

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of)
MICHAEL JAMES GOTTLIEB) FINAL ORDER BY DEFAULT

PROCEDURAL HISTORY AND PROCEDURAL LAW

1.

1.1 On April 16, 2024, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Revoke and to Assess a Civil Penalty* the real estate principal broker license of Michael Gottlieb (Gottlieb) The Oregon Real Estate Agency (Agency) sent the *Notice of Intent to Revoke and to Assess a Civil Penalty* to Gottlieb’s last known address of record with the Agency (710 Row River Rd, Cottage Grove, OR 97424). The *Notice of Intent to Revoke and to Assess a Civil Penalty* was also mailed to Gottlieb by regular first-class mail to the above address in a handwritten envelope. And *The Notice of Intent to Revoke and to Assess a Civil Penalty* was emailed to Gottlieb at his email address of record.

1.2 The email was not returned as undeliverable.

1.3 Neither the certified mailing nor the first-class mailing have been returned to the Agency. Over twenty days (20 days) have elapsed since the mailing of the notice issued in this matter and no written request for hearing has been received by the Agency.

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 to Revoke and to Assess a Civil Penalty*, 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 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 Gottlieb's last known address of record with the Agency was 710 Row River Rd, Cottage Grove, OR 97424.

2.3 A certified mailing of the *Notice of Intent* was mailed to Gottlieb at his last known address of record on April 16, 2024. The certified mailing of the notice has not been returned to the Agency.

2.4 The notice was also mailed regular first-class mail in a handwritten envelope to the above possible address for Gottlieb. 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.

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

2.6 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.

2.7 As noted in section 9 of the *Notice of Intent to Revoke 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 Gottlieb 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, Gottlieb was licensed as a principal broker with Mountain View Real Estate & Property Management (MVRE).

3.2 Gottlieb's principal broker license expired on December 31, 2023.

Brogan Weybright Complaint

3.3 On April 11, 2023, the Agency received a complaint from Brogan Weybright (Weybright), regarding Gottlieb. The Agency opened an investigation.

3.4 In their complaint, Weybright wrote that MVRE managed two properties for them. Gottlieb failed to return funds received from the properties, along with failing to pay utilities on one of the properties. Weybright also wrote that Gottlieb failed to provide requested documents when asked. The complaint also includes an allegation that one unit on the property was occupied by a person without a lease and not for market rent.

3.5 On April 20, 2023, Gottlieb provided the Agency a written response to the complaint. Gottlieb wrote that he manages one property for Weybright, acts only as a 'consultant' on other properties, and stated that all funds, deposits, or rent due to the owner as

well as documentation have been available with MVRE legal counsel since the day they were requested.

3.6 In his response to the Agency, Gottlieb also wrote that a fire caused a tenant to be displaced, and it was Weybright's idea to move the displaced tenant into a vacant unit.

3.7 On June 6, 2023, Agency Investigator Frank H. Leonard Jr. (Leonard) emailed Weybright and requested their property management agreement (PMA) and to identify what documents were requested from Gottlieb that were yet to be received.

3.8 Weybright responded to Leonard's email, writing that Gottlieb managed an 8-unit trailer park and home associated to the park, a 62-space RV park with a single-family home associated to it. Six units in Gardiner, Oregon were almost completed with new rental agreements. Weybright claimed they did not receive any documents from Gottlieb.

3.9 Weybright wrote that the PMA is missing, and that their attorney was able to get 'some' funds, but that compiling all the missing data was something that their CPA and wife are working on.

3.10 Weybright stated that on May 1, 2023, they received some funds, but no documents.

3.11 On June 6, 2023, Leonard sent an email to Gottlieb, requesting he provide the PMA and 'consulting' agreement to the Agency by June 14, 2023.

3.12 On June 14, 2023, Gottlieb requested and was granted a two-week extension for submitting the requested documents. Gottlieb stated that his attorney Kent Anderson (Anderson) was unable to provide the documents or access to the digital copies due to ongoing hardware failure with his office controller card.

