

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 99-0408  
 )  
YVONNE JOINER MEDIATE and )  
ROYAL REALTY & MANAGEMENT, )  
INC., )  
 )  
Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Larry J. Sartin, a duly designated Administrative Law Judge of the Division of Administrative Hearings, on May 5, 1999, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Daniel Villazon, Chief Attorney  
Division of Real Estate  
Department of Business and Professional  
Regulation  
Hurston North Tower, Suite N308  
400 West Robinson Street  
Orlando, Florida 32801-1772

For Respondents: No Appearance

STATEMENT OF THE ISSUE

The issue in this case is whether Respondents, Yvonne Joiner Mediate and Royal Realty Management, Inc., committed the offenses alleged in an Administrative Complaint issued against Respondents on or about November 18, 1998.

PRELIMINARY STATEMENT

On November 18, 1998, the Department of Business and Professional Regulation, issued an Administrative Complaint alleging that Respondents, Yvonne Joiner Mediate and Royal Realty Management, Inc., violated Section 475.25(1)(e), Florida Statutes (by failing to institute one of the procedures specified in Section 475.25(1)(d)1, Florida Statutes, in violation of Rule 61J2-10.032(1), Florida Administrative Code), and 475.25(1)(k), Florida Statutes. By letter dated January 10, 1999, Ms. Joiner disputed the allegations of fact of the Administrative Complaint and suggested that the allegations be dropped.

Although Ms. Joiner did not request a formal administrative hearing to contest the allegations of the Administrative Complaint, copies of the complaint and the letter were filed with the Division of Administrative Hearings on January 28, 1999, by Petitioner requesting assignment of the matter to an Administrative Law Judge. The matter was assigned to the undersigned.

An Initial Order was entered and mailed to Petitioner and Respondents requesting information concerning the scheduling of the formal hearing. The Initial Order was mailed to Respondents at the address used by Ms. Joiner in her letter of January 10, 1999. Petitioner responded to the Order. Respondent filed no response.

On March 14, 1999, a Notice of Hearing was entered scheduling the hearing to commence at 1:00 p.m. on May 5, 1999. The Notice was also sent to Respondents at the address used by Ms. Joiner in her letter of January 10, 1999.

On the date scheduled for the hearing counsel for Petitioner appeared. Respondent, however, failed to appear. After waiting fifteen minutes for Respondent, the hearing proceeded. At no time during or after the hearing did Respondent make an appearance or inform the undersigned of any reason for her failure to appear.

Petitioner presented the testimony of Clifford Brown and Sidney B. Miller. Petitioner's Exhibits 1 through 4 were accepted into evidence.

A Transcript of the hearing was filed on May 5, 1999. Proposed orders were, therefore, due on or before June 1, 1999. Petitioner filed a proposed order on June 2, 1999. The proposed order has been fully considered in entering this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner, the Department of Business and Professional Regulation, Division of Real Estate (hereinafter referred to as the "Division"), is an agency of the State of Florida. The Division is charged with the responsibility for, among other things, regulating the practice of persons holding real estate

brokers' and real estate sales persons' licenses in Florida. Section 20.165, and Chapters 455 and 475, Florida Statutes.

2. Respondent, Yvonne Joiner Mediate, is now, and at all times relevant to this matter was, licensed as a real estate broker in Florida.

3. Respondent, Royal Realty & Management, Inc. (hereinafter referred to as "Royal Realty"), is now, and at all times relevant to this matter was, a corporation registered as a real estate broker in Florida. Royal Realty's license number is 0255570. Royal Realty's last reported address is 1885 U.S. 19, Post Office Box 788, Monticello, Florida 32344.

4. Until December 31, 1998, Ms. Mediate was the active, qualifying broker for, and an officer of, Royal Realty. Since December 31, 1998, Ms. Mediate has been an inactive broker.

5. On or about May 15, 1994, Clifford Brown entered into a Contract for Sale and Purchase (hereinafter referred to as the "Purchase Contract"), with Ralph and Dawn Chapman, agreeing to purchase certain real property from the Chapmans.

6. Consistent with the Purchase Contract, Mr. Brown remitted a \$1,000.00 deposit with Ms. Mediate and Royal Realty.

7. The Purchase Contract was contingent upon Mr. Brown's obtaining financing for the balance of the purchase price through a third-party loan.

8. Closing on the Purchase Contract was originally scheduled for June 15, 1994. The date for closing was subsequently extended to June 30, 1994.

9. Mr. Brown ultimately failed to obtain the required third-party loan. As a consequence, closing on the Purchase Contract did not take place.

10. Even though Mr. Brown had defaulted on the Purchase Contract, neither party took any action to cancel the Purchase Contract immediately.

11. In October 1994 Mr. Brown had still not obtained financing. Therefore, Respondents, without Mr. Brown's consent, disbursed part of the \$1,000.00 deposit to the Chapman's and part to a title insurance company.

12. When Mr. Brown requested the return of his deposit, Ms. Mediate informed him that he had forfeited the deposit because he had failed to obtain a third-party loan.

13. On or about January 28, 1998, more than three years after disbursing the deposit, Ms. Mediate notified the Division that there was a dispute over whom Mr. Brown's deposit should be disbursed to.

14. On or about November 18, 1998, an Administrative Complaint was issued against Respondents. Respondents were both charged with violating Sections 475.25(1)(e) (by failing to institute one of the procedures specified in Section 475.25(1)(d)1, Florida Statutes in violation of Rule 61J2-

10.032(1), Florida Administrative Code), and (k), Florida Statutes.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction of the parties to, and the subject matter of, this proceeding. Section 120.57, Florida Statutes (1997).

