

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION, DIVISION)
OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 97-2675
)
RICHARD MICHAEL REGAZZI and)
ATLANTIC RENTALS, INC.,)
)
Respondents.)
_____)

RECOMMENDED ORDER

A formal hearing was held by the Division of Administrative Hearings, before Administrative Law Judge, Daniel M. Kilbride, in Melbourne, Florida, on October 17, 1997. The following appearances were entered:

APPEARANCES

For Petitioner: Daniel Villazon, Senior Attorney
Department of Business and
Professional Regulation
Post Office Box 1900
Orlando, Florida 32802

For Respondents: Richard Michael Regazzi, pro se
6211-B North Atlantic Avenue
Cape Canaveral, Florida 32920

STATEMENT OF THE ISSUE

Whether the Respondents' Florida real estate licenses should be disciplined based upon the following charges, as alleged in the administrative complaint:

COUNTS I and II: Whether Respondent Richard Michael Regazzi ("Regazzi") is guilty of fraud, misrepresentation, concealment,

false promises, false pretenses, dishonest dealing by trick, scheme or device, culpable negligence, or breach of trust in any business transaction in violation of Section 475.25(1)(b), Florida Statutes.

COUNT III: Whether Respondent Regazzi is guilty of failure to maintain trust funds in the real estate brokerage escrow bank account or some other proper depository until disbursement thereof was properly authorized in violation of Section 475.25(1)(k), Florida Statutes.

COUNT IV: Whether Respondent Atlantic Rentals Realty, Inc. is guilty of failure to maintain trust funds in the real estate brokerage escrow bank account or some other proper depository until disbursement thereof was properly authorized in violation of Section 475.25(1)(k), Florida Statutes.

COUNT V: Whether Respondent Regazzi is guilty of failure to prepare the required written monthly escrow statement-reconciliations in violation of Rule 61J2-14.012(2) and (3), Florida Administrative Code, and therefore in violation of Section 475.25(1)(e), Florida Statutes.

COUNT VI: Whether Respondent Atlantic Rentals, Inc. is guilty of failure to prepare the required written monthly escrow statement-reconciliations in violation of Rule 61J2-14.012(2) and (3), Florida Administrative Code, and therefore in violation of Section 475.25(1)(e), Florida Statutes.

COUNT VII: Whether Respondent Regazzi is guilty of having been found guilty for a third time of misconduct that warrants

his suspension or has been found guilty of a course of conduct or practices which shows that he is so incompetent, negligent, dishonest, or untruthful that the money, property, transactions, and rights of investors, or those with whom he may sustain a confidential relation, may not safely be entrusted to him in violation of Section 475.25(1)(o), Florida Statutes.

PRELIMINARY STATEMENT

By an Administrative Complaint filed February 14, 1997, the Petitioner, Department of Business and Professional Regulation, Division of Real Estate, alleged that the Respondents violated various statutes and rules. The Respondents disputed the allegations of fact and requested a formal hearing. This matter was referred to the Division of Administrative Hearings on June 4, 1997 and set for hearing. This matter was continued once at the request of the Petitioner.

A formal hearing was held on October 17, 1997, in Melbourne, Florida. At hearing, Petitioner called one witness, Investigator Maria Ventura, and five exhibits were admitted in evidence. Respondent Regazzi testified on his own behalf and called William Pace as an adverse witness. Respondents offered one exhibit into evidence. A transcript of the proceeding was filed on November 10, 1997. Petitioner filed its proposed recommended order on November 21, 1997. Respondents have not filed proposals as of the date of this order. Based on the evidence, the following findings of fact and conclusions of law are determined.

FINDINGS OF FACT

1. Petitioner is a state government licensing and regulatory agency charged with the responsibility and duty to prosecute Administrative Complaint pursuant to the laws of the State of Florida, in particular Section 20.165, Florida Statutes,

and Chapters 120, 455 and 475, Florida Statutes, and the rules promulgated pursuant thereto.

