

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

XIAO Q. TANG

STIPULATED FINAL ORDER

The Real Estate Agency (OREA) and Xiao Q. Tang (Tang) do hereby agree and stipulate to the following:

FINDINGS OF FACT
&
CONCLUSIONS OF LAW
1.

1.1 At all times mentioned herein, Tang was licensed as a principal broker, doing professional real estate activity under her own name.

1.2 On May 31, 2018, the Agency received a complaint from Lichao Zhang against Tang.

1.3 On August 10, 2017, Tang entered into a listing agreement with Guo Huang (Huang) to sell his property located at 5109 SE 118th Ave in Portland OR (subject property) for \$368,900.00. Haung signed a disclosed limited agency agreement for sellers on the same day.

1.4 In October 2017, Lichao and her parents contacted Tang to help them find a new rental property. On October 12, 2017, Lichao and her parents signed an offer to purchase on the subject property. The seller signed accepting their offer on October 12, 2017, and Tang opened escrow the same day.

1.5 On March 15, 2019, Agency Financial Investigator/Auditor Liz Hayes (Hayes) emailed Tang requesting the listing and purchase file for the subject property. On April 2, 2019, Tang provided the requested documents and included a short explanation of the

1 transaction, in part stating, “Additionally, the contract was as “as is” sale. The seller’s steep
2 reduction in price was due to the mutual agreement that the sale would be speedy and that the
3 seller would not be responsible for making repairs.”

4 1.6 Juli Spink (Spink), escrow agent at WFG National Title provided a copy of the
5 purchase agreement and email Tang used to open escrow on October 12, 2017.

6 1.7 The purchase agreement provided by Spink and Tang were different from each
7 other. The agreement provided by Tang contained extra terms on the following: line 143 “8.
8 “ADDITIONAL FINANCING PROVISIONS: N/A”, and also on line 284 “21. ADDITIONAL
9 PROVISIONS: SALE AS IS.” The agreement provided by Spink was blank in these two
10 sections.

11 1.8 Tang stated she forgot to add the “As-Is” language when she initially prepared
12 the sales agreement, admitting she should have had the buyers and seller initial the added
13 language. Tang stated she had explained to the buyer and seller about adding this language
14 after the agreement had already been signed.

15 **(1) Violation:** Tang opened escrow on October 12, 2017, for the sale of the subject
16 property with a purchase agreement lacking the term “SALE AS IS” as noted in the purchase
17 agreement provided to the Agency by Tang in violation of ORS 696.301(3) as it incorporates
18 OAR 863-015-0135(5) (11-15-16 Edition), which states: real estate licensees must include all
19 of the terms and conditions of the real estate transaction in the offer to purchase or, directly or
20 by reference, in the counter-offer, including but not limited to whether the transaction will be
21 accomplished by way of deed or land sales contract, and whether and at what time evidence of
22 title will be furnished to the prospective buyer.

23 1.9 On April 25, 2019, Hayes, while meeting with Tang at her main office location
24 8333 SE Powell Blvd., Portland OR., asked Tang for a copy of the Disclosed Limited Agency
25 Agreement for Buyers. Tang was unable to provide a copy to Hayes and said she had a copy
26 but it was at her home office. Tang did not have a branch office registered with the Agency, nor
27 had she notified the Commissioner that records would be held at a separate location.

28 **(2) Violation:** By failing to have access to a copy of the Disclosed Limited Agency
29 Agreement for Buyers at her main office, Tang violated ORS 696.301(3) as it incorporates
30 OAR 863-015-0260(1) and (2) (1-1-2018 Edition), which states: (1) principal brokers must

1 maintain and store complete and accurate records of professional real estate activity, including
2 any items generated through email or other electronic means, pursuant to ORS 696.280 and
3 as follows. (2) A principal broker must maintain the principal broker's office a means of viewing
4 copies of documents or records. A principal broker must provide, at his or her expense, a
5 paper copy of any document or record the Agency requests.

6 1.10 During the investigation, it was discovered that Tang was engaging in property
7 management activity. Tang stated she worked for about three owners and managed five
8 properties. One of the property owners Tang represented was Xin Jiang (Jiang).

9 1.11 In demand letter dated April 25, 2019, Tang was requested to provide copies of
10 all current property management agreements by May 2, 2019. Tang did not produce the
11 records until May 9, 2019.

