

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
AND PROFESSIONAL REGULATION, )  
DIVISION OF FLORIDA LAND SALES, )  
CONDOMINIUMS AND MOBILE HOMES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 98-5478  
 )  
GREGORY C. LINNEMEYER, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was held by the Division of Administrative Hearings, before Daniel M. Kilbride, Administrative Law Judge, on March 2, 1999, in Melbourne, Florida.

APPEARANCES

For Petitioner: William Oglo, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-1007

For Respondent: Gregory Linnemeyer, pro se  
613 Rockledge Drive  
Rockledge, Florida 32955

STATEMENT OF THE ISSUES

Whether Respondent committed five violations of the Yacht and Ship Brokers' Act, including the following counts: 1) failing to have the license of each salesperson in his employ prominently displayed in his principal place of business; 2) failing to place deposits received from clients pursuant to transactions involving

yachts into a broker's trust account; 3) allowing a person licensed only as a salesperson to act as a broker and to use the broker's name to evade the provisions of the Yacht and Ship Brokers' Act; 4) failing to deposit funds into the broker's trust account within three working days of receipt of funds pursuant to a purchase contract by a salesperson licensed under him; 5) allowing a salesperson licensed under him to carry out acts which if committed by the broker would place him in violation of the Yacht and Ship Brokers' Act and the rules thereunder, such as violating the Notary Public Law, failing to exercise due professional care in the performance of brokerage services, and making substantial and intentional misrepresentations with respect to transactions involving yachts, as alleged in the Amended Notice to Show Cause, in violation of the Yacht and Ship Brokers' Act, Chapter 326, Florida Statutes, and if so, what penalty should be assessed.

#### PRELIMINARY STATEMENT

Petitioner filed an Amended Notice to Show Cause, dated June 25, 1997. In response to the Notice, Respondent denied the allegations and requested a formal hearing. This matter was referred to the Division of Administrative Hearings on a December 9, 1998, and was set for hearing.

At the formal hearing, Petitioner presented the testimony of three witnesses: Jim Courchaine, investigator; Peter Butler, Section Head for General Regulation (which administers the Yacht

and Ship Brokers' Act) of the Division; Edward Hall, an expert in the management of yacht broker's offices; and Christopher June, an individual who purchased a yacht from Respondent. Petitioner presented a number of exhibits which were introduced into evidence. At the request of Petitioner, official recognition was taken of Chapter 326, Florida Statutes, and Rule 61B-60, Florida Administrative Code. Respondent testified on his own behalf and introduced two exhibits in evidence.

A Transcript of the proceeding was filed on May 5, 1999. At the request of the parties, the time for filing post-hearing submissions was set for 20 days following the filing of the Transcript. Petitioner filed its Proposed Recommended Order on May 25, 1999. Respondent has not filed proposals as of the date of this order.

#### FINDINGS OF FACT

1. Petitioner is the agency of the State of Florida charged with the responsibility to administer and enforce the Florida Yacht and Ship Brokers' Act, Chapter 326, Florida Statutes. The purpose of the Yacht and Ship Brokers' Act is to protect the consumer.

2. A yacht broker is an individual who, in expectation of compensation, sells used boats in excess of 32-feet in length for other persons. In order to obtain a license to act as a yacht broker, an individual must submit an application, undergo a background check for moral character, submit a surety bond, and

demonstrate to the Division that he has a trust account to place funds received in pending yacht transactions.

3. Before being able to independently perform yacht brokering services as a yacht broker, an individual must spend two consecutive years as a yacht salesperson in a mentorship working under a broker.

4. At all times relevant to this action, Respondent held a license with Petitioner to operate as a yacht broker. Respondent continues to be licensed as a yacht broker.

5. In late 1995 and early 1996, Respondent operated his yacht brokerage business, Greg and Associates, from two locations. His main office was located in Rockledge, Florida, and a branch office was located in Sarasota, Florida. No brokers were present at the Sarasota location.

