internally."³⁷

2.22 For March 2015, there was a stated difference of \$1,586.66. The reconciliation form contained the following explanation, "Continued correction from February 2015 discovery."³⁸

2.23 For April 2015, there was a stated difference of \$956.66. The reconciliation form contained the following explanation, "Continued correction from February 2015 discovery."³⁹

2.24 No detail of attempted corrective measures was noted on the reconciliation documents.⁴⁰

³³ Ex. A7.19 page 82, Ex. A7.20 pages 92-93.

³⁴ Ex. A7.18 (pages 64-75), Ex. A7.17(pages 75 to 86), Ex. A7.20 (pages 87 to 99).

³⁵ *Id.*

³⁶ *Id.*

³⁷ Ex. A 7.18 page 65..

³⁸ Ex. A7.19 page 76.

³⁹ Ex. A7.20 page 87.

Investigation of Lay's Complaint:

2.25 Lay owned Mar Shell Court located at 725 28th Street in Springfield Oregon, which consisted of a single family residence, five recreational vehicle spaces and ten mobile homes.⁴¹

2.26 Records show Webber and Lay signed and dated a property management agreement effective April 14, 2014, and expiring on May 14, 2015. There was no identifying code associated with the property management agreement. Webber used an identifying code of "Mar Shell" in the computerized record keeping system, but the code "Mar Shell" is not found on the property management agreement or tenant ledgers.⁴²

2.27 In Lay's complaint, he alleged that Nick Stoval, (Stoval), tenant in unit #11, who owed \$730.00 in back rent moved out mid May 2015 without notice, leaving his property a "complete dump." Lay alleged Webber and Ziebert refunded the security deposit to the tenant in full and Lay was charged a late fee of \$55.00 and a management fee of \$49.50.⁴³

2.28 A review of the tenant ledger indicates rent was \$495.00 per month and the security deposit was \$495.00.⁴⁴

2.29 A review of Lay's owner statement dated May 29, 2015, shows for unit #11 receipt on May 13, 2015 of \$495 with payment reference #541 and description of "Returned Depst." Disbursements are shown on May 14, 2015, for a \$49.50 management fee and a \$55.00 late fee.⁴⁵

2.30 Webber claimed the tenant in unit #11, Stoval, paid \$260.00 through April 15, 2015 and gave his notice April 16, 2015, in an email where he wrote he willingly forfeited his security deposit as his last month's rent.⁴⁶

⁴⁰ Ex. A7.18, Ex. A7.19 and Ex. A7.20.

⁴¹ Ex. A8 page 2.

⁴² Ex. A8.6 pages 19-23, Ex.A8.7 and Ex. A8.8.

⁴³ The entirety of the complaints is found at Ex. A8; Ex.A8.3 pages 12 – 14; Ex. A 8.8 pages 40-41, but for Stoval see specifically Ex. A8.3 page 13, Ex. A8.17 pages 89-90, Ex. A8.18 pages 91-2, Ex. A8.19 page 93. See also interview at Ex. A8.9 pages 42-44

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

2.31 On the tenant ledger for unit #11, a receipt of \$260.00 is shown entered in on April 6, 2015, leaving a balance due of \$235.00. No additional receipts or disbursements are shown for rent or the security deposit of \$495 after the entry on April 6, 2015.⁴⁷

2.32 For entries ranging from June 2014 through April 2015, the tenant ledger for unit #11 had missing details. The following details were missing from the tenant ledger: the identifying code, the identity of person tendering the funds, a check number, cash receipt number or unique series of letters or numbers for funds to establish an audit trail.⁴⁸

2.33 Lay alleged in his complaint unit #6 paid rent, but the rent did not show up on his owner statement as received into his clients' trust account, yet he was charged a management fee of \$43.00. Lay emailed Webber who claimed to correct the error, but Lay claimed he never received an updated statement showing the correction.⁴⁹

2.34 Lay's owner statement dated May 11, 2015, shows on April 23, 2015, a disbursement of a management fee of \$43.00 for unit #6, it did not show rent received during this time period.⁵⁰

