

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
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4 In the Matter of the Real Estate Broker's
5 License of
6
7 D. MICHAEL McKENNA
8

STIPULATED ORDER OF REVOCATION

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10 The Real Estate Agency (OREA) and D. Michael McKenna (McKenna) do hereby agree
11 and stipulate to the following:

12 1. OREA has investigated McKenna regarding his licensed property management
13 activity under file No. 200708-504.

14 2. Without admitting the accuracy or completeness of the information contained in
15 the files of the OREA and reserving the right in other proceedings to contest the accuracy and
16 completeness of that information, McKenna waives his right and opportunity to contest this
17 evidence and stipulates that uncontested this evidence constitutes substantial evidence in the
18 files of the OREA to support, after hearing, findings of fact and conclusions of law by the
19 Commissioner that would result in the revocation of McKenna's real estate broker's license,
20 effective 6-30-8.

21 3. Based upon the evidence contained in these files, evidenced by the investigation
22 report attached hereto, McKenna stipulates to the revocation of his real estate broker's license.

23 4. McKenna understands that he has the right to request a hearing before the Real
24 Estate Commissioner on this matter and to be represented by legal counsel at such a hearing.

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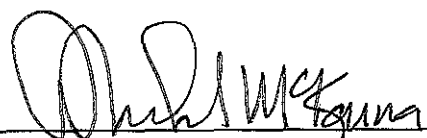
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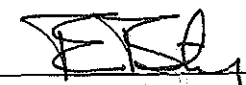
1 McKenna freely and voluntarily waives his rights to a hearing and judicial review of this matter
2 and to representation by legal counsel at such a hearing.

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IT IS SO STIPULATED

IT IS SO ORDERED





D. MICHAEL MCKENNA

GENE BENTLEY
Real Estate Commissioner

Date June 4, 2008

Date 6.30.8

DATE of service: 6-30-08

State of Oregon Real Estate Agency Investigative Report



Date: December 4, 2007
To: Rebecca Osborne, Regulation Division Manager
From: Joyce Pierce and Kate Nass
File No: 200708-504

Participants

Complaining Witness: Dr. Walter Bernards

Respondent: D. Michael McKenna, Principal Broker (Multiple) (890500223)
Summit Real Estate Management Inc. (940600260)

Respondent's Attorney: Marc Blackman
Ransom Blackman LLP

Complaint

On August 1, 2007, Dr. Walter Bernards (Bernards) made a complaint to the Oregon Real Estate Agency (OREA) against D. Michael McKenna (McKenna), Principal Broker of Summit Real Estate Management Inc. (Summit).

Bernards allegations were as follows:

1. Unauthorized transfers of cash, which total \$693,400, from Pioneer Ridge Apartments (Pioneer Ridge) and Greenbrier Apartment Buildings (Greenbrier) to Summit by McKenna, for the period March 2000 through August 17, 2004. The transfers were allegedly from the tax escrow accounts, transferred by McKenna to fictitious money market accounts.
2. Unauthorized transfers by McKenna, beginning in April 1997, of the tenant security deposits held by Summit into a Summit bank account. Bernards alleged that McKenna was unable or unwilling to provide the partnership/owners of Pioneer Ridge and Greenbrier with a list of the bank accounts and/or the accounting information, which indicated that security deposits were maintained by Summit for tenants.

3. An unauthorized management fee increase made by McKenna for the benefit of Summit, which allegedly totals approximately \$100k. Bernards alleged that McKenna paid Summit an "estimated management fee" at the beginning of each accounting period, and then McKenna made the necessary adjustments to the actual management fees due to Summit at the end of each accounting cycle.

4. Unauthorized additional fees/expenses paid to Summit, which included charges for insurance policy renewals, loan refinancing fees, and/or "finder's fees."