16. The burden of proof in this proceeding was on the Division, the party asserting the affirmative of the issue: that Respondents committed violations of Section 475.25(1), Florida Statutes. See Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). The Division was required to meet its burden by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

17. Section 475.25, Florida Statutes (1997), authorizes the Florida Real Estate Commission to take disciplinary action against the license of any real estate broker or real estate salesperson if the licensee commits certain specified acts. Of the specified acts of Section 475.23, Florida Statutes, Respondents were charged with violating the following:

. . . .

(e) Has 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.

. . . .

(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 . . . . The commission shall establish rules to provide for records to be maintained by the broker and the manner in which such deposits shall be made.

18. As to Section 475.25(1)(e), Florida Statutes, the specific rule which Respondents were charged with having violated is Rule 61J2-10.032(1), Florida Administrative Code:

(1)(a) A real estate broker, upon receiving conflicting demands for any trust funds being maintained in the broker's escrow account, must provide written notification to the Commission within 15 business days of the last party's demand, and the broker must institute one of the settlement procedures as set forth in s. 475.25(1)(d)1., Florida Statutes, within 30 business days after the last demand.

(b) A broker, who has good faith doubt as to whom is entitled to any trust funds held in the broker's escrow account, must provide written notification to the Commission within 15 business days after having such doubt and must institute one of the settlement procedures as set forth in s. 475.25(1)(d)1., Florida Statutes, within 30 business days after having such doubt. Based upon prior decisions of the Commission, good faith doubt shall be deemed to exist in the following situations:

1. the closing or consummation date of the sale, lease, or other real estate transaction has passed and the broker has not received conflicting or identical instructions from all of

the parties concerning the disbursement of the escrowed funds;

19. Respondents were charged with violating the foregoing rule by failing to follow one of the procedures for dealing with a dispute over the disbursement of escrowed funds established in Section 475.25(1)(d)1, Florida Statutes:

(d)1. Has failed to account or deliver to any person, including a licensee under this chapter, at the time which has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery, any personal property such as money, fund, deposit, check, draft, abstract of title, mortgage, conveyance, lease, or other document or thing of value, including a share of a real estate commission . . . . However, if the licensee, in good faith, entertains doubt as to what person is entitled to the accounting and delivery of the escrowed property, or if conflicting demands have been made upon the licensee for the escrowed property, which property she or he still maintains in her or his escrow or trust account, the licensee shall promptly notify the commission of such doubts or conflicting demands and shall promptly:

a. Request that the commission issue an escrow disbursement order determining who is entitled to the escrowed property;

b. With the consent of the parties, submit the matter to arbitration;

c. By interpleader or otherwise, seek adjudication of the matter by a court; or

d. With the written consent of all parties, submit the matter to mediation. . . .

If the licensee promptly employs one of the escape procedures contained herein, and if she or he abides by the order or judgment resulting therefrom, no administrative complaint may be filed against the licensee for failure to account for, deliver, or maintain the escrowed property.



20. Respondents had no right to disburse the deposit tendered to them by Mr. Brown. The rules governing brokers are clear that such funds may not be disbursed until after a transaction closes without the consent of the depositor of the funds. Rule 61J2-14.011, Florida Administrative Code. In this case, closing never took place and Mr. Brown never gave any instructions authorizing disbursement of the funds.

21. Pursuant to Rule 62J2-10.032(1), Florida Administrative Code, when the date for closing on the Purchase Contract, June 30, 1994, passed, and Respondents received no conflicting or identical instructions concerning the disbursement of Mr. Brown's deposit, Respondents were deemed to have good faith doubt as to how the funds should be disbursed.

22. Despite Respondents' good faith doubt as to how Mr. Brown's deposit should be disbursed, Respondents disbursed the funds to the sellers and a title company. Respondent's therefore, disbursed funds placed in their trust without following the procedures specified in Section 475.25(1)(d)1, Florida Statutes.

23. Based upon the foregoing, Respondents did in fact violate Section 475.25(1)(e), Florida Statutes, by failing to following one of the specified procedures of Section 475.25(1)(d)1, Florida Statutes, contrary to Rule 61J2-10.032(1), Florida Administrative Code, as alleged in the Administrative Complaint.

24. Respondents' disbursement of Mr. Brown's deposit before authorization from Mr. Brown to do so also violated Section 475.25(1)(k), Florida Statutes.

25. The Division has requested that Ms. Mediate be placed on probation for a period of one year from the entry of the final order in this case; that she be required to successfully complete a seven-hour escrow management course for real estate brokers; and that she be required to pay an administrative fine of \$1,000.00.

26. The Division has requested that Royal Realty & Management, Inc., be issued a written reprimand.

27. The punishment recommended by the Division is consistent with Rule 61J2-24.001, Florida Administrative Code. While the range of penalties provided for a violation of Section 475.25(1)(e), Florida Statutes, may be more severe than the penalties recommended by the Division, a consideration of the aggravating and mitigating circumstances supports the Division's recommendation.

#### RECOMMENDATION

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

RECOMMENDED that a final order be entered by Petitioner finding that Respondents have violated Sections 475.25(1)(e) and (k), Florida Statutes, as alleged in the Administrative Complaint issued against Respondents. It is further

RECOMMENDED that Respondent Yvonne Joiner Mediate be placed on probation for a period of one year from the entry of the final order; that she be required to successfully complete a seven hour escrow management course for real estate brokers; and that she be required to pay an administrative fine of \$1,000.00. It is further

RECOMMENDED that Respondent Royal Realty & Management, Inc., be issued a written reprimand.

DONE AND ENTERED this 28th day of June, 1999, in Tallahassee, Leon County, Florida.

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LARRY J. SARTIN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th 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.