

1.7 The assigned Administrative Law Judge from the Office of Administrative Hearings convened the hearing as scheduled on June 28, 2022. Paz did not appear at the hearing, nor did he notify the Agency or the Office of Administrative Hearings that he would not appear at the scheduled hearing.

2.

Based upon the foregoing, and upon the Agency's investigation reports, documents and files that, pursuant to Section 9 of the *Notice of Intent*, automatically become part of the evidentiary record of this disciplinary action upon default (for the purpose of proving a prima facie case (ORS 183.417(4)), the Real Estate Commissioner finds:

2.1 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.

2.2 As noted in section 9 of the *Notice of Intent to Revoke License No. PM 201218387 and to Assess a Civil Penalty* and section 2 above, the Agency's entire investigation file was designated as the record for purposes of presenting a prima facie case upon default, including submissions from Paz and all information in the administrative file relating to the mailing of notices and any responses received.

FINDINGS OF FACT

3.

3.1 On December 20, 2020, Paz became licensed as a property manager, working under the registered business name Ataraxis Property Management LLC.

3.2 On December 23, 2020, the Agency received a complaint from Andrey Labunskey against Paz.

3.3 Labunskey is a licensed principal broker with Atlas Management LLC and is the president of the company.

3.4 Prior to becoming licensed, on March 2, 2020, Paz was hired by Atlas as a Community Manager. Paz was promoted to Portfolio Manager and became responsible for Mist Wood Apartments located at 2655 NE 205 Ave, Fairview, OR (Mist Wood).

3.5 County records show ANR Fairview LLC as the owner of Mist Wood. Secretary of State records showed the Avery Living Trust, with AC Avery (Avery) as Trustee, as owner of both ANR Fairview LLC and A.C. Avery LLC (AC Avery).

3.6 On December 20, 2020, Paz became licensed as a property manager. Prior to becoming licensed, Paz signed a property management agreement for the Mist Wood property on December 9, 2020. The property management agreement was between Ataraxis Property Management LLC (Ataraxis) and ANR Fairview LLC. Paz applied to register Ataraxis as a registered business name with the Agency on December 10, 2020. This property management agreement was initially provided to the Agency by Karin Winans (Winans) from AC Avery LLC.

3.7 The property management agreement between Ataraxis and ANR Fairview LLC listed the Mist Wood address as 2645 NE 205th instead of 2655 NE 205th, which is the record as found on Multnomah County Property records. The apartments were originally recorded at 2645 NE 205th Street but when the property was later divided up, the apartments were assigned the 2655 NE 205th address.

3.8 The property management agreement provided by Winans from AC Avery LLC for Mist Wood showed it was signed by A.C. Buzz Avery on December 7, 2020, and by Paz on December 9, 2020 (prior to Paz obtaining a property manager license).

3.9 On May 3, 2021, Paz provided a property management agreement for Mist Wood. The property management agreement provided by Paz was identical to the one provided to Winans except the signature dates were different, and the PDF appeared to be a copy as Paz's document was in black and white and not in color as the original. Paz's copy of the property management agreement showed that he signed on December 10, 2020, and A.C. Buzz Avery signed on December 20, 2020.

3.10 The DocuSign envelope ID was identical on both property management agreements, D6E9BB5B-87B6-45D1-A56E-DA86DC8B8F4E, as shown in the upper left hand corner.

3.11 Agency Investigator/Auditor Cidia Nañez requested Paz to submit the certificate of completion for the Envelope ID D6E9BB5B-87B6-45D1-A56E-DA86DC8B8F4E, for the property management agreement he had submitted to the Agency. Paz responded, “The original PMA was not executed solely on DocuSign so this is not available; I no longer have access to the original account as it was a free trial.”

3.12 The property management agreement provided by Winans shows on the date line below A.C. Buzz Avery’s signature that dashes were used to separate the date numbers, whereas the property management agreement submitted by Paz, shows the date entered under A.C. Buzz Avery’s signature used slashes to separate the numbers.

3.13 The signature date under Paz’s name, on the agreement he provided, of December 10, 2020, coincided with the date Paz applied with the Agency to register his company, Ataraxis, as a registered business name. The signature date under Avery’s name, December 20, 2020, coincided with the date Paz completed all licensing requirements and received a property manager license.

3.14 Winans confirmed the property management agreement she submitted to the Agency was the only one A.C. Buzz Avery had signed (apart from one later signed in May 2021 removing the compensation addendum per lender’s request).

