

BEFORE THE ARKANSAS REAL ESTATE COMMISSION

IN THE MATTER OF

FH 3825

[REDACTED]
Fayetteville, Arkansas

CONSENT ORDER

The Arkansas Real Estate Commission (hereinafter referred to as “the Commission”) and [REDACTED] (hereinafter referred to as “Respondent”) hereby enter into an agreed Order to resolve the referenced matter.

IT IS HEREBY AGREED by and between the Respondent and the Commission’s Executive Director that:

1. Respondent [REDACTED] holds an Arkansas Real Estate Broker License and is subject to the jurisdiction of the Commission.
2. Respondent hereby waives any further procedural steps herein, including without limitation of his right to a hearing and all rights to seek judicial review or to otherwise challenge or contest the validity of this Consent Order.
3. Respondent has read the proposed Consent Order, acknowledges his right to consult with counsel, and voluntarily agrees to enter into this Consent Order on his own volition and without reliance upon any representation by the Commission, or any officer, employee, agent, or representative thereof other than expressly set forth herein.
4. Respondent has executed this Consent Order for the purpose of resolving the pending matter without further administrative action. In this regard, the Respondent agrees that the Commission will review and determine whether to approve this Consent

Order. Furthermore, should the Commission not approve this Consent Order, the Respondent agrees that the presentation to and consideration of this Consent Order by the Commission shall not unfairly or illegally prejudice the Commission or any of its members from further participation in the consideration and resolution of the matters set forth in the Order herein.

5. The Respondent and the Commission fully understand and agree that approval and entry of this Consent Order shall in no way preclude additional proceedings by the Commission against the Respondent for acts or omissions not specifically set forth in the Order herein.

FINDINGS OF FACT

6. On or about March 29, 1989, an Arkansas Real Estate Salesperson License was issued to Respondent [REDACTED]. On or about July 19, 2000, an Arkansas Real Estate Broker license was issued to Respondent [REDACTED]. At all times pertinent to the complaint, Respondent [REDACTED] held a Principal Broker License with Firm [REDACTED] in Fayetteville, Arkansas.

7. Prior to May 24, 2012, Respondent [REDACTED] entered into a Property Management Agreement with [REDACTED] for the property located at 2440 East Sharon, Fayetteville, Arkansas. A copy of the Management Agreement was not provided by Respondent [REDACTED] or Complainant [REDACTED], (hereinafter referred to as Complainant [REDACTED]). Property records for the subject property reflected the owners of record for the subject property to be [REDACTED] a single person, and [REDACTED], as joint tenants.

8. On or about May 24, 2012, Firm [REDACTED] and Tenant [REDACTED] entered into a Residential Lease Agreement for the subject property to begin May 24, 2012, and expire May 31, 2013, for a monthly rent amount of \$800.00. The agreement was signed by Tenant [REDACTED] and initialed “[REDACTED]” by Respondent [REDACTED]. The Lease Agreement did not provide contact information for Tenant [REDACTED].

9. From May 11, 2016, through January 10, 2018, bank records obtained through the course of the Arkansas Real Estate Commission’s investigation reflected Tenant [REDACTED] paid \$850.00 per month on the subject property excluding of the month of January 2017, where the records did not reflect a rent payment was made by Tenant [REDACTED]. Respondent [REDACTED]’s abbreviation noted on the deposit slips for the subject property was “2440 Shar”. Respondent [REDACTED] deposited the rent payments into the Firm Inc. dba Firm [REDACTED] Residential Escrow Account, account number 2421 at Arvest Bank. The Firm [REDACTED] Residential Escrow Account at Arvest Bank was not registered with the Arkansas Real Estate Commission.

