

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 A notice of intent is properly served when deposited in the United States mail, registered or certified mail, and addressed to the real estate licensee at the licensee's last known address of record with OREA. (ORS 183.415(2); OAR 137-003-0505; OAR 863-001-0006. If correctly addressed, such a notice is effective even though it is not received by the person to be notified. *Stroh v. SAIF*, 261 OR 117, 492 P2d 472 (1972) (footnote 3 in this case misquotes the cited treatise and contradicts the text of the opinion; treatise and cited case law support the proposition stated in the text.) Also, notice is effective even though the addressee fails or refuses to respond to a postal service "mail arrival notice" that indicates that certified or registered mail is being held at the post office. See *State v. DeMello*, 300 Or App 590, 716 P2d 732 (1986) (discussing use of certified mail to effectuate notice of driver's license suspension under ORS 482.570). See also *El Rio Nilo, LLC v. OLCC*, 240 Or App 362, 246 P3d 508 (2011) (Notice by certified mail effective even though addressee did not pick up in time to file request for hearing timely).(Oregon Attorney General's Administrative Law Manual and Uniform Model Rules Of Procedure Under the Administrative Procedures 2019 Edition at pages 97-98.

2.2 Doster's last known address of record with the Agency was 10673 SE 21st Avenue, Milwaukie, OR 97222.

2.3 A certified mailing of the *Notice of Intent* was mailed to Doster at her last known address of record on August 30, 2023. The Notice of Intent was received at Doster's address of record on September 2, 2023.

2.4 The notice was mailed certified to another possible address for Doster at PO Box 16610, Portland, OR 97292. This certified mailing has not been returned to the Agency.

2.5 The notice was also mailed regular first-class mail in a handwritten envelope to both of the above possible addresses for Doster. The mailings in the handwritten envelope have not been returned to OREA. The OAH Rules contain a rebuttable presumption that documents sent by regular mail are received by the addressee. ORS 137-003-0520(10). If the regularly mailed notice is actually received, it is effective on the date received, rather than the date of mailing.

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

2.7 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.

2.8 As noted in section 9 of the *Notice of Intent to Revoke License No. PM.200901058 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 Doster 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, Doster was licensed as a property manager with Portland's Premier Property Management LLC (PPPM).

3.2 On May 17, 2023, as part of related case 2023-198, Agency Investigator Dylan Ray (Ray) sent an email to Doster, requesting records. Doster was given a deadline of May 24, 2023, to provide the records to the Agency.

3.3 On May 24, 2023, Ray sent a second email to Doster requesting the records, as no response had been received. Ray also left a voicemail with Doster requesting cooperation.

3.4 On May 30, 2023, Ray sent a third email to Doster requesting the records, as no response had been received. A voicemail was also left with Doster.

3.5 On June 6, 2023, the Agency opened an investigation on Doster due to failure to provide records upon request.

3.6 On June 7, 2023, Ray sent a fourth email to Doster requesting the records needed in the related case. Ray also left Doster a voicemail.

3.7 Ray did not receive a response or any communication from Doster.

(1) Violation: By failing to produce property management records within five days of the request, Doster violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a)(b)(c) (1/1/2023 Edition). OAR 863-025-0035(2)(a)(b)(c) states: a property manager must produce records for inspection of the Agency (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; (b) if the Agency has reasonable grounds to believe that funds of an owner or tenant may be missing or misappropriated or that the property manager is engaging in fraudulent activity, any records demanded or requested by the Agency must be produced immediately; and (c) failure to produce such records within the timelines stated in OAR 863-025-0035(2)(a) or (b) of this section is a violation of ORS 696.301.

3.8 In a review of bank statements received from the Milwaukie Police Department in the related case, it was identified that Doster authorized checks payable to PPPM, that on the owner's ledgers showed payable to Wagoner's Construction LLC (Wagoner's).

3.9 Owner's ledgers were received from the complainant in the related case.

3.10 On the owner ledger labeled "BUTOMAPL – 8777 SW Maple Court, Tigard, OR 97223," the payee is shown as Wagoner's for check #8869, in the amount of \$1,405.00, and dated January 9, 2023. The check was identified with a description of "General Maintenance Labor, Inc. 0032 – Past Due – Exterior Repairs Water Damage Re."

3.11 A copy of check #8869 shows the same amount and date listed in the owner ledger, but the payee is identified as PPPM.

3.12 Check #8869 was signed by Doster.

3.13 On the owner ledger labeled "BUTOSEPT – 17608 SW September Lane, Beaverton, OR 97006," the payee is shown as Wagoner's for check #8682, in the amount of \$1,260.00, and dated October 18, 2022. The check was identified with a description of "General Maintenance Labor – Inv0113; HOA Repairs, Reduce Trip Hazards to 1" , Remo...".

3.14 A copy of check #8682 shows the same date as listed in the owner ledger, but the payee is identified as PPPM in the amount of \$6,472.00.

3.15 Check #8682 was signed by Doster.

3.16 On June 23, 2023, in a phone call with Ray, Forrest Wagoner, owner of Wagoner's, confirmed he has never worked for PPPM, does not know Doster, and did not work on the properties identified on the owner's ledger.