6. Respondent operated the Sarasota branch office from his main office in Rockledge, Florida. He never visited the Sarasota branch office. Respondent viewed his relationship to the Sarasota branch office as an "escrow agent." Bullock, a salesman, had complete autonomy to run the Sarasota branch office. Respondent met Bullock only once, and he never met any of the other salesmen who operated out of the branch office.

7. Respondent had only a commission arrangement with Bullock. Respondent sent checks for all commissions to Bullock, who deposited them in Bullock's company, Friar Tuck, Inc's., Barnett Bank business account. Respondent allowed Bullock to

hire the other salesmen, to determine a commission arrangement with the other salesmen, and to disburse commissions to the other salesmen. Respondent did not know the commission arrangement with most of the salesmen in the branch office.

8. On April 16, 1996, Respondent was interviewed in his office about some complaints that had been received concerning the operation of his Sarasota branch office. Among the salesmen working under Respondent's broker's license in his Rockledge office at that time were Darrell Lawson and Mark Salmuller. Respondent did not have the licenses of either of these two salesmen displayed. Both men were listed as active employees by Respondent.

9. At all times relevant to this proceeding, Respondent maintained a broker's trust account, entitled Greg and Associates, d/b/a Yacht Brokerage USA, in the Rockledge branch of the Barnett Bank.

10. At all times relevant to this proceeding, Chester Bullock, a yacht salesperson working for Respondent in Respondent's Sarasota branch office, maintained a business checking account entitled Friar Tuck, Inc., d/b/a Yachtmasters, in a Sarasota branch of the Barnett Bank. Bullock was listed as president of the company and was identified as a signatory on the account. This was not a proper broker's trust account, as Bullock, being a yacht salesman, could not have established such an account.

11. In July 1995, Chester Bullock and Jeff Webb, salesmen in the Sarasota branch office, took an offer and received a \$1,000.00 deposit from David and Cynthia Cislo, on a 1979 34-foot Marine Trade Trawler. Respondent's salesmen did not deliver the deposit to Respondent's trust account within three days of its receipt. The funds were deposited in Bullock's business checking account at the Sarasota branch of the Barnett Bank. Sometime later, the money was redeposited in Respondent's trust account.

12. Bullock notarized the vessel bill of sale at the time of the closing, and received a commission on the sale.

13. In November 1995, Bullock took an offer and received a \$5,350.00 deposit from a Louisiana client, Charles Cosgrove, on a 1964 38-foot Chris-Craft Commander yacht. Respondent's salesman did not deliver the deposit to Respondent's trust account within three days of its receipt.

14. On November 27, 1995, Bullock and Jeff Webber, Respondent's salespeople, acted as listing broker and salesperson, respectively, on the lease-purchase of the 1964 38-foot Christ Craft Commander by Cosgrove. Respondent never signed the brokerage sales record, which is the closing statement given to the lease-purchaser, Cosgrove, and was never identified as broker of record on any of the sales documents. Instead, the purchase-sale agreement lists Bullock as the broker, and the closing statement lists Bullock as the broker. Bullock acted as the notary public for the lease-purchase agreement.

15. In January 1996, Bullock and Harold Raines, yacht salesmen in the Sarasota branch office, took an offer and received a \$1,700.00 deposit from a client, Michael Hill, on a 1973, 53-foot Huckins yacht. The letterhead of the draft purchase and sales agreement, which stated "Yachtmasters" and a phone number for the Sarasota area, further indicated that Hill's offer was made through yacht salesmen at the Sarasota branch office. Respondent's salesmen did not deliver the \$1,700.00 deposit to Respondent's trust account within three days of its receipt. Instead of delivering the \$1,700.00 deposit to Respondent for deposit in Respondent's Rockledge broker's trust account, the check was delivered to Friar Tuck, Inc's., Sarasota account. Hill's deposit, which was supposed to be held in a trust account, intermingled with the other business funds of Bullock's account.

