

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of
RUTH F DURHAM)
STIPULATED FINAL ORDER

The Oregon Real Estate Agency (Agency) and Ruth Durham (Durham) do hereby agree and stipulate to the following:

FINDINGS OF FACT, STATEMENTS OF LAW
AND
CONCLUSIONS OF LAW

1.

In establishing the violations set forth herein, the Agency may rely on one or more of the definitions contained in ORS 696.010.

First Findings of Fact:

1.1 At all times mentioned herein, Durham was licensed as a property manager doing business under the registered business name of RFD Property Management Services (RFD).

1.2 On May 20, 2022, Durham was notified that her clients' trust account ending in #1749 (CTA #1749), which held owner funds, had been selected for a reconciliation review. Durham provided documents for March 2022 in a timely manner. An investigation was opened due to the outstanding issues found in the review.

1.3 On October 5, 2022, Agency Compliance Coordinator Hani Ghamrawi requested Durham provide a delegation of authority for Edward Durham (E. Durham), her most recent reconciliation records for CTA #1749 and an explanation why CTA #1749 was out of balance by \$20,118.01 on the March 2022 reconciliation.

1 1.4 On October 11, 2022, Durham provided the delegation of authority, August 2022
2 reconciliation records and an explanation for the account being out-of-balance.

3 1.5 The delegation of authority did not have the signatures of the person authorizing
4 (Durham) and receiving (E. Durham) a delegation of authority.

5 1.5.a Ultimately, after an additional request, E. Durham provided a signed delegation
6 of authority.

7 **First Statement of Law:** ORS 696.301(3) authorizes the Commissioner to reprimand a
8 licensee’s real estate license who has disregarded or violated any provision of ORS 659A.421,
9 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the
10 Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR 863-025-
11 0015(5)(b) (1/1/2021 Edition) which states: (5) The following delegations of the property
12 manager's authority must be in writing, dated and signed by the property manager and signed
13 by the individual who is receiving the authority, and kept with written policies. (b) Review and
14 approve reconciliations and receive and disburse funds under OAR 863-025-0025(23).

15 **First Conclusion of Law:** By failing to have the required signatures on the delegation
16 of authority, Durham violated ORS 696.301 and its implementing rule OAR 863-025-0015(5)(b)
17 (1/1/2021 Edition).

18 **Second Findings of Fact:**

19 1.6 The March 2022 reconciliation review documents for CTA #1749 showed the
20 reconciliation was out-of-balance by \$20,118.01, and the adjustment was not clearly identified
21 and explained.

22 1.7 The August 2022 reconciliation review documents for CTA #1749 showed the
23 reconciliation was out of balance by \$26,631.86.

24 **Second Statement of Law:** ORS 696.301(3) authorizes the Commissioner to
25 reprimand a licensee’s real estate license who has disregarded or violated any provision of
26 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or
27 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR
28 863-025-0028(2)(b) (1/1/2021 Edition) which states: (2) A property manager must reconcile
29 each clients' trust account within 30 calendar days of the date of the bank statement pursuant
30 to the requirements contained in this section. (b) The balances of each component in section

1 (2)(a) of this rule must be equal to and reconciled with each other. If any adjustment is needed,
2 the adjustment must be clearly identified and explained on the reconciliation document.

3 **Second Conclusion of Law:** Durham's March 2022 and August 2022 reconciliations
4 for CTA #1749 were out-of-balance, and Durham failed to clearly identify and explain the
5 needed adjustments on the reconciliations, in violation of ORS 696.301 and its implementing
6 rule OAR 863-025-0028(2)(b) (1/1/2021 Edition).

7 **Third Findings of Fact:**

8 1.8 During the investigation Durham explained to Ghamrawi that the \$20,118.01
9 discrepancy noted in the March 2022 reconciliation is the result of not disbursing funds
10 belonging to her from CTA #1749 (accumulated fines and fees, and management fees).

11 **Third Statement of Law:** The Real Estate Commissioner may reprimand the real
12 estate license of any real estate licensee if the licensee has disregarded or violated any
13 provision of ORS 659A.421, ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to
14 696.870 and 696.890 or any rule of the Agency. Implementation of ORS 696.301(3) is made
15 through OAR 863-025-0027(6) (1/1/2021 Edition) which states: (6) A property manager must
16 disburse earned management fees from the clients' trust account at least once each month
17 unless a different schedule of disbursement is specified in the property management
18 agreement and may only disburse such fees if sufficient funds are available.

