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BEFORE THE UTAH DIVISION OF REAL ESTATE
OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH

In the matter of the license of
BRUCE L. ARMSTRONG to act
as a Real Estate Principal and Dual Broker

STIPULATION AND CONSENT ORDER

Docket No. RE-2019-016

DRE Case Nos. RE-16-80578
RE-18-97103
RE-19-108880

The Division of Real Estate of the Department of Commerce of the State of Utah (the "Division"), by and through its counsel, Elizabeth B. Harris, and Bruce L. Armstrong ("Respondent"), hereby stipulate and agree as follows:

STIPULATION

1. Respondent is currently licensed with the Division as an associate broker under license no. 5502549-AB00.
2. At all times between January 1, 2009 and March 24, 2020, Respondent was licensed as a principal broker under license no. 5502549-PB00 and dual broker under license no. 5502549-DB00.
3. Respondent was the subject of an investigation conducted by the Division into allegations that he had violated certain provisions of the Utah Real Estate Licensing and

Practices Act (the Act), Utah Code § 61-2f-101 (2017), *et seq.*, and Real Estate Licensing and Practices Rules (the Rules), Utah Admin. Code R162-2f-101 (2017), *et seq.*

4. In connection with the Division's investigation, on or about August 12, 2019, the Division initiated an administrative action against Respondent by filing a Verified Petition.

5. A formal hearing in this matter is currently scheduled for August 17, 2020 before the Director of the Division of Real Estate ("Director") and the Utah Real Estate Commission ("Commission").

6. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code § 63G-4-102(4).

7. Respondent admits the jurisdiction of the Commission over Respondent and over the subject matter of this action.

8. Respondent is represented in this matter by Ryan Hancey of Kesler & Rust and is satisfied with the representation he has received.

9. Respondent understands that he is entitled to a hearing before the Director and Commission, at which time he may present evidence on his own behalf, call witnesses, and confront adverse witnesses. Respondent understands that by signing this document he hereby waives the right to a hearing, the right to present evidence on his own behalf, the right to call witnesses, the right to confront adverse witnesses, and any other rights to which he may be entitled in connection with said hearing.

10. Respondent understands that by signing this document he waives all rights to any administrative and judicial review as set forth in Utah Code Ann. §§ 63G-4-301 through 63G-4-405 and Utah Administrative Code R151-4-901 through R151-4-907.

11. Respondent has read this document, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been

made by the Division, nor by any representative of the Division, to induce Respondent to enter into this Stipulation & Consent Order, other than as described herein.

FINDINGS OF FACT

GENERAL ALLEGATIONS

12. At all times between January 1, 2009 and March 24, 2020, Respondent operated as a dual broker and maintained a real estate company, Armstrong Property Management, Inc. ("APM") under registration no. 5501371-CN00, and a property management company, 1031 Property Care, LLC ("1031 Property Care") under registration no. 5615140-MN00. On March 24, 2020, Respondent changed his principal broker license to an associate broker license, and his dual broker license was inactivated.

13. At all times relevant to this Stipulation, APM was primarily engaged in residential property management and managed between 200-250 residential properties located in the state of Utah. 1031 Property Care was primarily engaged in commercial property management and managed between 50-60 commercial properties throughout the United States.

14. From at least 2010, APM and 1031 Property Care maintained trust accounts as follows:

- a. APM Property Management Trust Account No. ***9694 ("APM Trust")
- b. 1031 Property Care Property Management Trust Account ***6044 ("1031 Property Care Trust")

DIVERSION AND COMMINGLING OF TRUST FUNDS

15. On at least three occasions in 2012, client funds from the APM Trust Account were diverted to the 1031 Property Care Trust Account to temporarily cover shortages in the 1031 Property Care Trust Account:

- a. \$50,000.00 on February 10, 2012;

- b. \$20,000.00 on March 6, 2012;
- c. \$35,000.00 on November 7, 2012.

16. Further, on at least six occasions in June of 2017, client funds from the 1031 Property Care Trust Account were used to pay APM expenses and payroll. These funds were reimbursed to the 1031 Property Care Trust Account on March 28, 2018.

17. At all times prior to May 13, 2013, the Act and Rules provided that a principal broker who deposited more than \$500.00 of the broker's own funds into a trust account impermissibly comingled trust funds in violation of Utah Code § 61-2f-401(4)(b).

18. In 2011 and 2012, Respondent employed a contract bookkeeper and unlicensed assistant for 1031 Property Care ("1031 Assistant"). During the approximately nine-month period between October 24, 2011 and August 3, 2012, Respondent issued 124 checks totaling \$75,002.20 directly from the 1031 Property Care Trust Account to the 1031 Assistant.