2.35 The tenant ledger for unit #6 indicated a receipt of \$430.00 on April 23, 2015, for rental period May 1, 2015 through May 30, 2015. The tenant ledger lacked the following required details: identifying code, identity of person who tendered the funds, check number, cash receipt number or unique series of letters or numbers for funds tendered for April 2014 through May 2015, and the date funds were deposited.⁵¹

2.36 During her interview with Agency Investigator/Auditor Meghan Lewis (Lewis), Webber acknowledged she may not have sent Lay an updated owner statement. Webber was confident rent was received from the tenant and her entry error was corrected.⁵²

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ The entirety of the complaints is found at Ex. A8; Ex. A8.3 pages 12 – 14; Ex. A 8.8 pages 40-41, but for Hoggott (Complaint #3 Ex. A8 page 40) specifically see Ex. A8.20 page 94-98. Ex. A8.21 page 99, Ex. A8.22 page 100-101. See also interview at Ex. A8.9 p ages 42-44.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* and Ex. A11.

2.37 Webber produced her property management records which showed on the owner ledger for Lay, for the period of April 2, 2015 through May 29, 2015, on April 23, 2015 an entry indicating rent received from tenant Hoggot, unit #6, for \$430.00.⁵³

2.38 Lay's owner ledger was missing the owner name, multiple receipts did not show a check number, cash receipt number or unique series of letters or numbers for the funds. Webber used an identifying code of "Mar Shell" in the computerized record keeping system, but the code "Mar Shell" is not found on the property management agreement or tenant ledgers.⁵⁴

2.39 Lay came to PPPM's office to request all keys for his properties. Webber released all the keys and signed a document on May 12, 2015, attesting to release of the keys.⁵⁵

2.40 Lay gave Webber and Ziebert a 45- day termination of management notice dated May 13, 2015. Lay wrote arrangements were to be made with him to obtain contracts, keys and security deposits and any money owed. In the notice it states that the property was under new management.⁵⁶

2.41 Per Ziebert's request, Lay submitted a second written termination notice dated May 19, 2015. In this notice, Lay requested all security deposits and rental contracts to be submitted to Keystone Management (the new property management company taking over his properties).⁵⁷

2.42 In an email dated June 1, 2015, Shelly Lay (Lay's wife) requested copies of thirty day notices relating to units #4, 6, 7, and 14.⁵⁸ On June 4, 2015, Shelly Lay made another email request for the notices and asked for copies of the tenant agreements.⁵⁹ She stated the tenant agreements had not yet been received by the new property manager.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Ex. A8.15.

⁵⁶ Ex. A8.14 page 85.

⁵⁷ Ex.A8.14 page 86 and Ex.A8.24 page 108.

⁵⁸ Ex. A8.23. This relates to Lay's Complaint #2 Ex. A8 page 14.

⁵⁹ Ex. A8.23 page 103.

2.43 In his complaint dated June 24, 2015, Lay claimed he never received the documents he requested.⁶⁰

2.44 Records indicate eleven security deposits were transferred to Keystone Management (the new property manager), with check #546 for \$5480.00 dated June 1, 2015.⁶¹

2.45 A ledger detail report dated February 19, 2016, for the period of April 2, 2015 to May 29, 2015, showed rental income received and corresponding management fees disbursed prior to an ending balance as of May 29, 2015, of \$455.00. No further rental income was received.⁶²

2.46 A report shows the transaction occurring on July 14, 2015, of check number #4842 for \$455.00, payable to PPPM with the description, "Management Fee."⁶³

2.47 The bank statement for clients' trust account #7643 for July 2015 showed check number #4842 posted on July 16, 2015, in the amount of \$455.00.⁶⁴

2.48 When Lewis asked for an explanation regarding the \$455.00 check, Sue Harris (Harris) responded stating it was an accounting software error where a check was erroneously generated payable to PPPM for management fees in the amount of \$455.00 with check number #4842. Harris stated after the transaction, the ledger showed a negative balance of \$455.00 and there was not any money in the ledger to issue a check. A ledger showing a negative balance of \$455.00 was never provided to the Agency. Harris claimed Lay was not owed money.⁶⁵

2.49 All of the above demonstrates incompetence in performing acts for which Ziebert is required to hold a license.

2.50 Ziebert's principal broker license expired on October 1, 2018 and was in lapsed status effective October 1, 2019.

⁶⁰ The entirety of the complaints is found at Ex. A8; Ex. A8.3 pages 12 – 14; Ex. A 8.8 pages 40-41, Ex. A8.20 page 94-98, Ex. A8.21 page 99, Ex. A8.22 page 100-101. See specifically Ex. A8 page 44.