16. Hill requested and received an oral extension from Bullock on his closing date to purchase the yacht. About a month later, Bullock notified Hill that the yacht was sold to another party. It was only after Hill threatened to sue Respondent, the responsible broker, and after Hill filed a complaint with Petitioner that Respondent refunded Hill his deposit.

17. The Yacht and Ship Brokers' Act does not permit licensed salespeople to perform certain acts. It requires the employing broker to do them. An employing broker, a broker who holds the license of his salesperson, must make all trust account

deposits and withdrawals of monies involved in a transaction brokered by the salesman. An employing broker is required to supervise the yacht transactions brokered by his salespeople and to sign closing statements, which itemize all charges and credits of the transaction for the client.

18. Respondent minimized his own involvement in his Sarasota branch office and permitted his salesman, Bullock, to operate it. This enabled Bullock to sign as the broker a closing statement of the sale of a yacht, which is an action that should have been performed only by a broker.

19. During the same time period that Respondent granted Bullock autonomy to supervise the Sarasota branch office, Bullock operated another business from the same location, Sarasota Marine and Maintenance Services, which did boat surveys and cleaned boats. Bullock was the president of Sarasota Marine and Maintenance Services.

20. In early 1996, Wittman, a Colorado resident at that time, telephoned Bullock about the 1988, 34-foot Wellcraft Grandsport in the magazine advertisement placed by Bullock. Bullock sent Wittman a videotape of the yacht. After reviewing the videotape, Wittman did not think that it was the same yacht advertised in the magazine. Bullock admitted that the yacht in the videotape was not the same yacht advertised in the magazine, but claimed that it was a sister ship. Based upon Bullock's assurances that the sister yacht was in good condition and the



results of a survey done by Bullock's company stating that the yacht was in good condition, Wittman purchased the yacht.

21. Bullock acted as both the listing broker and the selling broker in the sale of the 1988, 34-foot Wellcraft Grandsport yacht to Boyd Wittman, the purchaser. Notwithstanding the fact that he was representing the seller, Bullock did not obtain the written consent of Wittman, the purchaser.

22. Wittman wanted a registered surveyor to do a survey of the condition of the yacht, because Wittman lived out-of-state and wanted to avoid spending money to fly to Florida to inspect it. Bullock arranged for his own company, Sarasota Marine and Maintenance Services, to perform the survey. The survey was signed by Ernest Shaffer, who was identified as a Certified Marine Surveyor and Consultant with the Society of Accredited Marine Surveyors, the National Association of Marine Surveyors, and the National Marine Investigators. Ernest Shaffer was someone that Bullock hired to wash boats. He was not a certified surveyor, as he was held to be.

23. When the yacht was delivered to Wittman in Colorado, he was shocked by the poor condition of the yacht. The interior, the cockpit, the exterior, the bilge, and the mufflers were all in poor condition. Wittman was expecting a yacht that he could take someone out on a lake with, and it was not in good enough condition.

24. Wittman had to pay another \$15,000 to \$20,000 to repair

the yacht to improve it to good condition. Repairs included replacing all of the interior of the cabin, replacing the port windshield, putting new mufflers in, fixing a transmission leak, fixing the air-conditioning, rebuilding the water pumps so that the engines cooled properly, and replacing the dry-rot wood on the main deck on the cockpit. In sum, Wittman purchased the yacht for \$38,000, spent another \$15,000 to \$20,000 in repairs, and eventually sold it for \$37,000.

25. Bullock also quoted to Wittman a fee for shipping the yacht from Florida to Colorado for \$1,500. Wittman thought the price was reasonable. When the yacht was finally shipped, it cost Wittman approximately \$3,800, which he paid, because he had already bought the yacht and had to finish the transaction.

26. Bullock acted as both the listing broker and the selling broker in the sale of a 1973, 34-foot Nautiline yacht to Ernest C. Shaffer, the purchaser. Bullock arranged for his company, Sarasota Marine and Maintenance Services, to perform the survey. The survey was signed by Ted Williams, who was identified as a Certified Marine Surveyor and Consultant with the Society of Accredited Marine Surveyors (SAMS), the National Association of Marine Surveyors (NAMS), and the National Marine Investigators.