3.13 On June 27, 2023, Leonard made a second request by email for the PMA and 'consulting' agreement. Leonard also emailed six investigation questions for response.

3.14 On July 3, 2023, Gottlieb emailed Leonard that Anderson would be representing him through the investigation. On the same day, Leonard emailed Anderson requesting the PMA, 'consulting agreement', and owner's ledger.

3.15 Anderson replied to Leonard's email stating "All of my electronic records are on my disabled server and will not be accessible until later this week. I have a lot of documents from Michael Gottlieb and his company, but I can't access them until the server is repaired."

3.16 On July 10, 2023, Gottlieb emailed Leonard a PMA. The PMA listed two properties, 120 Cannon Road, and 152 Cannon Road, located in Lowell, Oregon.

3.17 A review of the PMA shows it was not signed by Weybright and only has Gottlieb's initials and signature.

3.18 In answer to an emailed question from Leonard, regarding the PMA, Gottlieb wrote, "In the absence of signed contracts (against my better judgment and mistake I will never repeat), I have operated based on mutual verbal agreements, a practice supported by a history of regular payments and communications that underscored our agreed terms. I have provided the agreement for the management of the Lowell property that I do not have signed, but that was provided to him in December of 2018 before I commenced any management activities."

(1) Violation: By failing to have the property owner sign the PMA, and instead only having his signature on the document, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0020(1)(2)(L) 1/1/2018, 1/1/2019, 1/1/2020, 1/1/2021, 1/1/2022, and 1/1/2023 Editions, which states (1) a property manager must not engage in the management of rental real estate without a written, unexpired property management agreement between the owner and the property manager; (2) a property management agreement must include, but is not limited to; (L) signatures of the property manager, or a person authorized in section (6) of this rule, and the owner.

In addition, this act violates ORS 696.301(3) and its implementing rule OAR 863-025-0035(1)(a) 1/1/2018, 1/1/2019, 1/1/2020, 1/1/2021, 1/1/2022, and 1/1/2023 Editions, which states (1) the property manager's records of the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least, the following: (a) a legible copy of each executed property management agreement and any executed addenda or amendments to that agreement.

The above is also a violation of ORS 696.301(3) as it incorporates ORS 696.890(3) 2019, 2021, and 2023 Editions, which states a real estate property manager may engage in the management of rental real estate for an owner of rental real estate only pursuant to a property management agreement.

3.19 On July 10, 2023, Gottlieb sent an email to Leonard writing that his office experienced a roof leak in March 2023, destroying several physical documents. Gottlieb wrote

that the original documents were presented to his legal counsel prior to verification of an online or offline backup. Gottlieb wrote that they were trying to recover these documents and expected access to be restored by the end of that week.

(2) Violation: By not having property management records that were accessible when requested by the Agency, Gottlieb violated ORS 696.301(3) as it incorporates ORS 696.280(5) 2023 Edition, which states (5) records under this section may be maintained in any format that allows for inspection and copying by the commissioner or the commissioner's representatives, as prescribed by rule of the Agency.

3.20 On July 31, 2023, Leonard emailed Weybright and requested the owner's ledger and tenant ledger. Weybright responded via email writing "There is not a ledger or one that anyone can decipher. My accountant is working through the past years of data, but [Gottlieb] stopped providing me ledgers almost two years ago."

(3) Violation: By not maintaining, or providing the property owner a monthly report of the owner's ledger, as required, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0055(1)(4) 1/1/2022 and 1/1/2023 Editions, which states (1) a property manager must prepare and maintain at least one separate owner's ledger for each property management agreement, for all funds received and disbursed, and (4) a property manager must report in writing to each owner any change in the owner's ledger. A monthly report, showing all receipts and disbursements for the account of the owner during the prior monthly period, is sufficient under this section. A copy of each such report must be preserved and filed in the property manager's records.