10. On November 17, 2017, the Los Angeles County Department of Health recorded a death certificate for joint tenant owner [REDACTED]. On or about January 17, 2018, Complainant [REDACTED] entered into a Management Agreement with Respondent [REDACTED] for the subject property. The management agreement stated a 10% management fee to be assessed on rental income, the ability to show the property to potential lessees, check all rental application references, to prepare Lease Agreements, Pet Agreements, and Rules & Rules. The Management Agreement also stated on Section 14, “Agent may collect, as agency revenue from the tenants of the property any of the following: late rent administrative charges, credit report fees, insufficient check charges or subleasing

administrative fees.” The agreement reflected an asterisk on Section 7 which stated: “16% Maintenance fee assessed on rental bills.” Complainant [REDACTED] told AREC Investigators he added an asterisk to the bottom of the agreement which stated: “might need to discuss this depending on the rental bills”, because he was concerned about such a large fee to be charged on major repairs such as the roof. The entire agreement could be cancelled by either party, at any time, with a thirty-day written notice upon termination of any active lease. The agreement did not contain contact information for the Property Owner, a description of the monthly statements of accounting to be provided to the Property Owner or an expiration date or other terms related to the duration of the agreement.

11. From February 2018 through April 2018, monthly rent in the amount of \$850.00 was deposited by Respondent [REDACTED] into the Residential Escrow Account for the subject property. Each month Respondent [REDACTED] prepared an Investor Monthly Statement for Complainant [REDACTED] which reflected rent paid for the month in the amount of \$800.00. Each month Respondent [REDACTED] collected a 10 % Management Fee and sent the monthly balance of \$720.00 to Complainant [REDACTED]. Respondent [REDACTED] did not account for the additional payment in the amount of \$50.00 paid by Tenant [REDACTED] each month which Respondent [REDACTED] retained.

12. On or about May 7, 2018, monthly rent was deposited by Respondent [REDACTED] into the Residential Escrow Account for the subject property in the amount of \$850.00. On May 10, 2018, Respondent [REDACTED] prepared an Investor Monthly Statement for Complainant [REDACTED] which reflected rent paid for the month of May 2018, in the amount of \$800.00. Respondent [REDACTED] charged a 10% Management Fee. On or about April 12, 2018, Invoice # 109585 from Dirty Deeds in the amount of \$65.00 was received by

Respondent [REDACTED] for the subject property. On or about April 13, 2018, Respondent [REDACTED] received a Renewal Invoice from Rid-A-Pest for the annual termite renewal on the subject property. The total maintenance bills were \$227.43 and Respondent [REDACTED] charged a 16% Maintenance Fee on the maintenance bills in the amount of \$36.39. The Monthly Owner statement for the subject property showed \$456.18 due to Complainant [REDACTED]. Respondent Principal Broker [REDACTED] did not disclose the \$50.00 "additional fee" paid by Tenant [REDACTED] which Respondent [REDACTED] retained.

13. On or about June 9, 2018, monthly rent for the subject property was deposited by Respondent [REDACTED] into the Residential Escrow Account in the amount of \$877.42. Respondent [REDACTED] prepared an Investor Monthly Statement for Complainant [REDACTED] which reflected rent paid for the month of June 2018, in the amount of \$800.00. Respondent [REDACTED] collected a 10 % Management Fee and sent the remaining amount of \$720.00 to Complainant [REDACTED]. Respondent [REDACTED] did not disclose the additional \$77.42 fee paid by Tenant [REDACTED]. Tenant [REDACTED] vacated the property at the end of June 2018.

14. On or about Wednesday, June 13, 2018, prospective Tenant [REDACTED] completed a Rental Application for the subject property. Monthly rent was listed as \$1,000.00. The Security Deposit was listed as \$1,000.00 and a Pet Fee of \$200.00 each. The Security Deposit was noted as paid on June 13, 2018, as well as an application fee in the amount of \$35.00. The money was deposited to the Firm Residential Escrow Account on Monday, June 18, 2018. Complainant [REDACTED] informed Respondent [REDACTED] he no longer wished to rent the subject property and had decided to

sell the property. Complainant [REDACTED] did not list the property for sale with Respondent [REDACTED] or with the person Respondent [REDACTED] recommended.

15. On or about July 10, 2018, Respondent [REDACTED] prepared an Investor Monthly Statement for Complainant [REDACTED]. The Statement showed rent was collected by Respondent [REDACTED] in the amount of \$1,000.00. Respondent [REDACTED] charged a Management Fee in the amount of \$100.00, on the \$1,000 listed as rent collected, which was not received. Maintenance invoices were paid to Matias Lawn & Tree Service in the amount of \$200.00 and Hutch's Pressure Washing and Wood Restoration in the amount of \$438.00. The maintenance invoices totaled \$638.00. A 16% Maintenance Fee in the amount of \$102.08 was charged to Complainant [REDACTED]. The statement showed Complainant [REDACTED] a balance due from Complainant [REDACTED] of \$840.08 for repairs. The balance due from Complainant [REDACTED] did not include the \$1,000.00 listed as rent that was not collected. Complainant [REDACTED] submitted a check to Firm [REDACTED] in the amount of \$1,500.00 for repairs at the subject property.

