

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 01-2190PL
)
WILLIAM A. MORRISEY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on August 24, 2001, by video teleconference at Orlando and Tallahassee, Florida, before Susan B. Kirkland, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Rania A. Soliman, Esquire
Department of Business and
Professional Regulation
400 West Robinson Street, N-308
Hurston Building, North Tower
Post Office Box 1900
Orlando, Florida 32801

For Respondent: No Appearance.

STATEMENT OF THE ISSUES

Whether Respondent violated Sections 475.25(1)(b), 475.25(1)(d)2, and 475.25(1)(e), Florida Statutes (1998

Supp.), and 475.42(1)(b), Florida Statutes, and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On August 21, 2000, Petitioner, Department of Business and Professional Regulation, Division of Real Estate (Department) filed a three-count Administrative Complaint against Respondent, William A. Morrisey (Morrisey), alleging that Morrisey had violated Sections 475.25(1)(b), 475.25(1)(d)2, and 475.25(1)(e), Florida Statutes (Supp. 1998), and 475.42(1)(b) Florida Statutes. Morrisey requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on June 14, 2001, for assignment to an administrative law judge.

The final hearing was scheduled to commence at 9:00 a.m. on August 24, 2001. Morrisey did not appear at the scheduled time. The undersigned waited until 9:30 a.m. to give Morrisey an opportunity to appear. Morrisey did not appear for the final hearing and did not advise the Division of Administrative Hearings why he did not appear.

At the final hearing, official recognition was taken of Chapters 120, 455, and 475, Florida Statutes.

At the final hearing the Department called the following witnesses: William Carlock, Steven M. Wheeler, Alphonse A. Cheneler, John Penne, Calvin J. Meeks, Linda Joyce Breeding,

David Guerdan, and John Scales. Petitioner's Exhibits 1-5 were admitted in evidence.

The one-volume Transcript was filed on September 17, 2001. Petitioner filed its Proposed Recommended Order on September 27, 2001. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

1. At all times material to this proceeding, William A. Morrisey was a licensed Florida real estate salesperson, issued license number 0607918 by the Department in accordance with Chapter 475, Florida Statutes.

2. On June 10, 1999, Morrisey, as a partner of W.M. #1, executed a contract to purchase real property located at 108 Westwind Court, Sanford, Florida. The sellers were William and Arlene Carlock. The sellers were represented by Stephen Wheeler (Wheeler) with Penne Brokers, Inc.

3. Morrisey identified himself in the contract as a licensed real estate salesperson with Real Estate Professionals of America. Morrisey was engaged in a personal real estate transaction and was not operating as a salesperson for Real Estate Professionals of America. Bill Paisley (Paisley) of Real Estate Professionals of America was the real estate agent for Morrisey and made the original offer on behalf of W.M. #1 to purchase the property. Paisley

represented to Wheeler that the purchase would be a cash transaction and that Morrisey was buying the property for a profit.

4. The Carlocks and Morrisey agreed to close on the property before the end of June 1999. Morrisey was unable to close before the end of June and asked for an extension of time until July 5, 1999. Wheeler began to communicate directly with Morrisey when problems arose about the closing date. Morrisey explained to Wheeler that he would not be paying cash for the property because he was going to sell the property to Keandra Brown.

5. On July 5, Mr. and Mrs. Carlock went to Abstractors Title Company of Central Florida (Abstractors Title) for the closing. Mr. Morrisey did not show for the closing because Ms. Brown did not have the mortgage.

6. Mr. Carlock left the keys to the house with Abstractors Title so that Morrisey could use the keys to do a final inspection on the house to make sure that the agreed-upon repairs were completed. Abstractors Title gave the key to Morrisey to do the final inspection.

7. The closing was rescheduled for August 4, 1999. Mr. and Mrs. Carlock came to the closing as well as Morrisey. The parties signed the closing papers, but Morrisey did not have the funds to close the transaction. He asked Alphonse

Cheneler with Abstractors Title to disburse the proceeds from a transaction that had not transpired (Morrisey's sale of the Carlocks' house to Ms. Brown) so that Morrisey could use those funds to complete his purchase of the property from Mr. and Mrs. Carlock. Mr. Cheneler advised Morrisey that he could not do that.

8. Morrisey also wanted Mr. Cheneler to disburse the funds from the Morrisey-Brown closing so that Morrisey could deposit some money in Ms. Brown's banking account to fulfill a lender requirement that she have a certain amount of money in her bank account. Mr. Cheneler told Morrisey that he felt that would be bank fraud and he would not do it. Morrisey offered Cheneler \$1,000 and a watch if Cheneler would disburse the funds. Cheneler refused.

9. Morrisey advised Wheeler on August 4, 1999, that he would have the funds within a couple of days, but Morrisey never brought the funds and the closing was never completed.

10. On August 4, 1999, Wheeler went to the property that was for sale, and found that Keandra Brown had moved into the house without the knowledge or consent of the owners. Wheeler told Ms. Brown that she would have to leave the property because Morrisey had not closed on the property. Morrisey came to the property while Wheeler was there and verbally

threatened Wheeler, saying he would remove Wheeler from the property if Wheeler did not leave.

