

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION, DIVISION)
OF REAL ESTATE,)
)
Petitioner,)
) CASE NO. 95-3637
vs.)
)
GERALDINE R. RUESEL,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A hearing was held in this case in Bradenton, Florida on August 1, 1996, before Arnold H. Pollock, a Hearing Officer with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Steven D. Fieldman, Esquire
Department of Business and
Professional Regulation
Division of Real Estate
400 West Robinson Street, N308
Post Office Box 1900
Orlando, Florida 32802-1900

For Respondent: Geraldine Ruesel, pro se
5351 Gulf Drive
Holmes Beach, Florida 34217

STATEMENT OF THE ISSUE

The issue for consideration in this matter is whether administrative disciplinary action should be taken against the Respondent because of the matters alleged in the Administrative Complaint filed herein.

PRELIMINARY STATEMENT

By Administrative Complaint dated May 3, 1995, Steven D. Fieldman, for the Secretary of the Florida Department of Business and Professional Regulation, sought to impose an administrative penalty against the Respondent herein because, it is alleged, she operated as a real estate broker or salesperson without holding a valid and current license to do so and had control of a brokerage corporation after her license was revoked and not reinstated; all in violation of Section 475.25(1), Florida Statutes. On May 26, 1995, the Respondent requested formal hearing on the allegations, and after several postponements, this hearing ensued.

At the hearing, Petitioner presented the testimony of Peggy Jean Lasser, a licensed real estate broker and George B. Sinden, an investigator for the Department. Petitioner also introduced Petitioner's Exhibits 1 through 4. Respondent testified in her own behalf but did not present any other witnesses. She also offered Respondent's Exhibit A but retained the exhibit to make copies for the Hearing Officer. The copies were received on August 9, 1996.

Shortly after the hearing, the undersigned, through his assistant, received a message from Respondent that she had arranged for a real estate broker to take over all her accounts. This message has not been confirmed. In a telephone response to the Notice of Ex Parte Communication filed by the undersigned on August 15, 1996, counsel for Petitioner advised he had received the same assurances from Respondent and attempted to verify them. His efforts indicated the assurances were not accurate and Respondent was still actively engaged in prohibited activity.

No transcript was provided. Subsequent to the hearing, neither Petitioner nor Respondent submitted Proposed Findings of Fact.

FINDINGS OF FACT

1. At all times pertinent to the issues herein, the Petitioner was the state government licensing and regulatory agency charged with the responsibility to prosecute Administrative Complaints alleging misconduct by practitioners of the real estate profession in this state. The Florida Real Estate Commission is the state agency responsible for licensing real estate sales persons and brokers in Florida and for regulating the real estate profession in this state.

2. By Administrative complaint dated May 1, 1992, Respondent and Nicholas G. Patsios were charged with various violations of Section 475.25(1), Florida Statute. At the time, Respondent was a licensed real estate salesperson at Gulf Beaches Realty, Inc. (Gulf Beaches) in Holmes Beach. Gulf Beaches was licensed as a real estate broker for which Mr. Patsios was the qualifying broker. However, Respondent was actually the owner of Gulf Beaches and registered as an officer of the corporation.

3. On January 16, 1992, an investigator for the Department had attempted to audit Gulf Beaches' escrow account but could not do so because the records were not in order. This was the impetus for the investigation into the operation which resulted in the filing of the Administrative Complaint.

4. Respondent actually operated the brokerage, and in the Administrative Complaint was alleged to have been registered as an officer of a brokerage corporation while licensed as a salesperson. She was also charged with having operated as a broker while licensed as a salesperson.

5. By Final Order dated August 18, 1992, the Florida Real Estate Commission found Respondent guilty of the alleged misconduct, fined her \$100.00, reprimanded her and placed her on probation for one year conditioned, *inter alia*, upon her not violating any other provisions of Chapter 475.

6. On May 21, 1993, the Department again charged Respondent with violations of Chapter 475, alleging that she: (1) continued to operate as a broker while licensed as a salesperson; (2) operated as a broker without holding a valid broker's license and (3) violated an order of the Commission. Though the matter was referred to the Division of Administrative Hearings, Respondent failed to respond to the Administrative Complaint, and pursuant to a motion to

relinquish jurisdiction, the matter was returned to the Commission. Thereafter, by Final Order dated November 7, 1993, the Commission revoked Respondent's license as a salesperson.

7. In the interim between that action and the filing of the instant Administrative Complaint, Peggy Jean Lasser, a licensed broker, became the qualifying broker for Gulf Beaches. She allowed Respondent, the owner of the brokerage, to control its operations, including interfacing with clients. When the Commission initiated action against Ms. Lasser for that infraction, she did not dispute the allegations, and as a result, by Final Order of the Commission dated August 15, 1995, her license was suspended for two years.

8. Ms. Lasser immediately ceased operating as the broker for Gulf Beaches. To the best of her knowledge, however, Gulf Beaches is still operating as a real estate office without a broker, and Respondent is still operating as a salesperson without a broker.

9. On July 29, 1996, George Sinden, an investigator for the Department, went to Gulf Beaches' office accompanied by another investigator. He found the door to the office open and Respondent seated at a desk beside the door. She was alone in the office. There were office machines present and it appeared to Sinden that the office was operating as a real estate office.