⁶¹ Ex. A8.24 pages 105-106.

⁶² Ex. A9.3 pages 8-9; Ex. A9.4 pages 10-11

⁶³ Ex. A9.7.

⁶⁴ Ex. A9.11 page 25.

⁶⁵ Ex. A9.13 pages 29-31; Ex. A9.14 page 32; and Ex. A9.40-48.

STATEMENT OF LAW

1. ORS 696.301(3) as it incorporates:

a. ORS 696.026(7)(a) (2013 Edition), which states if a principal real estate broker has a registered business name, all professional real estate activity conducted by the principal broker must be conducted under the registered business name.

2. ORS 696.301(12) (2011, 2013, and 2015 Editions) which states a licensee's real estate licensee can be disciplined if they have demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

3. ORS 696.890(3)(a)(b)(c)(e)(f) (2011 Edition), which states a real estate property manager owes the property owner the following affirmative duties: (a) to deal honestly and in good faith; (b) to disclose material facts known by the property manager and not apparent or readily ascertainable to the owner, (c) to exercise reasonable care and diligence; (e) to act in a fiduciary manner in all matters relating to trust funds, and (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest. Ziebert's conduct is grounds for discipline under ORS 696.301(12) (above) and 696.301(15) (below).

4. ORS 696.890(4)(c)(d)(e) (2013 and 2015 Editions) which states a property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds. Ziebert's conduct is grounds for discipline under ORS 696.301(12) (above) and (15) (below).

5. ORS 696.301(3) as it incorporates:

a. OAR 863-025-0025(2) (5-15-14 Edition) requires a property manager to open and maintain at least one clients' trust account as defined in OAR 863-025-0010. Per OAR 863-025-0010(4), a clients' trust account means a bank account labeled as "Clients' Trust Account," on all bank records and checks that is established and maintained by a property manager. Per OAR 863-025-0010(4), a clients' trust account means a bank account labeled as "Clients' Trust Account," on all bank records and checks that is established and maintained by a property manager.

b. OAR 863-025-0025(4) (5-15-14 Edition) states except as provided in section (7) of this rule, a property manager who receives security deposits on behalf of an owner must open and maintain a security deposits account as defined in OAR 863-025-0010 that is separate from the property manager's clients' trust account. Per OAR 863-025-0010(16), a security deposits account means a federally insured clients' trust account labeled as "Clients' Trust Account- Security Deposits" on all bank records and checks that is established and maintained by a property manager.

c. OAR 863-025-0025(20)(b) (5-15-14 Edition) which states the balances of the each component in section (20)(a) of this rule must be equal to and reconciled with each other. If any adjustment is needed the adjustment must be clearly identified and explained on the reconciliation document.

d. OAR 863-025-0025(22) (5-15-14 Edition) which states a property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

e. OAR 863-025-0030(1)(a)(b)(c)(d) (9-1-11 Edition) which states except as provided in section (3) of this rule, all tenants security deposits received by a property manager must be deposited and maintained in a security deposits account until: (a) the property manager forwards the tenant's security deposit to the owner of the property according to the terms of the tenant's rental or lease agreement and the property management agreement; (b) the property manager disburses the tenant's security deposit for purposes authorized by the tenant's rental or lease agreement and the property management agreement; (c) the property manager refunds a deposit to the tenant according to the terms of the tenant's rental or lease agreement and the property management agreement; or (d) the property management agreement is terminated and the property manager transfers the tenant's security deposit to the owner unless the owner directs the property manager in writing to transfer the security deposits and fees to another property manager, escrow agent or person.

f. OAR 863-025-0035(2)(a) (5-15-14 Edition), which states a property manager must produce records required under section (1) of this rule as follows: (a) When the Agency makes

a request for production of property management records, the property manager must provide such records within no less than five banking days.