19. The memo line on each of the checks indicated that the payment was for "Accounting/Office Management." However, the checks actually consisted of a mixture of wage payments, loans, and gifts from Respondent to the 1031 Assistant.

20. Respondent reported to the Division that these payments were made from Respondent's own funds being held in the 1031 Property Care Trust Account. The Division was unable verify the accuracy of this representation from the trust account records provided to the Division.

21. After 2012, Respondent continued to hold funds earned by and/or belonging to Respondent in the APM and 1031 Property Care trust accounts and continued to pay personal and business expenses directly from those accounts.

22. During this time, Respondent did not always perform monthly trust account reconciliations of the APM and 1031 Property Care trust accounts as required by the Act and

Rules. As a result, multiple accounting errors committed by Respondent and his staff went uncorrected for several months.

USE OF TRUST FUNDS TO PAY HOTEL EXPENSES

23. Between 2011 and 2014, Respondent and a group of investors acquired four hotel properties. Respondent had a financial interest in each of the four properties and managed the hotels' day to day operations.

24. On at least six occasions in 2016, client funds from the APM Trust Account were used to pay hotel-related expenses totaling \$107,373.20. As a result of these expenditures, the APM Trust Account was short at all times between January 22, 2016 and October 27, 2016. Once Respondent became aware of the trust account shortage, Respondent failed to report it to the Division as required by statute and rule.

25. On two additional occasions in September 2016, client funds from the 1031 Property Care Trust Account were used to pay hotel-related expenses totaling \$74,334.49.

UNAUTHORIZED PAYMENT OF LEASING COMMISSIONS

26. At all times relevant to this stipulation, Respondent and 1031 Property Care managed approximately 50 single-tenant, commercial properties.

27. As a general rule, each property had multiple unrelated owners who purchased their undivided fractionalized interest in the property from an investment sponsor and thereafter held the property as tenants-in-common with the other investors ("TIC Properties"). In most cases, prior to the owner's purchase, the investment sponsor had already negotiated and entered into a "build to suit lease" with a tenant such as Family Dollar or Dollar General. These leases generally provided for a 10-20 year initial lease term and generally included a set number of pre-negotiated lease renewal options.

28. At the time they purchased their interest in a property, each owner signed an

agreement designating 1031 Property Care as the manager of the property ("Property Management Agreement"). The Property Management Agreement outlined Respondent's duties in managing the property and the specific compensation he was entitled to receive for those services.

29. As a general practice, when Respondent received rents for a TIC Property, he held back a portion in a monetary reserve that could be used to pay property expenses as they came due. In order to track the specific transactions and funds held in trust for each TIC Property, Respondent utilized an accounting software which maintained a separate subaccount for each individual property.

30. In approximately 2014, Respondent began transferring money from the TIC Properties' subaccounts to his own personal subaccount within the 1031 Property Care Trust Account as payment of "leasing commissions" ostensibly related to lease renewals/extensions by the properties' existing tenants. However, in many cases, Respondent took leasing commissions he was not entitled to under the terms of the Property Management Agreement. These commissions were taken without the property owners' knowledge or consent:

- a. Between February 2013 and June 2015, sixteen leasing commissions totaling \$168,094.97 were transferred from property reserve accounts where the tenant's lease on the underlying property still had several years remaining and no lease renewal/extension had actually occurred.
- b. Between May 2014 and June 2016, seventeen leasing commissions totaling \$212,862.75 were transferred from property reserve accounts where, after initially attempting to modify the existing lease terms and engaging in negotiations with Respondent, the tenant for the underlying property renewed its lease at terms set forth in the original lease. The property management agreements governing these

properties did not expressly authorize payment of leasing commissions for tenants that renewed their existing leases.

31. Respondent makes the following statement on his own behalf:¹
 - a. When Respondent was notified of the issue with the sixteen leasing commissions that were paid from reserve accounts where no lease renewal/extension had actually occurred, Respondent initiated an internal audit, learned the sixteen commissions had not been earned, and repaid the commissions in full.

MISREPRESENTATIONS TO PROPERTY OWNERS

32. Between 2013 and 2016, leasing commissions totaling \$491,757.90 were transferred from the TIC Properties' reserve accounts. Respondent did not notify the relevant property owners that the commissions were being paid from the property reserve accounts at the time of payment and did not disclose the commission payments in the year-end reports he provided to the property owners.

33. The year-end reports sent to owners in 2015, 2016, 2017, and 2018 did not reflect payment of the leasing commissions and therefore incorrectly stated the property reserve account balances were greater than they actually were.