5. The property management agreement authorized a reimbursement to Summit for payroll expenses, insurance premiums, and surety bond expenses. Bernards alleged that Summit generated invoices to Pioneer Ridge and Greenbrier for the above expenses, however, the checks were made payable to Summit rather than the insurance or bonding company, etc. Bernards indicated that McKenna had refused to supply Bernards with copies of the original invoices, copies of insurance binders, and surety bonds from the vendors, so that expenses could be verified.

6. Bernards alleged that Summit failed to pay annual property taxes for Pioneer Ridge and Greenbrier, which resulted in the partnership/owners of Pioneer Ridge and Greenbrier having to take out a loan to bring the property taxes current. Bernards stated that because of the late payments, the partnership/owners incurred additional interest and penalties from the county authorities.

7. Upon termination of the property management services of Summit, which was effective February 28, 2005, a new property manager, Quantum Residential, Inc. (Quantum), was hired, effective March 1, 2005. Bernards alleged that Quantum has not received any of the March 2005 rents, collected by Summit or any security deposits that Summit should have been holding in trust for tenants.

In addition, Bernards also supplied a copy of a document entitled "Understanding between Pioneer Ridge and Greenbrier Partnerships and Summit Real Estate Management, Inc." which was dated May 1, 2005. Bernards alleged that, in that document, McKenna admitted to all of the allegations made by Bernards, but indicated that McKenna would tell OREA that the "missing funds" were repaid by McKenna or Summit to Pioneer Ridge and Greenbrier. Bernards maintains that such funds were not repaid.

Case Detail

On August 6, 2007, IA Pierce and IA Nass met with Bernards, and began a preliminary review of the documentation that he provided. All of the information Bernards supplied was in the form of original documentation. Bernards was asked about having the original documents, to which Bernards responded that he had received the "original information" directly from McKenna at Summit.

Upon review of the documentation supplied by Bernards, IA Pierce and IA Nass located several transfers, estimated management fees, and payroll expenses. However, the review did not locate any tenant security deposit information. The information reviewed raised several questions regarding Bernards allegations in items 1-7. However, the information

contained in the boxes was very brief, and in order to substantiate the allegations or find out what happened to the money, IA Pierce and IA Nass needed additional records from and cooperation of Summit.

On September 12, 2007, a management decision was made that a Subpoena Ducus Tecum (subpoena) would likely be necessary in order to obtain the additional documents needed to complete the investigation. The subpoena was drafted and served upon McKenna by IA Pierce on September 19, 2007, at 11:20am. It requested that McKenna testify and supply documents to OREA on October 8, 2007, at 10:00am.

On September 24, 2007, IA Pierce and IA Nass were notified via facsimile, that McKenna had retained Marc Blackman (Blackman), Attorney of Ransom Blackman LLP. The notification by Blackman also included a request for a three-week extension of the subpoena, based upon the amount of documentation OREA requested.

On September 27, 2007, Rebecca Osborne (Osborne), Regulations Manager convened a telephone conference call with Blackman, IA Pierce, and IA Nass, at which time, Osborne granted the extension. Blackman also requested that a copy of the complaint received by OREA from Bernards and the document entitled "Understanding between Pioneer Ridge and Greenbrier Partnerships and Summit Real Estate Management, Inc." dated May 1, 2005, be forwarded to Blackman, via facsimile or email, for his review. OREA opted to accommodate this request.

A copy of the "Understanding between Pioneer Ridge and Greenbrier Partnerships and Summit Real Estate Management, Inc." dated May 1, 2005 is attached hereto and made a part of this report (pages 5 through 7).

Blackman also suggested that IA Pierce and IA Nass complete the document review process at Summit's office location in Portland, Oregon due to the large amount of records being requested. Blackman also suggested that OREA contact and speak with Joel Mullin (Mullin), Attorney at Stoel Reeves, who represented the partners of Pioneer Ridge and Greenbrier other than Bernards.

On October 10, 2007, IA Nass contacted Mullin, who confirmed that he represented the partners of Pioneer Ridge and Greenbrier. Mullin explained that he did not have any accounting information or documentation regarding Summit's management of the properties. Mullin said that he represented the partners only in stopping the lawsuit filed by Bernards. Mullin explained that his clients were elderly, in their 70's and 80's, and did not want to deal with everything that would come along with a lawsuit.