g. OAR 863-025-0040(2)(a)(C)(c)(5-15-14 Edition) which states a record of receipts and disbursements or a check register must contain at least the following information: (a) for each receipt of funds: (C) the purpose of the funds and identity of the person who tendered the funds; (c) If there is more than one property in a clients' trust account, each entry for a receipt, deposit or disbursement must be identified with the applicable identifying code.

h. OAR 863-025-0050(4)(c)(d)(B)(C)(D)(e)(A)(B)(C)(D)(E) (5-15-14 Edition). OAR 863-025-0050(4) requires a tenant's ledger to contain the following information: (c) the identifying code; (d) For each deposits of funds: (B) the purpose of the funds and identity of the person who tendered the funds, (C) The check number, cash receipt number or unique series of letters and/or numbers that established an audit trail to the receipt of funds and (D) the date the funds were deposited. (e) For each disbursement of funds: (A)the date the funds were disbursed; (B) the amount of funds disbursed; (C) the check number or bank-generated electronic tracking number; (D) the payee of the disbursement; (E) the purpose of the disbursement.

i. OAR 863-025-0050(4)(c)(d)(B)(C)(D) (4-1-13 and 5-15-14 Editions). OAR 863-025-0050(4) requires a tenant's ledger to contain the following information: (c) the identifying code; (d) For each deposits of funds: (B) the purpose of the funds and identity of the person who tendered the funds, (C) The check number, cash receipt number or unique series of letters and/or numbers that established an audit trail to the receipt of funds; (D) the date the funds were deposited.

j. OAR 863-025-0055(3)(a)(b)(C) (4-1-13 and 5-15-14 Editions) which requires owners' ledgers to contain: (a) the owner's name and identifying code; (b) for each deposit of funds: (C) the check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds.

k. OAR 863-025-0055(3)(b)(B)(D)(c)(A)(E) (5-15-2014 Edition) which states (3) all owners ledgers must contain at least the following information: (b) for each deposit of funds: (B) the purpose of the funds and identity of the person who tendered the funds; (D) the date

the funds were deposited, (c) for each disbursement of funds: (A) the date the funds were disbursed, and (E) the purpose of the disbursement.

l. OAR 863-025-0068(2) (5-15-14) which states upon written request from the property owner, a property manager must deliver to the owner copies of the current rental or lease agreement, including all addenda and modification, within five business days of the date of the request for all information, unless the owner and manager agree to a different time period.

m. ORS 696.301(15) which states that OREA may discipline (up to and including revocation) any licensee who engaged in any conduct that is below the standard of care for the practice of professional real estate activity in Oregon.

ULTIMATE FINDINGS OF FACT

1. Ziebert conducted professional real estate activity by engaging in management of rental real estate on behalf of PPPM, prior to affiliating the company with Preferred Northwest Realty and associating her license with PPPM.
2. Ziebert used multiple tenants' security funds to repair Barker's rental property.
3. Ziebert disbursed tenants' security deposits funds to a single owner which created potential harm to other property owners.
4. Ziebert failed to use the required identifying language in the account name for security deposits account ending in #2415.
5. Ziebert failed to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415.
6. Ziebert failed to use the required identifying language in the account name for clients' trust account ending in #7643.
7. Ziebert failed to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal.
8. Ziebert failed to have the required transaction dates or descriptions on owner's ledgers.
9. Ziebert failed to properly balance the clients' trust account reconciliations for account ending in #7643 for the months of February 2015, March 2015, and April 2015. The records indicate there was less money in the bank account than was recorded on the owners' ledger.

10. Ziebert failed to timely resolve the \$2,889.06 difference on the February 2015 reconciliation and the account remained out of balance on the March 2015 reconciliation. Ziebert also failed to provide detail of any attempted corrective measures.
11. Ziebert failed to entirely resolve the deficiency from the February 2015 reconciliation as of the April 2015 reconciliation, or document her attempts to resolve the deficiency.
12. Ziebert failed to entirely resolve the February 2015 reconciliation as of the May 2015 reconciliation or document her attempts to resolve the deficiency.
13. Between June 2, 2014 through April 6, 2015, Ziebert failed to include the required detail on tenant ledger for unit #11.
14. Between April 21, 2014 through April 23, 2015, Ziebert failed to include required details on the tenant ledger for unit #6.
15. Ziebert failed to include identifying information on Lay's owner ledger, for time period April 2, 2015 through May 29, 2015.
16. Ziebert failed to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers.
17. Ziebert failed to timely deliver the tenant agreements requested by Lay.
18. Ziebert failed to properly account for the \$455.00 which was disbursed to PPPM by check number #4842 in July 2015.
19. Ziebert demonstrated incompetence through the above actions.
20. Ziebert engaged in conduct that is below the standard of care for the practice of professional real estate activity in Oregon.

