

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 98-0696
)
LYNDA J. LOBSITZ and JACLO, INC.,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on May 29, 1998, at Vero Beach, Florida, before Susan B. Kirkland, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Geoffrey T. Kirk
Senior Attorney
Department of Business and
Professional Regulation,
Division of Real Estate
400 West Robinson Street
Orlando, Florida 32802

For Respondent: Lynda J. Lobsitz, pro se
2945 Cardinal Drive
Vero Beach, Florida 32963

STATEMENT OF THE ISSUES

Whether Respondents violated Sections 475.25(1)(e), (k), Florida Statutes, and Chapter 61J2-14, Florida Administrative Code.

PRELIMINARY STATEMENT

On December 17, 1997, Petitioner, Department of Business and Professional Regulation, Division of Real Estate (Division), filed a four-count administrative complaint, against Respondents, Lynda J. Lobsitz and Jaclo, Inc., charging each with one count of failing to maintain funds in escrow and one count of failing to properly prepare the required monthly statement escrow reconciliations as required under Chapter 61J2-14, Florida Administrative Code.

Respondents requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings for assignment to an administrative law judge.

At the final hearing, Petitioner called Dawn Luchek as its witness. Petitioner's Exhibits 1-11 were admitted in evidence. Lynda J. Lobsitz testified in her own behalf. Respondents' Exhibits 2-10 were admitted in evidence.

The parties agreed to file Proposed Recommended Orders within ten days of the filing of the transcript. The transcript was filed on June 15, 1998. The parties timely filed their Proposed Recommended Orders. The parties' Proposed Recommended Orders have been considered by the administrative law judge in rendering this recommended order.

FINDINGS OF FACT

1. Petitioner, Department of Business and Professional Regulation, Division of Real Estate (Division), is a state

licensing and regulatory agency charged with the responsibility

and duty to prosecute administrative complaints pursuant to Chapters 455 and 475, Florida Statutes.

2. Respondent, Lynda J. Lobsitz (Lobsitz), is and was at all material times to this proceeding licensed as a real estate broker in accordance with Chapter 475, Florida Statutes, having been issued license number 0377747.

3. Respondent, Jaclo, Inc. (Jaclo), is and was at all times material to this proceeding, a licensed real estate brokerage corporation, having been issued license number 0275422.

4. During May 1997, the Division conducted an office inspection and escrow audit of Respondents' real estate office.

5. On the day of the audit, Respondents maintained an escrow account for rental security deposits, which account had an adjusted trust liability of \$85,300.89.¹ The adjusted bank balance was \$85,185.22, resulting in a shortage of \$115.67.

6. Respondents prepared bank reconciliation reports for January, February, March, and April 1997 for the rental security deposit account and for the rental escrow account. Attached to each of the reports was the monthly bank statement for the account and period covered in the bank reconciliation report. The bank statements identified the name of the bank, the name of the account, the account number, the account balances and dates. A list of outstanding checks, identifying the outstanding checks by date and number, was attached to each report. The dates used to reconcile the balances were not included in the bank

reconciliation reports.

7. For the January 1997 bank reconciliation report for the rental rents deposits account, there was a difference of \$7,616.25. Respondents stated on the report that \$7,630.00 was for a check which was returned for endorsement. The report further stated that \$13.75 had not been located.

8. For the February 1997 bank reconciliation report for the rental rents deposits account, there was a difference of \$1,756.75. The report contained an explanation for the difference and the corrective action taken.

9. For the March 1997 bank reconciliation report for the rental rents deposits account, there was a difference of \$500 which was explained with the corrective action noted.

10. For the bank reconciliation report for January 1997 for the rental security deposit and account, there was an overage of \$531.33. The report stated that the amount had not been located.

11. For the bank reconciliation for the rental security deposit and account for February, 1997, there was an overage of \$2,234.33. The report explained that \$1,700 was a bank error deposit; \$3.00 was sales tax which was to be transferred to rents account; and the remaining \$531.33 could not be located.

