

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

MATHEW KENT MCVAY



FINAL ORDER BY DEFAULT

PROCEDURAL HISTORY

1.

1.1 On May 28, 2020, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Reprimand* the real estate property manager license of Mathew Kent McVay (McVay). The Oregon Real Estate Agency (Agency) sent the Notice of Intent to McVay’s last known address of record with the Agency (1415 Esplanade, Klamath Falls, OR 97601). The *Notice of Intent* was also mailed to McVay by regular first class mail.

1.2 The notice was also emailed to McVay at his email address of record.

1.3 Neither of the mailings have been returned to the Agency. Over 20 (20 days) have elapsed since the mailing of the notice issued in this matter and no written request for hearing has been received.

2.

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

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

2.2 McVay’s last known address of record with the Agency was 1415 Esplanade, Klamath Falls, OR 97601.

2.3 A certified mailing of the notice of intent was mailed to McVay at his last known address of record on May 28, 2020. The Domestic Return Receipt was signed for by T Alexander on June 1, 2020. The certified mailing of the notice has not been returned to the Agency.

2.4 The notice was also mailed regular first class mail in a handwritten envelope. The mailing in the handwritten envelope has not been returned to OREA. In accordance with ORS 40.135(1)(q), there is a presumption that the mailing properly addressed and placed with the U.S. Postal Service was delivered. That presumption has not been overcome by any evidence.

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

2.6 According to ORS 696.775, the lapsing, expiration, revocation or suspension of a real estate license, whether by operation of law, order of the Real Estate Commissioner or decision of a court of law, or the inactive status of the license, or voluntary surrender of the license by the real estate licensee does not deprive the commissioner of jurisdiction to: (1) proceed with an investigation of the licensee; (2) conduct disciplinary proceedings relating to the licensee; (3) Take action against a licensee, including assessment of a civil penalty against the licensee for a violation of ORS 696.020(2); or (4) revise or render null and void an order suspending or revoking a license.

2.7 As noted in paragraph 9 of the *Notice of Intent to Reprimand*, the Agency's entire investigation file was designated as the record for purposes of presenting a prima facie case upon default, including submissions from McVay and all information in the administrative file relating to the mailing of notices and any responses received.

FINDINGS OF FACT

3.

3.1 At all times mentioned herein, McVay was licensed as a real estate property manager doing business under First Choice Property Management, Inc., (First Choice).

3.2 On May 10, 2019, First Choice was selected for a reconciliation mail in review and was required to submit the December 2018 reconciliation for security deposit account ending in #4988.

3.3 On June 7, 2019, First Choice submitted their December 2018 reconciliation documents for two security deposit accounts, ending in #4988 and #4251. On October 15, 2019, the Agency opened an investigation.

3.4 The reconciliation document for December 2018 for security deposits account ending in #4988 showed the following:

- Reconciled bank balance: \$152,921.21
- Check register: \$152,921.21
- Tenant ledger balance: \$152,921.21

3.5 The reconciliation document for December 2018 for security deposits account ending in #4251 showed the following:

- Reconciled bank balance: \$300,000.00
- Check register balance: \$300,000.00
- Tenant ledger balance: \$300,000.00

3.6 The December 2018 reconciliation form for account ending in #4251 showed the check register balance as \$300,000.00, however, the supporting check register showed an ending balance of \$452,921.21 balance. The check register showing the balance of \$452,921.21 included \$152,921.21 which was held in a separate security deposits account ending in #4988.

3.7 McVay maintained one check register for two separate security deposits accounts ending in #4988 and #4251.

3.8 The December 2018 reconciliation form for security deposits account ending in #4251 does not list the date the document was prepared. McVay signed the December 2018 reconciliation on August 2, 2019, not within 30 days of the bank statement as required.

3.9 The December 2018 reconciliation form for security deposits account ending in #4988 lists a date of January 25, 2019. The reconciliation was signed by McVay on August 2, 2019.

3.10 The September 2019 reconciliation form for security deposit account ending in #4988 indicates \$47.28 in checks were purchased using funds from the account. A note on the form stated “\$47.28 – Check charge to be reimbursed to account by First Choice Office Account 10/2019.” The \$47.28 is also reflected in the “Reconciliation Report” as a bank adjustment for a check fee charge under “Cleared Checks and other Decreases.”