34. In June 2019, Respondent took steps to notify the affected property owners of the leasing commissions paid from their accounts.

CONCLUSIONS OF LAW

35. Respondent admits, and the Division concludes, that based upon the foregoing facts,

Respondent violated the Act and Rules as follows:

- a. Respondent failed to act competently as a principal and dual broker in such

¹ The Division does not join in making this statement and does not make any representations or admissions as to its truth or accuracy.

- manner as to safeguard the interests of the public in violation of Utah Code § 61-2f-401(7);
- b. Respondent failed, within a reasonable time, to account for and remit money belonging to another which came into Respondent's possession in violation of Utah Code § 61-2f-401(4)(a);
 - c. Respondent commingled money belonging to another with Respondent's own money in the 1031 Property Care Trust Account in violation of Utah Code § 61-2f-401(4)(b);
 - d. Respondent diverted money belonging to APM and 1031 Property Care clients from the purpose for which it was received in violation of Utah Code § 61-2f-401(4)(c);
 - e. Respondent made substantial misrepresentations to his 1031 Property Care clients relating to their reserve account balances in violation of Utah Code § 61-2f-401(1)(a);
 - f. Respondent breached the fiduciary duty of Loyalty to his APM and 1031 Property Care clients, in violation of Utah Code § 61-2f-401(16) and Utah Admin. Code R162-2f-401a(1)(f);
 - g. Respondent breached his fiduciary duty to hold safe and account for all money entrusted to Respondent in violation of Utah Code § 61-2f-401(16) and Utah Admin. Code R162-2f-401a(1)(f);
 - h. Respondent failed to complete monthly reconciliations of the APM Trust Account and 1031 Property Care Trust Accounts in violation of Utah Code § 61-2f-401(14) and Utah Admin. Code R162-2f-403a(9)(d);

- i. Respondent failed to notify the Division of shortages in the APM and 1031 Property Care Trust Accounts in violation of Utah Code § 61-2f-401(14) and Utah Admin. Code R162-2f-402a(10).

REMEDIAL ACTIONS AND SANCTIONS

36. Respondent admits the Division's Findings of Fact and Conclusions of Law as set forth herein and agrees that grounds exist for taking disciplinary action against his licenses pursuant to Utah Code § 61-2f-404(1):

37. As full settlement of all the issues raised in this stipulation, Respondent agrees that an order shall be entered imposing the following sanctions:

- a. Respondent's associate and dual broker licenses shall be revoked as of the date the Commission and the Director sign the final order in this matter (the "Final Order Date").
- b. Respondent shall immediately cease and desist from engaging in any activities requiring a license under Utah Code § 61-2f-101, *et seq.*;
- c. Respondent shall be barred from applying for licensure with the Division for a five-year period which will commence on the Final Order Date. Respondent shall be required to appear before the Commission for a hearing on any future applications for licensure with the Division;
- d. Respondent shall pay a civil penalty of \$405,357.72 to the Division within twenty-four (24) months from the Final Order Date. The penalty may be reduced, dollar for dollar, in an amount up to \$280,357.72 for restitution paid by Respondent to property owners as set forth in Exhibit A to this Stipulation & Consent Order within 24 months from the Final Order Date. Proof of restitution payments shall be provided to the Division in the form of canceled checks and

written confirmation of receipt of funds from the property owners or the owners' designated agent. Respondent shall also provide the Division with documentation sufficient to show the source of funds used to pay restitution.

38. Should Respondent fail to pay the civil penalty set forth above within 24 months of the Final Order Date or otherwise fail to comply with the terms set forth in this Stipulation and Consent Order, in accordance with the provisions of Utah Code § 78B-5-205 and Rule 58A of the Utah Rules of Civil Procedure, Respondent specifically now, and hereafter, authorizes entry of judgment against him for the unpaid balance owing to the Division ("Judgment Amount"). Respondent admits, agrees, and acknowledges that the Judgment Amount will be justly due the Division by reason of his material failure to timely pay the civil penalty as set forth herein. In confessing judgment, Respondent hereby agrees and authorizes that the judgment may be immediately entered against him, less any sums paid to the Division after the date hereof.

39. Respondent and the Division recognize and agree that this stipulation shall not be binding until the Commission and the Director review it and jointly approve it in a public meeting conducted pursuant to Utah Code Ann. § 52-4 *et seq.*

40. Respondent acknowledges that, as part of their review, the Commission and Director may ask the Division investigative staff and counsel questions about this stipulation and the investigative staff and counsel may answer such questions and provide factual information in public and on the record.