27. Neither Bullock, Ernest Shaffer, nor Ted Williams, his employees who signed the surveys of the yachts described above, was certified with NAMS or SAMS, two marine surveys accreditation

associations.

28. In the case of a 1973, 53-foot Huckins yacht, Bullock tried to sell the boat three times and took three simultaneous contacts on the same vessel. He took a contract from Michael Hill, a prospective purchaser, extended the closing date for Hill to March 6, 1996, and simultaneously had contracts for the same boat with the prospective purchasers Sam Bankester and Steven Kenneally, with the closing dates of February 29, 1996, and March 2, 1996, respectively. Ultimately, Steven Kenneally purchased the yacht. The terms of the contracts did not provide for simultaneous contracts on the same vessel.

29. The prospective purchaser who did not come up with the money first lost out on the opportunity to purchase the yacht. In addition, the Hills, the prospective purchasers, had a difficult time obtaining their earnest money back from Bullock.

30. In January of 1996, Raines, Respondent's salesman, showed Chris June, a North Carolina resident, a 1970, 42-foot Trojan Sea Voyager yacht named "Fantasia." June liked the 42-foot Trojan Sea Voyager and entered into a contract to purchase it through Raines and Bullock. Bullock recommended a surveyor, John Pomeroy, in St. Petersburg, Florida, to complete the survey. Pomeroy was, in fact, not certified with NAMS or SAMS.

31. Bullock told June that the boat was in very good condition and that it was a great value. During the survey, June noticed that wood on the yacht was separating in the bow, and

asked Bullock and Pomeroy about it. They explained that this was "wet/dry expansion" which occurs in yachts that sit for a long time and can easily be fixed with some screws and caulking. "Wet/dry expansion" causes wood in wooden yachts to start separating, according to Bullock and Pomeroy, due to the wet wood below the waterline and the dry wood above the waterline. The survey disclosed no substantial problems with the yacht.

32. Relying on the statements of Bullock and Pomeroy, June purchased the "Fantasia" for \$22,000, with money loaned to him by a relative. A month after purchasing his yacht, June was informed that his boat was sinking while moored at the dock. June had to hire a marine recovery company to recover the yacht, just before it was about to go completely under water.

33. The yacht took on water in an area near the stern that was not well checked-out, where a basketball-sized wad of putty holding the corner together came loose.

34. As the estimate to repair the boat was more than three times what the boat was worth, June sold it to a salvage yard for \$2,500. However, the salvage yard defaulted on that payment.

35. June has been making accelerated payments on his loan, and has the loan down to approximately \$19,000. He made a claim

against Respondent's surety bond and settled the action for a small amount from the bonding company.

36. Respondent attended two all-day workshops hosted by the Petitioner's Section of General Regulation, which cover in detail how to display a license, to display trust accounts, to display broker's duties and responsibilities, and to display branch offices. Respondent was exposed to the statutes and rules which were violated.

37. Respondent took a cavalier attitude towards following the requirements of the Act.

38. On February 15, 1996, Petitioner entered a Final Order against Respondent in Docket No. YS95397, imposing a fine of \$1,500 for Respondent's violation of the Act. Respondent used the name "Yachtmasters" for his Sarasota branch office without having a license issued in that name in violation of Florida law.

39. In the case DBPR v. Chester C. Bullock, Docket No. YS97172 (December 11, 1998), the Petitioner charged Chester Bullock, a registered salesman, with five violations:

Charge 1 - The Respondent acted as a broker when he was licensed only as a salesman.

Charge 2 - The Respondent made substantial and intentional misrepresentations with respect to transactions involving yachts upon which people have relied.

Charge 3 - The Respondent violated other laws governing transactions involving yachts, specifically, he violated Chapter 117, Florida Statutes, by notarizing signatures on documents in which he had a financial interest.