3.21 On July 31, 2023, Leonard emailed Anderson inquiring about the documentation that he requested on July 3, 2023. That same day Anderson responded and wrote "My server is in CA with the manufacturer and not yet been returned to service. However, we have successfully restored most of our database from a backup and I can now access notes and emails. I believe my client sent you whatever relevant management agreement he had. It is my understanding that he was only able to locate an unsigned document from an email he sent to Mr. Weybright. I have no other agreement."

3.22 Leonard conducted a phone interview with Weybright on July 31, 2023. Leonard asked Weybright what documents they had requested from Gottlieb and what they had

received. Weybright stated that they requested "the rental agreements, the logs and pretty much everything." Weybright said that they did not receive rental agreements, contact information, or copies of the PMAs.

(4) Violation: By not providing the property owner with copies of tenant contact information, tenant agreements or ledgers, when requested, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0068(1) (1/1/2023 Edition) which states (1) upon written request from a property owner, a property manager must deliver to the owner the information listed in subsections (a) through (e) of this section for each tenant within five business days of actually receiving the request for information, unless the owner and the manager agree to a different time period.

3.23 On August 7, 2023, Gottlieb emailed Leonard a Summary of Weybright Properties Ledgers (SWPL). The SWPL indicates that \$34,611.22 was issued to Weybright on April 19, 2023.

3.24 Additionally, on August 7, 2023, Gottlieb emailed Leonard the following:

- Deposit ledger and tenant statement for tenants K. Whitney and J. Ansell. The log indicates that the deposit of \$1,500.00 was transferred to Anderson.
- Tenant statement and deposit log with a date range of 04/27/2021-03/01/2023, for tenant M. Doty, and the tenant's address. The log indicates a deposit to Anderson for transfer to client of \$1,850.00.
- Tenant statements and deposit log with a date range of 04.27.2021-04/07/2023 for tenant R. Anderson, and the tenant's address. The deposit log indicates a \$1,850.00 transfer to Anderson for payment to client.
- Tenant statement and deposit log with a date range 03/03/2023-04/01/2023 for S. McNamara. The deposit log indicated \$1,450.00 transfer to Anderson for payment to client.
- Tenant statement and deposit log with a date range 03/23/2023-04/01/2023 for T. Casper, and tenant's address. The deposit log indicated a \$1,450.00 transfer to Anderson for payment to client.

- Tenant statement dates 01/01/2019-04/01/2023 for R. Carico, and the tenant's address. The deposit log noted #3,018.00 transfer to Anderson for payment to client.
- Tenant statement dated 08/18/2021-03/30/2023 for R. Pearson, and tenant's address. On the deposit under the prepaid rent liability, it indicates transfer to Anderson for payment to client of \$700.00.
- Tenant statement dated 03/17/2023-04/01/2023 for A. Ames and R. Ames, and the tenant's address. The deposit ledger notes \$1,150.00 transfer to Anderson for payment to client.

(5) Violation: By failing to maintain complete tenant ledgers, in part, as required, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0050(4)(b)(c)(d)(B)(C)(D) (1/1/2019, 1/1/2020, 1/1/2021, 1/1/2022, 1/1/2023 Editions) which states (4) a tenant's ledger must contain at least the following information: (b) the legal description of the property, the mailing address of the property and the unit number, or a unique series of letters and/or numbers that establishes an audit trail to the tenant agreement; (c) the identifying code; (d) for each deposit of funds; (B) the purpose of the funds and identity of the person who tendered the funds; (C) the check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; (D) the date the funds were deposited.

3.25 Gottlieb emailed Leonard the Rental Owner Statement for 120 and 152 Cannon Street. A review of the statements shows an insufficient ledger balance on 11/2/2022, of -\$559.89 through 11/8/2022, with a high insufficient balance in the amount of -\$4,196.90. The ledger was brought sufficient on 12/1/2022.

3.26 A review of the December 2021 Rental Owner Statement for 120 and 152 Cannon Street, shows a distribution of \$8,019.54 dated 12/27/2021, which caused an insufficient balance of -\$1,744.43. An additional management fee dated 12/27/2021, caused the insufficient balance to increase to -\$1,772.56.