41. Respondent has the right to be present when the stipulation is presented for consideration and to address the Commission and the Director about this stipulation or the facts underlying it. If Respondent desires to be present to address the Commission and Director, Respondent may contact Maelynn Valentine at the Division by calling (801) 530-6750 for information about the date, time, and place of the meeting at which this stipulation will be

presented for consideration to the Commission and the Director.

42. If either the Commission or the Director does not approve any part of the stipulated agreement proposed herein, this entire stipulation shall be null and void except as to Paragraph 43 and this matter will proceed to a formal hearing as currently scheduled for August 17, 2020.

43. Should this stipulation be nullified and the matter proceed to hearing, Respondent waives any claim Respondent may have with regard to the Commission and Director by virtue of their:

- a. having reviewed this stipulation;
- b. having heard any statement made by Division Counsel, investigative staff or Respondent; and
- c. having decided the stipulation shall be null and void.

This waiver shall survive any nullification of this stipulation.

44. Respondent acknowledges that upon approval by the Commission and the Director, this stipulation and its exhibit shall be made a part of the attached final order, and shall be the final compromise and settlement of this matter, and is not subject to reconsideration, renegotiation, modification, appeal, or rehearing. Notwithstanding the foregoing, the exhibit to this stipulation contains confidential information, and that information will be redacted in accordance with Utah Code § 63G-4-101 *et seq.*

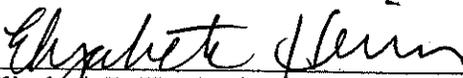
45. This document and all other documents incorporated herein by reference constitute the entire agreement between the parties herein. This Stipulation supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements that modify, interpret, construe, or affect this agreement.

46. Respondent acknowledges that this stipulation does not foreclose the possibility that Respondent may be prosecuted criminally or investigated by other government agencies on the basis of the facts admitted. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions.

47. Respondent acknowledges that this stipulation and order, once adopted, will be classified as a public document and will be accessible to the public. Respondent acknowledges that the Division will publish information in the Division's quarterly newsletter and may inform other state and federal agencies of any action taken on Respondent's license and the terms of this stipulation and order.

SEAN D. REYES
UTAH ATTORNEY GENERAL

Dated: August 12, 2020.

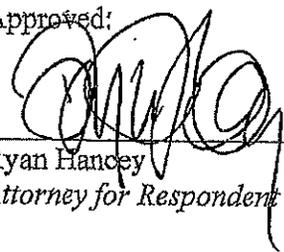

Elizabeth B. Harris, Assistant Attorney General
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114
Counsel for the Division of Real Estate

RESPONDENT

Dated: August 11, 2020.


Bruce L. Armstrong
670 E. 400 N.
Lindon, UT 84042

Approved:


Ryan Hancey
Attorney for Respondent

ORDER

The Commission and the Director approve and adopt the foregoing stipulation of the parties. Based upon the foregoing stipulation and for good cause appearing, the Commission and the Director order that, in lieu of holding a hearing in this matter:

1. Respondent's associate and dual broker licenses shall be revoked as of the Final Order Date;
2. Respondent shall immediately cease and desist from engaging in any activities requiring a license under Utah Code § 61-2f-101, *et seq.*;
3. Respondent shall be barred from applying for licensure with the Division for a five-year period which will commence on the Final Order Date;
4. Respondent shall be required to appear before the Commission for a hearing on any future applications for licensure with the Division;
5. Respondent shall pay a civil penalty of \$405,357.72 to the Division within twenty-four (24) months from the Final Order Date. The penalty may be reduced, dollar for dollar, in an amount up to \$280,357.72 for restitution paid by Respondent to property owners as set forth in Exhibit A to this Stipulation & Consent Order within 24 months from the Final Order Date. Proof of restitution payments shall be provided to the Division in the form of canceled checks and written confirmation of receipt of funds from the property owners or the owners' designated agent. Respondent shall also provide the Division with documentation sufficient to show the source of funds used to pay restitution.

To file and no copy of exhibit
based on the same
to file and no penalty
based on the same

2019/07/11

2019/07/11 10:00 AM

This order shall be effective on the signature date below.

Dated this 12 day of August, 2020.

UTAH REAL ESTATE COMMISSION

RICK SOUTHWICK, CHAIR

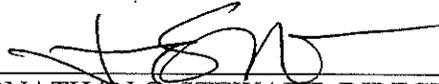
LORI CHAPMAN, VICE CHAIR

JAMES BRINGHURST

MARIE MCCLELLAND

RANDY SMITH

The undersigned concurs with the foregoing order this 12 day of August,
2020.