16. On or about July 17, 2018, Firm [REDACTED] wrote check 004451 to Prospective Tenant [REDACTED] in the amount of \$1,035, refunding the Security Deposit and Application Fee.

17. On or about August 2, 2018, Ozarks Electric Cooperative sent an invoice to Firm [REDACTED] for the subject property in the amount of \$9.94. The payment was due by August 20, 2018. The invoice noted a late charge was due in the amount of \$4.93 if payment was received after August 20, 2018. On or about August 10, 2018, Respondent [REDACTED] prepared an Investor Monthly Statement for the subject property reflecting the invoice for the electric bill was paid in the amount of \$14.87. The invoice

was stamped as paid with check # 21802 from the Firm operating account on August 17, 2018, in the amount of \$14.87 which included the late fee. The Investor Statement reflected a negative balance in the amount of (\$14.87). A revised Investor Monthly Statement was later sent to Complainant reflecting a negative balance of (\$854.95) which included the negative balance from the prior month but did not reflect the \$1,500.00 advance Complainant had paid in July 2018 for repair bills.

18. On or about September 10, 2018, Respondent provided an Investor Monthly Statement to Complainant on the subject property reflecting maintenance invoices paid for carpet cleaning in the amount of \$355.88 and painting in the amount of \$1,325.73. The total maintenance invoices amounted to \$1,681.61. Respondent charged a 16% Maintenance Fee in the amount of \$269.06. The statement reflected the forfeited security deposit from Tenant in the amount of \$500.00 and a 10% Management Fee in the amount of \$50.00. The statement reflected a balance forward due from Complainant of (\$14.87). Respondent later sent a corrected Investor Monthly Statement to Complainant with the balance forward due corrected making the total due from Complainant (\$855.62).

19. On or about October 10, 2018, Respondent provided an Investor Monthly Statement to Complainant. The statement reflected an electric bill paid to Ozarks Electric in the amount of \$150.61. The invoice showed a balance forward from September 18, 2018, in the amount of \$55.39 and a late fee on the unpaid amount of \$4.93. Respondent charged a Maintenance Fee on the utility bill of 16% in the amount of \$24.10. On September 25, 2018, Respondent deposited a \$1,000.00 check from Complainant for additional repair funds. A revised Monthly Statement

was sent to Complainant [REDACTED] correcting the balance due from the prior month to (\$855.62) and showed a Balance Due to Investor of \$144.38 "Holding in Escrow". The corrected statement did not correctly subtract the utility bills and maintenance fee. The revised Balance Due to Complainant [REDACTED] should have been an amount due from Complainant Anglin of (\$30.33).

20. On or about November 10, 2018, Respondent [REDACTED] provided an Investor Monthly Statement to Complainant [REDACTED] reflecting an electric bill from Ozark Electric in the amount of \$31.96. The invoice reflected check # 21877 was issued from the **Firm** [REDACTED] operating account for this invoice. The payment was due November 20, 2018, per the invoice. Respondent [REDACTED] charged a 16% Maintenance Fee in the amount of \$5.11. The statement reflected Total Bills of \$37.07. The Balance Due Investor was \$772.68. The statement had "Incorrect Accounting" written at the bottom. A Revised November Statement was sent to Complainant [REDACTED] reflecting Balance Due Investor of \$107.31 (Holding in Escrow). The revised statement did not correct the addition errors from the October 2018 Statement. The Balance Due from Investor should have been (\$67.40).

21. On or about December 10, 2018, Respondent [REDACTED] prepared an Investor Monthly Statement for Complainant [REDACTED] reflecting an electric bill from Ozark Electric in the amount of \$31.40. The bill showed current charges of \$26.47 and a late fee on the prior months' payment of \$4.93. The invoice was marked paid on December 13, 2018, with check number 21894 from the **Firm** [REDACTED] Operating Account. The Investor Monthly Statement noted a 16% Maintenance Fee in the amount of \$5.02 and a Balance Due to Investor of \$736.26. The Statement is noted "Incorrect Accounting" at the Bottom

of the page. A revised Monthly Statement was sent to Complainant [REDACTED] reflecting a Balance Due to Investor of \$70.89 (Holding in Escrow). The statement did not correct the errors from the October 2018 Statement. The Balance Due from Investor should have been (\$103.82).