(6) Violation: By disbursing funds causing the client's trust account for 120 and 152 Cannon Street to have a negative ledger balance in December 2021, and November 2022, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0027(3) (1/1/2021, 1/1/2022 Editions) which 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.

(7) Violation: By disbursing funds for a management fee causing the client's trust account ledger for 120 and 152 Cannon Street to have a negative balance, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0027(6) (1/1/2021 1/1/2022 Editions) which states (6) a property manager must disburse earned management fees from the clients' trust account at least once each month unless a different schedule of disbursement is specified in the property management agreement, and may only disburse such fees if sufficient funds are available.

3.27 On August 23, 2023, Gottlieb emailed the December 2022 reconciliation for clients' trust account ending in 1813 (CTA #1813), as requested by Leonard. A review of the reconciliation shows part I, II, and III reconcile at \$28,696.12. Gottlieb's signature attesting to the accuracy and completeness of the reconciliation is dated April 28, 2023. No supporting documentation of the December 2022 reconciliation, including the bank statement, check register, and owner ledgers were provided.

(8) Violation: By failing to complete the December 2022 client trust account reconciliation for CTA #1813 until April 2023, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0028(2)(d)(A)(B) (1/1/2022, 1/1/2023 Editions) which states (2) a property manager must reconcile each clients' trust account within 30 calendar days of the date of the bank statement pursuant to the requirements contained in this section; (d) within 30 calendar days from the date of the bank statement, the property manager must: (A) complete the reconciliation document; (B) sign and date the reconciliation document, attesting to the accuracy and completeness of the reconciliation.

3.28 Schedule C, (Owner Ledgers or Tenant Security Deposits) shows the Owner ID Code entered as, "4WLLC01" and "FBOAMER01". 4WLLC01 is further described as "869 AUTUMN" with a reconciled balance of \$2,874.27. FBOAMER01 is further described as "IRA-AMERITITRADE – 120/152 CANNON" with a reconciled balance in December 2022 of \$25,821.85.

3.29 Gottlieb had previously provided Leonard a cumulative "Rental Owner Statement", dated, 6/18/21-4/30/23 for 120 and 152 Cannon Street. An additional title reads,

“TD Ameritrade FBO Brogan Weybright_*****6215”. A review of this report shows for the dates of 12/1/2022 through 12/28/2022, the highest balance in December 2022 is \$4,646.90 on 12/6/2022 (after being insufficient the prior 30-days.) The next date after 12/28/22 is shown as 1/1/2023, with a balance of \$3,756.95.

(9) Violation: By completing a single trust account reconciliation document for CTA #1813 for December 2022 that indicated \$25,821.85 maintained for “IRA-Ameritrade-120/152 Cannon”, and also submitting a cumulative owner statement for 120/152 Cannon, that indicated for the month of December 2022, a high balance of only \$4,646.90, Gottlieb is subject to Grounds for Discipline per ORS 696.301(14)(2023 Edition) because he (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.

3.30 On August 24, 2023, Leonard emailed Gottlieb and requested that he submit the corresponding bank statement and check register that supported the account balance as indicated on the single reconciliation document for CTA #1813. That same day, Gottlieb responded, saying he would send them that day.

3.31 Gottlieb failed to provide the December 2022 CTA #1813 supporting documentation of the bank statement and check register, as requested.

(10) Violation: By failing to provide records of your property management activity upon request by the Agency, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0035(2)(a)(b)(c) (1/1/2023 Edition) which 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.

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Dane Palmer Complaint

3.32 On September 7, 2023, the Agency received a complaint from Dane Palmer (Palmer) against Gottlieb. The Agency opened an additional investigation.

3.33 In the complaint, Palmer alleged that Gottlieb has not provided statements for Palmer's account or rentals for at least two years, despite requests for them. Palmer also alleged that Gottlieb is holding approximately \$35,000.00 and will not allow him access to it.