Mullin said, "McKenna did bad stuff" and commingled, at a minimum, while managing the properties. Mullin said that the basic difference between his clients and Bernards is that his clients believe that Summit has repaid the partnership back, while Bernards does not.

On October 18, 2007, a meeting was held involving IA Pierce, IA Nass, and Kendra Mathews (Mathews), an attorney at Ransom Blackman LLP. Mathews was representing McKenna while Blackman was on vacation, prior to IA Pierce and IA Nass beginning the document review process.

During the meeting, OREA supplied Mathews with a written request for additional information, including a written statement from McKenna addressing Bernards' allegations. This request was to be filled no later than November 2, 2007.

On October 24, 2007, IA Pierce and IA Nass began the process of reviewing documentation at the Summit business office, and several documents were "flagged" for copies. On November 14, 2007, IA Pierce picked up the copies previously requested from the Summit offices.

On November 21, 2007, OREA received a letter from Blackman that indicated that McKenna would stipulate to a voluntary revocation of McKenna's principal broker's license.

Regulatory Record

No prior OREA regulatory record exists for McKenna or Summit Real Estate Management, Inc.

Persons Interviewed

Dr. Walter Bernards
D. Michael McKenna
Marc Blackman
Joel Mullins

Contact Information

Complaining Witness: Dr. Walter Bernards
3290 NW 112th Pl.
Portland, OR 97229
(503) 645-1636

Respondent: D. Michael McKenna, Principal Broker
Summit Real Estate Management Inc.
5125 SW Macadam Ave., Ste 125
Portland, OR 97239
(503) 223-7666

Respondent's Attorney: Marc Blackman
Ransom Blackman LLP
1001 SW 5th Ave., Ste 1400
Portland, OR 97204
(503) 228-0487

UNDERSTANDING BETWEEN PIONEER RIDGE & GREENBRIER PARTNERSHIPS
AND SUMMIT REAL ESTATE MANAGEMENT, INC.

Over the past five and a half months, many questions have been raised by the owners of Pioneer Ridge Apartments and Greenbrier Apartments concerning Summit Real Estate Management Inc.'s handling of the Properties. The following is a list of the issues raised, and Summit's agreement with the facts as presented.

1. **CONVERSION OF FUNDS FROM PIONEER RIDGE:** Beginning March 1, 2000, moneys belonging to the owners of Pioneer Ridge Apartments were transferred to Summit and commingled with Summit's funds. These conversions were not authorized by nor disclosed to the Owners. Intermittent transfers continued until 12/26/03, and the last of the principal was not returned until 8/17/04. Most of the funds were transferred via Pioneer Ridge account # 860-12100. Prior to April 2003 this account was designated as A/R - Other, and after that date as a Money Market account. There never was such an account in any financial institution. This was nothing more than an accounting entry to record and conceal the funds being shifted from Pioneer Ridge to Summit. On several occasions there were also direct transfers of funds to entities owned in part by or managed by Summit. The total of all of the unauthorized transfers from Pioneer Ridge is \$566,300. The dates and amounts of all of the transfers and repayments are listed in exhibit A. No fees or interest have been paid on these borrowings.

2. **CONVERSION OF FUNDS FROM GREENBRIER:** Beginning March 24, 2000, moneys belonging to the owners of Greenbrier Apartments were transferred to Summit and commingled with Summit's funds. These conversions were not authorized by, nor disclosed to, the Partners. Intermittent transfers continued until 12/26/03, and the last of the principal was not returned until 8/17/04. Most of the funds were transferred via Greenbrier account # 289-12100. Prior to April 2003 this account was designated as A/R - Other, and after that date as a Money Market account. There never was such an account in any financial institution. This was nothing more than an accounting entry to record and conceal the funds being shifted from Greenbrier to Summit. The total of all of the unauthorized transfers from Greenbrier is \$126,800. The dates and amounts of all of the transfers and repayments are listed in exhibit B. No fees or interest have been paid on these borrowings.

