

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, DIVISION }  
OF REAL ESTATE, }  
 )  
Petitioner, )  
 )  
vs. ) Case No. 98-3545  
 )  
WASHINGTON MOISES QUINONES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on November 2, 1998, at Sebring, Florida, before Richard A. Hixson, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ghunise Coaxum, Senior Attorney  
Department of Business and  
Professional Regulation  
400 West Robinson Street, Suite N-308  
Orlando, Florida 32801

For Respondent: No Appearance

STATEMENT OF THE ISSUES

At issue is whether Respondent's Florida real estate license should be disciplined upon charges that: (1) Respondent 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, as set forth in Count I of the Administrative Complaint; and (2) Respondent is guilty of having had a registration suspended, revoked, or otherwise acted against in any jurisdiction in violation of Section 475.225(1)(s), Florida Statutes, as set forth in Count II of the Administrative Complaint.

PRELIMINARY STATEMENT

On or about May 20, 1998, Petitioner filed a two-count Administrative Complaint against Respondent alleging that Respondent violated Section 475.25(1)(b), Florida Statutes, and Section 475.25(1)(s), Florida Statutes. Respondent disputed the allegations of fact and requested a formal hearing pursuant to 120.57(1), Florida Statutes. A formal hearing was held on November 2, 1998, in accordance with 120.57(1), Florida Statutes.

At the hearing, Petitioner's counsel and representative appeared. Petitioner's exhibits numbered one through two were admitted into evidence.

Respondent did not appear at hearing. Respondent submitted no request for continuance, and did not contact the Division of Administrative Hearings to explain his failure to attend the hearing. Several attempts were made by Petitioner's counsel and the Administrative Law Judge to contact Respondent, to no avail, which information was placed on the record.

On November 16, 1998, Petitioner filed a Proposed

Recommended Order. Respondent filed no pleadings subsequent to hearing. Upon consideration, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner is the 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, Washington Moises Quinones, is and was at all times material to the Administrative Complaint a licensed Florida real estate salesperson, issued license number 0650737 in accordance with Chapter 475, Florida Statutes.

3. Respondent, Washington Moises Quinones, was also a member of the Florida Bar.

4. On or about August 29, 1997, the Florida Bar petitioned the Florida Supreme Court for an emergency suspension of Respondent's bar license.

5. The petition filed with the Florida Supreme Court reflects that Respondent's "trust records reveal losses which approximate \$350,000.00."

6. On or about September 11, 1997, the Florida Supreme Court granted the petition for emergency suspension of Respondent's bar license, and suspended Respondent from the practice of law for the reasons set forth in the Petition.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapter 120, Florida Statutes, and Rule 28-106.106, Florida Administrative Code.

8. Petitioner's authority to discipline Respondent's real estate license is derived from Chapter 475, Florida Statutes.

9. 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); Dept. of Banking & Finance v. Osborne Stern, Co., 670 So. 2d 932 (Fla. 1996).

10. A real estate license may be disciplined in Florida if the licensee 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." Section 475.25(1)(b), Florida Statutes.

11. A real estate license may be disciplined in Florida if the licensee "had a registration suspended, revoked, or otherwise acted against in any jurisdiction. The record of the disciplinary action certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be

admissible as prima facie evidence of such disciplinary action."  
Section 475.25(1)(s), Florida Statutes.

12. Petitioner has proved by clear and convincing evidence that Respondent 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, as alleged in Count I of the Administrative Complaint.

13. Petitioner has proved by clear and convincing evidence that Respondent is guilty of having had a registration suspended, revoked, or otherwise acted against in any jurisdiction in violation of Section 475.25(1)(s), Florida Statutes.

14. The discipline which may be imposed against a real estate licensee may include: revocation, suspension for a period not exceeding ten years, imposition of an administrative fine not to exceed \$1,000 for each count or separate offense, a reprimand, probation, and any or all of the foregoing. Section 475.25(1), Florida Statutes.

#### RECOMMENDATION

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

RECOMMENDED that Respondent be found guilty of violation Section 475.25(1)(b), Florida Statutes, and 475.25(1)(s), Florida Statutes, as charged in the Administrative Complaint, and that Respondent's real estate license be revoked in accordance with Section 475.25(1), Florida Statutes.

DONE AND ENTERED this 8th day of December, 1998, in Tallahassee, Leon County, Florida.

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RICHARD A. HIXSON  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building

1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of December, 1998.

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.