

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, DIVISION )  
OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) CASE NO. 96-5107  
 )  
TAM N. SHIGLEY, )  
 )  
Respondent. )  
\_\_\_\_\_ )

**RECOMMENDED ORDER**

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Administrative Law Judge, Susan B. Kirkland, held a formal hearing in this case on January 31, 1997, in West Palm Beach, Florida, by video teleconference.

**APPEARANCES**

For Petitioner: Geoffrey T. Kirk, Senior Attorney  
Legal Section - Suite North 308  
400 West Robinson Street  
Hurston Building, North Tower  
Orlando, Florida 32801-1772

For Respondent: No appearance.

**STATEMENT OF THE ISSUES**

Whether Respondent violated Sections 475.25(1)(b),(e),(k), and Section 475.42(1)(b), Florida Statutes, and Rule 61J-14.009, Florida Administrative Code, and if so, what penalty should be imposed.

**PRELIMINARY STATEMENT**

On February 24, 1995, the Department of Business and Professional Regulation, Division of Real Estate (Department), filed an administrative complaint against Respondent, Tam N. Shigley (Shigley), alleging that she violated Sections 475.25(1)(b),(e),(k), and Section 475.42(1)(b), Florida Statutes, and Rule 61J2-14.009, Florida Administrative Code. Shigley requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on October 31, 1996, for assignment to an Administrative Law Judge.

At the final hearing, Shigley failed to appear. Respondent called two witnesses and entered 11 exhibits in evidence.

The transcript was filed on February 20, 1997. At the final hearing counsel for Petitioner stated Petitioner would file proposed recommended order within ten days of the filing of the transcript. The parties did not file proposed recommended orders.

**FINDINGS OF FACTS**

1. Respondent, Tam N. Shigley (Shigley) was provided notice of the final hearing in this case by Notice of Hearing by Video dated December 6, 1996. The final hearing was scheduled to commence at 9:00 a.m. on January 31, 1997. The Administrative Law Judge and counsel for Petitioner waited until 9:15 a.m. to commence the hearing, but Shigley did not appear. Shigley did

not advise either the Division of Administrative Hearings or the Petitioner that she would not be appearing at the final hearing.

2. Shigley is now and was at all times material to this proceeding a licensed Florida real estate salesperson, issued license number 0465639.

3. On March 27, 1994, Shigley was employed by First Nationwide Mortgage. She negotiated a contract between Bich Hue and Minh Huynh (hereinafter Buyers) and Lois A. Hopwood (hereinafter Seller) for the purchase of a house located in Sunrise, Florida. Shigley was listed as the contract escrow agent on the contract.

4. Shigley received a check for \$5,500 from the Buyers as a deposit to be held in escrow until the closing. Shigley cashed the check and did not deposit the proceeds of the check in an escrow account.

5. Shigley's employer was unaware that Shigley had accepted the check, had cashed the check, and had not deposited the check in the escrow account.

6. At the closing of the real estate transaction, Shigley did not have the \$5,500 which she had received from the Buyers and stated that she had lost the money.

7. On May 23, 1994, Shigley entered into an agreement with the seller in which she agreed to pay the Seller the \$5,500 within six months and that if she did not repay the money within

the specified time that the Seller would report Shigley's actions to the Real Estate Board.

8. Shigley did not repay the money to the Seller.

9. Michael Millard filed a complaint with the Broward County Sheriff's Department in March, 1995, alleging that Shigley had absconded with \$1350 which he had given her as a deposit on a lease.

10. On March 14, 1995, Harvey Kosberg filed a complaint with the Department of Business and Professional alleging that Shigley, while registered as a salesperson with Rainbow Realty had acted as a broker and took and kept money in her name.

11. The Department undertook to investigate the allegations of Mr. Kosberg and was unable to locate Shigley. She did not have a telephone listing, and the post office did not have a forwarding address for her.

#### **CONCLUSIONS OF LAW**

12. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

13. Petitioner has alleged that Respondent violated Sections 475.25(1)(b),(e),(k) and Section 475.42(1)(b), Florida Statutes, and Rule 61J2-14.009, Florida Administrative Code. Petitioner is seeking the revocation of Respondent's license as a real estate salesperson. Petitioner has the burden to establish by clear and convincing evidence the allegations set forth in the

administrative complaint. Ferris v. Turlington, 510 So.2d 292 (Fla. 1987).

14. Sections 475.25(1)(b),(e),(k), Florida Statutes, provide:

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed \$1,000 for each count, or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

\* \* \* \*

(b) Has been guilty of fraud or misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick or scheme, or device, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon him by law or by the terms of a listing contract, written, oral, express, or implied, in a real estate transaction; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in any such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the licensee that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the licensee or was an identified member of the general public.

\* \* \* \*

(e) Has violated any of the provisions of this chapter or any lawful order or rule made or issued under the provision of this chapter or chapter 455.

\* \* \* \*

(k) . . .[H]as failed, if a salesperson, to immediately place with his registered employer any money, fund, deposit, check, or draft entrusted to him by any person dealing with him as an agent of his registered employer. . . .

15. The Department has established by clear and convincing evidence that Shigley violated Sections 475.25(1)(b),(e), (k), Florida Statutes, by accepting, cashing, and not depositing the check from Bich Hue and Minh Huynh in an escrow account. Further Shigley failed to give the money to the Seller or to return the funds to the Buyers.

16. Section 475.42(1)(b), Florida Statutes, provides:

No person licensed as a salesperson shall operate as a broker or operate as a salesperson for any person not registered as his employer.

17. The Department has established by clear and convincing evidence that Shigley violated Section 475.42(1)(b), Florida Statutes by acting as a broker in the transaction involving the Huynhs and Ms. Hopwood by negotiating a contract for sale and purchase of property and collecting a deposit as escrow agent.

18. Rule 61J2-14.009, Florida Administrative Code provides:

Every salesperson who receives any deposit, as defined above, shall deliver the same to the broker or employer no later than the end of the next business day following receipt of the item to be deposited. Saturday, Sundays and legal holidays shall not be construed as business days. Receipt by a salesperson or

any other representative of the brokerage firm constitutes receipt by the broker for purposes of 61J2-14.008(1)(d), Florida Administrative Code.

19. The Department has established by clear and convincing evidence that Tam Shigley violated Rule 61J2-14.009, Florida Administrative Code by failing to deliver the check from the Huynhs to a broker or her employer.

**RECOMMENDATION**

Based on the foregoing Findings of Fact and Conclusions of Law, it is

**RECOMMENDED** that a Final Order be entered finding that Tam N. Shigley violated Sections 475.25(1)(b),(e),(k), and 475.42(1)(b), Florida Statutes, and Rule 61J2-14.009, Florida Administrative Code and revoking her license as a real estate salesperson.

**DONE AND ENTERED** in Tallahassee, Leon County, Florida, this 11<sup>th</sup> day of March, 1997.

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**SUSAN B. KIRKLAND**

Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of March, 1997.

**COPIES FURNISHED:**

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**NOTICE OF RIGHT TO SUBMIT EXCEPTIONS**

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.