3.11 The September 2019 security deposits account ending in #4988 “Reconciliation Report” indicates thirteen unreconciled transactions/outstanding deposits totaling \$13,501.00. The unreconciled transactions/outstanding deposits date back to April 30, 2013 and include transactions that remain outstanding from 2014, 2015, 2016, 2018 and 2019. Explanations were provided for two of the thirteen unreconciled transactions, no explanations were provided for the remaining eleven transactions/deposits.

3.12 McVay was unsure why the deposits remained outstanding for so long and believed they were errors on his part.

3.13 McVay wrote a check for \$13,501.00 to offset the outstanding transactions while continuing to research the deposits. On October 25, 2019, McVay provided a receipt indicating the \$13,501.00 was deposited into security deposits account ending in #4988.

STATEMENT OF LAW

4.

4.1 ORS 696.301(3) which states a real estate licensee’s real estate license may be disciplined if they have: ORS 696.301(3) which states a real estate licensee’s real estate license may be disciplined if they have: (3) disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the Real Estate Agency

4.2 ORS 696.301(3) as it incorporates:

a. ORS 696.241(5) (2019 Edition) states a principal real estate broker or licensed property manager may not commingle other funds with the trust funds held in a clients’ trust account, except for: (a) earned interest on a clients’ trust account as provided in subsections (7) and (8) of this section; and (b) earned compensation as provided in subsection (9) of this section.

4.3 ORS 696.301(3) as it incorporates:

a. OAR 863-025-0025(22) (4-1-2013, 5-15-2014 and 11-15-2016 Editions) 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.

b. OAR 863-025-0028(3)(a)(B) (1-1-2018 Edition), which states (3) A property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (a) The reconciliation must have three components that are contained in a single reconciliation document: (B) The balance in the records of receipts and disbursements or the check register as of the date of the bank statement.

c. OAR 863-025-0028(3)(d)(A)(B) (1-1-2018 Edition), which states (3) a property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (d) Within 30 calendar days of the date of the bank statement, the property manager must; (A) Complete the reconciliation document; and (B) Sign and date the reconciliation document attesting to the accuracy and completeness of the reconciliation.

d. OAR 863-025-0028(3)(d)(B) (1-1-2018 Edition), which states (3) a property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (d) Within 30 calendar days of the date of the bank statement, the property manager must; (B) Sign and date the reconciliation document attesting to the accuracy and completeness of the reconciliation.

e. OAR 863-025-0028(4) (1-01-2018 Edition) 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.

f. OAR 863-025-0040(1) (1-1-2018 Edition) which states except as provided in section (4) of this rule, a property manager must prepare and maintain a chronological record of receipts and disbursements or a check register for each clients' trust account and each

security deposits account in which the manager must record each receipt of funds and each disbursement of funds.

g. OAR 863-025-0065(6) (1-1-2018 Edition) states a property manager may not deposit any funds received on behalf of an owner in the property manager's personal account or commingle any such funds received with personal funds of the property manager.

ULTIMATE FINDINGS OF FACT

5.

5.1 McVay failed to maintain a separate check register for clients' trust account ending in #4251.

5.2 McVay failed to include the date the December 2018 reconciliation form was prepared. McVay signed the December 2018 reconciliation form security deposits account ending in #4251 on August 2, 2019.

5.3 McVay signed the December 2018 reconciliation form for security deposits account ending in #4988 on August 2, 2019.

5.4 McVay purchased \$47.28 in checks in September 2019 with funds from security deposits account ending in #4988.

5.5 McVay failed to take corrective action to resolve the 13 outstanding deposits totaling \$13,501.00 dating back to 2014, 2015, 2016, 2018 and 2019.

5.6 In summary, the facts above establish grounds to reprimand McVay's property manager license.

CONCLUSIONS OF LAW

6.

6.1 Pursuant to ORS 183.417(4) and OAR 137-003-0670 McVay is in default.

6.2 The material facts establish a violation of a ground for discipline under ORS 696.301 as set forth in the *Notice of Intent to Reprimand*.

