

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND	)	
PROFESSIONAL REGULATION, DIVISION	)	
OF REAL ESTATE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 00-2422
	)	
JEAN PROL,	)	
	)	
Respondent.	)	
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RECOMMENDED ORDER

Administrative Law Judge Daniel Manry conducted the administrative hearing in this proceeding on September 12, 2000, in Orlando, Florida.

APPEARANCES

For Petitioner: Ghunise L. Coaxum, Esquire  
Department of Business and  
Professional Regulation  
Division of Real Estate  
400 West Robinson Street, Suite N-308  
Orlando, Florida 32801

For Respondent: No Appearance

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent violated Section 475.25(1)(b), Florida Statutes (1999), by committing a breach of trust in a business transaction. (All Chapter and Section references are to Florida Statutes (1999) unless otherwise stated.)

### PRELIMINARY STATEMENT

On October 26, 1999, Petitioner filed an administrative complaint against Respondent alleging that Respondent committed a breach of trust in a real estate transaction. Respondent timely requested an administrative hearing.

At the hearing, Petitioner presented the testimony of three witnesses and submitted eight exhibits for admission in evidence. Respondent did not appear and did not otherwise submit any documents or testimony for admission in evidence.

The identity of the witnesses and exhibits, and the rulings regarding each, are set forth in the Transcript of the hearing filed on October 18, 2000. Petitioner timely filed its Proposed Recommended Order ("PRO") on October 30, 2000. Respondent did not submit a PRO.

### FINDINGS OF FACT

1. Petitioner is the state agency responsible for the regulation and discipline of real estate licensees in the state. Respondent is licensed in the state as a real estate sales person pursuant to license number 0349967. Petitioner issued the last license to Respondent in care of 100% Real Estate, Inc., 1810 Lee Road, Orlando, Florida 32810.

2. On August 6, 1998, Dr. and Mrs. Richard M. Cowins (the "Cowins") entered into a Contract for Sale and Purchase (the "Contract") of their residence located at 9151 Cypress Point Drive. The Contract listed Respondent as the agent for J.C.

Services Ltd., or Assigns ( the "Buyer"). The Contract established the date of closing as September 8, 1998.

3. On August 7, 1998, Respondent executed an Addendum to the Contract for Sale and Purchase. The Addendum, in relevant part, stated that Respondent was the agent for the Buyer, required a home inspection, and gave the Buyer the right to cancel the contract and obtain a refund of the \$5,000 escrow deposit if the home inspection report was not satisfactory to the Buyer.

4. On August 7, 1998, Respondent executed a single agency disclosure form stating that Respondent was the agent for the Cowins as sellers. Respondent delivered the single agent disclosure form to the Cowins on August 7, 1998. The record does not disclose why Respondent executed a single agency disclosure form for the Cowins and signed the Contract and Addendum as the agent for the Buyer.

5. The Cowins entered into a contract for the purchase of a replacement residence. The Cowins placed \$10,000 in escrow for the purchase of the replacement residence.

6. Two inspection reports were completed for the Cowins' residence. Both inspection reports required repairs to windows and the roof. The Cowins made the repairs.

7. Respondent requested an extension of the closing on behalf of the Buyer but did not give the Cowins a reason for the requested extension. The Cowins refused to extend the closing

without a reason and demanded the funds in escrow. Respondent attempted to place the escrow funds into an interpleader proceeding but was unable to do so because Respondent refused to disclose the identity of the Buyer.

8. Respondent refunded the escrow of \$5,000 to the Buyer. The Cowins forfeited the \$10,000 they had placed in escrow on the replacement residence because they were unable to close without the sale proceeds for the sale of their residence.

#### CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter and parties in this proceeding. The parties were duly noticed for the administrative hearing.

10. The burden of proof is on Petitioner. Petitioner must show by clear and convincing evidence that Respondent committed the acts alleged in the administrative complaint and the reasonableness of any proposed penalty. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

11. Petitioner satisfied its burden of proof. Petitioner showed by clear and convincing evidence that Respondent committed a breach of trust in violation of Section 475.25(1)(b) by falsely representing to the Cowins that Respondent was a single agent for them when Respondent in fact represented the Buyer in a real estate transaction.

12. Florida Administrative Code Rule 61J2-24.001 prescribes the discipline to be imposed against Respondent's license. The discipline includes fines and suspension of license.

RECOMMENDATION

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

RECOMMENDED that the Commission enter a Final Order finding Respondent guilty of violating Section 475.25(1)(b), imposing a fine of \$1,000, and suspending Respondent's license for one year.

DONE AND ENTERED this 1st day of November, 2000, in Tallahassee, Leon County, Florida.

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DANIEL MANRY  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of November, 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 should be filed with the agency that will issue the final order in this case.