(2) Violation: By identifying a payee other than PPPM on the owner ledger, but authorizing disbursements to PPPM from a Client's Trust Account, Doster violated ORS 696.301(14) (2021 Edition). ORS 696.301(14) states a real estate license may be disciplined if they have: (14) 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.

STATEMENT OF LAW APPLICABLE TO FINDINGS OF FACT

4.

4.1 ORS 696.301(3) 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(12) states a licensee's real estate license can be disciplined if they have: (12) demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

4.3 ORS 696.301(14) states a licensee's real estate license can be disciplined if they have: (14) 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.

4.4 ORS 696.301(15) states a licensee's real estate license may be disciplined if they have: (15) 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.

4.5 ORS 696.396(2)(c)(B) and (C) states the Real Estate Commissioner may revoke a real estate license if 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; or (C) Exhibits dishonest or fraudulent conduct.

4.6 OAR 863-027-0020(1) defines the goal of progressive discipline and OAR 863-027-0020(2) sets out all factors the Real Estate Commissioner will consider when determining the level of discipline for licensees.

4.7 ORS 696.990(6)(a) states a real state licensee who is a real estate property manager or principal real estate broker and who is engaging in or who has engaged in the management of rental real estate may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty of up to \$1,000.00 per day of violation, or a lesser penalty in an amount determined by the commissioner if the licensee fails to comply with rules that require the licensee to produce for inspection records related to the management of rental real estate that are maintained by the licensee as provided by ORS 696.280. ORS 696.990(6)(b) states a civil penalty imposed under this subsection may not exceed \$10,000.00.

4.8 OAR 863-025-0035(2)(a)(b) and (c) 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; (b) if the Agency has reasonable grounds to believe that funds of an owner or tenant may be missing or misappropriated or that the property manager is engaging in fraudulent activity, any records demanded or requested by the Agency must be produced immediately; and (c) Failure to produce such records within the timelines stated in subsection (a) or (b) of this section is a violation of ORS 696.301.

4.9 In establishing the violations alleged above, the Agency may rely on one or more definitions contained in ORS 696.010.

4.10 And, in accordance with 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.

ULTIMATE FINDINGS OF FACT

5.

5.1 Doster failed to produce the requested property management records to the Agency.

5.2 Doster authorized disbursements to PPPM from a Client's Trust Account but identified a different payee in the owner's ledger.

5.3 Doster's complete failure to produce the requested records constitutes grounds to impose a civil penalty as per ORS 696.990(6)(a) and (b).

5.4 Doster demonstrated incompetence and untrustworthiness, and conduct that is below the standard of care for the practice of professional real estate activity in Oregon.

5.5 In summary, the facts above establish grounds to revoke Doster's property manager license and impose a civil penalty in an amount up to \$10,000.00.

CONCLUSIONS OF LAW

6.

6.1 Pursuant to ORS 183.417(4) and OAR 137-003-0670 Doster 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.200901058 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 Doster's property manager license.

6.4 Specifically, Doster 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; 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 Doster's property manager license is appropriate for violations of ORS 696.301(3), (12), (14) and (15).

6.6 A revocation of Doster's property manager license is appropriate under ORS 696.396(2)(c)(B) and (C). According to ORS 696.396(2)(c)(B) 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 dishonest or fraudulent conduct.

6.7 The *Notice of Intent to Revoke License No. PM.200901058 and to Assess a Civil Penalty* also established grounds to assess a civil penalty pursuant to ORS 696.990(6)(a)(b), and based on these violations, the Agency may assess a civil penalty against Doster.

6.8 Based on the evidence in the record, the preponderance of the evidence supports the revocation of Doster's property manager license and assessing a \$10,000.00 civil penalty.

6.9 The Agency may therefore, revoke Doster's property manager license. The Agency may also assess a civil penalty in the amount of \$10,000.00.

6.10 Pursuant to ORS 696.775 the expiration or lapsing of Doster's license does not prohibit the Commissioner from proceeding with this, or further action.

6.11 The specific violations are repeated here below:

(1) Violation: By failing to produce property management records within five days of the request, Doster violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a)(b)(c) (1/1/2023 Edition). OAR 863-025-0035(2)(a)(b)(c) states: a property manager must produce records for inspection of the Agency (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; (b) if the Agency has reasonable grounds to believe that funds of an owner or tenant may be missing or misappropriated or that the property manager is engaging in fraudulent activity, any records demanded or requested by the Agency must be produced immediately; and (c) failure to produce such records within the timelines stated in OAR 863-025-0035(2)(a) or (b) of this section is a violation of ORS 696.301.

(2) Violation: By identifying a payee other than PPPM on the owner leger, but authorizing disbursements to PPPM from a Client's Trust Account, Doster violated ORS 696.301(14) (2021 Edition). ORS 696.301(14) states a real estate license may be disciplined if they have: (14) 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.

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ORDER

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

IT IS FURTHER ORDERED that, pursuant to ORS 696.990(6)(a)(b) and based upon the violation set forth above, Doster pay a civil penalty of \$10,000.00, said penalty to be paid to the General Fund of the State Treasury by paying the same to OREA.

Dated this 5th day of october, 2023.

OREGON REAL ESTATE AGENCY

DocuSigned by:
Steve 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.