6.3 Based on these violations, the Agency may reprimand McVay's property manager license.

6.4 Specifically, McVay is subject to discipline pursuant to ORS 696.301(3) which states in part a licensee's real estate license may be disciplined if they have: (3) disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the Real Estate Agency.

6.5 A reprimand is appropriate for violations of ORS 696.301(3).

6.6 Based on the evidence in the record, the preponderance of the evidence weighs in favor of the reprimand of McVay's property manager license.

6.7 The Agency may, therefore, reprimand McVay's property manager license.

OPINION

7.

The Agency takes its consumer protection role very seriously. McVay's violations center around his trust account accounting and reconciliation responsibilities. Most serious of the violations is McVay's failure to take corrective action to resolve the 13 outstanding deposits dating back to 2014, 2015, 2016, 2018 and 2019. Managing and properly accounting for trust funds is a serious responsibility for anyone engaged in property management activity. McVay's failures regarding his trust accounting and reconciliations provide sufficient basis for a reprimand of his license.

The specific violations are repeated here below:

(1) Violation: By not maintaining a separate check register for security deposits account ending in #4251, McVay violated ORS 696.301(3) as it incorporates OAR 863-025-0028(3)(a)(B) (1-1-2018 Edition), which states (3) A property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (a) The reconciliation must have three components that are contained in a single reconciliation document: (B) The balance in the records of receipts and disbursements or the check register as of the date of the bank statement. McVay also violated ORS 696.301(3) as it incorporates OAR 863-025-0040(1) (1-1-2018 Edition) which states except as provided in section (4) of this rule, a property manager must prepare and maintain a chronological record of receipts and disbursements or a check register for each

clients' trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds.

(2) Violation: By not including the date the reconciliation from document was prepared by and by signing the December 2018 reconciliation for security deposits account ending in #4251 on August 2, 2019, McVay violated ORS 696.301(3) as it incorporates OAR 863-025-0028(3)(d)(A)(B) (1-1-2018 Edition), which states (3) a property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (d) Within 30 calendar days of the date of the bank statement, the property manager must; (A) Complete the reconciliation document; and (B) Sign and date the reconciliation document attesting to the accuracy and completeness of the reconciliation.

3) Violation: By signing the December 2018 reconciliation form for security deposits account ending in #4988 on August 2, 2019, McVay violated ORS 696.301(3) as it incorporates OAR 863-025-0028(3)(d)(B) (1-1-2018 Edition), which states (3) a property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (d) Within 30 calendar days of the date of the bank statement, the property manager must; (B) Sign and date the reconciliation document attesting to the accuracy and completeness of the reconciliation.

(4) Violation: By purchasing \$47.28 in checks in September 2019 with funds from security deposits account ending in #4988, McVay violated ORS 696.301(3) as it incorporates ORS 696.241(5) (2019 Edition) and OAR 863-025-0065(6) (1-1-2018 Edition) ORS 696.241(5) states a principal real estate broker or licensed property manager may not commingle other funds with the trust funds held in a clients' trust account, except for: (a) earned interest on a clients' trust account as provided in subsections (7) and (8) of this section; and (b) earned compensation as provided in subsection (9) of this section. OAR 863-025-0065(6) states a property manager may not deposit any funds received on behalf of an owner in the property manager's personal account or commingle any such funds received with personal funds of the property manager.

(5) Violation: By failing to take corrective action to resolve the 13 outstanding deposits totaling \$13,501.00 dating back to 2014, 2015, 2016, 2018 and 2019, McVay violated ORS

696.301(3) as it incorporates OAR 863-025-0025(22) (4-1-2013, 5-15-2014 and 11-15-2016 Editions) and OAR 863-025-0028(4) (1-01-2018 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.

ORDER

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

Dated this 30th day of June, 2020.

OREGON REAL ESTATE AGENCY

DocuSigned by:

Steven Strode

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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.

Certificate of Mailing

On June 30, 2020, I mailed the foregoing Final Order By Default issued on this date in Agency Case No. 2019-484.

By: First Class Mail

MATHEW KENT MCVAY
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KLAMATH FALLS, OR 97601-0000

By: Email:

matt@1stcpm.com

Rick Marsland
Licensing Specialist