19 **Third Conclusion of Law:** By failing to disburse accumulated fines and management
20 fees owed to Durham from CTA #1749 at least once each month, Durham violated ORS
21 696.301 and its implementing rule OAR 863-025-0027(6) (1/1/2021 Edition).

22 **Fourth Findings of Fact:**

23 1.9 In response to Ghamrawi's request for new reconciliation documents, the
24 reconciliation form provided was not complete, specifically Part III the sum of all owner ledgers
25 was blank, and the reconciliation was not signed.

26 **Fourth Statement of Law:** The Real Estate Commissioner may reprimand the real
27 estate license of any real estate licensee if the licensee has disregarded or violated any
28 provision of ORS 659A.421, ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to
29 696.870 and 696.890 or any rule of the Agency. Implementation of ORS 696.301(3) is made
30 through OAR 863-025-0028(2)(a)(C)(b)(d)(A)(B) (1/1/2021 Edition) which states: (2) A property

1 manager must reconcile each clients' trust account within 30 calendar days of the date of the
2 bank statement pursuant to the requirements contained in this section. (a) The reconciliation
3 must have three components that are contained in a single reconciliation document. (C) The
4 sum of all positive owners' ledgers as of the date of the bank statement. (b) The balances of
5 each component in section (2)(a) of this rule must be equal to and reconciled with each other.
6 If any adjustment is needed, the adjustment must be clearly identified and explained on the
7 reconciliation document. (d) Within 30 calendar days from the date of the bank statement, the
8 property manager must: (A) Complete the reconciliation document; and (B) Sign and date the
9 reconciliation document, attesting to the accuracy and completeness of the reconciliation.

10 **Fourth Conclusion of Law:** Durham failed to complete a reconciliation with three
11 components, specifically it did not contain the sum of all positive owners' ledgers and Durham
12 failed to sign the reconciliation document attesting to the accuracy and completeness of the
13 reconciliation, in violation of ORS 696.301 and its implementing rule OAR 863-025-
14 0028(2)(a)(C)(b)(d)(A)(B) (1/1/2021 Edition).

15 **Fifth Findings of Fact:**

16 1.10 The August 2022 check register and bank statement show Durham disbursed
17 approximately \$7,583.80 of funds from an owner ledger that did not have sufficient funds for
18 the disbursements.

19 **Fifth Statement of Law:** The Real Estate Commissioner may reprimand the real estate
20 license of any real estate licensee if the licensee has disregarded or violated any provision of
21 ORS 659A.421, ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and
22 696.890 or any rule of the Agency. Implementation of ORS 696.301(3) is made through OAR
23 863-025-0027(3) (1/1/2021 Edition) which states: (3) A property manager must not disburse
24 funds from a clients' trust account or security deposits account unless there are sufficient
25 funds, as defined in OAR 863-025-0010, in the ledger account against which the disbursement
26 is made.

27 **Fifth Conclusion of Law:** By disbursing funds from an owner ledger that did not have
28 sufficient funds for the disbursement, Durham violated ORS 696.301 and its implementing rule
29 OAR 863-025-0027(3) (1/1/2021 Edition).

30 **Sixth Findings of Fact:**

1 1.11 The August 2022 owner ledgers did not identify all disbursement for the month.

2 **Sixth Statement of Law:** The Real Estate Commissioner may reprimand the real
3 estate license of any real estate licensee if the licensee has disregarded or violated any
4 provision of ORS 659A.421, ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to
5 696.870 and 696.890 or any rule of the Agency. Implementation of ORS 696.301(3) is made
6 through OAR 863-025-0055(4) (1/1/2021 Edition) and ORS 696.890(4)(c)(e)(f) (2021 Edition).
7 OAR 863-025-0055(4) (1/1/2021 Edition) states: (4) A property manager must report in writing
8 to each owner any change in the owner's ledger. A monthly report, showing all receipts and
9 disbursements for the account of the owner during the prior monthly period, is sufficient under
10 this section. A copy of each such report must be preserved and filed in the property manager's
11 records. If an annual report contains information not required to be provided by the property
12 manager under these rules, the property manager must set forth such information separately.
13 ORS 696.890(4)(c)(e)(f) (2021 Edition) states: (4) A real estate property manager owes the
14 property owner the following affirmative duties: (c) To exercise reasonable care and diligence;
15 (e) To act in a fiduciary manner in all matters relating to trust funds; and (f) To be loyal to the
16 owner by not taking action that is adverse or detrimental to the owner's interest.