3.15 Agency records showed Paz reported clients’ trust account ending in #1930, named “MW2655 CTA” was opened on December 22, 2020.

3.16 The March 2021 AppFolio Reconciliation Report for clients’ trust account ending in #1930 concealed the Adjusted Cash Balance and final outcome of the reconciliation found on the final page of the report. The final page of the AppFolio Reconciliation report can be seen, in its entirety, on a revised March 2021 AppFolio Reconciliation report Paz later submitted on May 11, 2021.

3.17 Owner statements provided by Paz on April 27, 2021, showed several entries of bank charges. The property management agreement did not reference bank charges or who

would be responsible for bank fees. Paz did not provide a signed addendum regarding the bank charges.

3.18 February 2021 owner ledger statement for clients' trust account ending in #1390 showed an insufficient balance from February 25, 2021, through February 28, 2021.

3.19 The ledger first became insufficient on February 25, 2021, when a disbursement of \$18,695.28 was made (noted as Owner Distribution- February Draw) which left the balance as -\$174.45. The negative balance continued through the end of the month.

3.20 Agency records showed Paz reported security deposit account named "MW2655 CTA SD" ending in #3781 was opened on December 22, 2020.

3.21 On April 26, 2021, Paz was requested to provide his most recent monthly reconciliation for security deposits account ending in #3781. On April 27, 2021, Paz provided the following documents: a March 2021 AppFolio Reconciliation Report, a Wells Fargo Bank Statement and a Security Deposit Funds Detail report. Paz did not provide a signed single reconciliation document.

3.22 The March 2021 AppFolio Reconciliation Report for security deposits account ending in #3781 concealed the Adjusted Cash Balance and final outcome of the reconciliation found on the final page of the report. The final page of the AppFolio Reconciliation report can be seen, in its entirety, on a revised March 2021 AppFolio Reconciliation report Paz later submitted on May 11, 2021.

3.23 Wells Fargo bank statement for clients' trust account ending in #3781 showed an ending balance on March 31, 2021 of \$21,631.17. The Security Deposits Funds Detail report showed a balance on March 31, 2021, of \$21,631.00. The difference of \$.17 was interest that was earned that month.

3.24 The tenant rental lease agreement did not state that the security deposits were deposited into an interest bearing account and that interest earned would be disbursed to the owner.

STATEMENT OF LAW APPLICABLE TO FINDINGS OF FACT

4.

4.1 ORS 696.020(2) (2019 Edition) states: an individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license.

4.2 ORS 696.301(3) states a real estate licensee's real estate license may be disciplined if they have: 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

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

4.4 ORS 696.301(14) states a licensee's real estate license can be disciplined if they have committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or real estate licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

4.5 ORS 696.301(15) states a licensee's real estate license can be disciplined if they engaged in any conduct that is below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon.

4.6 ORS 696.301(3) incorporates:

a. ORS 696.890(4)(a)(c)(e)(f) (2019 Edition) states: (4) a property manager owes the property owner the following affirmative duties: (a) to deal honesty and good faith; (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.

b. OAR 863-025-0020(2)(a) (1-1-20 Edition) states: a property management agreement must include, but is not limited to the address or legal description of the owner's rental real estate.

c. OAR 863-025-0020(3)(c) (1-1-20 Edition) which states: (3) if the property manager and owner agree to any of the following terms, the terms must be included in the property management agreement: (c) specific charges that will be paid by the owner.

d. OAR 863-025-0025(1)(a) (1-1-20 Edition) states all clients' trust accounts and security deposits accounts must be labeled on all bank records and checks as "Clients' Trust Account" or "Client Trust Account."

e. OAR 863-025-0025(1)(b) (1-1-20 Edition) which states: all security deposits trust accounts must be labeled on all bank records and checks as "Clients' Trust Account – Security Deposits" or "Client Trust Account SD".

f. OAR 863-025-0025(11)(b)(c) (1-1-20 Edition) which states: (11) a property manager may place security deposits received by the property manager in a federally insured interest bearing security deposits account if: (b) the tenant or tenants whose security deposits are deposited into such account have provided written approval for such an account; and (c) the provisions in the property management agreement and the written approval of the tenant specify to whom and under what circumstances the interest earnings will accrue and be disbursed.