22. On or about January 10, 2019, Respondent [REDACTED] prepared an Investor Monthly Statement for Complainant [REDACTED] reflecting an electric bill from Ozark Electric in the amount of \$28.02. The invoice was marked paid on January 12, 2019, with check number 21914 from the Firm [REDACTED] operating account. The Investor Monthly Statement noted a 16% Maintenance Fee in the amount of \$4.48 and a Balance Due to Investor of \$703.76. The Statement is noted "Incorrect Accounting" at the Bottom of the page. A revised Monthly Statement was sent to Complainant [REDACTED] reflecting a Balance Due to Investor of \$38.39 (Holding in Escrow). The statement did not correct the errors from the October 2018 Statement. The Balance Due from Investor should have been (\$136.32).

23. On January 28, 2019, Complainant [REDACTED] signed a Warranty Deed transferring Title of the Subject Property to [REDACTED] Complainant [REDACTED] notified Respondent [REDACTED] of the sale and requested Respondent [REDACTED] have the utilities discontinued in the Management Company's name.

24. On or about February 10, 2019, Respondent [REDACTED] prepared an Investor Monthly Statement for Complainant [REDACTED] reflecting an electric bill from Ozark Electric in the amount of \$32.53 for the period ending January 31, 2019. The invoice was marked paid on February 10, 2019, with check number 21926 from the Firm [REDACTED] operating account. The Investor Monthly Statement noted a 16% Maintenance Fee in the

amount of \$5.20 and a Balance Due to Investor of \$666.03. The Statement is noted "Incorrect Accounting" at the Bottom of the page. A revised Monthly Statement was sent to Complainant [REDACTED] reflecting a Balance Due to Investor of \$.66 (Holding in Escrow). The statement did not correct the errors from the October 2018 Statement. The Balance Due from Investor should have been (\$174.05).

25. From March 10, 2019, through May 10, 2019, Respondent [REDACTED] sent Investor Monthly Statements to Complainant [REDACTED] showing no transactions. No adjustments were made to the Statements marked "Incorrect Accounting" and "Revised Statement". The subject property was vacant. No further corrections were made to Respondent [REDACTED]'s accounting and on May 9, 2019, check number 4653 in the amount of \$.66 was issued to Complainant [REDACTED] from Respondent [REDACTED]'s Firm Residential Escrow Account. Respondent [REDACTED] stated to AREC Investigators that the subtraction error made in October 2018, by unlicensed office assistant [REDACTED] must have been an adding machine error. Because no adjustments were made for the subtraction error made by Office Assistant [REDACTED] the Firm Residential Trust Account could not have been in balance.

26. On June 10, 2020, AREC Investigators requested documents from Respondent [REDACTED] Respondent [REDACTED] provided Bank Statements requested but did not provide Owner and Tenant Ledgers, Monthly Reconciliation Records or Check Registers. On July 10, 2020, AREC Investigators requested the remaining records from Respondent [REDACTED] Respondent [REDACTED] provided Excel spreadsheet Tenant and Owner Ledgers for the subject property which were only from the period February 2018 through May 2019, and did not include the Property Manager's Name, identity of the person

tendering funds, the check number deposited, the date of the deposit, the date of the disbursement, the check number of the disbursement, the payee of the disbursement or the purpose of the disbursement. Respondent [REDACTED] provided a check register for the period January 2018 through May 2018, on the Residential Escrow Account. The check register did not include identification of the subject property or balances of the account. A reconciliation of the trust accounts was not provided to AREC Investigators.

CONCLUSIONS OF LAW

27. By failing to register the Management Realty Residential Escrow Account with the Arkansas Real Estate Commission, Respondent [REDACTED] violated Commission Rule 10.8(e).