12. For the bank reconciliation for the rental security deposit and account for March 1997, there was an overage of \$31.33. The explanation and corrective action stated on the report was "Bank wire to incorrect account Mushlin will transfer from rents accounts. \$531.33 have not located."

13. For the bank reconciliation report dated April 1997 for

the rental security account, there was an overage of \$531.33 with the explanation of "Have not located difference."

CONCLUSIONS OF LAW

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

15. Respondents are alleged to have failed to properly prepare the monthly escrow reconciliation statements. Rule 61J2-14.012, Florida Administrative Code provides:

(1) [T]he broker shall keep an accurate account of each deposit transaction and each separate bank account wherein such funds have been deposited. All such books and accounts shall be subject to inspection by DPR or its authorized representative at all reasonable times during regular business hours.

(2) Once 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 be included in the monthly statement-reconciliation shall be the date the reconciliation was undertaken, the date used to reconcile the balances, the names 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, an itemized list of the broker's trust liability, 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.

(3) Whenever 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). . . .

16. Respondents have violated Rule 61J-14.012, Florida Administrative Code, by failing to properly maintain the monthly-statement reconciliation reports. For the reconciliation reports for the rental security deposits for January through March 1997, there was a reported overage of \$531.33 with no explanation for the difference other than it could not be located. No corrective action was taken concerning the overage. For April 1997, the report indicated an overage of \$31.33 and indicated the \$531.33 still had not been located. On the day of the audit, there was a shortage of \$115.67 in the rental security deposit account when compared to the trust liability balance, in violation of Rule 61J2-14.012, Florida Administrative Code. Respondents are subject to disciplinary action pursuant to Section 475.23(1)(e), Florida Statutes.

17 Respondents have alleged to have violated Section 475.25(1)(k), Florida Statutes, which provides that a licensee may be subject to discipline if he:

(k) Has failed, if a broker, to immediately place, upon receipt, any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or 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 her or 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

18. Petitioners have failed to establish that Respondents violated Section 475.25(1)(k), Florida Statutes. There is no evidence that the Respondents did not deposits all the rental security deposits which they received in the escrow account. The Respondents did disburse \$61.05 for cleaning for a client when there were insufficient funds in the account to pay for the cleaning. When the error was discovered, the Respondents requested the client to immediately reimburse the money spent for the cleaning. The funds were reimbursed by the client. There is no evidence to show that there was an intentional misuse of the funds. Respondents have not established a violation of Section 475.25(1)(k), Florida Statutes.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a Final Order be entered finding that Respondents violated Sections 475.25(1)(e), Florida Statutes, issuing a reprimand for the Respondents, requiring that Respondent Jaclo, Inc., pay an administrative fine of \$100, and requiring that Respondent Lynda J. Lobsitz take a seven-hour broker management course.

DONE AND ENTERED this 14th day of July, 1998, in Tallahassee, Leon County, Florida.

SUSAN B. KIRKLAND
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 14th day of July, 1998.

ENDNOTE

^{1/} The adjusted trust liability is derived by adding the amounts in the column titled "Year to Date" on Petitioner's Exhibit 5, Respondents' Security Report for All Properties dated May 23, 1997, which totaled \$63,643.55 and included \$61.05 which had been paid for cleaning when the client's account did not contain sufficient funds to pay that amount. To the \$63,643.55 is added the amount of outstanding checks, \$21,657.34, for a total trust liability of \$85,300.88.

COPIES FURNISHED:

Henry M. Solares
Division Director
Division of Real Estate
Department of Business and
Professional Regulation
400 West Robinson Street
Orlando, Florida 32802-1900

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

Geoffrey T. Kirk, Esquire
Department of Business
and Professional Regulation
Division of Real Estate
400 West Robinson Street

Orlando, Florida 32802-1900

Lynda J. Lobsitz, pro se
c/o Jaclo, Inc.
2945 Cardinal Drive
Vero Beach, Florida 32963

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.