2. Respondent Regazzi is, and was at all times material hereto, a licensed Florida real estate broker. License number 0273453 was issued in accordance with Chapter 475, Florida Statutes. The last license issued was as a broker in care of Atlantic Rentals, Inc., 6811 North Atlantic Avenue, No. B, Cape Canaveral, Florida.

3. Respondent Atlantic Rentals, Inc. is, and was at all times material hereto, a corporation registered as a Florida real estate broker having been issued license number 0273444 in accordance with Chapter 475, Florida Statutes. The last license issued was at the address of 6811 North Atlantic Avenue, No. B, Cape Canaveral, Florida.

4. At all times material hereto, Respondent Regazzi was licensed and operating as the qualifying broker and officer of Respondent Atlantic Rentals, Inc.

5. On January 28, 1997, Petitioner's Investigator Maria Ventura ("Investigator Ventura") conducted an audit of Respondents' escrow account #3601612291, maintained at NationsBank and titled Atlantic Rentals, Inc., Multi Unit escrow Account (escrow account).

6. On January 28, 1997, Respondents had a reconciled bank balance of \$46,166.93.

7. As of January 28, 1997, Investigator Ventura determined that Respondents had a total trust liability of \$84,586.77.

8. By comparing Respondents' reconciled bank balance with Respondents' trust liability, it was determined that Respondents had a shortage of \$38,419.84 in their escrow account.

9. In addition, Respondents were not performing monthly reconciliations of their escrow account.

10. On January 28, 1997, Respondent Regazzi prepared a monthly reconciliation statement (reconciliation statement) for December 1996, and provided it to Petitioner on the same day. Respondent Regazzi's reconciliation statement indicated that there was shortage of \$28,885.36 in the escrow account.

11. Respondent Regazzi's reconciliation statement is not signed, and does not indicate what month was being reconciled. The statement indicates that the reconciled bank balance and trust liability agree when, in fact, the reconciliation statement indicates a shortage of \$28,885.36.

12. Respondent Regazzi's explanation of how the funds were removed from the escrow account by a third party is not credible. Even if this account were credible, it does not lessen Respondent Regazzi's culpability.

13. On April 21, 1992, the Florida Real Estate Commission ("FREC") issued a final order whereby Respondent Regazzi was found guilty of misconduct and was fined \$200, and placed on probation for one year with a requirement to complete and provide satisfactory evidence to the Department of having completed an

approved 30-hour broker management course. Respondent successfully completed the terms of probation.

14. On November 12, 1996, the FREC issued a final order whereby Respondent Regazzi was fined \$250 for misconduct and Respondent Atlantic Rentals, Inc. was reprimanded.

CONCLUSIONS OF LAW

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

16. The Petitioner's authority to prosecute this matter is derived from Chapters 455 and 475, Florida Statutes.

17. Section 475.25, Florida Statutes, provides that the Florida Real Estate Commission may suspend a license for a period not exceeding ten years; revoke a real estate license; may impose an administrative fine not to exceed \$1,000 for each count or separate offense; and may impose a reprimand or, any or all of the foregoing, if it finds that a licensee has violated Section 475.25(1)(b),(e),(k), or (o), Florida Statutes.

18. Petitioner has the burden of proof as to the allegations contained in the Administrative Complaint. Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). In license disciplinary proceedings, the burden of proof is by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

19. A real estate broker is charged with knowledge of Chapter 475. Wallen v. Florida Department of Professional Regulation, Division of Real Estate, 568 So. 2d 975, (Fla. 3rd DCA 1990).

20. As real estate licensees in Florida, the Respondents occupy a status under law with recognized privileges and responsibilities. Zichlin v. Dill, 25 So. 2d 4, (Fla. 1946); United Homes, Inc. v. Moss, 54 So. 2d 351 (Fla. 2nd DCA 1963).