CONCLUSIONS OF LAW

1. Pursuant to ORS 183.417(4) and OAR 137-003-0670 Ziebert is in default.
2. The material facts establish a violation of a ground for discipline under ORS 696.301 as set forth in the *Amended Notice of Intent to Revoke*. ORS 696.396(1),(2)(c)(B).
3. Specifically, Ziebert is subject to discipline pursuant to ORS 696.301(12) and (15) for incompetence in the performance of professional real estate activity and demonstrating

conduct that is below the standard of care for the practice of professional real estate activity in Oregon.

4. Based on the evidence in the record, the preponderance of the evidence weighs in favor of revocation of Ziebert's license.
5. The Agency may, therefore, revoke Ziebert's principal broker license.
6. Pursuant to ORS 696.775, the expiration of Ziebert's license does not prohibit the Commissioner from proceeding with this, or further, action.

OPINION

The Agency takes its consumer protection role very seriously. Ziebert's actions, as documented herein, effected multiple violations of Agency statutes and rules. There were violations of affiliation rules, violation of the bank account naming rules, violations of record keeping rules, violations of reconciliation rules, the failure to timely produce records requested by clients, violations of delegation rules etc. but the single most egregious violation was the mismanagement and misuse of client security deposit funds when Ziebert used multiple clients' tenant's security deposit funds from the joint client security deposit account towards repairs made on behalf of a single client property owner. The funds transfer was illegally made, inappropriately documented, and completely unsecured. Moreover, no attempts were made to recoup these funds prior to the commencement of the Agency audit. Thus the funds were not fully reimbursed for more than two and a half years from the date of disbursement. The fact that the funds were ultimately replaced does little to mitigate the serious violations that occurred. Combined with the multiple accounting and recordkeeping violations, these events demonstrate Ziebert's overall incompetence in her property management activity. The specific violations are set forth in the statement of facts above, and are repeated here for emphasis and to allow further comment as to each.

- (1) By conducting professional real estate activity by engaging in management of rental real estate on behalf of PPPM, prior to affiliating the company with Preferred Northwest Realty and associating her license with PPPM, Ziebert violated ORS 696.301(3) as it incorporates ORS

696.026(7)(a) (2013 Edition). This violation was a simple one which should have been quickly and easily correctable.

(2) By using multiple tenants' security funds to repair Barker's rental property, Ziebert violated ORS 696.301(12) (2011 Edition) and ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a)(b)(c)(d) (9-1-11 Edition). Combined the statute and rule set forth very clearly the manner in which tenant security funds are to be held and the circumstances under which they may be disbursed. None of those conditions existed when Ziebert chose to disburse the funds for the use of Ms. Barker.

(3) By disbursing tenants' security deposits funds to a single owner, Ziebert created potential harm to other property owners in violation of ORS 696.301(12) (2011 Edition) and ORS 696.890(3)(a)(b)(c)(e)(f) (2011 Edition) which require the property manager to deal honestly and in good faith, to disclose material facts known to the property manager and not apparent or readily ascertainable by the owner, to exercise reasonable care and diligence and to act in a fiduciary manner in all matters relating to trust funds, not to mention being loyal to the owner by not taking adverse positions – failure to act in compliance with these requirements demonstrates conduct that is below the standard of care for the practice of professional real estate activity in Oregon and demonstrates incompetence.⁶⁶ Far from dealing honestly and in good faith, Ziebert did not tell the other clients that she planned to use their tenant's security deposits for the sole benefit of Barker. She also failed to take any action to secure the moneys she was lending Barker, she further failed to appropriately document the "loan" or the repayments on that "loan", and while she may have been loyal to Ms. Barker she was certainly not loyal to her other clients since she was taking a position adverse to their interests.

