REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

CHARLES R. VAIL STIPULATED FINAL ORDER

The Oregon Real Estate Agency (OREA) and Charles R Vail (Vail) do hereby agree and stipulate to the following:

FINDINGS OF FACT

&

CONCLUSIONS OF LAW

1.1 Vail obtained a property manager license from OREA on March 12, 2013. After becoming licensed, Vail worked under his own name until October 7, 2013, when he registered Vail Properties as a registered business name with OREA.

1.2 On June 3, 2013, OREA received a complaint from Joe Cherepanov (Cherepanov) and Darlene Elliott (Elliott), former tenants of 719 Fairview Ave SE, Salem Oregon (subject property). Elliot stated that Cherepanov had rented the subject property for over 11 years from the owners, Roy John Bolduc (Bolduc) and Zohra Campbell (Campbell). The complaint included allegations that Vail had engaged in the management of rental real estate activity without a license.

1.3 On January 30, 2013, Vail entered into a property management agreement with Bolduc. The agreement was for management of the subject property for a two year period starting on January 30, 2013 and ending on January 30, 2015. The agreement was signed by Vail and his wife, Priscilla Vail (Priscilla). Compensation agreed upon in the management agreement was a management fee equal to ten percent (10%) of the gross receipts collected from the operation of the subject property. Vail continued to manage the property under the
property management agreement for Bolduc after he obtained his property manager license from OREA on March 12, 2013.

1.4 The property management agreement stated the following:
“...Agent shall deposit (either directly or in a depository bank for transmittal) all revenues from the property into the bank account of the owner, here referred to as the trust account, and a joint account for owner and agent.”

Violation: By having the property management agreement require the owner of the property access to the clients' trust account, Vail violated OAR 863-025-0025(9) (9/14/12 Edition), which states that a property manager may not allow an owner to be an authorized signer on a clients’ trust account and may not allow an owner to deposit, hold or disburse funds in a clients’ trust account.

1.5 Vail stated that Bolduc was willing to keep Cherepanov and Elliot as tenants, if they would sign a new lease with management by the Vails. Between February 1, 2013, and getting licensed on March 12, 2013, Vail stated he encouraged Bolduc to offer another lease to the tenants and advised him to raise the rents on the tenants.

1.6 On February 1, 2013, Vail and his wife Priscilla showed up at the subject property and introduced themselves as the new property managers. Vail did not receive his property manager's license until March 12, 2013 and Priscilla is not licensed by OREA.

1.7 Cherepanov stated during the investigation that since his first meeting with Vail on February 1, 2013, the property owner, Bolduc refused to take rents from him and required all rents from the tenants go to Vail. During the first meeting Vail gave the tenants an introductory letter from the property management company.

1.8 Vail collected the rent for February 2013 from the tenants. A copy of the check was provided for the investigation. Dated February 1, 2013, signed by Elliott and payable to the order of Charles Vail. The “For” memo line stated “Feb lease- Joe Cherepanov- 719 Fairview Ave SE,” and was in the amount of $1,050.00.

1.9 Cherepanov and Elliot provided for the investigation a note they stated was left on their door on February 3, 2013. Written by Vail and Priscilla, the note reminded the tenants of the “regular appointment” set for February 15, 2013 and requested a spare key to the front door.
1.10 At the February 15, 2013 meeting, Vail and Priscilla met with the tenants to discuss signing a new rental agreement that increased the rent or vacating the property in the future.

1.11 Vail obtained the March 2013 rent check, dated February 2, 2013, for the subject property.

1.12 Prior to becoming licensed on March 12, 2013, Vail received a management fee of $115.00 for his services.

**Violation:** By conducting professional real estate activity without a license by engaging in the activities listed above, Vail violated ORS 696.020(2) (2011 Edition), which states that 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.

1.13 On August 1, 2013, Vail notified OREA that he opened a security deposit account. The account name disclosed to OREA was “Client Fund Chkg.” The account was not properly named with the required language of “clients’ trust account-security deposit.”

**Violation:** By failing to have the clients’ trust account security deposit account properly named, Vail violated OAR 863-025-025(2) (9/14/2012 Edition), which requires a property manager to open and maintain at least one clients’ trust account as defined in OAR 863-025-0010. Per OAR 863-025-0010(15) (9/14/2012 Edition) “Security Deposits Account,” means a federally insured clients’ trust account labeled as “Clients’ Trust Account- Security Deposits” on all bank records and checks that are established and maintained by a property manager.

1.14 Vail opened a separate clients’ trust account and failed to notify OREA of the account.

**Violation:** By failing to notify OREA within 10 business days after the clients’ trust account was opened, Vail violated ORS 696.241(4), which requires a property manager to notify OREA within 10 business days after the date a clients’ trust account is open.

1.15 Letters and invoices given to tenants from April 2, 2013, April 6, 2013 and June 3, 2013, showed Charles Vail working for Vail Properties.

1.16 Vail Properties was registered with the Oregon Secretary of State on September 26, 2013, but was not registered with the OREA as of October 4, 2013.
1.17 On October 7, 2013, Vail registered Vail Properties with OREA as a registered business name.

Violation: By using the name Vail Properties on communications when the name was not registered with OREA, Vail violated ORS 696.026(6) (2011 Edition), which states that a licensed real estate property manager may only conduct professional real estate activity under their licensed name or a registered business name registered with OREA.

1.19 During the investigation, OREA investigator Aaron Grimes (Grimes), asked Vail for his written company policies and Vail said he did not have any written policies for his company. At the time of the settlement conference on January 6, 2013, Vail provided a copy of his written company policies dated October 23, 2013.

Violation: By not having written company polices for activity performed prior to October 23, 2013, Vail violated OAR 863-025-0015 (9/14/2012 Edition), which requires that each property manager to develop, maintain and follow written policies for persons and activities conducted under their license.

2.

2.1 OREA reserves the right to investigate and pursue additional complaints that may be received in the future regarding this licensee.

STIPULATION & WAIVER

I have read and reviewed the above findings of fact and conclusions of law which have been submitted to me by OREA 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 OREA 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, in which case an amended notice of intent may be issued in this matter. 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.

ORDER

IT IS HEREBY ORDERED, pursuant to ORS 696.301 and based on the violations above, that Vail's property manager license be, and hereby is, reprimanded.

IT IS FURTHER ORDERED that Vail must: a) complete the 60-hour Property Manager Pre-License course and provide documentation, such as a certificate of completion to OREA within four months from the date of this order, and b) pursuant to ORS 696.990, and based on the violation set forth above, pay a $1,500.00 civil penalty for which $250.00 will be immediately imposed for conducting the management of rental real estate activity without a license, the $1,250.00 remainder of the $1,500.00 civil penalty will be dismissed if Vail completes the 60-hour Property Manager Pre-License Course and provides a certificate of completion to OREA within four months from the date of this order.

IT IS FURTHER ORDERED that, if Vail does not provide a certificate showing completion of the 60-hour Property Manager Pre-License course to OREA within four months from the date of this order, the remaining $1,250.00 civil penalty will be imposed.

All civil penalties are to be paid to the General Fund of the State Treasury by paying the same to the OREA.

IT IS SO STIPULATED:                      IT IS SO ORDERED:

[Signature]

CHARLES R VAIL

[Signature]

GENE BENTLEY
Real Estate Commissioner

Date 2/5/2014

Date 2/11/14

DATE of service: 2-12-2014