17 **Sixth Conclusion of Law:** By failing to identify, on owner ledgers, all disbursements
18 made during the month Durham violated of ORS 696.301 and its implementing rule OAR 863-
19 025-0055(4) (1/1/2021 Edition) and ORS 696.890(4)(c)(e)(f) (2021 Edition).

20 **Seventh Findings of Fact:**

21 1.12 The owner ledgers did not contain all required information, specifically the
22 ledgers did not contain the check number or cash receipt to each deposit, the date funds were
23 deposited and disbursed, the purpose of disbursements and the balance after each recorded
24 entry.

25 **Seventh Statement of Law:** The Real Estate Commissioner may reprimand the real
26 estate license of any real estate licensee if the licensee has disregarded or violated any
27 provision of ORS 659A.421, ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to
28 696.870 and 696.890 or any rule of the Agency. Implementation of ORS 696.301(3) is made
29 through OAR 863-025-0055(3)(b)(C)(D)(c)(A)(C)(E)(d) (1/1/2021 Edition) and ORS
30 696.890(4)(c)(d)(e) (2021 Edition). OAR 863-025-0055(3)(b)(C)(D)(c)(A)(C)(E)(d) (1/1/2021

1 Edition) states: (3) All owner ledgers must contain at least the following information: (b) For
2 each deposit of funds: (C) The check number, cash receipt number or a unique series of letters
3 and/or numbers that established an audit trail to the receipt of funds; and (D) The date the
4 funds were deposited. (c) For each disbursement of funds: (A) The date the funds were
5 disbursed, (C) The check number or bank-generated electronic tracking number: (E) The
6 purpose of the disbursement; and (d) The balance after each recorded entry. ORS
7 696.890(4)(c)(d)(e) (2021 Edition) states: (4) A real estate property manager owes the property
8 owner the following affirmative duties: (c) To exercise reasonable care and diligence; (d) To
9 account in a timely manner for all funds received from or on behalf of the owner; and (e) To act
10 in a fiduciary manner in all matters relating to trust funds.

11 **Seventh Conclusion of Law:** By failing to include all required information on owner
12 ledgers Durham violated ORS 696.301 and its implementing rule OAR 863-025-
13 0055(3)(b)(C)(D)(c)(A)(C)(E)(d) (1/1/2021 Edition) and ORS 696.890(4)(c)(d)(e) (2021 Edition).

14 **Eighth Findings of Fact:**

15 1.13 Tenant ledgers did not contain all required information, specifically the ledgers
16 did not contain for each deposit of funds, the check number or series of letter/numbers to
17 establish an audit trail, the date the funds were deposited, and for each disbursement of funds,
18 the date the funds were disbursed, the check number or bank generated tracking number and
19 the balance after each recorded entry.

20 **Eighth Statement of Law:** The Real Estate Commissioner may reprimand the real
21 estate license of any real estate licensee if the licensee has disregarded or violated any
22 provision of ORS 659A.421, ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to
23 696.870 and 696.890 or any rule of the Agency. Implementation of ORS 696.301(3) is made
24 through OAR 863-025-0050(4)(d)(C)(e)(A)(C)(E)(f) (1/1/2021 Edition) which states: (4) A
25 tenant's ledger must contain at least the following information: (d) For each deposit of funds:
26 (C) The check number, cash receipt number or a unique series of letters and/or numbers that
27 established an audit trail to the receipt of funds. (e) For each disbursement of funds: (A) The
28 date the funds were disbursed; (C) The check number or bank-generated electronic tracking
29 number; (E) The purpose of the disbursement; and (f) The balance after each recorded entry.

1 **Eighth Conclusion of Law:** By failing to include all required information on tenant
2 ledgers Durham violated ORS 696.301 and its implementing rule OAR 863-025-
3 0050(4)(d)(C)(e)(A)(C)(E)(f) (1/1/2021 Edition).