12 **(3) Violation:** By failing to timely produce the requested records Tang violated ORS
13 696.301(3) as it incorporates OAR 863-025-0035(2)(a) and (c) (1-1-2018 Edition), which
14 states: (2)A property manager must produce records required under section (1) of this rule for
15 inspection by the Agency as follows: (a) when the Agency makes a request for production of
16 property management records, the property manager must provide such records within no less
17 than five banking days; (c) failure to produce such records within the timeline stated in
18 subsection (a) or (b) of this section is a violation of ORS 696.301.

19 1.12 On May 9, 2019, Tang provided 5 separate documents which appeared to be the
20 property management agreements authorizing Tang to manage 9 properties for lease. The
21 agreements referenced a 6-7% property management fee and were signed by Tang and each
22 owner(s). The property management agreements lacked the following detail:

- 23 • The term of the agreement and the method for termination;
- 24 • The terms and conditions of the agreement;
- 25 • The management fees, application fees, screening fees, rebates, discounts,
26 overrides and any other form of compensation to be received by the property
27 manager for management of rental real estate including when such compensation is
28 earned and when it will be paid;
- 29 • A description of the monthly statements of accounting the property manager will
30 provide to the owner;

- The disposition of the property manager's records of the management of the owner's rental real estate after termination of the agreement;

(4) Violation: By failing to have the above required detail in her property management agreements Tang violated ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(d),(e),(f),(g), and (h) (1-1-2018 Edition), which states: (2) a property management agreement must include, but is not limited to: (d) the term of the agreement and the method for termination; (e) the terms and conditions of the agreement; (f) the management fees, application fees, screening fees, rebates, discounts, overrides and any other form of compensation to be received by the property manager for management of rental real estate including when such compensation is earned and when it will be paid; (g) a description of the monthly statements of accounting the property manager will provide to the owner; (h) the disposition of the property manager's records of the management of the owner's rental real estate after termination of the agreement.

1.13 On October 24, 2017, Tang prepared a lease agreement for tenants D. Shiverly, E. Kramer, W. Guyette, and P. Halk for the property at 2829 SE 137th Ave. The original lease agreement noted a security deposit equaling \$3,000.00 with an additional deposit of \$2,000.00 for "Bad Credit." According to the property owner, Jiang, he held \$2,000.00. Tang never collected remaining balance of the security deposit of \$1,000.00 or the additional \$2,000.00 noted for poor credit. The lease agreement also failed to note the security deposit would be held by the owner, Jiang.

(5) Violation: By failing to collect the entire security deposit and additional deposit for the tenants' poor credit rating as noted on the lease agreement and failing to note on the lease agreement that the security deposit would be held by the property owner, Tang violated ORS 696.890(4)(a),(c), and (f) (2015 Edition) which states: (4) a real estate property manager owes the property owner the following affirmative duties: (a) to deal honestly and in good faith; (c) to exercise reasonable care and diligence; (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest. Tang's conduct is grounds for discipline under ORS 696.301(12) and (15).

1.14 The tenants fell behind on their rent payments and a few months later tenants D. Shiverly and E. Kramer moved out of the property. Tang reduced the rent amount for the two

1 remaining tenants W. Guyette and P.Halk still residing in the home without the property
2 owner's approval or addendum to the lease agreement.

3 **(6) Violation:** By lowering the rent amount for the two remaining tenants, W. Guyette and
4 P. Halk without the owner's approval or addendum to the lease agreement, Tang violated ORS
5 696.890(4)(f) (2015 Edition) and ORS 696.301(3) as it incorporates ORS 696.890(4)(f) (2017
6 Edition) which states: (4) a real estate property manager owes the property owner the following
7 affirmative duties: (f) to be loyal to the owner by not taking action that is adverse or detrimental
8 to the owner's interest. Tang's conduct is grounds for discipline under ORS 696.301(12) and
9 (15) for her actions taken prior to 2018.

10 1.15 Another tenant, G. Gilbert, moved into the home. Tang had G. Gilbert fill out a
11 lease agreement instead of modifying the original lease with an addendum or filling out a new
12 lease agreement naming all tenants. The new lease agreement named only G. Gilbert with
13 rent listed for \$600.00. G. Gilbert stayed only briefly, and then moved out. After G. Gilbert left
14 Tang had another tenant move in, filling out another lease agreement, naming only the new
15 tenant A. Hatchell. At this point there were 3 active lease agreements naming 4 separate
16 tenants for the same property. The property owner was not aware and was not told about the
17 two additional tenants.

