

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS)	
AND PROFESSIONAL REGULATION,)	
DIVISION OF REAL ESTATE,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 96-5609
)	
GERMAN H. RODRIGUEZ,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 7, 1997, before J.D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Christine M. Ryall, Esquire
Department of Business and
Professional Regulation
Division of Real Estate
400 West Robinson Street
Orlando, Florida 32802

For Respondent: German H. Rodriguez, Pro Se
703 Southwest 89th Avenue
Plantation, Florida 33324

Frederick H. Wilsen, Esquire
GILLIS & WILSEN
1415 East Robinson Street, Suite B
Orlando, Florida 32801

STATEMENT OF THE ISSUES

The issue in this case is whether the Respondent, German H. Rodriguez, committed the violation alleged in the administrative complaint; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

This case began on September 19, 1996, when the Petitioner, the Department of Business and Professional Regulation, Division of Real Estate (Department), issued an administrative complaint that alleged the Respondent, German H. Rodriguez, had violated Section 475.25(1)(m), Florida Statutes, by obtaining a license by means of fraud, misrepresentation, or concealment. More specifically, the complaint alleged that the Respondent had submitted a license renewal form affirming that he had completed all of the requirements for license renewal when, in fact, he had not completed the continuing education required by law. Petitioner maintains Respondent thereby received his renewal of license based upon a misrepresentation of his completion of the continuing education course work. Thereafter, the Respondent disputed the factual allegations of the complaint and the matter was forwarded to the Division of Administrative Hearings for formal proceedings on December 2, 1996.

At the hearing, Respondent elected to represent himself but subsequently requested to late-file a proposed recommended order through his attorney. Such motion, filed on February 21, 1997, was granted by order entered March 5, 1997. Petitioner filed a

proposed recommended order on February 13, 1997, but was granted leave to either file an amended proposed order or to respond to the Respondent's proposed order. This response was due not later than March 21, 1997. The transcript of the proceeding was filed on February 28, 1997.

FINDINGS OF FACT

1. Petitioner is the state agency charged with the responsibility of regulating and disciplining real estate licensees in the State of Florida.

2. At all times material to the allegations of this case, Respondent has been licensed as a real estate broker, license number 0434907.

3. On March 20, 1995, Respondent submitted a license renewal form to the Petitioner which resulted in the automatic issuance of a renewed license for two years, ending March 31, 1997.

4. The license renewal form provided, in pertinent part:

I hereby affirm that I have met all of the requirements for license renewal set forth by the Department of Business and Professional Regulation and/or the professional regulatory board indicated on the reverse side of this notice.

I understand that, within the upcoming licensure period, if my license number is selected for audit by the Department and/or professional regulatory board, I may be required to submit proof that I have met all applicable license renewal requirements. I understand that proof may be required by the Department of Business and Professional Regulation and/or professional regulatory

board at any time and that it is my responsibility to maintain all documentation supporting my affirmation of eligibility for license renewal.

I further understand that failure to comply with such requirements is in violation of the rules and statutes governing my profession and subjects me to possible disciplinary action and, further, that any false statements herein is in violation of section 455.227 Florida Statutes, subjecting me to disciplinary action as well as those penalties provided below.

I affirm that these statements are true and correct and recognize that providing false information may result in disciplinary action on my license and/or criminal prosecution as provided in section 455.2275, Florida Statutes.

5. When Respondent executed the renewal form he did not have documentation supporting his eligibility for license renewal. Specifically, Respondent did not have a course report documenting completion of the required 14 hour continuing education course. The course report that Respondent later received from an approved real estate school noted that Respondent had started the course June 1, 1995, and had finished it June 26, 1995.

6. Respondent knew that the 14 hour continuing education course was required by the Department for license renewal. Further, Respondent knew that the course was to be completed before the renewal came due.

7. Respondent maintains that he intended to complete the course before the renewal because he had, in fact, requested a

correspondence course from an approved real estate school, had completed the course work, and had filled out the answer sheet. Unfortunately, according to Respondent, the envelope was misplaced and he failed to timely mail the answer form to the company for scoring. Therefore, Respondent did not get credit for the work until June, 1995, when he completed the work again.

8. As chance would have it, Respondent was selected for audit in August, 1995. By this time he had completed the continuing education course work as required by the Department for license renewal but, as indicated above, did so after the renewal form had been submitted.

9. In response to the audit, Respondent represented that he had completed the work prior to renewal but, through inadvertence, had not gotten the course credit until after the renewal period.

10. Respondent did not successfully complete 14 hours of continuing education prior to submitting the renewal form.

11. Respondent has been a licensed real estate broker for ten years during which time he has never been disciplined.

12. At the time of the renewal, Respondent was not using his real estate license and was in an inactive status.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

14. The Petitioner bears the burden of proof to establish, by clear and convincing evidence, the allegations of the administrative complaint. Ferris v. Turlington, 510 So.2d 292 (Fla. 1987).

15. Section 475.25(1), Florida Statutes, provides, in part:

(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:

* * *

(m) Has obtained a license by means of fraud, misrepresentation, or concealment.

16. Fourteen hours of continuing education completed prior to the renewal is a prerequisite to renewal of a real estate broker's license. Section 475.182, Florida Statutes.

17. Rule 61J2-3.015, Florida Administrative Code, provides, in pertinent part:

(2) Each licensee and instructor permit holder shall retain the grade report as proof of successful completion of continuing education or post-license education requirements for at least 2 years following the end of the renewal period for which the education is claimed.

18. In this case, the Department has established, by clear and convincing evidence, that the Respondent submitted a false renewal form. Respondent knew that continuing education course

work was required prior to license renewal but failed to secure the course credit before submitting the renewal form. Assuming, *arguendo*, that Respondent misplaced the first answer sheet (which required scoring by the real estate school), it is clear Respondent knew he did not have the results from same prior to the time he filed the renewal form. Absent the course report, Respondent had no assurance that his first effort at the course work had received a passing grade. Moreover, had Respondent not misrepresented the status of his eligibility, the license would not have been automatically renewed.

19. To his credit, Respondent went ahead and completed the continuing education in June, 1995, well before the audit notice was received from the Department. Thus, it is concluded Respondent attempted to comply with the law before the violation was discovered. Moreover, no member of the public was placed at risk by virtue of Respondent's untimely completion of the course work.

20. Rule 61J2-24.001(3), Florida Administrative Code, provides guidelines for penalties involving Section 475.25(1)(m), Florida Statutes. The range of proposed penalties is at the minimum a reprimand and/or a fine of \$1000 up to the maximum of a fine of \$1000 and revocation. Given Respondent's past disciplinary record, the lack of any real threat to the public given the circumstances of this case, and his license

status at the time of the incident, it is concluded that a penalty at the minimum end of the guideline range is appropriate.

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 violated Section 475.25(1)(m), Florida Statutes, and imposing a reprimand with an administrative fine in the amount of \$1,000.00.

DONE AND ENTERED this 9th day of April, 1997, in Tallahassee, Florida.

J. D. PARRISH

Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of April, 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.