(4) By failing to use the required identifying language in the account name for security deposits account ending in #2415, Ziebert violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (5-15-14 Edition).

⁶⁶ For violations of ORS 696.890 Ziebert's conduct is grounds for discipline under ORS 696.301(12) and 696.301(15).

- (5) By failing to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415, Ziebert violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (5-15-14 Edition).
- (6) By failing to use the required identifying language in the account name for clients' trust account ending in #7643, Ziebert violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (5-15-14 Edition).
- (7) By failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Ziebert violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C)(c)(5-15-14 Edition).
- (8) By failing to have the required transaction dates or descriptions on owner's ledgers, Ziebert violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B)(D)(c)(A)(E) (5-15-2014 Edition).
- (9) Ziebert failed to properly balance the clients' trust account reconciliations for account ending in #7643 for the months of February 2015, March 2015, and April 2015. The records indicate there was less money in the bank account than was recorded on the owners' ledger. Ziebert violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (5-15-14 Edition).
- (10) Ziebert failed to timely resolve the \$2,889.06 difference on the February 2015 reconciliation and the account remained out of balance on the March 2015 reconciliation packet and Ziebert also failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (5-15-14 Edition).
- (11) Ziebert failed to entirely resolve the deficiency from the February 2015 reconciliation as of the April 2015 reconciliation. She described the difference as a "correction from February." No detail of her attempted corrective measures was mentioned. By failing to timely resolve the issue or document her attempts, Ziebert violated ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (5-15-14 Edition).
- (12) Ziebert failed to entirely resolve the February 2015 reconciliation as of the May 2015 reconciliation or document her attempts to resolve the deficiency. By failing to timely resolve the issue or document her attempts, Ziebert violated ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (5-15-14 Edition).

(13) Between June 2, 2014 through April 6, 2015, Ziebert failed to include the required detail on tenant ledger for unit #11, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c)(d)(B)(C)(D)(e)(A)(B)(C)(D)(E) (5-15-14 Edition).

(14) Between April 21, 2014 through April 23, 2015, Ziebert failed to include required details on the tenant ledger for unit #6, by doing so, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c)(d)(B)(C)(D) (4-1-13 and 5-15-14 Editions).

(15) Ziebert failed to include identifying information on Lay's owner ledger, for time period April 2, 2015 through May 29, 2015, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a)(b)(C) (4-1-13 and 5-15-14 Editions).

(16) By failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Ziebert violated ORS 696.890(4)(c)(d)(e) (2013 and 2015 Editions). For violations of ORS 696.890 Ziebert's conduct is grounds for discipline under ORS 696.301(12) and (15).

(17) Ziebert failed to timely deliver the tenant agreements requested by Lay in violation of ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (5-15-14).

(18) By failing to properly account for the \$455.00, which was disbursed to PPPM by check number #4842 in July 2015, Ziebert demonstrated incompetence in violation of ORS 696.301(12) (2015 Edition).

The rules identified in violations (4) through (15), are extremely important to the Agency's auditing abilities and thus its ability to ensure that the public's funds are protected. And, when combined with the agency rules related to honesty, good faith, the not misusing client funds, not to mention the need for competence, provide clear grounds for revocation of Respondent's license. Moreover, there is an excess of facts supporting the finding of violation in each instance and thus the preponderance of the evidence necessary for the finding that Respondent's license must be revoked.

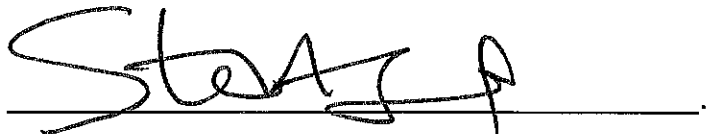
Furthermore, all of the above demonstrates conduct that is below the standard of care for the practice of professional real estate activity in Oregon. It also demonstrates incompetence in performing acts for which Ziebert is required to hold a license. ORS 696.301(12) and (15) (2011, 2013, and 2015 Editions).

ORDER

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

Dated this 16th day of DECEMBER, 2019.

OREGON REAL ESTATE AGENCY



Steven Strode

Real Estate Commissioner

NOTICE OF RIGHT TO APPEAL: 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 to the Oregon Court of Appeals, pursuant to the provisions of ORS 183.482.