21. Inasmuch as a real estate licensee in Florida belongs to a privileged class, the State has prescribed a high standard of qualifications. Zichlin, supra. "The law specifically required that a person, in order to hold a real estate license, must make it appear that he is . . . trustworthy . . . and that he bears a good reputation for fair dealing." McKnight v. Florida Real Estate Commission, 202 So. 2d 199 (Fla. 2nd DCA 1967), cert. denied 209 So. 2d 672 (Fla. 1968).

22. Further, in Dreyer v. Florida Real Estate Commission, 370 So. 2d 95, 98 (Fla. 4th DCA 1979), the court stated:

No action of a real estate broker or salesman can result in greater damage to the money and property of investors and those with whom the registrant may sustain a confidential relation than misusing funds entrusted to the registrant by his client.

The Dreyer court went on to hold that the broker is ultimately responsible for proper trust accounting practices notwithstanding if such errors were caused by a subordinate. Dreyer, supra at 100.

23. Finally, the act that no identifiable person has been shown to have been injured by a licensee's conduct does not absolve the licensee of a violation of Chapter 475. Hime v. Florida Real Estate Commission, 61 So. 2d 182, 183 (Fla. 1952); See also Dreyer, supra, 370 So. 2d at 99.

24. Section 475.25(1)(b), Florida Statutes, provides:

(1) The commission 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 . . . [h]as been guilty of culpable negligence or breach of trust in any business transaction.

25. Petitioner has established by clear and convincing evidence that the foregoing conduct concerning the manner in which Respondents maintained or supervised trust funds constituted culpable negligence and breach of trust in violation of Section 475.25(1)(b), Florida Statutes.

26. Respondent Regazzi's conduct goes to the central theme of professional licensure in the State of Florida. Respondent Regazzi clearly failed to live up the standards required of licensed real estate professionals. Respondent Regazzi used his clients' security deposits either for his own personal benefit or he permitted it to be used for the personal benefit of another. In either event, Respondent Regazzi breached the trust of his clients. His actions subjected his clients to the very real possibility that their security deposits will not be available when requested.

27. Therefore, there is clear and convincing evidence that the Respondents, each of them, are guilty of having committed a violation of Section 475.25(1)(b) (1995), Florida Statutes, as alleged in Counts I and II of the Administrative Complaint.

28. Section 475.2(1)(k), Florida Statutes, (1995) provides:

The Florida Real Estate Commission may suspend a license for a period not exceeding ten years; revoke a real estate license; may impose an administrative fine not to exceed \$1,000 for each count or separate offense; and may impose a reprimand or, any or all of the foregoing, if it finds that a licensee failed, if a broker, to immediately place, upon receipt, any money, funds, deposit, check, or draft entrusted to him by any person dealing with him as a person dealing with him as a broker in escrow with a title company, banking institution, credit union, or savings and loan association located and doing business in this state, or to deposit such funds in a trust or escrow account maintained by him with some bank, credit union, or savings and loan association located and doing business in this state, wherein the funds shall be kept until disbursement thereof is properly authorized. . . .

29. Respondents have violated Section 475.25(1)(k), Florida Statutes (1995), by having negative balances in their escrow accounts. They were not maintaining trust funds in escrow.

30. Therefore, there is clear and convincing evidence that Respondents are guilty of having committed a violation of Section 475.25(1)(k), Florida Statutes (1995), as alleged in Counts III and IV of the Administrative Complaint.

31. Rule 61J2-14.012(2) and (3), Florida Administrative Code, provides:

[a]t least monthly, a broker shall cause to be made a written statement comparing the broker's total liability with the reconciled bank balance(s) of all trust accounts. The broker's trust liability is defined as the sum total of all deposits received, pending and being held by the broker at any point in time. The minimum information to included in the monthly statement-reconciliation shall be the date the reconciliation was undertaken, the date used to reconcile the balances, the name of the bank(s), the name(s) of the account(s), the account number(s), the account balance(s) and date(s), deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the bank

account balance(s) with the balance per the broker's checkbook(s) and other trust account books and records disclosing the date of receipt and the source of the funds. The broker shall review, sign and date the monthly statement-reconciliation.