3.34 On October 11, 2023, Palmer texted Leonard a photo of a sign attached to Gottlieb's office door. The signage reads "NEW MAIL ADDRESS WE HAVE CHANGED OUR MAILING ADDRESS – Dear Tenants, the office will be closed indefinitely to the public, while undergoing repairs and renovation. All correspondence, payments, maintenance requests should be sent to MVREPM LLC PMB 325, Cottage Grove, Oregon, 97424. Thank you all for your attention to this matter. Best Regard, Mike Gottlieb Principal Broker Mountain View Real Estate & PM 541-653-2868."

3.35 According to Agency records, MVRE's RBN address is 710 Row River Road, Cottage Grove, OR. Gottlieb has not notified the Agency of a change of address for MVRE.

(11) Violation: By not notifying the Agency within 10 calendar days that MVRE had a change of mailing address, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-024-0062(1) (1/1/2023 Edition) which states that each active, inactive and expired property manager licensee must maintain on file with the Agency a current mailing address and email and notify the Agency within 10 calendar days of a change of mailing or email address.

3.36 On October 11, 2023, Leonard conducted a video interview with Palmer. Palmer told Leonard that Gottlieb has been managing his properties for the last 15 years. When asked if he had a PMA with Gottlieb, Palmer stated he did, but no longer had copies due to records being lost in a fire. Palmer recalled that the PMA was paper format.

3.37 When asked how funds were disbursed, Palmer stated, "What I would do is, I would leave money with Gottlieb because there were things that I wanted to do with the money. But occasionally, I would contact him and say send me \$5,000 or \$10,000 bucks. And he would do it." Palmer said, "Sometime in May of this year, I got \$5,000 from Gottlieb and it was difficult to get."

3.38 Leonard asked Palmer when the last time he had received funds from Gottlieb. Palmer stated that he requested \$10,000.00 from Gottlieb in August 2023. Palmer did not receive the requested disbursement.

3.39 Palmer provided a text he sent to Gottlieb dated August 21, 2023, which stated “Can you get me \$10,000, please.” On August 22, 2023, Palmer sent a follow up “Did you get my text. Gottlieb replied “Hi Dane, I saw it late night. I got so many texts in the am it was buried; I’ll get that going asap. Have a great day.”

(12) Violation: By failing to disburse funds to the owner as requested, Gottlieb violated ORS 696.301(3) as it incorporates ORS 696.890(4)(a)(c)(d)(e)(f) (2023 Edition) which states 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; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner’s interest.

3.40 During his interview, Palmer told Leonard that the water pump on the property had to be replaced. Palmer said Gottlieb took the contractor’s invoice and said he would pay it, but never did.

3.41 Palmer provided an unpaid invoice for the water pump. The invoice was dated July 17, 2023, with a due date of August 17, 2023, in the amount of \$3,059.00.

3.42 Palmer told Leonard that his new property manager had let him know that there were bills for the property that had not been paid in several months, including the garbage bill.

3.43 On October 16, 2023, Cottage Grove Garbage Service attached invoices that were past due for the property within the last year.

(13) Violation: By failing to pay the garbage bill, resulting in garbage collection being cancelled for the property, along with failing to pay the invoice for the water pump replacement, Gottlieb violated ORS 696.301(3) as it incorporates ORS 696.890(4)(a)(c)(d)(f) (2023 Edition) which states that 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; (d) to account in a timely manner for all funds received from or on behalf of the

owner; (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest.

3.44 On October 18, 2023, Leonard sent an email to Gottlieb requesting records which included:

- PMA with Palmer
- Owner Ledger
- Security deposit ledger
- Rental agreements
- Formal response to allegation

3.45 Gottlieb has not responded to the Agency's request for comment or submitted the requested documents.

(14) Violation: By failing to provide records of his property management activity upon request by the Agency, Gottlieb violated OAR 863-025-0035(2)(a)(b)(c) (1/1/2023 Edition) which 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.

Judi Hoaglin Complaint

3.46 On October 4, 2023, Judi Hoaglin (Hoaglin) submitted a complaint to the Agency against Gottlieb. The Agency opened an additional investigation.