4 **Ninth Findings of Fact:**

5 1.14 RFD uses the vendor NW HouseWrights and Restorations LLC to perform work
6 on properties they manage. Durham's son, E. Durham, is the owner of NW HouseWrights and
7 Restorations LLC. The property management agreements do not disclose the use of this
8 business in which Durham has a pecuniary interest.

9 **Ninth Statement of Law:** The Real Estate Commissioner may reprimand the real
10 estate license of any real estate licensee if the licensee has disregarded or violated any
11 provision of ORS 659A.421, ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to
12 696.870 and 696.890 or any rule of the Agency. Implementation of ORS 696.301(3) is made
13 through 863-025-0020(2)(i)(j) (1/1/20201 Edition) which states: (2) A property management
14 agreement must include, but is not limited to: (i) Disclosure of the use of employees or a
15 business in which the property manager has a pecuniary interest at the time of the execution of
16 the property management agreement, that will provide services for the owner's property; and
17 (j) A statement that the property manager will disclose to the owner, in writing, the property
18 manager's planned use of any employees or a business in which the property manager has a
19 pecuniary interest to provide services for the owner's property, if such employees or business
20 were not disclosed in the property management agreement pursuant to section (2)(i) of this
21 rule.

22 **Ninth Conclusion of Law:** By failing to disclose in the property management
23 agreements that Durham has a pecuniary interest in NW HouseWrights and Restorations LLC
24 Durham violated ORS 696.301 and its implementing rule OAR 863-025-0020(2)(i)(j)
25 (1/1/20201 Edition).

26 **Tenth Findings of Fact:**

27 1.15 Durham collected and maintained pre-paid rents, used to secure the
28 performance of a rental or lease agreement therefore constituting a security deposit, in CTA
29 #1749. Durham did not transfer the portion of the funds constituting security deposits into the
30 security deposit CTA within three banking days.

1 for a violation of ORS 696.020(2); or (4) revise or render null and void an order suspending or
2 revoking a license.

3 3.

4 The Agency reserves the right to investigate and pursue additional complaints that may
5 be received in the future regarding this licensee.

6 4.

7 STIPULATION AND WAIVER

8 I, Ruth F Durham, have read and reviewed this Stipulated Final Order and its Findings
9 of Fact, Statements of Law and Conclusions of Law. I understand that the Findings of Fact,
10 Conclusions of Law and this Stipulation and Waiver of Hearing rights embody the full and
11 complete agreement and stipulation between the Agency and me. I further understand that if I
12 do not agree with this stipulation I have the right to request a Hearing on this matter and to be
13 represented by legal counsel at such a Hearing. I also understand that any Hearing would be
14 conducted in accordance with the procedures set forth in ORS Chapter 183 and in accordance
15 with the Rules of Practice and Procedure adopted by the Attorney General of the State of
16 Oregon. By signing this Stipulated Final Order I freely and voluntarily waive my rights to a
17 Hearing, to representation by legal counsel at such a Hearing, and to judicial review of this
18 matter.

19 I hereby agree and stipulate to the above Findings of Fact and Conclusions of Law and
20 understand that the Order which follows hereafter, which I have also read and understand,
21 may be completed and signed by the Real Estate Commissioner or may be rejected by the
22 Real Estate Commissioner. I further understand that, in accordance with the provisions of
23 ORS 696.445(3), notice of this Order shall be published in the Oregon Real Estate News
24 Journal.

25 In addition to all of the above, I agree that once the Commissioner executes this
26 Stipulated Final Order, I will accept service of the Stipulated Final Order by email, and hereby
27 waive the right to challenge the validity of service.

28 ORDER

29 IT IS HEREBY ORDERED that Ruth Durham's license be, and hereby is reprimanded.
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IT IS SO STIPULATED:

DocuSigned by:
Ruth Durham
0CE72B1C80094B3...
RUTH DURHAM

Date 3/2/2023 | 9:32 AM PST

IT IS SO ORDERED:



DocuSigned by:
Steven Strode
E2C2D0097AD8471...
STEVEN STRODE

Real Estate Commissioner

Date 3/2/2023 | 11:54 AM PST

Date of Service: 03/02/2023