

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 99-4702
)
COLLIE E. STEVENS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Mary Clark, held a formal hearing in the above-styled case by videoconference on April 20, 2000. The Administrative Law Judge presided from a videoconference center in Tallahassee, Florida; the parties, their witnesses, and the court reporter participated from a videoconference center in Orlando, Florida.

APPEARANCES

For Petitioner: Andrea D. Perkins, Esquire
Department of Business and
Professional Regulation
400 West Robinson Street, Suite 308N
Orlando, Florida 32801-1772

For Respondent: Collie E. Stevens, pro se
Son Set Free Realty, Inc.
2294 North U.S. One
Fort Pierce, Florida 34950

STATEMENT OF THE ISSUE

An Administrative complaint dated April 13, 1999, alleges that Respondent Mr. Stevens violated several provisions of Section 475.25, Florida Statutes, when he failed to return an earnest money deposit to a buyer after being directed to do so by the seller, the U.S. Department of Veterans Affairs. The issues in this proceeding are whether Mr. Stevens committed the violation and if so what discipline is appropriate.

PRELIMINARY STATEMENT

Mr. Stevens requested a formal hearing in response to the Administrative Complaint; the case was then forwarded to the Division of Administrative Hearings where it was assigned and set for hearing as described above.

At hearing the Division of Real Estate (Agency) presented one witness and five exhibits, received in evidence as Petitioner's Exhibit Nos. 1-5. Mr. Stevens testified in his own behalf and presented three exhibits which were received into evidence as Respondent's Exhibit Nos. 1-3.

The Transcript of the proceeding was filed on May 19, 2000. The Agency filed its Proposed Recommended Order on May 31, 2000. Mr. Stevens did not file any proposals.

FINDINGS OF FACT

1. Respondent, Collie E. Stevens, has been licensed in the State of Florida as a real estate broker since 1986. Prior to

that year he was licensed as a real estate salesperson in Florida.

2. In 1996 Mr. Stevens represented the seller, the U.S. Department of Veterans Affairs (VA), in the sale of a home in Orange County, Florida. On October 1, 1996, Doris Wright executed an Offer to Purchase and Contract of Sale for the home.

3. When she signed the contract Ms. Wright gave the broker, Mr. Stevens, a check for \$675.00 as an earnest money deposit. Mr. Stevens deposited the check into his escrow account.

4. Later, in October or November 1996, Ms. Wright withdrew her offer to purchase the property. The VA regional office provided a notice to Mr. Stevens dated November 20, 1996, directing him to return the earnest money deposit to Ms. Wright.

5. Mr. Stevens never returned the money to Ms. Wright although she made several requests through his secretary and made several attempts to contact him directly.

6. Mr. Stevens alleges that he is entitled to retain at least \$250.00 of the \$675.00 deposit because that was the mortgage company's fee for processing Ms. Wright's mortgage application. Mr. Stevens claims that Ms. Wright authorized him to pay that fee on her behalf when she was not in town; Ms. Wright does not dispute that claim.

7. Mr. Stevens also argues that he should be entitled to the remainder of the deposit money because Ms. Wright cancelled a listing agreement for him to sell her house. Ms. Wright disputes

this claim and Mr. Stevens did not produce any contract or document evidencing such an agreement.

8. During the pendency of his dispute with Ms. Wright over entitlement to the deposit Mr. Stevens never notified the Florida Real Estate Commission of the dispute nor did he submit the matter to arbitration, mediation, or any court. Mr. Stevens insists that he could have worked out his differences with Ms. Wright and that he was always willing to give her \$425.00, left after deducting \$250.00 for the processing fee from the \$675.00 deposit.

9. In 1996, in another case, Mr. Stevens was disciplined by the Florida Real Estate Commission for culpable negligence or breach of trust, failure to give notice of his representation of a party, failure to maintain trust funds in an escrow account, and failure to preserve and make available brokerage records.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction in this proceeding pursuant to Sections 120.57(1) and 455.225, Florida Statutes.