3.47 On September 11, 2023, Hoaglin emailed Gottlieb advising him that Kensington Property Management (KPM) was assuming the property management for Palmer. Hoaglin requested Gottlieb provide lease agreements, tenant ledgers, and maintenance records with keys for all the properties.

3.48 On September 18, 2023, Gottlieb sent a text to Hoaglin stating "...I will get all the rental agreements and ledgers to you by email today, and then will send you a package with everything I have for keys deposit, and ledger by tomorrow..."

3.49 On December 7, 2023, Leonard sent an email to Hoaglin inquiring if funds or documents have been received from Gottlieb. Hoaglin replied that she had not received anything.

(15) Violation: By failing to provide the requested property management agreement, security deposits, owner ledger, and tenant ledger to the property owner or the property management company within 60 days of notice of termination, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0070(2)(a)(b)(A)(B)(C)(D)(E)(F) (1/1/2023 Edition) which states (2) not later than 60 days after the effective date of the termination, the property manager must: (a) disburse all obligated funds to the party or parties entitled to the funds; and (b) provide the owner with the following: (A) a final accounting of the owner's ledger account; (B) All funds belonging to the owner as shown on the owner's ledger, unless the owner directs the property manager, in writing, to transfer the funds to another property manager, escrow agent or person; (C) An accounting of all security deposits and fees held for tenants; (D) All tenant security deposits and fees held for tenants, unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent or person; (E) Copies of all current tenant rental or lease agreements, unless the owner waives such requirement in writing or directs the property manager, in writing, to provide such documents to another property manager, escrow agent or person; and (F) a notice the property manager may destroy the required records of the property management activity performed after six years.

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: ORS 696.301(3) which 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 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 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 696.396(2)(c)(B) and (C). According to ORS 696.396(2)(c)(B) and (C) 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 dishonesty or fraudulent conduct.

4.5 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.

4.6 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.

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

4.8 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 Gottlieb failed to have the property owner sign the PMA, and instead only had his signature on the document.

5.2 Gottlieb failed to have property management records that were accessible when requested by the Agency.

5.3 Gottlieb failed to maintain or provide the property owner a monthly report of the owner's ledger.

5.4 Gottlieb failed to provide the property owner with copies of tenant contact information, tenant agreements or ledgers, when requested.

5.5 Gottlieb failed to maintain complete tenant ledgers.

5.6 Gottlieb disbursed funds causing the client's trust account for 120 and 152 Cannon Street to have a negative ledger balance in December 2021, and November 2022.

5.7 Gottlieb disbursed funds for a management fee causing the client's trust account ledger for 120 and 152 Cannon Street to have a negative balance.

5.8 Gottlieb failed to complete the December 2022 client trust account reconciliation for CTA #1813 until April 2023.

5.9 Gottlieb provided conflicting information of reported balances by completing a single trust account reconciliation document for CTA #1813 for December 2022 that indicated \$25,821.85 maintained for "IRA-Ameritrade-120/152 Cannon", and also submitting a cumulative owner statement for 120/152 Cannon, that indicated for the month of December 2022, a high balance of only \$4,646.90.

5.10 Gottlieb failed to notify the Agency within 10 calendar days that MVRE had a change of mailing address.

5.11 Gottlieb failed to disburse funds to the property owner as requested.

5.12 Gottlieb failed in his duties to the owner by failing to pay the garbage bill, resulting in garbage collection being cancelled for the property, along with failing to pay the invoice for the water pump replacement.

5.13 Gottlieb failed to provide the requested property management agreement, security deposits, owner ledger, and tenant ledger to the property owner or the property management company within 60 days of notice of termination.

5.14 Gottlieb's failure to timely produce, or complete failure to produce, the records constitutes grounds to impose a civil penalty as per ORS 696.990(6)(a) and (b).

5.15 In summary, the facts above establish grounds to revoke Gottlieb's principal broker 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 Gottlieb is in default.

6.2 The material facts establish a violation of grounds for discipline, by preponderance of the evidence, under ORS 696.301 as set forth in the *Notice of Intent to Revoke 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 Gottlieb's principal broker license.