18 **(7) Violation:** By preparing two additional lease agreements for tenants G. Gilbert and A.
19 Hatchell without the knowledge of the owner, resulting in 3 existing lease agreements for the
20 same property, Tang violated ORS 696.890(4)(a),(b),and (f) (2015 Edition) and ORS
21 696.301(3) as it incorporates ORS 696.890(4)(a),(b), and (f) (2017 Edition) which states: (4) a
22 real estate property manager owes the property owner the following affirmative duties: (a) to
23 deal honestly and in good faith; (b) to disclose material facts known by the property manager
24 and not apparent or readily ascertainable to the owner; (f) to be loyal to the owner by not
25 taking action that is adverse or detrimental to the owner's interest. Tang's conduct is grounds
26 for discipline under ORS 696.301(12) and (15) for her actions taken prior to 2018.

27 1.16 Tang maintained account ending in #2960 named "Xiao Q. Tang Clients Trust
28 Account." Tang used this account for real estate transactions and rents. With a check dated
29 September 14, 2018, Tang repaid a personal loan with clients' trust account funds. The check
30 was for an amount of \$2,272.22.

1 **(8) Violation:** By using clients' trust account funds from account ending in #2960 to repay a
2 personal loan Tang violated ORS 696.301(3) as it incorporates ORS 696.241(5) (2017
3 Edition), which states: a principal broker or licensed real estate property manager may not
4 commingle any other funds with trust funds held in a clients' trust account. Tang also violated
5 ORS 696.301(3) as it incorporates ORS 696.890(4)(a),(c),(e), and (f) (2017 Edition) which
6 states: (4) a real estate property manager owes the property owner the following affirmative
7 duties: (a) to deal honestly and in good faith; (c) to exercise reasonable care and diligence; (e)
8 to act in a fiduciary manner in all matters relating to trust funds; (f) to be loyal to the owner by
9 not taking action that is adverse or detrimental to the owner's interest.

10 1.17 Clients' trust account ending in #2960 was open and active at least as early as
11 the date of the check mentioned above, September 14, 2018. As of May 29, 2019, Tang had
12 not registered clients' trust account ending in #2960 with the Agency.

13 **(9) Violation:** By failing to register clients' trust account ending in #2960, with the Agency,
14 Tang violated ORS 696.301(3) as it incorporates OAR 863-025-0025(3) (1-1-2018 Edition),
15 and ORS 696.245(2) (2017 and 2019 Editions). OAR 863-025-0025(3) states within 10
16 business days from the date a clients' trust account is opened, the property manager must
17 notify the Agency using an online process established by the Agency. The notification will
18 include the information required in ORS 696.245, including a copy of the completed and signed
19 "Notice of Clients' Trust Account and Authorization to Examine." 696.245(2) (2017 and 2019
20 Editions) requires a property manager within 10 business days from the date a clients' trust
21 account is open, to notify the Real Estate Agency that the account has been opened and must
22 include the required information.

23 1.18 In demand letter dated April 25, 2019, Tang was requested to produce a copy of
24 her February 2019 record of receipts and disbursement for clients' trust account ending in
25 #2960. Tang did not provide this document.

26 **(10) Violation:** By failing to provide the February 2019 record of receipts and disbursements
27 journal as requested in the April 25, 2019, demand letter Tang violated ORS 696.301(3) as it
28 incorporates OAR 863-025-0035(1)(d), (2)(a) and (c) (1-1-2018_Edition) OAR 863-025-
29 0035(1)(d), (2)(a) and (c) states: (1)property manager's records of the management of rental
30 real estate are "complete and adequate" as required under ORS 696.280 if the records

1 contain, at least, the following: (d) a record of receipts and disbursements or check register
2 maintained for each clients' trust account or security deposits account: (2) a property manager
3 must produce records required under section (1) of this rule for inspection by the Agency as
4 follows: (a) When the Agency makes a request for production of property management
5 records, the property manager must provide such records within no less than five banking
6 days; (c) failure to produce such records within the timelines stated in subsection (a) or (b) of
7 this section is a violation of ORS 696.301.

8 1.19 At the time of the investigation, Tang was not sending out monthly owner
9 statements. Instead she was sending out a yearly accounting of rents received to the property
10 owner. According to Tang, her yearly report listed out the rents received for the year for tax
11 purposes. According to Tang, her report does not show how much money Tang was holding
12 on behalf of the property owner, nor does it show Tang's property management fee.