11. In a licensure discipline such as this the Agency has the burden of proving by clear and convincing evidence the allegations of its complaint. Department of Banking and Finance v. Osborne Stein and Co., 690 So. 2d 932 (Fla. 1996).

12. Based on his failure to return Ms. Wright's deposit, the Agency has charged Mr. Stevens with violations of the following:

475.25 Discipline

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; 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:

(b) Has been 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 this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a listing contract, written, oral, express, or implied, in a real estate transaction; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in any such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the licensee that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the licensee or was an identified member of the general public.

* * *

(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 if a civil judgment relating to the practice of the licensee's profession has been obtained against the licensee and said judgment has not been satisfied in accordance with the terms of the judgment within a reasonable time, or any secret or illegal profit, or any divisible share or portion thereof, which has come into the licensee's hands and which is not the licensee's property or which the licensee is not in law or equity entitled to retain under the circumstances. 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 all 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. The department may conduct mediation or may contract with public or private entities for mediation services. However, the mediation process must be successfully completed within 90 days following the last demand or the licensee shall promptly employ one of the other escape procedures contained in this section. Payment for mediation will be as agreed to in writing by the parties. The

department may adopt rules to implement this section.

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.

2. Has failed to deposit money in an escrow account when the licensee is the purchaser of real estate under a contract where the contract requires the purchaser to place deposit money in an escrow account to be applied to the purchase price if the sale is consummated.

* * *

(o) Has been found guilty, for a second time, of any misconduct that warrants her or his suspension or has been found guilty of a course of conduct or practices which show that she or he is so incompetent, negligent, dishonest, or untruthful that the money, property, transactions, and rights of investors, or those with whom she or he may sustain a confidential relation, may not safely be entrusted to her or him.

13. The Agency has met its burden of proof, as to the latter two violations but not the first. The evidence suggests Mr. Stevens' careless disregard or cavalier attitude toward his duties as a broker rather than intentional fraud. Even after direction by the seller he did nothing required in Subsection 475.25(1)(d)1., Florida Statutes, to resolve his own dispute with Ms. Wright regarding her deposit.

14. Rule 61J2-14.011, Florida Administrative Code, addresses the rights of brokers regarding escrow deposits. That rule states that a "broker who receives a deposit shall not have

any right to or lien upon said deposit, except upon the written agreement or order of the depositor so long as the depositor has sole control of said deposit." That rule also permits a depositor to "demand return of a deposit until such time as another party has acquired some interest or equity." Further, "such right to demand return of the deposit shall again accrue upon a breach by the other party to the contract."

15. In this case Mr. Stevens ignored his duty to release the funds to Ms. Wright. The transaction did not close and the seller, the VA, specifically authorized its broker to release the funds to Ms. Wright.

16. If Mr. Stevens genuinely thought he was entitled to the funds, he should have obtained something in writing permitting him to keep them and, failing that, he should have proceeded to resolve the dispute as directed by statute and rule. Instead, there is no evidence of even a letter to Ms. Wright notifying her that he was taking the funds held in escrow. For a second time Mr. Stevens abused the privileges of licensure as a real estate broker and failed to appropriately manage funds held in escrow in spite of prior discipline.

17. The penalty recommended by counsel for the Agency is within the guidance range described in Rule 61J2-24, Florida Administrative Code, for violations of Sections 475.25(1)(d) and (o), Florida Statutes.

RECOMMENDATION

Based on the foregoing, it is

RECOMMENDED:

That the Florida Real Estate Commission issue a final order finding that Collie E. Stevens is guilty of a violation of Sections 475.25(1)(d)1. and 475.25(1)(0), Florida Statutes, as charged in the Administrative Complaint, and that the Florida Real Estate Commission suspend his license for two years and require him to complete a 7-hour escrow management course and a 60-hour post-licensure course, and that he pay the costs associated with this case.

DONE AND ENTERED this 19th day of June, 2000, in Tallahassee, Leon County, Florida.

MARY CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of June, 2000.

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 must be filed with the agency that will issue the Final Order in this case.