6.4 Specifically, Gottlieb is subject to discipline pursuant to ORS 696.301(3), (12) and (14) 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; and (14) having 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.

6.5 A revocation of Gottlieb's principal broker license is appropriate for violations of ORS 696.301(3), (12) and (14).

6.6 A revocation of Gottlieb's principal broker 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; and (C) exhibits dishonest or fraudulent conduct.

6.7 The Notice of Intent to Revoke and to Assess a Civil Penalty also established ground 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 Gottlieb.

6.8 Based on the evidence in the record, the preponderance of the evidence supports the revocation of Gottlieb's principal broker license.

6.9 The Agency may therefore revoke Gottlieb's principal broker 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 of Gottlieb'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 have the property owner sign the PMA, and instead only having his signature on the document, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0020(1)(2)(L) 1/1/2018, 1/1/2019, 1/1/2020, 1/1/2021, 1/1/2022, and 1/1/2023 Editions, which states (1) a property manager must not engage in the management of rental real estate without a written, unexpired property management agreement between the owner and the property manager; (2) a property management agreement must include, but is not limited to; (L) signatures of the property manager, or a person authorized in section (6) of this rule, and the owner.

In addition, this act violates ORS 696.301(3) and its implementing rule OAR 863-025-0035(1)(a) 1/1/2018, 1/1/2019, 1/1/2020, 1/1/2021, 1/1/2022, and 1/1/2023 Editions, which states (1) the property manager's records of the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least, the

following: (a) a legible copy of each executed property management agreement and any executed addenda or amendments to that agreement.

The above is also a violation of ORS 696.301(3) as it incorporates ORS 696.890(3) 2019, 2021, and 2023 Editions, which states a real estate property manager may engage in the management of rental real estate for an owner of rental real estate only pursuant to a property management agreement.

(2) Violation: By not having property management records that were accessible when requested by the Agency, Gottlieb violated ORS 696.301(3) as it incorporates ORS 696.280(5) 2023 Edition, which states (5) records under this section may be maintained in any format that allows for inspection and copying by the commissioner or the commissioner's representatives, as prescribed by rule of the Agency.

(3) Violation: By not maintaining, or providing the property owner a monthly report of the owner's ledger, as required, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0055(1)(4) 1/1/2022 and 1/1/2023 Editions, which states (1) a property manager must prepare and maintain at least one separate owner's ledger for each property management agreement, for all funds received and disbursed, and (4) a property manager must report in writing to each owner any change in the owner's ledger. A monthly report, showing all receipts and disbursements for the account of the owner during the prior monthly period, is sufficient under this section. A copy of each such report must be preserved and filed in the property manager's records.

(4) Violation: By not providing the property owner with copies of tenant contact information, tenant agreements or ledgers, when requested, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0068(1) (1/1/2023 Edition) which states (1) upon written request from a property owner, a property manager must deliver to the owner the information listed in subsections (a) through (e) of this section for each tenant within five business days of actually receiving the request for information, unless the owner and the manager agree to a different time period.

(5) Violation: By failing to maintain complete tenant ledgers, in part, as required, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0050(4)(b)(c)(d)(B)(C)(D) (1/1/2019, 1/1/2020, 1/1/2021, 1/1/2022, 1/1/2023 Editions) which states (4) a tenant's ledger

must contain at least the following information: (b) the legal description of the property, the mailing address of the property and the unit number, or a unique series of letters and/or numbers that establishes an audit trail to the tenant agreement; (c) the identifying code; (d) for each deposit of funds; (B) the purpose of the funds and identity of the person who tendered the funds; (C) the check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; (D) the date the funds were deposited.

(6) Violation: By disbursing funds causing the client's trust account for 120 and 152 Cannon Street to have a negative ledger balance in December 2021, and November 2022, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0027(3) (1/1/2021, 1/1/2022 Editions) which 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.