10. During his visit, Mr. Sinden could find no one with a valid license as a broker or salesperson. Respondent indicated she was trying to find a broker to qualify the company. She admitted she was currently operating a real estate business. Respondent also indicated she had four rentals which she was managing and for which she was depositing funds into a trust account for the owners. She also claimed to have an escrow account with over \$2,000 in it. Sinden found that Respondent was not complying with the Commission's monthly reconciliation requirements and he could not determine to whom the funds in the escrow account belonged. Respondent claims this money was deposit money placed by a prospective purchaser in a sale between two parties, both of whom trusted her to hold the funds. She claims she was to receive a 5 percent fee.

11. Records of Secretary of State's office showed Ms. Lasser as the only officer of Gulf Beaches. However, she no longer holds a valid broker's license. Respondent indicated she was the sole owner of Gulf Beaches. She claimed when Sinden interviewed her and at the hearing, where she again admitted the matters set forth above and in the Complaint, that she has not take in any new business since Ms. Lasser left.

12. Respondent admits that she has attempted to divest herself of her clients but claims that because the Complaints filed against her by the Department have damaged her reputation, no broker will work with her or her business since the action in 1992. Respondent either cannot or will not accept the fact that she is operating illegally. Her primary concern seems to be the fact that this business is her way of making a living. She is 80 years old and seeks only to operate for two more years, at which time she will "meet her maker."

13. The evidence is clear that since 1992, and before, Respondent has been the owner of Gulf Beaches. From the departure of Mr. Patsios to the incumbency of Ms. Lasser, and after the departure of that individual up to the present, Respondent has operated the corporation without a broker. It is also clear that since November 1993, Respondent has operated as a salesperson without a valid license.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Section 120.57(1), Florida Statutes.

15. In its Administrative Complaint the Department seeks to take administrative disciplinary action against the Respondent because, it alleges, she operated as a real estate broker or salesperson without a valid and current license to do so and operated a real estate brokerage without a licensed real estate broker, both in violation of Section 475.25(1), Florida Statutes.

16. Section 455.228(1), Florida Statutes, provides that when the Department has probable cause to believe that a non-licensed person has violated a statute that relates to a regulated profession, or a rule adopted a regulatory body regarding such regulated profession, it may deliver a cease and desist notice to the offender. In addition, the Department may, under the provisions of Chapter 120, impose an administrative penalty not to exceed \$5,000 per incident.

17. The burden of proof in this case rests with the Petitioner to establish, by clear and convincing evidence, that Respondent is in violation of the statute regulating the profession or real estate and the rule of the Division of Real Estate. *Ferris v. Turlington*, 510 So.2d 292 (Fla. 1987).

18. Section 475.42(1)(a), Florida Statutes, provides that no person shall operate as a broker or salesperson of real estate without being the holder of a valid and current active license to do so. Rule 61J2-5.014, F.A.C. prohibits control by a broker of a brokerage firm after that broker's license has been revoked. Section 475.25(1)(e), Florida Statutes, allows the Department to take action when an individual has violate any provision of Chapter 475 or any lawful order or rule made or issued under the provisions of Chapter 475 or Chapter 455.

19. In the instant case, the evidence clearly shows that Respondent is the owner of Gulf Beaches Realty, Inc. in Holmes Beach and has been such since before she was first disciplined by the Florida Real Estate Commission in 1992. That initial discipline, which included a reprimand, a minimal fine and probation failed to change Respondent's conduct. She continued to own and operate the brokerage without holding a broker's license for a period until the Commission again disciplined her by revoking her license as a salesperson in 1993. Notwithstanding that second action, Respondent continued her unlawful activity, including, for a time, operating the office without a broker, notwithstanding the Commission's initiation of the current action. Her unlawful activities continued up to and through the hearing on this matter.

20. In defense of her actions, Respondent claimed only that the Department's harassment of her had made it impossible for her to get any broker to come in and manage her office. She claimed further that, at her advanced age, this was the only way she could support herself. It is clear, however, that Respondent was fully aware of the fact that she was required to be licensed as a broker to serve as an officer of a brokerage corporation, and licensed to operate as either a broker or a sales person. She further knew that she must operate as a salesperson under the supervision of a licensed broker, and in failing to comply with any of the above requirements, she violated the provision of both the Department's rule and the statute requiring her to be licensed.

That misconduct, in all particulars, is a violation of Section 475.25(1)(e), Florida Statutes, and supports discipline as called for in Section 475.42(1)(a), Florida Statutes.

21. The Department indicates its intention to impose the maximum penalty available to it under Section 455.228, Florida Statutes, to-wit: an administrative fine not to exceed \$5,000. At hearing, counsel for the Department also indicated its intent to take whatever other actions are available to insure the Respondent ceased her illegal activity. Such action is consistent with the terms of the statute, but in light of the fact that there is no evidence that any client has lost funds as a result of Respondent's action, appears excessive in amount.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Florida Real Estate Commission enter a final order finding Respondent guilty of the misconduct alleged in the Administrative Complaint and, consistent with the provisions of Section 455.228, Florida Statutes, impose an administrative fine in the amount of \$2,500.00.

DONE and ENTERED this 3rd day of September, 1996, in Tallahassee, Florida.

ARNOLD H. POLLOCK, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of September, 1996.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to the Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the agency that will issue the Final Order in this case concerning their rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.