13 **(11) Violation:** By failing to provide monthly owners statement to owners and account for
14 her monthly property management fee on the yearly financials provided to the owners Tang
15 violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (1-1-2018 Edition), which
16 states: A property manager must report in writing to each owner any change in the owner's
17 ledger. A monthly report showing all receipts and disbursements for the account of the owner
18 during the prior monthly period is sufficient under this section. A copy of each such report
19 must be preserved and filed in the property manger's record. If an annual report contains
20 information not required to be provided by the property manager under these rules, the
21 property manager must set forth such information separately.

22 1.20 Tang was required to provide her February 2019 three-way reconciliation and all
23 supporting documentation for account ending in #2960. Tang provided an incomplete
24 reconciliation form with a copy of the February 2019 bank statement. The date on the
25 reconciliation form was May 1, 2019. On the reconciliation form Part I was partially filled out,
26 noting a balance as of February 1, 2019 of \$4,031.95 and unreconciled deposits of \$6,061.05
27 and unreconciled disbursements of \$7,830.50, the Part I total was not filed in and blank. Part II
28 was blank, Part III showed a zero, and Part IV was blank. The February 2019 bank statement
29 was included, showing an ending balance as of February 29, 2019 of \$8,054.00. No other
30 supporting documentation was provided and no explanation given.

1 **(12) Violation:** By failing to properly complete the February 2019 reconciliation as required,
2 Tang violated ORS 696.301(3) as it incorporates OAR 863-025-0028(2)(a), (b),(c,) and (d)(A)
3 (1-1-2018 Edition), which states: (2) a property manager must reconcile each clients' trust
4 account within 30 calendar days of the date of the bank statement pursuant to the
5 requirements contained in this section: (a) the reconciliation must have three components that
6 are contained in a single reconciliation document; (b) the balances of each component in
7 section (2)(a) of this rule must be equal to and reconciled with each other. If any adjustment is
8 needed, the adjustment must be clearly identified and explained on the reconciliation
9 document; (c) outstanding checks must be listed by check number, issue date, payee and
10 amount; (d) within 30 calendar days from the date of the bank statement, the property
11 manager must: (A) complete the reconciliation document.

12 1.21 All of the above demonstrate incompetence in performing acts for which Tang is
13 required to hold a license.

14 **(13) Violation:** ORS 696.301(12) (2015, 2017, and 2019 Edition) which states a
15 licensee's real estate license can be disciplined if they have demonstrated incompetence in
16 performing any act for which the licensee is required to hold a license.

17 2.

18 2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301.
19 Based on these violations a suspension is appropriate for violations of ORS 696.301(3),(12),
20 and (15).

21 2.2 A suspension of Tang's principal broker license is appropriate under ORS
22 696.396(2)(c)(B). According to ORS 696.396(2)(c)(B), the Agency may suspend a real estate
23 license if the material facts establish a violation of a ground for discipline under ORS 696.301
24 that exhibits incompetence in the performance of professional real estate activity.

25 2.3 The foregoing violations are also grounds for the issuance of a limited license
26 pursuant to ORS 696.125. Here the Commissioner has determined that issuance of a limited
27 license is in the public interest as to property management portions of Tang's real estate
28 activities. This determination related to property management is based upon the need for
29 adequate consumer protection.
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ORDER

IT IS HEREBY ORDERED that Tang’s real estate license be suspended for a period of 2 months, with said suspension to commence and be effective on November 1, 2020, and to continue through December 31, 2020.

IT IS FURTHER ORDERED that Tang be issued a principal broker license with limitations pursuant to ORS 696.125 as set forth below:

(a) The limited license period shall be for 10 years, starting from the date the Commissioner signs this stipulated order;

(b) Tang shall not conduct or engage in or supervise any employee engaged in professional real estate activity pertaining to property management activities, as defined in ORS 696.010(14).

(c) The above limited license restrictions shall continue for 10 years, as set forth above, and thereafter until Tang (1) requests an unrestricted license, in writing. When Tang requests an unrestricted license, OREA will conduct an inquiry on Tang including but not limited to a check through the Law Enforcement Data System. If OREA finds that there is no reason to continue the limited license, an unrestricted license will be issued.

IT IS FURTHER ORDERED that, should Tang violate any term or condition of this Order, it may be a basis on which to revoke Tang’s license in accordance with ORS 696.301(13).

IT IS SO STIPULATED:

IT IS SO ORDERED:

DocuSigned by:
Xiao Tang
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XIAO Q. TANG

DocuSigned by:
Steven Strobe
B444D267DDE44A0...
Steven Strobe

Date 9/4/2020 | 7:58 PM PDT

Date 9/8/2020 | 9:24 AM PDT

Date of Service: 09/08/2020