(7) Violation: By disbursing funds for a management fee causing the client's trust account ledger for 120 and 152 Cannon Street to have a negative balance, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0027(6) (1/1/2021 1/1/2022 Editions) which states (6) a property manager must disburse earned management fees from the clients' trust account at least once each month unless a different schedule of disbursement is specified in the property management agreement, and may only disburse such fees if sufficient funds are available.

(8) Violation: By failing to complete the December 2022 client trust account reconciliation for CTA #1813 until April 2023, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0028(2)(d)(A)(B) (1/1/2022, 1/1/2023 Editions) which states (2) a property manager must reconcile each clients' trust account within 30 calendar days of the date of the bank statement pursuant to the requirements contained in this section; (d) within 30 calendar days from the date of the bank statement, the property manager must: (A) complete the reconciliation document; (B) sign and date the reconciliation document, attesting to the accuracy and completeness of the reconciliation.

(9) Violation: By completing a single trust account reconciliation document for CTA #1813 for December 2022 that indicated \$25,821.85 maintained for "IRA-Ameritrade-120/152 Cannon", and also submitting a cumulative owner statement for 120/152 Cannon, that indicated for the

month of December 2022, a high balance of only \$4,646.90, Gottlieb is subject to Grounds for Discipline per ORS 696.301(14)(2023 Edition) because he (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.

(10) Violation: By failing to provide records of your property management activity upon request by the Agency, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0035(2)(a)(b)(c) (1/1/2023 Edition) which 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.

(11) Violation: By not notifying the Agency within 10 calendar days that MVRE had a change of mailing address, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-024-0062(1) (1/1/2023 Edition) which states that each active, inactive and expired property manager licensee must maintain on file with the Agency a current mailing address and email and notify the Agency within 10 calendar days of a change of mailing or email address.

(12) Violation: By failing to disburse funds to the owner as requested, Gottlieb violated ORS 696.301(3) as it incorporates ORS 696.890(4)(a)(c)(d)(e)(f) (2023 Edition) which states 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; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest.

(13) Violation: By failing to pay the garbage bill, resulting in garbage collection being cancelled for the property, along with failing to pay the invoice for the water pump replacement,

Gottlieb violated ORS 696.301(3) as it incorporates ORS 696.890(4)(a)(c)(d)(f) (2023 Edition) which states that 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; (d) to account in a timely manner for all funds received from or on behalf of the owner; (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest.

(14) Violation: By failing to provide records of his property management activity upon request by the Agency, Gottlieb violated OAR 863-025-0035(2)(a)(b)(c) (1/1/2023 Edition) which 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.

(15) Violation: By failing to provide the requested property management agreement, security deposits, owner ledger, and tenant ledger to the property owner or the property management company within 60 days of notice of termination, Gottlieb violated ORS 696.301(3) and its implementing rule OAR 863-025-0070(2)(a)(b)(A)(B)(C)(D)(E)(F) (1/1/2023 Edition) which states (2) not later than 60 days after the effective date of the termination, the property manager must: (a) disburse all obligated funds to the party or parties entitled to the funds; and (b) provide the owner with the following: (A) a final accounting of the owner's ledger account; (B) All funds belonging to the owner as shown on the owner's ledger, unless the owner directs the property manager, in writing, to transfer the funds to another property manager, escrow agent or person; (C) An accounting of all security deposits and fees held for tenants; (D) All tenant security deposits and fees held for tenants, unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent or person; (E) Copies of all current tenant rental or lease agreements, unless the owner waives such requirement in writing or directs the property manager, in writing, to provide

such documents to another property manager, escrow agent or person; and (F) a notice the property manager may destroy the required records of the property management activity performed after six years.

ORDER

IT IS HEREBY ORDERED that Gottlieb's principal broker license is revoked.

IT IS FURTHER ORDERED that, pursuant to ORS 696.990(6)(a)(b) and based upon the violation set forth above, Gottlieb 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 23rd day of May, 2024.

OREGON REAL ESTATE AGENCY

DocuSigned by:
Steve Strobe
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Steven Strobe
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.