REAL ESTATE AGENCY 1 BEFORE THE REAL ESTATE COMMISSIONER 2 3 In the Matter of the Real Estate License of 4 5 STIPULATED FINAL ORDER TONI LYNNE O'HARA 6 7 8 9 10 The Oregon Real Estate Agency (Agency) and Toni Lynne O'Hara (O'Hara) do hereby 11 agree and stipulate to the following: 12 FINDINGS OF FACT 13 & 14 **CONCLUSIONS OF LAW** 15 1. 16 1.1 At all times mentioned herein, O'Hara was licensed as a property manager 17 working under the registered business name of Viking Property Management, LLC (VPM). 18 1.2 On September 3, 2019, the Agency sent an email to VPM notifying them of a 19 clients' trust account reconciliation review for security deposit account ending in #3006. VPM 20 was required to submit the reconciliation for January 2019, along with supporting 21 documentation within 30 days. On October 3, 2019, O'Hara submitted the January 2019 22 reconciliation and supporting documentation for security deposits account ending in #3006. 23 The three components of the reconciliation did not balance. 24 1.3 Agency staff and O'Hara corresponded back and forth multiple times where 25 O'Hara attempted to find the errors in her reconciliation and bookkeeping. On March 5, 2020, 26 an investigation was opened. 27 VPM had two clients' trust accounts registered with the Agency, clients' trust 28 account ending in #2982 and security deposits account ending in #3006. 29 On April 1, 2020, Agency Financial Investigator/Auditor Cidia Nanez (Nanez) 1.5 30 contacted O'Hara requesting her most recent reconciliations. O'Hara stated she hadn't done the reconciliations for a while.

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- (1) Violation: On April 1, 2020, O'Hara was asked to produce her most recent reconciliations, O'Hara admitted that she had not done her reconciliations in a while, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0028(2) & (3) (1-1-2018 Edition), which requires a property manager to reconcile each clients' trust account and security deposits account within 30 calendar days of the date of the bank statement.
- 1.6 On April 1, 2020, O'Hara was emailed a demand for documents, which included a reconciliation for February 2020 with supporting documentation of both O'Hara's clients' trust accounts (a client trust account and a security deposits account). O'Hara was required to provide the documents no later than end of the day April 8, 2020.
  - 1.7 O'Hara failed to provide any reconciliations by the April 8, 2020, deadline.
- **(2) Violation:** By failing to provide the requested reconciliations by the April 8, 2020, deadline O'Hara violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (1-1-2018 Edition), which states: (2) a property manager must produce records required under section (1) of this rule for inspection by the Agency 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.
- 1.8 On April 13, 2020, O'Hara emailed her reconciliation and supporting documentation for security deposits account ending in #3006 for January 2020. The reconciliation did not balance. On the reconciliation document, Part I total for the reconciled bank balance was \$164,296.70, Part II total for the Check Register/Receipts and Disbursements Journal was \$164,169.88, and Part III total for Security Deposits Ledgers was \$156,243.00.
- (3) Violation: By failing to properly reconcile the three components to each other, O'Hara violated ORS 696.301(3) as it incorporates OAR 863-025-0028(3)(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: (b) the balances of each component in section (3)(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.

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- 1.9 A review of the clients' trust account owner's ledger balances showed a balance of \$547.79 listed under VPM. O'Hara stated those were her funds that she uses for any mistakes, like possibly writing a wrong check.
- (4) Violation: By keeping \$547.79 of her own funds in the clients' trust account, as shown on the owner's ledger balance, O'Hara 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 real estate property manager may not commingle any 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 the personal funds of the property manager.

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- 2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301. Based on these violations a reprimand is appropriate for violations of ORS 696.301(3).
- 2.2 The Agency reserves the right to investigate and pursue additional complaints that may be received in the future regarding this licensee.
- 2.3 In establishing the violations alleged above, OREA may rely on one or more of the definitions contained in ORS 696.010.
- 2.4 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.

STIPULATION & WAIVER

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

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

I agree once the Commissioner executes this stipulated order, I will accept service of the final order by email, and hereby waive the right to challenge the validity of service.

ORDER

IT IS HEREBY ORDERED that the property manager license of Toni Lynne O'Hara be, and hereby is, reprimanded.

IT IS SO STIPULATED: IT IS SO ORDERED:

DocuSigned by:

Toni Lynne O'Hara

TONI LYNN O'HARA

Date 8/24/2020 | 10:51 AM PDT

—Docusigned by: Steven Strode

STEVEN STRODE

Real Estate Commissioner

Date 8/24/2020 | 11:51 AM PDT

Date of Service: 08/24/2020

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