Charge 4 - The Respondent failed to immediately deliver deposits received from clients for the purchase of yachts to the broker under whom he was licensed as a salesman.

Charge 5 - The Respondent failed to exercise due professional care in the performance of brokerage services, such as recommending his own company as a surveyor to a client and representing it as being an accredited surveyor company, when it was not.

40. Bullock was found guilty on all charges and assessed a civil penalty of \$45,000 in that case and had his yacht salesperson's license revoked.

41. The Petitioner has proven each of the violations by clear and convincing evidence. Respondent's explanations for his conduct is not credible.

#### CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding, pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

43. Petitioner is charged with the responsibility to prosecute this matter pursuant to Section 326.006, Florida Statutes.

44. Petitioner has the burden of proof as to the allegations contained in the Amended Notice to Show Cause. Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 11st DCA 1977). Since the revocation of license

proceedings are penal in nature, State ex rel. Vining v. Florida Real Estate Commission, 281 So. 2d 487 (Fla. 1973), the Petitioner bears the burden of proving, by clear and convincing evidence, each count as alleged in the Amended Notice. Department of Banking and Finance v. Osborne Stein & Co., 670 So. 2d 932 (Fla. 1996.)

45. In Count 1, Respondent is charged with failing to have the license of each salesperson in his employ prominently displayed in his principal place of business.

46. Section 326.004(14)(a), Florida Statutes, provides in pertinent part:

Each license must be prominently displayed in the office of the broker.

47. Based upon Respondent's failure to have the licenses of his salesmen, Darrell Lawson and Mark Salmuller displayed, he has violated Section 326.004(14)(a), Florida Statutes. Respondent's excuses, that he only had a temporary license on Mr. Lawson and that Mr. Salmuller was inactive in the business, did not obviate the need for displaying the licenses. Respondent had them licensed as active salesmen.

48. In Count 2, Respondent is charged with failing to place deposits received from clients pursuant to transactions involving yachts into a broker's trust account.

49. Section 326.005(1), Florida Statutes, provides:

A broker shall place any funds received pursuant to a transaction into a trust account in a savings and loan association,

bank, trust company, or other financial institution located in this state having a net worth in excess of \$5 million until he or she disburses such funds. A separate record shall be maintained of all such moneys received and the disposition thereof.

50. Based upon the facts discussed in paragraphs 11, 13, and 15, Respondent failed to place deposits received from clients into a broker's trust account in violation of this section.

51. In Count 3, Respondent is charged with allowing a person licensed only as a salesperson to act as a broker and to use the broker's name to evade the provisions of the Yacht and Ship Brokers' Act (ACT).

52. Section 326.006(2)(e)7, Florida Statutes, provides:

The division may suspend or revoke the license of a broker or salesperson who:

\* \* \*

7. Allows an unlicensed person to use his or her name to evade the provisions of the Yacht and Ship Brokers' Act.

53. Based upon the facts discussed in paragraphs 6, 7, 10, 17, 18, and 19, Respondent allowed Charles Bullock, who was only a salesman, to operate as a broker and evade the provisions of the act in violation of this section.

54. In Count 4, Respondent is charged with failing to deposit funds into the broker's trust account within three working days of receipt of funds pursuant to a purchase contract by a salesperson licensed under him.

55. Rule 61B-60.006(3), Florida Administrative Code (1990),



provides in pertinent part:

Within 3 working days of receipt of funds pursuant to a purchase contract, all funds received by a broker or salesman in connection with the sale, exchange, or purchase of a yacht shall be deposited in the broker's trust account and shall be deposited in the broker's trust account and shall remain in the account until the funds are disbursed pursuant to the provisions of the contract or controlling statute. . . .