g. OAR 863-025-0027(3) (1-1-20 Edition) states: (3) a property manager must not disburse funds from a clients' trust account or security deposits account unless there are sufficient funds, as defined in OAR 863-025-0010, in the ledger account against which the disbursement is made. OAR 863-025-0010(21) defines, "Sufficient funds", as an amount of funds on an owner's ledger or a tenant's ledger that is equal to or greater than the amount of a planned disbursement from a clients' trust account or a security deposits account but which must not include any security deposits in a security deposits trust account that are required to be held pending the termination of a rental agreement. Only funds belonging to the owner or tenant on whose behalf the disbursement is planned may be considered in determining if there are sufficient funds or a sufficient credit balance.

h. OAR 863-025-0028(3)(a)(d)(A)(B) (1-1-20 Edition) which states: (3) a property manager must reconcile each security deposits account within 30 calendar days of the bank statement pursuant to the requirements contained in this section. (a) The reconciliation must have three components that are contained in a single reconciliation document: (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 attesting to the accuracy and completeness of the reconciliation.

4.7 ORS 696.010(17)(c),(h),(i),(k) (2019 Edition) defines “Professional real estate activity” as: any of the following actions, when engaged in for another and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation, by any person who: (c) negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate.; (h) engages in management of rental real estate; (i) purports to be engaged in the business of buying, selling, exchanging, renting or leasing real estate; and (k) assists or directs in the negotiation or closing of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate.

4.8 ORS 696.010(14)(a)(A)-(M), and (b)(A)-(F) (2019 Edition) defines “Management of rental real estate.” ORS 696.010(14)(a)(M) states: (a) representing the owner of real estate under a property management agreement in the rental or lease of the real estate and includes but is not limited to: (M) offering or attempting to do any of the acts described in this paragraph for the owner of real estate.

4.9 ORS 696.010(6) (2019 Edition) defines “compensation as: valuable consideration for services rendered or to be rendered, whether contingent or otherwise.

4.10 ORS 696.990(4)(a) and (b) states any person that violates ORS 696.020(2) may be required by the Real Estate Commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner of: (a) not less than \$100 nor more than \$500 for the first offense of unlicensed professional real estate activity; and (b) not less than \$500 nor more than \$1,000 for the second and subsequent offenses of unlicensed professional real estate activity.

ULTIMATE FINDINGS OF FACT

5.

5.1 Paz signed the property management agreement between Ataraxis Property Management LLC (Ataraxis) and ANR Fairview LLC on December 9, 2020, prior to have a

license. Paz engaged unlicensed professional real estate activity and constitutes grounds to impose a civil penalty under ORS 696.990(4)(a) and (b).

5.2 The property management agreement between Ataraxis and ANR Fairview LLC incorrectly listed the address for Mist Wood at 2645 NE 205th and not 2655 NE 205th as found on Multnomah County Property records.

5.3 Paz submitting an altered copy of the property management agreement between Ataraxis and ANR Fairview to the Agency.

5.4 Paz named clients' trust account ending in #1930 "MW2655 CTA," which did not include the required naming requirements.

5.5 On April 27, 2021, Paz sent the Agency a copy of the March 2021 AppFolio Reconciliation report for clients' trust account ending in #1930 which concealed the Adjusted Cash Balance and final outcome of the reconciliation.

5.6 Paz failed to address who was responsible for bank fees in the property management agreement.

5.7 Paz made disbursements from the owner ledger account for clients' trust account ending in #1390 when there were not sufficient funds to do so. The insufficient balance started on February 25, 2021 and continued through February 28, 2021.

5.8 Paz named the security deposit account ending in #3781 "MW2655 CTA SD," which did not include the required naming requirements.

5.9 Paz failed to properly complete and provide the reconciliation on a signed single reconciliation document for March 2021 for security deposits account ending in #3781.

5.10 On April 27, 2021, Paz sent the Agency a copy of the March 2021 AppFolio Reconciliation report for CTA-SD #3781, which concealed the Adjusted Cash Balance and final outcome of the reconciliation.

5.11 Tenant security deposits were deposited and being held in an interest bearing account. The tenant rental agreement did not state that security deposits were deposited in an interest-bearing account.

5.12 In summary, the facts above establish grounds to revoke Paz's property manager license and impose a \$500.00 civil penalty.

CONCLUSIONS OF LAW

6.

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

6.2 The material facts establish a violation of a ground for discipline, by preponderance of the evidence, under ORS 696.301 as set forth in the *Notice of Intent to Revoke License No. PM 201218387 and to Assess a Civil Penalty*. ORS 696.396(1),(2)(c)(B) and (C).