[w]henever the trust liability and the bank balances do not agree, the reconciliation shall contain a description or explanation for the difference(s) and any corrective action taken in reference to shortages or overages of funds in the account(s). Whenever a trust bank account record reflects a service charge or fee for a non-sufficient check being returned or whenever an account has a negative balance, the reconciliation shall disclose the cause(s) of the returned check or negative balance and the corrective action taken.

32. Section 475.25(1)(e), Florida Statutes, provides:

The Commission may suspend a license for a period not exceeding ten years, may revoke a real estate license; may impose an administrative fine not to exceed \$1,000 for each account or separate offense; and may impose a reprimand; if it finds that the licensee . . . [h]as violated any of the provisions of this chapter or any lawful order or rule made or issued under the provisions of this chapter or chapter 455.

33. Respondents violated Rules 61J2-14.012(2) and (3), Florida Administrative Code, and therefore are in violation of Section 475.25(1), Florida Statutes, in that Respondents failed to perform monthly reconciliations. The one reconciliation statement Respondent Regazzi prepared was not signed and no corrective action was taken to replace the \$28,885.36 shortage.

34. Furthermore, there is no explanation for the shortage. Notably, missing is any evidence, other than Respondent Regazzi's assertions, that a third person caused the shortage.

35. There is clear and convincing evidence that Respondents are guilty of violating Rules 61J2-14.012(2) and (3), Florida Administrative Code. Therefore, they are in violation of Section

475.25(1)(e), Florida Statutes, as alleged in Counts V and VI of the Administrative Complaint.

36. Section 475.25(1)(o), Florida Statutes (1995), provides:

The commission . . . may revoke a license, . . . if it finds that the licensee . . . [h]as been found guilty, for a second time, of any misconduct that warrants his suspension or has been found guilty of a course of conduct or practices which show that he is so incompetent, negligent, dishonest, or untruthful that the money, property, transactions, and rights of investors, or those with whom he may sustain a confidential relation, may not safely be entrusted to him.

37. The evidence shows Respondent Regazzi violated Section 475.25(1)(o), Florida Statutes (1995). In two prior separate cases FREC disciplined Respondent Regazzi for mishandling trust funds.

38. Respondent Regazzi has clearly shown a course of conduct that indicates that he cannot be trusted with others' trust funds.

39. There is clear and convincing evidence that Respondent Regazzi is guilty of having committed a violation of Section 475.25(1)(o), Florida Statutes (1995), as alleged in Count VIII of the Administrative Complaint.

RECOMMENDATION

Upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that

1. Respondent Regazzi be found guilty of violating Sections 475.25(1)(b), (e), (k), and (o), Florida Statutes (1995), as charged in the Administrative Complaint.

2. Respondent Atlantic Rentals, Inc. be found guilty of having violated Sections 475.25(1)(b), (k), and (e), Florida Statutes, as charged in the Administrative Complaint.

3. That Respondents Regazzi's real estate license be revoked and that he be ordered to pay restitution in the amount of \$38,419.84, plus interest.

4. That Respondent Atlantic Rentals, Inc.'s corporate brokerage registration be revoked.

RECOMMENDED this 23rd day of December, 1997, at Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of December, 1997.

COPIES FURNISHED:

Daniel Villazon, Esquire
Department of Business and
Professional Regulation
400 West Robinson Street, Suite N-308
Orlando, Florida 32801

Richard Michael Regazzi, pro se
Atlantic Rentals, Inc.
6811-B North Atlantic Avenue
Cape Canaveral, Florida 32920

Henry M. Solares, Division Director
Department of Business and

Professional Regulation
Post Office Box 1900
Orlando, Florida 32802-1900

Lynda L. Goodgame
General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

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.