11. Mr. Carlock hired an attorney and started eviction proceedings to have Ms. Brown evicted from the premises. Ms. Brown moved out of the house on August 18, 1999.

12. The contract required Morrissey to place a \$1,000 deposit with the law firm of Swann, Hadley, & Alvarez. Morrissey did not place the \$1,000 in an escrow account with Swann, Hadley, & Alvarez. By letter dated August 11, 1999, a representative of Swann, Hadley, & Alvarez advised Wheeler that Morrissey had never placed the money in an escrow account with Swann, Hadley, & Alvarez. Morrissey never placed the \$1,000 with either Penne Brokers, Inc., or Real Estate Professionals of America.

13. A complaint was filed with the Department concerning Morrissey's actions in the real estate transaction at issue. An investigator for the Department sent a letter to Morrissey on September 20, 1999, notifying Morrissey that a complaint had been filed against him. Morrissey contacted the investigator and told the investigator that he would send the investigator some documents by facsimile transmission. Morrissey never sent the documents. Morrissey again called the investigator and scheduled an appointment for November 16, 1999, but Morrissey never appeared for the appointment. The investigator left a

voice mail message for Morrisey, but Morrisey never replied. A second notification letter was sent to Morrisey, and Morrisey called and scheduled another appointment. Morrisey met with the investigator on December 13, 1999.

14. Morrisey advised the investigator that he did ask Abstractors Title to close on the Morrisey-Brown transaction prior to closing on the Carlock-Morrisey transaction so that Morrisey could use the proceeds from the Morrisey-Brown transaction to close on the Carlock-Morrisey transaction. Morrisey also advised that he did not make the \$1,000 deposit at Swann, Hadley, & Alvarez.

15. Mr. and Mrs. Carlock sold the property to another buyer on February 1, 2000.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Sections 120.569 and 120.57, Florida Statutes.

17. The Department has the burden to establish the allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

18. In Count I of the Administrative Complaint, the Department alleges that Morrisey was in violation of Section

475.42(1)(b), Florida Statutes, by having operated as a salesperson for any person not registered as his employer in violation of Section 475.25(1)(e), Florida Statutes (1998 Supp.), which provides that a licensee may be disciplined for violating any of the provisions of Chapter 475, Florida Statutes.

19. In its Proposed Recommended Order, the Department concedes that in the transaction to purchase the Carlocks' property that Morrissey was not operating as a salesperson for Real Estate Professionals of America, and, thus, was not in violation of Section 475.42(1)(b), Florida Statutes. The Department has failed to establish the allegations in Count I of the Administrative Complaint.

20. In Count II of the Administrative Complaint, the Department alleges that Morrissey violated Section 475.25(1)(d)2, Florida Statutes (Supp. 1998), which provides that the Department may discipline a licensee if the Department finds that the licensee has done the following:

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.

21. The Department has established by clear and convincing evidence that Morrissey violated Section

475.25(1)(d)2, Florida Statutes (1998 Supp.). Morrisey was the purchaser in the Morrisey-Carlock transaction and was required by the purchase contract to place a \$1,000 in an escrow account with the law firm of Swann, Hadley, & Alvarez. Morrisey failed to place the money with Swann, Hadley, & Alvarez.

22. In Count III of the Administrative Complaint, the Department alleges that Morrisey violated Section 475.25(1)(b), Florida Statutes (Supp. 1998), which provides that a licensee may be disciplined if the Department finds that the licensee has done the following:

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 . .
. .

23. The Department has established by clear and convincing evidence that Morrisey has violated Section 475.25(1)(b), Florida Statutes (Supp. 1998). Morrisey was guilty of dishonest dealings when he attempted to induce Mr. Cheneler to release the funds from the Morrisey-Brown transaction prior to the closing of the Morrisey-Carlock transaction in order for Morrisey to have funds to close the Morrisey-Carlock transaction and to place funds in Ms. Brown's account to satisfy her lender requirement. Morrisey was

guilty of concealment when he allowed Ms. Brown to occupy the Carlocks' property prior to the closing of the Morrissey-Carlock transaction and without the consent and knowledge of Mr. and Mrs. Carlock.

24. For violations of Section 475.25(1), Florida Statutes (Supp. 1998), the Department has the authority to place a licensee on probation, suspend or revoke a licensee, impose an administrative fine, and issue a reprimand.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a Final Order be entered dismissing Count I of the Administrative Complaint, finding that William A. Morrissey violated Sections 475.25(1)(b) and 475.25(1)(d)2, Florida Statutes (Supp. 1998), suspending his license for five years, imposing a \$1,000 administrative fine for the violation of Section 475.25(1)(b), Florida Statutes (Supp. 1998), and imposing a \$1,000 administrative fine for the violation of Section 475.25(1)(d)2, Florida Statutes (Supp. 1998).

DONE AND ENTERED this 17th day of October, 2001, in
Tallahassee, Leon County, Florida.

SUSAN B. KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of October, 2001.

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.