

1-31-02

Final Order No. BPR-2002-04000 Date: **11-1-02**
FILED

Department of Business and Professional Regulation
AGENCY CLERK
Sarah Wachman, Agency Clerk

By: Brandon M. Nichols

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE COMMISSION

04 JUL 15 AM 10:00
FILED
DIVISION OF
ADMINISTRATIVE
HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF REAL ESTATE

Petitioner

vs.

CASE NO. 200080799
200080800
DOAH NO. 01-3128

AP

CA-CLWS

ELIO RODRIGUEZ AND
COAST TO COAST REALTY

Respondent

FINAL ORDER

On March 20, 2002, pursuant to Sections 120.569 and 120.57(1), Florida Statutes, the Florida Real Estate Commission heard this case to issue a Final Order.

Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings presided over a formal hearing on October 24, 2001 and issued a Recommended Order on January 31, 2002, which the Florida Real Estate Commission adopted as to the Findings of Fact, Conclusions of Law and Recommendations subject to Exceptions. A copy of which is attached hereto as Exhibit A and made a part hereof.

The Petitioner and Respondent filed Exceptions to the Recommended Order, which are attached hereto as Exhibit B and C, respectively, and made a part hereof.

After completely reviewing the record and being otherwise fully advised, the Commission accepts Petitioner's Exception No. 1, which addresses the sentence in paragraph no. 42 of the Conclusions of Law in the Recommended Order. The Commission finds that language in the

Recommended Order stating “and there was no harm to the public resulting from the violations,” is not based on competent and substantial evidence and, therefore, strikes it.

The Commission accepts Petitioner’s Exception No. 2, which addresses the sentence in paragraph no. 30 of the Conclusions of Law in the Recommended Order. The Commission strikes the language “because the contract was never fully executed. Petitioner failed to establish by clear and convincing evidence that Mr. Martinez-Cid, on behalf of Lecanto [sic], was entitled to an accounting of the \$10,000 down payment that should have been placed in Respondent CTC’s escrow account,” because it is not based on the competent and substantial evidence in the record.

The Commission rejects Respondent’s Exception A of the Findings of Fact in the Recommended Order. The Commission finds that paragraph no.12 is based upon competent and substantial evidence.

The Commission rejects Respondent’s Exception B, which addresses paragraph no. 32 of the Conclusions of Law in the Recommended Order.

The Commission rejects Respondent’s Exception C, which addresses paragraph no. 36 of the Conclusions of Law in the Recommended Order.

The Commission rejects Respondent’s Exception D, which addresses the Recommendation found in the Recommended Order.

Based upon Petitioner’s Exception No. 1, the Commission modifies paragraph no. 42 of the Recommended Order to read as follows:

42. The recommended penalties that follow are based in the findings of fact and conclusions of law contained herein, together with Petitioner’s guidelines. The undersigned has considered the following as mitigating factors in making the recommendation that follows: Respondents have no prior disciplinary record.

Based upon Petitioner’s Exception No. 2, the Commission modifies paragraph no. 30 of the Recommended Order to read as follows:

30. Respondents are not guilty of the violations alleged in Counts I and II.

The Commission finds that Respondents violated Sections 475.25(1)(b) and 475.25(1)(k), Florida Statutes.

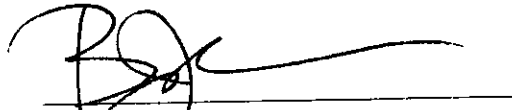
Therefore, based upon a complete review of the record and Petitioner’s and Respondent’s Exceptions to the Recommended Order, the Commission **ORDERS** the suspension of Respondents’ licenses for a period of 90 days and each Respondent to pay a fine of \$1,000 for violations of Section 475.25(1)(k), Florida Statutes,. The Commission further **ORDERS**, for violations of Section

475.25(1)(b), Florida Statutes, the suspension of Respondents' licenses Respondents' licenses for a period of six months and each Respondent to pay a fine in the amount of \$1,000. The periods of suspension shall run concurrently.

This Final Order shall be effective thirty days from date of filing with the Clerk of the Department of Business and Professional Regulation. However, any party affected by this Order has the right to seek judicial review, pursuant to Section 120.68, Florida Statutes, and to Section 9.110, Florida Rules of Appellate Procedure.

Within thirty days of the filing date of this Final Order, review proceedings may be instituted by filing a Notice of Appeal with the Clerk of the Department of Business and Professional Regulation at Suite 308N, 400 West Robinson Street, Orlando, Florida 32801. At the same time, a copy of the Notice of Appeal with applicable filing fees must be filed with the appropriate District Court of Appeal.

DONE AND ORDERED this 20th day of March, 2002 in Orlando, Florida.



Director
Division of Real Estate

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent by U.S. Certified Mail to: Steve Johnson, Esquire, 1801 E. Colonial Drive, Orlando, Florida 32803; the Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060; and a copy provided to Juana C. Watkins, Esquire, DBPR, 400 W. Robinson Street, 308N, Orlando, FL 32802, this 1st day of November 2002.

Brandon M. Nichols