28. By failing to ensure the Property Management Agreement contained an address and contact information for the owner of the Subject Property, failing to provide a description of the monthly statements which would be provided to the owner of the property, and failing to disclose the duration of the contract or provide an expiration date, Respondent Principal Broker [REDACTED] violated Commission Rules 10.19 (a)(1), 10.19(a)(6), and 10.19 (a)(7).

29. By failing to disclose the extra \$50.00 "fees" from Tenant [REDACTED] and failing to provide an accounting to Complainant [REDACTED] of the extra payments made each month, Respondent [REDACTED] failed to report to the Owner all receipts and disbursements for the owner's account, a violation of Commission Rule 10.22(g).

30. By failing to disclose the extra \$77.42 "fees" from Tenant [REDACTED] and failing to provide an accounting to Complainant Property Owner [REDACTED] of the extra payment

made for June, Respondent [REDACTED] failed to report to the Owner all receipts and disbursements for the Owner's account in violation of Commission Rule 10.22(g).

31. Respondent [REDACTED] failed to deposit Prospective Tenant [REDACTED]'s funds into a trust account within three (3) days after receipt, which constitutes a violation of Commission Rule 10.8(g)(1).

32. By charging Complainant [REDACTED] a 10% management fee on rental or security deposit monies neither collected nor retained, Respondent [REDACTED] failed to protect and promote the interests of his client and failed to deal honestly with his client, which constitute violations of Commission Rule 8.5(a) and Arkansas Code Annotated §17-42-311(a)(11).

33. By not defining in the Property Management Agreement that "16% maintenance fee assessed on rental bills" was to include utility bills, Respondent [REDACTED] failed to reduce the exact terms of the agreement to writing, a violation of Commission Rule 10.10(a). By failing to pay the utility bill on the subject property in a timely manner to avoid a late fee being charged, Respondent [REDACTED] failed to protect and promote the interests of his client, a violation of Commission Rule 8.5(a), and by failing to account for the repair escrow money sent to Respondent [REDACTED] by Complainant [REDACTED], Respondent [REDACTED] violated Arkansas Code Annotated §17-42-311(a)(6).

34. By failing to provide Complainant Anglin an accurate report of the monthly transactions on the subject property, Respondent [REDACTED] violated Commission Rule 10.22(g).

35. By failing to properly supervise Bookkeeper/Office Assistant [REDACTED] in order to ensure a correct accounting was provided to Complainant [REDACTED], Respondent [REDACTED] violated Commission Rule 10.4(a)(1).

36. By failing to maintain deposit records traceable to the Owner and Tenant Ledgers, respectively, Respondent [REDACTED] violated Commission Rule 10.21(a).

37. By failing to include the required information on the Owner Ledgers, Respondent [REDACTED] violated Commission Rules 10.22(d)(2), (3), and (4) and 10.22(e)(1)(3)(4) and (5).

38. By failing to include the required information on the Tenant Ledgers, Respondent [REDACTED] violated Commission Rules 10.23(c)(3) and (4) and 10.23(d)(1)(3)(4)(5).

39. By failing to provide Trust Account Reconciliations to AREC Investigators, Respondent [REDACTED] violated Commission Rules 10.8(g)(2) and 10.8(g)(3).

40. Respondent [REDACTED]'s violations in Paragraphs 28-39 constitute a violation of Arkansas Code Annotated §17-42-311(a)(2).

41. Respondent [REDACTED]'s violations in Paragraphs 28-40 constitute a violation of Arkansas Code Annotated §17-42-311(a)(11).

ORDER

IT IS THEREFORE ORDERED that Respondent [REDACTED] shall pay a \$8,500.00 penalty to the Arkansas Real Estate Commission within 90 days of the date of this Order. Respondent [REDACTED]'s penalty above will be reduced by any amount paid directly to Complainant [REDACTED] up to the amount calculated by the Commission due to Complainant [REDACTED].

in the amount of \$1,351.94. Respondent [REDACTED] agrees to surrender his Arkansas Real Estate Broker License and appear before the Arkansas Real Estate Commission if he wishes to reapply for licensure.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order and that Respondent's failure to comply with any provision herein shall constitute a violation of a Commission order pursuant to Arkansas Code Annotated § 17-42-311(a)(2) for which the Commission may impose disciplinary action upon the Respondent's license.

IT IS SO ORDERED this 12th day of August, 2024.