56. Based upon Respondent's failure to see to it that the earnest money paid by Hill, Cosgrove, and the Cislos, be deposited into Respondent's trust account within three days of receipt of it, Respondent has violated Rule 61B-60.006(3), Florida Administrative Code. Cosgrove's yacht transaction, which was a lease-purchase agreement, is a transaction also covered by the Act because the agreement contains an offer to purchase. An offer to purchase is a covered transaction pursuant to Section 326.002(1), Florida Statutes, which includes a person who offers to buy a yacht for another person in the definition of broker.

57. In Count 5, Respondent is charged with allowing a salesperson licensed under him to carry out acts which if committed by the broker would place him in violation of the Act and the rules thereunder, such as violating the Notaries Public Law, failing to exercise due professional care in the performance of brokerage services, and making substantial and intentional misrepresentations with respect to transactions involving yachts.

58. Rule 61B-60.009(1) and (2), Florida Administrative Code (1992), provides:

(1) A licensee shall not knowingly misrepresent facts, shall have an affirmative duty to inform the division of any changes in status or of any knowledge of any facts which may adversely affect the licensee's fitness for licensure, shall undertake to perform only those brokerage services which he can reasonably expect to complete with professional competence, shall exercise due professional care in the performance of brokerage services, and shall not permit others to carry out on his or her behalf, either with or without compensation, acts which, if carried out by the licensee, would place him in violation of sections 326.001 through 326.006, Florida Statutes or chapter 61B-60, Florida Administrative Code.

(2) A broker shall be deemed responsible by the division for the actions of all salesmen who perform brokerage functions under his supervision and control.

59. Section 326.006(2)(e)(8), Florida Statutes, provides:

The division may suspend or revoke the license of a broker or salesperson who:

8. Violates any law governing the transactions involving a yacht, including any provision relating to the collection of payment of sales or use taxes.

60. Section 117.05(6)(e), Florida Statutes, provides:

A notary public may not notarize a signature on a document if:

(e) The notary public has a financial interest in or is a party to the underlying transaction; provided, however, a notary public who is an employee may notarize a signature for his or her employer and this employment is not a financial interest in the transaction nor is he or she a party to the transaction under this subsection unless he or she receives a benefit other than salary and any fee for services authorized by law. For purposes of this paragraph a notary public who is an attorney does not have a financial interest in and is not a party to the underlying transaction evidenced by a notarized document if he or she notarizes a signature on that document for a client for whom he or she serves as an attorney of record and the attorney has no interest in the document other than a fee paid to him or her for legal services and any fee authorized by law for services as a notary public.

61. Since Respondent's salesman, Bullock, had a financial interest in the Cosgrove yacht transaction, the Cislo yacht transaction, and the Wittman yacht transaction, and Bullock notarized documents necessary for the sale, Bullock violated

Section 326.006(2)(e)(8), Florida Statutes, which prohibits a broker or salesman to violate any law governing the sale of yachts including Section 117.05(6)(e), Florida Statutes, of the Notary Public law.

62. Rule 61B-60.009(1), Florida Administrative Code (1992), provides:

A licensee shall not knowingly misrepresent facts, shall have an affirmative duty to inform the division of any changes in status or of any knowledge of any facts which may adversely affect the licensee's fitness for licensure, shall undertake to perform only those brokerage services which he can reasonably expect to complete with professional competence, shall exercise due professional care in the performance of brokerage services, and shall not permit others to carry out on his or her behalf, either with or without compensation, acts which, if carried out by the licensee, would place him in violation of sections 326.001 through 326.006, Florida Statutes or chapter 61B-60, Florida Administrative Code.

63. Section 326.006(2)(e)4, Florida Statutes, provides:

The division may suspend or revoke the license of a broker or salesperson who:

4. Acts for both the buyer and seller in a transaction involving a yacht without the knowledge and written consent of both parties.

64. Chester Bullock violated Rule 61B-60.009(1), Florida Administrative Code, which requires that a licensee exercise due professional care in the performance of brokerage services. Bullock failed to exercise due professional care by using his own company to survey yachts for Wittman and Shaffer, his clients.