6.3 Based on these violations, the Agency may revoke Paz's property manager license.

6.4 Specifically, Paz is subject to discipline pursuant to ORS 696.301(3), (12), (14), and (15) for (3) disregarding or violating 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; (12) demonstrating incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license; (14) committing an act of fraud or engaging in dishonest conduct substantially related to the fitness of the applicant or real estate licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity; and (15) engaging in any conduct that is below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon.

6.5 A revocation of Paz's property manager license is appropriate for violations of ORS 696.301(3), (12), (14) and (15).

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

6.7 The *Notice of Intent to Revoke License No. PM 201218387 and to Assess a Civil Penalty* also established grounds to assess a civil penalty pursuant to ORS 696.990(4)(a) and

(b) for violations of ORS 696.020(2), and based on these violations, the Agency may assess a civil penalty against Paz.

6.8 Based on the evidence in the record, the preponderance of the evidence supports the revocation of Paz's property manager license and assessing a \$500.00 civil penalty for the professional real estate activity conducted prior to Paz having a license.

6.9 The Agency may therefore, revoke Paz's property manager license. The Agency may also assess a civil penalty in the amount of \$500.00.

6.10 The specific violations are repeated here below:

(1) By signing the property management agreement between Ataraxis Property Management LLC (Ataraxis) and ANR Fairview LLC on December 9, 2020, prior to having a license, Paz engaged in unlicensed professional real estate activity (ORS 696.010(17)(c),(h),(i),(k) and ORS 696.010(14)(a)(M)) in violation of ORS 696.020(2) (2019 Edition).

(2) The property management agreement between Ataraxis and ANR Fairview LLC incorrectly listed the address for Mist Wood at 2645 NE 205th and not 2655 NE 205th as found on Multnomah County Property records in violation of ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(a) (1-1-20 Edition).

(3) By submitting an altered copy of the property management agreement between Ataraxis and ANR Fairview to the Agency, Paz violated ORS 696.301(12),(14), and (15) (2019 Edition).

(4) By naming the clients' trust account ending in #1930 "MW2655 CTA," which did not include the required naming requirements, Paz violated ORS 696.301(3) as it incorporates OAR 863-025-0025(1)(a) (1-1-20 Edition).

(5) On April 27, 2021, Paz sent the Agency a copy of the March 2021 AppFolio Reconciliation report for clients' trust account ending in #1930 which concealed the Adjusted Cash Balance and final outcome of the reconciliation, in violation of ORS 696.301(12),(14), and (15) (2019 Edition).

(6) By failing to address who was responsible for bank fees in the property management agreement Paz violated ORS 696.301(3) as it incorporates OAR 863-025-0020(3)(c) (1-1-20 Edition).

(7) Paz made disbursements from the owner ledger account for clients' trust account ending in #1390 when there were not sufficient funds to do so. The insufficient balance started on

February 25, 2021 and continued through February 28, 2021. Paz violated ORS 696.301(3) as it incorporates OAR 863-025-0027(3) (1-1-20 Edition) and ORS 696.890(4)(a)(c)(e)(f) (2019 Edition).

(8) By naming the security deposit account ending in #3781 “MW2655 CTA SD,” which did not include the required naming requirements, Paz violated ORS 696.301(3) as it incorporates OAR 863-025-0025(1)(b) (1-1-20 Edition).

(9) By failing to properly complete and provide the reconciliation on a signed single reconciliation document for March 2021 for security deposits account ending in #3781 Paz violated of ORS 696.301(3) as it incorporates OAR 863-025-0028(3)(a)(d)(A)(B) (1-1-20 Edition).

(10) On April 27, 2021, Paz sent the Agency a copy of the March 2021 AppFolio Reconciliation report for CTA-SD #3781 which concealed the Adjusted Cash Balance and final outcome of the reconciliation in violation of 696.301(12)(14)(15) (2019 Edition). the community of individuals engaged in the practice of professional real estate activity in Oregon.

(11) Tenant security deposits were deposited and being held in an interest bearing account. The tenant rental agreement did not state that security deposits were deposited in an interest bearing account in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(11)(b)(c) (1-1-20 Edition).

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ORDER

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

IT IS FURTHER ORDERED that, pursuant to ORS 696.990(4)(a) and (b) and based upon the violation set forth above for engaging in professional real estate activity prior to having a license, Paz pay a civil penalty of \$500.00, said penalty to be paid to the General Fund of the State Treasury by paying the same to OREA.

Dated this 29th day of July, 2022.

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 July 29, 2022, I mailed and emailed the foregoing Final Order by Default issued on this date in OAH Case No. 2022-ABC-05121 and the Agency Case No. 2020-626.

By: First Class Mail

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