JONATHAN C. STEWART, DIRECTOR
DIVISION OF REAL ESTATE

Motion to sign on behalf of
Commission / Board.
Signing on behalf of
Commission / Board.


Name: Jonathan Stewart
Division / Acting Director

EXHIBIT A

PROPERTY	PROPERTY SUBACCOUNT ID	RESTITUTION AMOUNT
Advance Auto #2024 201 N. 32 nd Street Muskogee, OK 74401	ADVAUTOMUS	\$10,500.00
Auto Zone #3542 601 N. Main St. Andrews, TX 79714	AUTO-ANDRW	\$3,000.00
Checker Auto #3722 498 N. Kenazo Blvd. Horizon City, TX 79928	CHECK-HOR	\$15,833.32
Dollar General #10568 835 S. Main St. Brigham City, TU 84302	DG-BRIGHAM	\$15,700.00
Family Dollar #7826 5627 El Indio Hwy Eagle Pass, TX 78852	FD-EAGLE	\$8,300.00
Family Dollar #7680 831 Darrington Blvd Horizon City, TX 79928	FD-HORIZON	\$19,300.00
Family Dollar #7589 2722 South Prairie Ave. Pueblo, CO 81005	FD-PUEBLO	\$14,300.00
Fresenius #5497 720 N. St. Mary's Street Falfurrias, TX 78355	FRE-FALFUR	\$10,000.00
Fresenius #5487 1030 War Eagle Dr. Lewisburg, TN 37091	FRESLEWIS	\$600.00
Kindercare #301467 610 Cranbury Road East Brunswick, NJ 08816	KC-EBRUNSW	\$11,000.00
Kindercare #301573 6610 Flying Ranch Rd. Colorado Springs, CO 80919	KC-COSPRIN	\$8,800.00
Kindercare #301581 16975 Village Center Dr. Parker, CO 80134	KC-PARKER	\$4,200.00
O'Reilly Auto #1755 2405 Lazelle St. Sturgis, SD 57785	STURGIS1	\$19,611.65

Tires Plus 2060 N. Main St. Longmont, CO 80501	TIRES-LMCO	\$9,000.00
Tires Plus 6040 Singleton Road Norcross, GA 30093	TIRES-NOGA	\$11,700.00
Village Inn 322 12 th St. Ogden, UT 84404	VINN-OGDEN	\$6,000.00
Affordable Care, Inc. 301 SE Loop 338 Odessa, TX 79762	AFFORDABLE	\$2,000.00
Dollar General #10786 10940 US Highway 181 San Antonio, TX 78233	DG-SANANT	\$12,400.00
Family Dollar #6480 67 SW Main Street Blackfoot, ID 83221-2720	FD-BLACK	\$33,000.00
Family Dollar #7112 816 S. 4 th Street Douglas, WY 82633	FD-DOUGLAS	\$3,900.00
Family Dollar #6915 (DG #19106) 5307 Decatur Road Fort Wayne, IN 46806	FD-FORTWAY	\$20,300.00
Family Dollar #7221 430 8 th Ave. Greeley, CO 80631	FD-GREELEY	\$6,100.00
Family Dollar #6761 510 White Horse Rd Greenville, SC 29605	FD-GREENSC	\$13,000.00
Family Dollar #7223 1314 College Ave. South Houston, TX 77587	FD-HOUSTON	\$14,600.00
Family Dollar #6585 (DG# 19110) 3808 S. 7 th St. Louisville, KY 40216	FD-LOUIS	\$2,900.00
Family Dollar #5542 834 S. 24 th Street Omaha, NE 68108	FD-OM	\$20,567.32
Family Dollar # 6349 197 S. State Street Preston, ID 83263	FD-PRESTON	\$5,300.00

PROPERTY	PROPERTY SUBACCOUNT ID	RESTITUTION AMOUNT
Family Dollar #6451 5938 Old Pearsall Rd San Antonio, TX 78242	FD-SAT	\$11,000.00
Family Dollar #6053 3089 S. Midvale Park Rd. Tucson, AZ 85746	FD-TUCSON	\$11,700.00
Family Dollar #7075 9201 N. Wayside Dr. Houston, TX 77028	FD-WAYSID2	\$8,214.36
Family Dollar #6328 4890 S. 4 th Ave. Yuma, AZ 85364	FD-YUMA4TH	\$4,900.00
Family Dollar #7146 2405 Lazelle Street Sturgis, SD 57785	STURGIS1	\$29,331.07
Family Dollar #7772 316 Minnesota Ave. Aitkin, MN 56431	AITKIN1	\$12,500.00