In addition, he falsely stated that his company used accredited surveyors. Bullock acted as an agent of both the seller and purchaser in Wittman's yacht transaction without obtaining the written consent of both of the parties. Finally, Bullock obtained more than one contract on the same vessel in the Hill yacht transaction. This was not permitted under the terms of the contracts.

65. Section 326.006(2)(e)1, Florida Statutes, provides:

The division may suspend or revoke the license of a broker or salesperson who:

1. Makes a substantial and intentional misrepresentation, with respect to a transaction involving a yacht, upon which any person has relied.

66. Based upon the misrepresentations of Bullock in Wittman's and June's yacht transactions, Bullock violated Section 326.006(2)(e)1.

67. As Respondent has permitted Bullock to carry out the acts of violating the Notary Public Law, failing to exercise due professional care, acting for both the buyer and seller of a transaction without the written consent of both, and making substantial and intentional misrepresentations in yacht transactions, Respondent has violated Rule 61B-60.009(1) and (2), Florida Administrative Code, which prohibits him from permitting others to carry out acts that if done by Respondent would place him in violation of the Act.

68. Section 326.006(2)(d)4, Florida Statutes, provides:

The division may impose a civil penalty against a broker or salesperson or any of his or her assignees or agents, or against an unlicensed person or any of his or her assignees or agents, for any violation of this chapter or a rule adopted under this chapter. A penalty may be imposed for each day of continuing violation, but in no event may the penalty for any offense exceed \$10,000. . . .

69. Rule 61B-60.010, Florida Administrative Code (1992), provides guidelines for determining civil penalties. The nature of Respondent's violation is a factor to be considered in the penalty guidelines. Rule 61B-60.010(2)(i), Florida Administrative Code. All of the five charges against Respondent involve Respondent's failure to follow rules and act in ways that protect consumers. Respondent has not only acted in ways that jeopardize consumer protection, but has caused actual consumer harm by almost requiring the Hills to litigate prior to returning their \$1,700 deposit; by allowing his salesman to make misrepresentations which resulted in Wittman's purchasing a yacht that needed \$15,000-\$20,000 in repairs; and by allowing his salesman to make misrepresentations to Chris June which resulted in June's purchasing a yacht for \$20,000 that now in a salvage yard. These are aggravating factors.

70. A penalty factor in Rule 61B-60.010(2)(f), Florida Administrative Code, applicable in this case is whether Respondent's conduct was intentional. Based upon the Findings of Fact, it is apparent that Respondent's violations were

intentional. This also is an aggravating factor.

71. Another penalty guideline applicable in this case is whether Respondent knew or should have known that the misfeasance constituted a violation of Chapter 326, Florida Statutes, or its rules. Rule 61B-60.010(2)(g), Florida Administrative Code (1992). Respondent's descriptions of his duties as an escrow agent, corroborated by the statements of Bullock, indicate an abdication of supervisory responsibility. Respondent should have known that his lack of supervision and control of the office would result in violations of the Act for which he is responsible. This is an aggravating factor.

72. Based upon the evidence described above on counts 2 through 5, it is this type of situation that the maximum civil penalties and revocation of Respondent's license is designed for.

#### RECOMMENDATION

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

RECOMMENDED that the Division of Florida Land Sales, Condominiums and Mobile Homes enter a final order which:

1. Finds Respondent guilty of the charges set forth in Counts 1, 2, 3, 4 and 5 of the Amended Notice to Show Cause.
2. Respondent's broker's license is hereby revoked.
3. The Division impose a civil penalty of \$40,500, which is \$500 for Count 1 and \$10,000 each for Count 2, 3, 4, and 5.

4. The Respondent shall immediately cease and desist from any violations of Chapter 326, Florida Statutes, and the administrative rules promulgated thereunder.



DONE AND ENTERED this 18th day of June, 1999, in  
Tallahassee, Leon County, Florida.

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DANIEL M. KILBRIDE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of June, 1999.

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.