3. **TENANT SECURITY DEPOSITS:** Summit admits to the transfer of Tenant Security Deposit Assets from both Pioneer Ridge and Greenbrier to Summit, where they were commingled with Summit's funds. Conversion of these funds

to Summit occurred in January of 2000, and the funds have remained with Summit to this date. Total funds transferred to Summit from Pioneer Ridge equals \$43,160 and from Greenbrier \$45,174. These transfers, like those involving the "12100 Accounts", were unauthorized and were not disclosed to the Partners. I admit that when I told the Accountant at Ford Black & Co. in March of 2004, and two of the Partners in December of 2004 that these funds were in a non-interest bearing commingled account with other like funds, I was being untruthful. No fees or interest have been paid by Summit for the use of these funds.

4. **LOANS MADE TO THE PROJECTS BY SUMMIT:** Summit has made the claim on many occasions, both verbally and in writing, to at least four of the Partners, that while Summit did improperly use money belonging to Pioneer Ridge and Greenbrier, that Summit also "advanced funds to those properties and have carried reimbursable expenses when the property did not have funds to pay such things as payroll, benefit costs, petty cash etc.". I admit that is not true. At no time have I advanced Summit's money for the use of either of the projects.

5. **REFINANCE FEE – PIONEER RIDGE:** Summit acknowledges that Summit paid itself a fee of \$16,250 for assistance in obtaining refinancing for Pioneer Ridge. Summit acknowledges that the owners of Pioneer Ridge did not request this service of Summit and that there was never a negotiation of fees. Summit acknowledges that if its efforts in assisting in the obtaining of refinancing for Pioneer Ridge was outside of ordinary management responsibility, and would generate a fee of this magnitude, that the partnership had a right to select its own agent and negotiate the fee. Summit has agreed to return this fee.

6. **REFINANCE FEE – GREENBRIER:** Without a request from the owners, Summit has begun to "shop" a refinance package for Greenbrier. Summit declares that it will neither seek nor accept a fee for this non-requested service.

7. **ACCOUNTING EXPENSES INCURRED BY PARTNERS:** Summit acknowledges that it's unusual accounting procedures and unauthorized transfers of funds to Summit from Pioneer Ridge and Greenbrier has necessitated the retention of professional accounting assistance to uncover the facts. Summit agrees to make restitution for these expenses.

8. OTHER FAILURES TO DEAL WITH OWNERS HONESTLY AND IN GOOD FAITH: Summit declares that there have been no other instances of improper use of the money generated at either Pioneer Ridge or Greenbrier and managed by Summit. Summit maintains that all other handling and reporting of the finances at these two projects have been done by ordinarily accepted accounting practices, and that all other monies belonging to the partners have been turned over to the partners or used for appropriate needs of the properties. Summit agrees to provide to Dr. Bernards the already requested and promised documents as follows:

- i. Documents needed to trace the disposition of the new Tenant Security Deposits, from 1/01/00 through 2/28/05.
- ii. All documents concerning the commingling of tenant security deposits from the opening of the projects until Jan 2000, or until the commingling account was no longer utilized.
- iii. Documents addressing the transfer of the security deposit assets to Summit, presumably in 2000.
- iv. Summit also agrees to provide any other documents requested by the partners, and to maintain all of the documents of the properties for the period required by law.

Summit also declares that any moneys belonging to Pioneer Ridge or Greenbrier at the time of the change of Management have been turned over to the new Management Team, with the exception of the Tenant Deposit Reserve Assets discussed in paragraph 4 above.

9. Summit understands that the settlement proposal the Partners have made today is based upon the assumption that the above statements agreed to by Summit are indeed true, to the best of Mike McKenna's knowledge. If time proves one or more of these statements to be seriously false, the partnership has the right to void the agreement made with Summit on May 17, 2005 and pursue other avenues for recovery.

Signed this 17 day of May 2005.


Mike McKenna